

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
THE APPLICATION OF THE INTERIM ACCORD
OF 13 SEPTEMBER 1995**

(THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA v. GREECE)

REJOINDER OF GREECE

VOLUME I

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VOLUME I

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CHAPTER 1: INTRODUCTION

1.1. The present Rejoinder is filed in conformity with the Court's Order dated 12 March 2010 authorizing the submission of a Reply by the former Yugoslav Republic of Macedonia and a Rejoinder by Greece and fixing 9 June 2010 for the time-limit for the Reply and 27 October 2010 for the Rejoinder.

1.2. In accordance with the Court's Practice Direction II, paragraph 2, a "short summary" of Greece's reasoning appears at the end of this Rejoinder. Consequently, there is no need to present an overview of this written pleading in this Introduction. However, by way of introduction, before presenting the structure of the Rejoinder (c), the Respondent wishes to make a series of brief remarks concerning:

- (a) the subject-matter of the dispute and
- (b) the overall character of the case.

A. The Subject-Matter of the Dispute

1.3. At this stage of the procedure, it might seem superfluous to revert to the subject-matter of the dispute. But it is a crucial issue, and one which still divides the parties. The FYROM maintains that:

"the dispute that has been submitted to the Court does not require the Court to resolve the difference referred to in Article 5(1), or to express any view on that matter ..."¹

¹ Reply, paras. 1.8(3) and 3.14. See also Memorial, para. 3.14, Reply, paras. 3.13- 3.19.

Greece has shown in its Counter-Memorial that the difference over the name is at the core of the dispute.² It fully maintains this view.

1.4. In these circumstances, the Court cannot simply limit itself to acknowledging the Applicant's definition of the subject-matter of the dispute, but has to reach its own appreciation of the facts. The Court has held that:

“It is for the Court itself, while giving particular attention to the formulation of the dispute chosen by the Applicant, to determine on an objective basis the dispute dividing the parties, by *examining the position of both parties*.”³

1.5. The FYROM strives to present its case as “not [requiring] the Court to resolve the difference over the Applicant's name.”⁴ This is pure word play. It is true that the FYROM's pleadings do not include a formal submission to that end and that its whole judicial strategy aims at showing that the Court is not required to “express any views on that matter”, let alone decide it. To that end, it attempts to divert attention from the safeguard clause in Article 11, paragraph 1, of the Interim Accord⁵ and tries to make an exclusive link between Articles 5, paragraph 1,⁶ and 21, paragraph 2,⁷ in isolation from the rest of the Interim Accord. But this argument faces two decisive difficulties:

² Counter-Memorial, paras. 1.4-1.8 and 6.32-6.51.

³ *Fisheries Jurisdiction (Spain v. Canada)*, *Jurisdiction of the Court, Judgment*, *I.C.J. Reports 1998*, p. 432, 448, para. 30 (emphasis added); *Nuclear Tests (New Zealand v. France)*, *Judgment*, *I.C.J. Reports 1974*, p. 457, 466, para. 30; *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case, Order of 22 September 1995*, *I.C.J. Reports 1995*, p. 288, 304, para. 55.

⁴ Reply, para. 1.8(3) and para. 3.14.

⁵ “... the Party of the First Part reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993).”

⁶ “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

- *first*, as has been shown in Greece’s Counter-Memorial⁸ and as is further demonstrated hereinafter,⁹ the Court cannot decide on the FYROM’s express submissions without first taking a position on the continuation—or the non-continuation—of the negotiations on the name issue and the respective responsibilities of the Parties in this situation (a matter which is a necessary hidden submission of the Applicant);
- *second*, the explicit language of Article 11, paragraph 1, leaves no doubt that it was conceived to address the existence of a dispute on the name issue —exactly the contingency provided for by Article 21, paragraph 2, and its reference to Article 5.

1.6. Moreover, the facts speak for themselves. The FYROM’s whole case is directed at obtaining a reversal of the NATO decision to defer an invitation to the FYROM to join the Alliance until “a mutually acceptable solution *to the name issue* has been reached.”¹⁰ This raises acute questions as to the jurisdiction of the Court. First, the FYROM’s claim is, in reality, directed against an organisation which is not (and could not be) a party to this case; and, second, the FYROM’s claim bears on the name issue which is excluded from the Court’s jurisdiction by Article 21, paragraph 2, of the Interim Accord. The Applicant’s tortured explanations cannot conceal the inescapable fact that it reproaches Greece for “its actions and subsequent statements, that the sole reason for its objection to the Applicant’s membership of NATO was *the difference between the Parties as to*

agreement on the difference described in that resolution and in Security Council resolution 817 (1993).”

⁷ “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.”

⁸ See Counter-Memorial, paras. 6.46-6.51.

⁹ See below, paras. 3.16-3.24.

¹⁰ NATO Press Release (2008)049, *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*, para. 20: Memorial, Annex 65 (emphasis added).

the Applicant's constitutional name."¹¹ Or, as expressed again in the Reply: "the factual record demonstrates that the reason for the Respondent's objection to the Applicant's admission to NATO was the lack of resolution *of the difference over the name.*"¹²

1.7. It is Greece's submission that it has not violated Article 11, paragraph 1, of the Interim Accord and that, in joining the consensus decision postponing the admission of the FYROM into the Alliance pending settlement of the name issue, it has simply exercised its rights and complied with its duties under Article 10 of the North Atlantic Treaty,¹³ rights and duties which are preserved by Article 22 of the Interim Accord. Moreover, Article 11, paragraph 1, itself reserves the Respondent's "right to object to any membership... if and to the extent the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)", and this condition was satisfied here. But, even if the Court were to reject this analysis, it would still have to find that it has no jurisdiction in this case because the alleged "objection" by Greece to the admission of the FYROM in NATO would necessarily have been based, in the Applicant's own words, on "the difference between the Parties over the ... name."¹⁴

B. The Overall Character of the Case

1.8. Seen from outside the region, the name issue—which is at the heart of the case brought by the FYROM before the Court—might seem trivial, exaggerated or artificial. It is not. Macedonia is a region divided between four States, in an

¹¹ Application of 13 November 2008, para. 20 (emphasis added).

¹² Reply, para. 4.39 (emphasis added).

¹³ See *Study on NATO Enlargement, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council*, Brussels, 3 September 1995 (published in *NATO Handbook Documentation*, NATO Office of Information and Press, 1999, pp. 335-369): Counter-Memorial, Annex 19.

¹⁴ Reply, para. 4.39.

area long cursed by irredentist claims and bloody ethnic strife. The claim of one State to bear the unqualified name for all parts of the region of Macedonia is not trivial. Greece has supported the independence of the FYROM and pressed it to adopt a name that accurately indicates that it is only part of the Macedonian region. The FYROM has persisted in rejecting any clear qualifier which would so indicate. The Security Council provided an interim solution with the commitment to negotiate and, on this basis, Greece was able to establish an Interim Accord with the FYROM. That agreement has enabled Greece to have amicable relations with the FYROM.

1.9. Greece has always played fair and been transparent about its goal. It has, in particular, always complied with the obligation agreed in the Interim Accord to negotiate 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 name issue.

1.10. For its part, the FYROM has constantly endeavoured to create a *fait accompli* which would render its obligation to negotiate in good faith an empty shell. One of its gambits is the so-called “dual formula” according to which the purpose of the negotiations on the name issue is only to find a name for the “Party of the Second Part” exclusively in its bilateral relations with Greece, while preserving the use of the name it has chosen for itself in all other contexts. In the words of the FYROM’s President:

“That means use of the Republic of Macedonia constitutional name for the entire world, for all international organizations and in the bilateral relations with all countries, and to find a compromise

solution only for the bilateral relations with the Republic of Greece.”¹⁵

1.11. It is simply inconceivable that Greece would have accepted such a fool’s bargain. Indeed, the assumption is refuted by the very wording of Security Council Resolution 817 (1993). For the same reason, it strains credulity to interpret Article 11, paragraph 1, of the Interim Accord as if Greece gave *carte blanche* to the FYROM by committing itself not to object to the latter’s membership in any international organisation, even when it became obvious that the FYROM would violate its commitment not to be referred to in the organisation other than by its provisional agreed name. Here again, it would be a fool’s bargain, since once the FYROM had become a member of an organisation (NATO in the instant case) Greece would have no means of ensuring its compliance with the commitment as to the name by which it would be referred to in the organization.

1.12. The Applicant has relentlessly attempted to erode its obligation to use its provisional name and, correlatively, it has conspired to frustrate the negotiation process established and accepted by it in order to settle the dispute. It now attempts to persuade the Court that the impasse in the negotiations is due to the usual vicissitudes of the diplomatic process, rather than its own obstructive tactics; shirking all responsibility for the deferral of its invitation to join NATO in 2008, when in fact its own behaviour is the reason for the continuance of the dispute.

1.13. The same cunning can be detected in the FYROM’s use of the shorthand rubric, “*constitutional* name” in the hope of imparting an aura of legitimacy to its manoeuvres to use a name which the negotiation process to which it agreed was to

¹⁵ Statement made by President Crvenkovski, *Stenography notes from the 7th sequel of the 27th session of the Parliament of the Republic of Macedonia*, held on 3 November 2008, p. 27-7/11: Counter-Memorial, Annex 104.

replace. An incantation of domestic “constitutional” preference does not, however, supersede international law.

1.14. And this points to another aspect of the present case: the strategic importance of the time factor, which the Applicant has manipulated in a devious but contradictory way:

- On the one hand, the FYROM insists that the clock must stop the moment when the Interim Accord was signed. It does so, for example, when it alleges that, “by concluding the Interim Accord, the Respondent recognized that notwithstanding the unresolved difference over the name, the Applicant satisfied all the core principles of international law, the very same principles that animate the North Atlantic Treaty, and that the difference over the name was *not* an issue that precluded the Applicant from pursuing ‘the maintenance of peace and security, especially in the region’”;¹⁶ or when it contends that its admission to the United Nations confirms that it is, once and for all a “peace-loving State” whose devotion to the principle of good neighbourliness cannot be challenged, even in the face of fifteen years of contrary practice.¹⁷
- On the other hand, it “runs the clock” in that it has contrived a situation which it hopes will persuade the international community and the Court that there is no longer anything to negotiate, since, “the constitutional name of the Applicant was and still is the ‘Republic of Macedonia’, and is recognized as such by a large number of States.”¹⁸

¹⁶ Reply, para. 5.44 (footnotes omitted).

¹⁷ See Reply, para. 4.84.

¹⁸ Reply, para. 4.42.

1.15. The FYROM is attempting to send a subliminal message: instead of the rule of law, instead of *pacta sunt servanda*, it would have the Court believe that the name issue is trivial and that this case is a fairy tale. Greece, it would have the Court believe, is the “big bad wolf”, stubbornly making “much ado about nothing” at the expense of a tiny innocent neighbour.¹⁹ But this case is about the rule of law and *pacta sunt servanda*, and the name issue is not trivial. The mere fact that both Parties concluded the Interim Accord, in which the name issue was central, belies the FYROM’s analysis: it tells you that it was important, indeed very important, to Greece. It was crucial at the time, and remains so. Indeed it was so politically sensitive that it was expressly withdrawn from the Court’s jurisdiction by Article 21, paragraph 2, of the 1995 Accord.

1.16. This case is not about the Applicant’s right to “continue to exercise its rights as an independent State [...] including the right to pursue membership of NATO and other international organizations.”²⁰ Greece does not challenge that. It is about the Applicant’s duty to do those things consistent with its international obligations; it is about *pacta sunt servanda*.

C. Structure of this Rejoinder

1.17. Greece’s Rejoinder is divided into a further nine Chapters.

1.18. Given the seriously distorted image of the 1995 Interim Accord which the FYROM presented in its Reply, Chapter 2 is devoted to an analysis of this instrument. A correct understanding is indispensable both for determining the absence of jurisdiction of the Court in the present case and for deciding on the breaches of the Interim Accord alleged by the FYROM. It will be shown in

¹⁹ See e.g. Annual Address of Branko Crvenkovski, President of the FYROM in Parliament, *Stenography Notes from the 37th Session of the Parliament of the Republic of Macedonia*, held on 18 December 2008, p. 37-00/2: Counter-Memorial, Annex 105.

²⁰ Memorial, para. 1.1; Reply, para. 1.3.

particular that the Interim Accord is fundamentally a synallagmatic agreement and was designed to be a provisional protective framework.

1.19. Chapters 3 and 4 explain why the Court cannot exercise jurisdiction in this case. In Chapter 3, Greece affirms its three formal objections, respectively based on Articles 5, paragraph 1, and 21, paragraph 2, of the Interim Accord, on Article 22 and on the fact that the dispute in reality concerns conduct attributable to NATO, an entity over which the Court lacks jurisdiction. In Chapter 4, Greece makes the more general point that deciding on the present case would depart from the inherent limitations on the exercise of the Court's judicial function in as much as its Judgment would not be capable of effective application and would interfere with on-going diplomatic negotiations mandated by the Security Council. Chapter 4 also briefly discusses the legal implications of the FYROM's maintained "reservation of rights".

1.20. These objections to jurisdiction have not been introduced in a separate phase, for the sake of the expeditiousness of the proceedings. The Chapters that follow Chapter 4 are presented in the alternative and only in the eventuality that the Court does not sustain these objections.

1.21. In Chapter 5, Greece revisits the meaning and scope of Article 11, paragraph 1, of the Interim Accord, because the matter has been seriously confused by the FYROM in its Reply. Chapter 5 shows in particular that the FYROM's interpretation of Article 11, paragraph 1:

- denies any *effet utile* to Article 22;
- misinterprets the obligation "not to object";
- ignores the plain meaning of the safeguard clause which conditions the obligation not to object.

For its part, Chapter 6 demonstrates, on the basis of this analysis, that Greece has not breached its conditional obligation under Article 11, paragraph 1. This is,

inter alia, because it participated in the decision taken by the NATO Bucharest Summit, in accordance with its obligations under the North Atlantic Treaty, and because the safeguard clause condition was fulfilled at all relevant times.

1.22. Chapters 7 and 8 are linked: in the former, Greece shows that the FYROM has violated a number of provisions of the Interim Accord; these provide a basis for certain defences for Greece, which are described in the latter. In spite of the FYROM's vociferous denial, the exception of non-performance *is* an available defence, and Greece would also have been entitled to resort to counter-measures if it were *prima facie* found to be in breach of Article 11, paragraph 1, in response to the FYROM's breaches of that Article itself, of Article 5, paragraph 1, and several other material breaches of other provisions of the Accord.

1.23. In the further alternative, and even more subsidiarily, Chapter 9 briefly deals with the remedies requested by the FYROM.

1.24. Finally, in conformity with Practice Direction II, before Greece's Submissions, Chapter 10 presents a short summary of the Respondent's reasoning.

CHAPTER 2: THE INTERIM ACCORD

A. Introduction

2.1. In its Counter-Memorial, Greece drew attention to the synallagmatic character of the Interim Accord.²¹

2.2. In its frantic efforts to portray Greece's obligation under Article 11, paragraph 1 of the Interim Accord as an "absolute" obligation, totally isolated within that agreement and disconnected from the other commitments, rights and obligations expressed in it, the FYROM, in its Reply, attacks the description of the Interim Accord as a "synallagmatic agreement" and a "holding operation". The FYROM disparagingly calls them "talismanic characterizations".²² Yet, there is nothing talismanic or shamanic in these terms or in their application to the Interim Accord, as will be demonstrated here.

B. The Interim Accord as a "synallagmatic agreement"

2.3. "Synallagmatic agreement" is a basic legal classification, widely recognized in the legal literature,²³ and used by the ICJ²⁴ and the International Law Commission.²⁵

2.4. The *Shorter Oxford English Dictionary* defines the term "synallagmatic" as follows: "adjective: of a contract, treaty, etc.: imposing mutual obligations, reciprocally binding".

²¹ Counter-Memorial, paras. 3.41-3.49.

²² Reply, para. 4.73.

²³ See, e.g., S. Rosenne, *Developments in the Law of Treaties 1945-1986*, Cambridge University Press, 1989, p. 182; M. Footer, *An Institutional and Normative Analysis of the WTO*, Martinus Nijhoff Publishers, 2006, p. 194.

²⁴ See, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 3, 132, para. 261.

²⁵ ILC, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study Group of the International Law Commission*, ILC, 58th Session, Doc: A/CN.4/L. 682 (13 April 2006), para. 472.

2.5. A recent study explains the municipal law origins of the concept and its rationale in these terms:

“In national systems of law, a legal obligation of a non-delictual nature normally arises from a synallagmatic contract. In English law, the general rule is that a contractual obligation is not recognized as enforceable in the absence of a ‘consideration’, that is to say what the International Court refers to as a ‘*quid pro quo*’... French law arrives at a very similar position by a different route: every contractual obligation must have a ‘*cause*’, and in a synallagmatic contract, the obligation of each party is the *cause* of the obligation of the other.”²⁶

2.6. In these terms, it is evident that the Interim Accord is a quintessentially synallagmatic agreement, for it is based on a global *quid pro quo* or exchange of considerations between the Parties, as was demonstrated at some length in Greece’s Counter Memorial.²⁷ In consequence, Greece’s obligation under Article 11, paragraph 1, which was one of the main commitments exchanged, cannot be treated or interpreted in isolation, but as part of this *quid pro quo*.

2.7. The FYROM tries to counter this simple fact by three types of arguments in its Reply.

1. The FYROM’s bald denial of the synallagmatic character of the Interim Accord

2.8. The first argument of the FYROM is merely to deny that the Interim Accord is a synallagmatic agreement. For example:

²⁶ H. Thirlway, “Concepts, Principles, Rules and Analogies: International and Municipal Legal Reasoning”, in *RCADI*, vol. 294 (2002), p. 340.

²⁷ Counter-Memorial, paras. 3.41-46 and 8.31.

“...it is inappropriate to characterize the entire Interim Accord as ‘synallagmatic agreement’ if by that it is claimed that fulfilment of each obligation is somehow linked to the fulfilment of every other obligation.”²⁸

2. *The contention that Article 11(1) is a self-contained provision*

2.9. The second line of argument of the FYROM against the synallagmatic character of the Interim Accord is to take for granted that the only contingency in which the obligation of Greece under the first clause of Article 11(1) can be suspended (“not to object”), is that provided for in the second clause of that provision (i.e., “if and to the extent the [FYROM] is to be referred to in such organization or institution differently than [by this designation]”). This neatly takes Article 11(1) out of the Interim Accord, thus excluding all other possible grounds under the law of treaties and general international law.

2.10. Thus, Chapter IV, section III of the Reply enumerates a long list of circumstances in which Article 11(1) allegedly “does not permit the Respondent to object”, because, it is said, they do not fall within the specific contingency provided for in the second clause of Article 11(1).

2.11. In developing this line of argument, the Applicant misrepresents the reasoning of the Respondent to the point of misquoting the Counter-Memorial, when Applicant writes in the Reply that: “Respondent argues that the second clause of Article 11(1) ‘cannot be treated in isolation’.”²⁹

2.12. The Applicant thus suggests that Greece is trying to channel through the second clause of Article 11(1) other considerations or contingencies than those provided in that clause, for the functioning of the suspensive condition of Greece’s obligation under the first clause. But what the Counter-Memorial says in

²⁸ Reply, para. 4.74.

²⁹ Reply, para. 4.73, quoting from Counter-Memorial, para. 3.26.

the paragraph of which the last five words are quoted in the Applicant's Reply, is quite different. Greece there says:

“...whilst this provision [Article 11(1)] imposes an obligation on Greece in the form of a limitation on a pre-existing right, the obligation is not ‘absolute’ as contended by the FYROM. For its existence depends on the continuous fulfilment and observance of a condition, failing which the obligation ceases to operate and Greece recovers its full liberty to exercise the right whose existence is preserved by the condition...*Moreover*, this obligation is part and parcel of a larger bundle of rights and obligations exchanged by the parties in the Interim Accord, and as such cannot be treated in isolation”³⁰.

2.13. It is evident from reading the full text that what “cannot be treated in isolation”, is not the second clause of Article 11(1) (the safeguard clause) as misrepresented by the Applicant, but Greece's obligation under the first clause of that provision. It is also clear from a reading of the text that the relevant context from which the treatment of this obligation cannot be isolated goes well beyond (“Moreover...”) the specific contingency provided in the second clause: Greece's obligation is part and parcel of a comprehensive exchange of considerations between the parties in terms of rights and obligations on a *quid pro quo* basis; whence the third line of argument in the FYROM's attack on the “synallagmatic” character of the agreement.

3. The claim that the obligations allegedly violated by the FYROM are not synallagmatic

2.14. The third line of argument by the FYROM is the mere assertion that the

³⁰ Counter-Memorial, para. 3.26 (emphasis added).

other provisions of the Interim Accord, especially those which it is said to have violated, are not synallagmatic or connected in any way to the obligation of Greece under Article 11(1).

2.15. The Respondent's Reply is replete with such contentions: "...the treaty obligations under the Interim Accord that are in issue are unconnected to each other"³¹; "they are in no way 'synallagmatic' or directly linked as a '*quid pro quo*'"³². The argument is more explicitly put in the following statement:

"...While the Interim Agreement as a whole obviously imposes obligations on both Parties in different ways, in no sense are these obligations 'synallagmatic', if by that it is meant that the obligation is dependent upon the other Party's fulfilling of some other obligation"³³.

However, in a footnote at the end of this statement, Applicant adds:

"Of course, if one Party were to commit material breach of a provision, the other Party might be able to suspend or terminate its obligations under that or a different provision, provided the relevant steps are taken under the law of treaties..."³⁴

2.16. This last statement calls for two critical remarks. The first is addressed specifically to the footnote, the second to the legal logic of the reasoning which underlies in general this third category of statements attacking the "synallagmatic" character of the Interim Accord.

2.17. First, as far as the footnote is concerned, it reveals a serious confusion between substance and procedure, between the substantive grounds justifying a claim for suspension or termination of a treaty and the procedure to be followed to

³¹ Reply, para. 5.52.

³² Reply, para. 5.81; see also para. 5.83.

³³ Reply, para. 4.74.

³⁴ *Ibid.*, footnote 255, p. 116.

prosecute that claim. Either a substantive ground for such a claim exists in international law or it does not, regardless of the procedure. Just going through the motions by following the relevant steps does not produce the substantive ground for the claim. And if by “relevant steps” is meant the procedure provided for in Article 65, paragraphs 1 and 2 of the Vienna Convention on the Law of Treaties, Greece demonstrates in Chapter 8 below that these are not required where the claim is put forward as a defense, pursuant to Article 65, paragraph 5, of the Vienna Convention.³⁵

2.18. But what is more important about the footnote (setting aside the question of procedure) is that it is a clear admission of the synallagmatic character of the agreement; for what can be the *rationale* in case “one party were to commit material breach of a provision”, of the claim of the other party “to suspend or terminate its obligations under that or a different provision” of the treaty, if not the reciprocal interdependence and community of destiny of these obligations and the provisions from which they flow, in sum, the synallagmatic character of the agreement?

2.19. Second, the FYROM’s third line of attack on the characterization of the Interim Accord as a “synallagmatic agreement” displays a major flaw in legal reasoning. Each of the FYROM’s statements uses the word “synallagmatic”, as if it were a description or characterization of a particular right, a particular obligation or a particular commitment. This is conceptually wrong—because what is synallagmatic is the agreement as such or as a whole, not the specific or individualized rights and obligations that flow from its provisions. What makes an agreement synallagmatic is not whether these rights and obligations are identical, parallel or diverse; it is the fact that the agreement constitutes a legal transaction (a *negotium*), by which each party assumes its bundle of commitments

³⁵ See, below, paras. 8.17-8.23.

or obligations, the *quid* in exchange for the rights and obligations which are the other face of the coin of the commitments and obligations assumed by the opposite party (the *quo*). For each party, the bundle of commitments and obligations it receives by the operation of the agreement constitutes the “consideration” or the “*cause*” (in the technical legal sense of these terms) of the commitments and obligations it assumes, by virtue of the same agreement.

2.20. This does not mean that each obligation of one party is necessarily directly and expressly linked to a specific obligation of the other party. But what ties the two bundles together is the legal transaction itself, the exchange or the *negotium* that ties the “legal knot” (reminiscent of the “*vinculum juris*” of Roman law) and establishes a community of destiny between the components of the two bundles. Thus, the violation of a significant obligation in the bundle assumed by one party, leads to the frustration of the legal transaction as a whole, and cannot but affect, by feedback, the commitments and obligations assumed by the aggrieved party vis-à-vis the party responsible for the violation.

2.21. This makes it necessary to identify the rights, obligations and commitments that constitute the two bundles of the *quid pro quo* in the Interim Accord. This in turn raises the questions of its object and purpose (discussed in what follows) and its qualification as a “holding operation” (discussed below under section C).

2.22. Before turning to the analysis of the object and purpose of the Interim Accord, a general remark on the FYROM’s method of interpreting that agreement is in order. This method is quite odd, if compared with the fundamental rule of interpretation codified in Article 31(1) of the Vienna Convention on the Law of Treaties which provides:

“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

2.23. As will be demonstrated in Chapter 5, the FYROM interprets Greece’s obligation (“not to object”) under the first clause of Article 11, paragraph 1, as imposing a broad obligation, an approach which it then abandons when it comes to the interpretation of the suspensive condition of that obligation, prescribed in the second clause of the same sentence (“if and to the extent the [FYROM] is to be referred to in such organization or institution differently...”).

2.24. The FYROM also insists on interpreting this obligation (“not to object”) and the provision prescribing it in total isolation from the rest of the treaty, i.e. the other provisions of the Interim Accord and the rights, obligations and commitments flowing therefrom, as was just described. The FYROM thus purports to disconnect this obligation, as interpreted by it, from its immediate context, i.e., the other provisions of the treaty, or to jump over the context, thus abandoning the terms of the treaty for its own postulation of the object and purpose of the Interim Accord.

2.25. Thus, according to the FYROM, “That was the object and purpose of the Interim Agreement [*sic*] as a whole: to find a way to allow for pragmatic cooperation bilaterally and multilaterally on an interim basis”³⁶. This formulation sounds as if the sole purpose of the Interim Accord was to enable the FYROM to obtain recognition and cooperation from Greece and clear access to international organizations.

2.26. Later, the FYROM formulates the same idea in different terms:

³⁶ Reply, para. 4.63.

“The whole point of the Interim Agreement was to create certain rights and obligations of the Parties that would operate even *in the absence* of a negotiated settlement of the difference over the name.”³⁷

The emphasized words in the text of the FYROM’s formulation (“*in the absence* of a negotiated settlement of the difference over the name”) suggest that the Interim Accord has been constructed on the premise that in order to be able to operate, the Interim Accord must neutralize and set aside the question of reaching “a negotiated settlement of the difference over the name”; in other words that this question lies outside the ambit, hence the concerns, of the Interim Accord. Aside from the violation of logic this entails, the very text shows on the contrary that the future negotiated settlement lies at the heart of the concerns of the Interim Accord and constitutes a crucial part of the subject-matter it regulates (see for example Articles 1, 5, 11, 21).

2.27. The FYROM’s formulation, quoted above, far from being an accurate description of the object and purpose of the Interim Accord, is a caricature. It is a truncated rendering of the objectives of the Accord to limit them to the benefits the FYROM expected to draw from it, while ignoring the benefits (in terms of commitments and obligations) the FYROM had to concede in exchange, to make the transaction acceptable to Greece. As was explained in Greece’s Counter-Memorial,³⁸ what interested the FYROM most was to obtain recognition and the normalisation of its relations with Greece, both bilaterally—Greece being its biggest neighbour, and as a land-locked country, its bridge to the sea and beyond—and multilaterally.

2.28. As explained in the Introduction, to understand Greece’s concerns that led

³⁷ *Ibid.*, para. 4.72 (emphasis in original).

³⁸ Counter-Memorial, paras. 3.42-3.45.

it to accept the Interim Accord, one has to recall first that the FYROM constitutes just one part of the geographic and historical Macedonia, most of which lies within present Greek boundaries and constitutes part of its national territory, its inhabitants being an important component of the Greek national community. Moreover, the historic and cultural heritage and symbols of ancient Macedonia form an essential part of Greece's historical and cultural patrimony.

2.29. Thus, what counted most for Greece at the time of the conclusion of the Interim Accord and in the face of the deadlock over the name issue, was to secure the abandonment and renunciation by the FYROM of these irredentist tendencies and pretensions; not only by formal statements in the treaty (concerning territorial integrity, hostile propaganda, the appropriation of its national symbols, etc.); but first and foremost by guaranteeing in the treaty that a satisfactory agreement would be reached over a name that would stop serving as a beacon or a siren reverberating continuously the same irredentist ambitions and pretensions; and this through meaningful good faith negotiations, barring the road to unilateral action and *faits accomplis*.

2.30. The concerns of Greece in this regard were well expressed already at the time of the episode of the admission of the FYROM into the United Nations. Thus, in a letter dated 6 April 1993, it is said:

“My Government considers the three main elements of the resolution, namely the settlement of the difference over the name of the Applicant State, the adoption of appropriate confidence-building measures and the procedure for admitting the new States to the UN under a provisional name, an integral and indivisible package which

alone can resolve the outstanding difference between Greece and the new Republic.”³⁹

2.31. It was thus essential to find a legal formula that accommodated the normalization of the relations between the Parties sought by the FYROM, with this last objective sought by Greece, to realize the full object and purpose of the agreement. And it is in that context that the question of the Interim Accord functioning as a “holding operation” is raised.

C. The Interim Accord as a Provisional Protective Framework

2.32. In its Reply, the FYROM brazenly declares that it is “incorrect to characterize the Interim Accord as a holding operation”.⁴⁰ Elsewhere in the Reply, the FYROM asserts that:

“...the Interim Accord was not a mere ‘*modus vivendi*’ or ‘holding operation’. To the contrary, the Interim Accord fundamentally altered the relationship that existed between the Applicant and the Respondent prior to September 1995...”⁴¹

2.33. These statements confuse two aspects or functions of the Interim Accord, which are easily distinguishable in the light of the preceding analysis, and which were already clearly distinguished in Greece’s Counter-Memorial.⁴²

2.34. In order fully to realize its object and purpose described above, the Interim Accord had simultaneously to fulfil three functions:

(i) first, to normalize the relations between the Parties to the extent possible,

³⁹ Letter dated 6 April 1993 from the Minister for Foreign Affairs of Greece addressed to the President of the Security Council, S/25543: Memorial, Annex 30. See also Letter of the Minister of Foreign Affairs of the Hellenic Republic addressed to the Special Representative of the Secretary of the United Nations with attached Memorandum, dated 17 March 1994: Annex 59.

⁴⁰ Reply, para. 4.73.

⁴¹ Reply, para. 4.16.

⁴² Counter-Memorial, paras. 3.8-3.10 and 3.42-3.45.

- in spite of the persistence of the difference over the name;
- (ii) secondly, to preserve the position of the Parties on the name issue, by insuring that the normalization of their relations, both bilaterally and multilaterally, pursuant to its provisions, will be without prejudice to their respective positions on that issue, and will not work out in a manner that weighs in favour of one to the detriment of the other;
 - (iii) thirdly, to lay down the legal groundwork for reaching a mutually satisfactory agreement on the name issue through *bona fide* meaningful negotiations.

It is with a view to fulfilling the second and third functions that the Interim Accord operates as a “holding operation”.

2.35. This simply means that it operates in this regard, in banal legal language, as an “interim” or “provisional measure of protection”.⁴³ If we go by the simple meaning of the words constituting this current legal term, “interim” means provisional or temporary, not intended as a lasting regime or solution, but as a legal stop-gap until a final resolution to an outstanding issue is reached. The provisional character of the Interim Accord is not in dispute.⁴⁴ From this “provisional” character of the Interim Accord derives another of its classifications, namely its being a *modus vivendi*, at least for that part of its provisions relating to the controverted subject-matter—enabling the relations between the Parties to continue, in spite of the persistence of their difference, until a permanent solution to that difference is reached.

2.36. Finally, the expression “protection” in the phrase “interim measure of

⁴³ The term “provisional” is used here in its substantive and not its procedural meaning. Obviously, we are not speaking here of the “provisional measures” of Article 41 of the Statute of the Court, which can be indicated only by the Court (or a court or a tribunal), but of certain provisions of an agreement. However, these provisions perform substantively the same function as the provisional measures indicated by the Court, i.e. “to preserve the respective rights [or positions] of either party”, in other words to avoid their being prejudiced, until a definitive solution is reached.

⁴⁴ See Reply, para. 4.63.

protection” (the French term “*mesure conservatoire*” is more expressive), refers to the preservation of the claims of the Parties over the controverted matter, here the name issue, by maintaining the matter in its actual state (*en l'état*, i.e., as it is at the time of taking the measure; here the conclusion of the Interim Accord), until the dispute is resolved. This is to ensure that, in the interim, it neither evolves through cumulative practice nor is deliberately changed through unilateral acts or otherwise in favour of one Party to the detriment of the other, particularly under the guise of the implementation of the provisional agreement. It is in this sense that the Interim Accord functions as a “holding operation”, i.e., as an interim measure of protection (see particularly Articles 1(1), 11(1), 21(2), 23(2)).

2.37. This does not mean that this is the only function of the Interim Accord or that all its provisions fall in this category, as was clearly indicated in Greece’s Counter-Memorial⁴⁵. It is logical that provisions relating to the two other functions of the Interim Accord (described above in paragraph 2.34) operate differently.

2.38. But the three functions of the Interim Accord are interdependent. Particularly, the “interim measure of protection” or “holding operation” function is a *sine qua non*, a condition precedent or an enabling condition, without which the other two functions (i.e., normalization of the relations between the two Parties to the extent possible in spite of the persistence of the dispute over the name issue; and laying down the legal groundwork for reaching a negotiated settlement) would be impossible to perform.

D. Conclusion

2.39. The main points may be summarized as follows:

- (i) The Interim Accord is a synallagmatic agreement, representing a

⁴⁵ Counter-Memorial, para. 3.10; see also paras. 3.42-46.

comprehensive legal transaction or exchange of rights and obligations on a *quid pro quo* basis. As a result, these rights and obligations are interdependent and share a community of destiny.

- (ii) This reciprocal and interdependent character applies particularly to the obligation of Greece under Article 11, paragraph, “not to object” to the admission of the FYROM to international organizations and institutions which constitutes a significant commitment on the part of Greece in the comprehensive *quid pro quo*.
- (iii) This obligation cannot thus be treated in isolation from its immediate context, *i.e.*, the other provisions of the Interim Accord, and the state of compliance by the FYROM with its obligations under these provisions.
- (iv) The Interim Accord also functions in part as a provisional protective framework designed to maintain the name in the state in which it was at the time of the conclusion of the agreement and until it is resolved by an agreement between the Parties on a mutually acceptable name.
- (v) Any violation of this arrangement, whether directly or indirectly, by undermining the possibilities of achieving such a result, would frustrate the whole legal transaction, sanctioned by the Interim Accord, and open the way for immediate action by the aggrieved party.

CHAPTER 3: JURISDICTION

A. Introduction

3.1. In its Counter-Memorial, Greece submitted three objections to the jurisdiction of the Court over the dispute which the FYROM has lodged.

- First, that the dispute concerns the difference referred to in Interim Accord Article 5(1) and, consequently, is outside the jurisdiction of the Court by operation of Interim Accord Article 21(2).
- Second, that the dispute is excluded from the Court's jurisdiction by operation of Interim Accord Article 22.
- Third, that the dispute concerns conduct attributable to NATO yet neither NATO nor its members have consented to the Court's jurisdiction.

The FYROM, in its Reply, has attacked each of these objections. In this chapter, after some preliminary observations pertaining to all of the objections, Greece will reply *seriatim* and in detail to the FYROM's attacks.

3.2. From its Application through its Reply, the FYROM has struggled to exclude from jurisdictional and substantive consideration the very issues which are central to this case:

- the difference between the parties over the name by which the FYROM was to be known;
- the crucial role the interim arrangement of that difference played in securing the Interim Accord; and
- the FYROM's repeated violation of the agreement on that interim arrangement as well as its premeditated intention to continue to violate it.

Thus, in its Reply, the FYROM tries to persuade the Court, yet again, that it

“does not have to express any view on the conduct of negotiations under the auspices of the United Nations Secretary General, or the behavior of either Party in the context of those negotiations, or the reasons for the lack of resolution of the difference over the name. These matters are simply not relevant to the dispute before the Court.”⁴⁶

Elsewhere in its Reply, the FYROM asserts “[t]he subject of this dispute does not concern—either directly or indirectly—the difference referred to in Article 5, paragraph 1.”⁴⁷

3.3. To the contrary. In fact and in law, the difference referred to in Interim Accord Article 5(1) and then explicitly excluded from the consent to jurisdiction expressed in Interim Accord Article 21(2) is at the very heart of the dispute which the FYROM is endeavoring to persuade the Court to accept. The acts which the FYROM imputes to Greece at the Bucharest meeting (whose occurrence has been assumed for purposes of testing jurisdiction) are an inseparable part of the difference referred to in Article 5, paragraph 1. Indeed, the acts would be simply incomprehensible apart from the difference.

3.4. In its Reply, the FYROM repeatedly asserts that the gravamen of Greece’s objection is “the non-resolution of the difference over the name”.⁴⁸ While this formulation serves the FYROM’s strategic purposes here, it is incorrect because it is materially incomplete. The basis of Greece’s alleged objection at Bucharest could only have been that the FYROM’s explicit and intentional violation of its obligations with respect to the use of its provisional name and its intention to continue to do so in every international organization in which it gains membership had compounded and aggravated the non-resolution of the difference; that,

⁴⁶ Reply, para. 3.19.

⁴⁷ Application of 13 November 2008, para. 10.

⁴⁸ See, e.g., Reply, para. 3.16.

coupled with the FYROM's absence of good faith and its intransigence in the negotiation process, effectively precluded resolution of the difference. Resolution of the difference was necessary, if the FYROM was to meet the NATO requirement of good neighbourly relations, clearly articulated by the Alliance in its discussions of the FYROM's possible accession; the FYROM's deliberate aggravation of the difference was directly relevant as a factor in judging whether the safeguard clause condition had been met.

3.5. The two predicates of the Interim Accord were Greece's unwillingness to accept the FYROM's self-designation and both parties' commitment to negotiate a resolution of the issue. Having accepted the obligation to negotiate, the FYROM, acting in bad faith, obdurately stonewalled negotiations, while it actively pursued (and pursues) the use, in bilateral and multilateral relations, of the name it demanded (the very name which had caused the difference in the first place) in an effort to present Greece with a *fait accompli*. The strategy was openly, even boastfully, elaborated by President Crvenkovski in an address to the FYROM Parliament on 3 November 2008. There he said:

“First of all, in the negotiations under UN auspices we participated actively, *but our position was always the same and unchanged*. And that was the so called dual formula. That means the use of the constitutional name of the Republic of Macedonia for the entire world, in all international organizations and in bilateral relations with all countries, with a compromise solution to be found only for the bilateral relations with the Republic of Greece.

Secondly, to work simultaneously on *constant increase of the number of countries which recognize our constitutional name* and

thus strengthen our proper political capital in international field
which will be needed for the next phases".⁴⁹

By its own admission the FYROM stands convicted of these current and intended future violations of the Interim Accord.

3.6. Rather than the FYROM's caricature of Greece's case, Greece reaffirms its own statement in its Counter-Memorial, where it said:

"Now it is clear that the difference over the name of the FYROM has not been resolved. Therefore, the rights and obligations with respect to the provisional regime for 'the difference' remain in force. The violations which the FYROM alleges Greece to have committed relate to 'the difference referred to in Article 5(1)'. In view of the constant pattern of conduct of the FYROM, Greece had reasonable grounds to conclude that 'the difference' was directly relevant to the FYROM's application for membership in NATO, and moreover that the FYROM's prior actions with regard to other, cognate international organisations with respect to 'the difference' were also relevant to its prospective application for membership in NATO."⁵⁰

3.7. As the FYROM is at pains to obscure this most relevant point, it is necessary to revert to it briefly. Interim Accord Article 5(1), it will be recalled, refers to and incorporates the relevant parts of SC res 817 (1993) which addresses "the difference ... over the name" and provides that the FYROM is to be "provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference

⁴⁹ *Stenography notes from the 7th sequel of the 27th session of the Parliament of the Republic of Macedonia*, held on 3 November 2008, p. 27-7/11: Counter-Memorial, Annex 104 (emphasis added).

⁵⁰ Counter-Memorial, para. 6.35.

that has arisen over the name of the State”. The FYROM’s contention that resolutions such as these are only recommendations is simply incorrect. As Greece demonstrated in its Counter-Memorial, Security Council resolutions in admissions matters are binding on the General Assembly.⁵¹ But even if that were not clear Charter law (which it is and has been so determined by the Court itself),⁵² the FYROM seems to forget, once again, that it accepted, under the safeguard clause in Article 11, paragraph, of the Interim Accord, Greece’s reservation of

“the right to object to *any membership* referred to above if and to the extent the Party of the Second Part [the FYROM] is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993).” (emphasis supplied)

In its Counter-Memorial, Greece explained that the “if and to the extent” clause in Article 11, paragraph 1, makes explicit (if there could have been any doubt on the matter) that the obligation which the FYROM accepted is a continuing one.⁵³

3.8. Yet in its Memorial, the FYROM advanced an interpretation of that obligation which has been the basis for its actions within international organizations. The acts which this interpretation has inspired constitute *per se* violations of the terms of SC res. 817 and the Interim Accord. The FYROM stated:

“Significantly, the Resolution [817] did not require the Applicant *to call itself* ‘the former Yugoslav Republic of Macedonia’, and the Applicant never agreed to refer to itself as such. Consequently, in

⁵¹ Counter-Memorial, para. 6.18.

⁵² *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, p. 4, 10.

⁵³ Counter-Memorial, paras. 7.59-7.60.

accordance with resolution 817 and without raising any difficulties with the United Nations Secretariat, the Applicant has always used its constitutional name in written and oral communications with the United Nations, its members and officials.”⁵⁴

Again, at paragraph 5.66, the FYROM repeated itself, stating:

“Significantly, the resolution did not require the Applicant *to call itself* ‘the former Yugoslav Republic of Macedonia’, and the Applicant has never agreed to call itself by that name. In accepting the terms of resolution 817, the Applicant agreed ‘to be referred to’ under the provisional designation within the United Nations, but was not fettering its sovereign right to call itself by its constitutional name, as made clear by the Applicant during the negotiation process. Consequently, in accordance with resolution 817, the Applicant has continued to call itself by its constitutional name in written and oral communication with the United Nations and its Member States.”

The FYROM seems oblivious to its self-contradiction. In two consecutive sentences, it manages to say, first, that “the Applicant agreed ‘to be referred to’ under the provisional designation within the United Nations,” and in the immediately following sentence that “the Applicant has continued to call itself by its constitutional name in written and oral communication with the United Nations and its Member States.” Indeed, in the very first sentence of its Application in this proceeding, the FYROM contradicted the hypocritical assertions in its later written submissions:

“The Republic of Macedonia (being provisionally referred to for all purposes within the United Nations as ‘the former Yugoslav

⁵⁴ Memorial, para. 2.20 (emphasis original).

Republic of Macedonia' in accordance with United Nations Security Council Resolution 817 of 1993) brings this Application

... „⁵⁵

3.9. The FYROM's pharisaical reading of its own obligations has been ignored by the United Nations; despite the FYROM's self-designation, all references in United Nations communications and documents, including even the name-plate in meetings, remain "the former Yugoslav Republic of Macedonia". But the FYROM has tried, consistently, to subvert the application by the United Nations of Security Council resolution 817.⁵⁶ For the most part, this has involved repeated undignified attempts by the FYROM to sneak around its obligation under SC res. 817, requiring Greece to expose such gambits. One of the most egregious, the General Assembly incident, which was detailed in Greece's Counter-Memorial,⁵⁷ elicited an explicit affirmation of the United Nations' policy. The UN Deputy Spokeswoman, Maria Okabe, responding to a question, stated that "Within the UN the SG and the Secretariat observed the practice of using the name 'the Former Yugoslav Republic of Macedonia' or 'FYROM', as referred to in SC resolution [817]."⁵⁸

3.10. For the Court to decide whether the FYROM could or could not use the name (hence did or did not trigger the suspensive condition in the second clause of Article 11, paragraph 1), would be to deal with the name issue.

3.11. The FYROM confesses to a consistent practice on its part with regard to SC res. 817 (1993) and Interim Accord Articles 5(1) and 11(1), which is plainly

⁵⁵ Application of 13 November 2008, para. 1.

⁵⁶ See below, paras. 7.26-7.41.

⁵⁷ Counter-Memorial, para. 4.67.

⁵⁸ See United Nations, Spokesperson's Noon Briefing. Daily Press Briefing by the Office of the Spokesperson for the Secretary-General and the Spokesperson for the General Assembly President, dated 26 September 2007, Department of Public Information, News and Media Division, New York, available at: <http://un.org/News/briefings/docs/2007/db070926.doc.htm>: Annex 34.

incompatible with its commitments under those instruments; it thereby falls within the ground for objection reserved in Article 11(1). It will be recalled, again, that Article 11(1) provides that “the Party of the First Part reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993).” The FYROM itself acknowledges at paragraph 3.7 of its Reply that Article 11(1) provides a permissible ground for objection; that concession, along with its confession of intentional violation of the Interim Accord, is one of the predicates of the jurisdictional objections tendered by Greece.

3.12. Even if Greece had objected, as the FYROM contends (a factual claim which Greece contests),⁵⁹ such an objection would have fallen squarely within Greece’s vouchsafed right to object in Article 11. But seemingly oblivious to its previous statements (cited above), the FYROM repeats and repeats again in its Reply that the dispute “does not concern the difference over the name”.⁶⁰

3.13. Greece would emphasize that its submission is not that there is no role for the Court in the Interim Accord. To the contrary! Greece agrees with the FYROM that “Article 21(2) gives the Court a central role in ensuring that the parties comply with their obligations in the Interim Accord.”⁶¹ The Interim Accord contains many different obligations which are each subjected to the jurisdiction of the Court. The jurisdictional clause in the Interim Accord is broad and meaningful but, that said, it contains an exception. The question is the scope of what is excluded from that consent to jurisdiction. Greece rejects the FYROM’s proposed interpretation of the “except for” clause in Article 21(2). In a nutshell, the FYROM contends that it only excludes an actual determination by

⁵⁹ Counter-Memorial, para. 7.40; and, below, paras. 5.31, 6.41.

⁶⁰ Reply, para. 3.14, and Chapter III, Section 1 *passim*.

⁶¹ *Ibid.*, para. 3.12.

the Court of the name of the FYROM or “the expression of any view on the matter”.⁶² By contrast, Greece relies on the ordinary meaning of Article 21(2), which shows beyond peradventure that the exception refers generally and without any adjectival qualification to the difference over the name. Thus the parties here join issue on the interpretation of the “text” and the “context” of the Interim Accord’s jurisdictional regime. The FYROM insists that the exclusive limitation of the jurisdiction of the Court over “the difference... with respect to the name...” is actually determining the name. Greece, for its part, has shown that the “difference” must include any dispute the settlement of which would prejudice, directly or by implication, the difference over the name.

3.14. As for burden of proof, Greece rejects the FYROM’s summary assertion that “[t]he burden is on the Respondent to persuade the Court that the dispute put before the Court by the Applicant requires the Court to resolve difference [*sic*] over the name”.⁶³ As in all cases, each party bears the *onus probandi* for its contentions.⁶⁴ Furthermore, Greece has never suggested that the Court should “resolve” the difference over the name; it simply has demonstrated that the FYROM’s complaints to the Court cannot be addressed without implicating and assessing the difference over the name and the extent to which such difference was (or would have been) relied upon by Greece in Bucharest.

3.15. Greece turns to a more detailed consideration of the FYROM’s most recent arguments on each objection.

⁶² Reply, para. 3.14.

⁶³ *Ibid.*

⁶⁴ See, generally, M. Kazazi, *Burden of Proof and Related Issues: A Study on Evidence Before International Tribunals*, Kluwer, The Hague, 1996, chapter II.

B. The Dispute Concerns the Difference Referred to in Article 5(1) and is Therefore Excluded by Article 21(2) from the Jurisdiction of the Court

3.16. Greece maintains that the dispute concerns the difference referred to in Interim Accord Article 5(1) and is accordingly outside the jurisdiction of the Court by operation of Article 21(2).⁶⁵ The FYROM characterizes as “contorted” Greece’s statement that “even if Greece *had* objected to the FYROM’s membership application at the Bucharest meeting, the documents issuing from the summit make clear that the failure to resolve the difference over the name *would have been* the sole reason”.⁶⁶ But a dismissive adjective is not an argument. Indeed, if objection there were, one cannot imagine another reason for it: the criteria for admission to NATO would have given Greece, as a member State, no choice. However, it should be noted that the “failure to resolve the difference” is not merely a consequence of the FYROM’s unwillingness to negotiate in good faith over the 15 years of the Interim Accord;⁶⁷ it is also a consequence of the FYROM’s intention and practice to use the time secured by its sterilization of the negotiations to convince or cajole others to use the very name which had caused the dispute and thereby to create a *fait accompli*. The failure to resolve the difference is also a consequence of the FYROM’s declared, *ex ante* intention to violate its commitments with respect to that difference in whatever organization it might manage to gain membership, even when such membership has been obtained under the provisional name and the condition of membership was to use that provisional name.

⁶⁵ Counter-Memorial, paras. 6.32-6.51.

⁶⁶ Reply, para. 3.11. Note that the original quotation is from Greece’s Counter-Memorial at para. 6.40, but the emphasis has been added by the FYROM.

⁶⁷ See Counter-Memorial, paras. 2.21-2.34.

3.17. The FYROM's criticism of Greece's submission turns on Greece's interpretation of the scope of the exception clause in Interim Accord Article 21(2).⁶⁸ As will be recalled, Article 21(2) provides:

*“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.”*⁶⁹

Article 5(1) provides:

“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).”

3.18. It is manifest that the text of the “except for” clause in Article 21(2) does *not* say “except for the determination of the name of the FYROM”. As for the rest of the Interim Accord, which constitutes the “context” of Article 21(2), it confirms that the Interim Accord explicitly accepted the broader jurisdictional implications of the “difference” by preserving for Greece the “rights and obligations resulting from other bilateral and multilateral agreements ...” (Article 22). As explained in Greece's Counter-Memorial, these other parts of the Interim Accord have jurisdictional implications, for a provision of a treaty is not to be interpreted in isolation but in the context of the rest of the treaty in the light of its object and purpose and other applicable international obligations such as SC res.

⁶⁸ Reply, para. 3.12.

⁶⁹ Emphasis added.

817.⁷⁰ In its Counter-Memorial, Greece showed that, while Article 21(2) is the jurisdictional clause, the jurisdictional *regime* in the Interim Accord perforce integrates other provisions: accordingly, understanding and applying it requires the integration, not only of Article 5(1) which is expressly incorporated into Article 21(2), but also Article 11(1), Article 22 and the key premise of the entire Interim Accord, viz., SC res. 817 (1993).⁷¹

3.19. The FYROM commences its critique of Greece's interpretation of Article 21(2) by an inverted and incomplete rendition of interpretation methodology in international law. At paragraph 3.12, the FYROM submits that Greece's reading "is based on a misinterpretation of the object and purpose of Article 21(2)." Article 31(1) of the Vienna Convention on the Law of Treaties dictates that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." It is impermissible to skip over the ordinary meaning of the text in its context and to substitute, in its place, a fictitious object and purpose which is not only not based on the language of the treaty but is obviously designed to defeat the ordinary meaning of the text of Article 21(2) and its contextual components in Articles 5(1) and 22.

3.20. According to the FYROM, the object and purpose of the Interim Accord would be frustrated by Greece's interpretation because, the FYROM argues, it "would effectively serve to deprive Article 21 of any practical meaning or effect".⁷² By way of support for this proposition, the FYROM argues that

"since the very purpose of the Interim Accord was to enable the Parties to avoid difficulties posed by the ongoing difference of the

⁷⁰ See Article 31 of the Vienna Convention on the Law of Treaties, 31 May 1969, 1155 UNTS 331.

⁷¹ See Counter-Memorial, paras. 6.13-6.31.

⁷² Reply, para. 3.15.

Applicant's name, any dispute concerning any provision of the Interim Accord is necessarily related to the name issue.”⁷³

This is a lopsided version of the object and purpose of an agreement which owes its acceptance to the fact that it successfully accommodated the differing interests of each of the Parties. The Court will note that the FYROM makes no reference to its own obligations with respect to the use of the provisional name “for all purposes ...” Indeed, as explained in the Counter-Memorial, without taking account of the FYROM's half of that obligation, there would have been no reason for Greece to have concluded the Interim Accord.⁷⁴

3.21. The FYROM's contention that Greece's reading of the ordinary language of the Interim Accord would mean that “any provision of the Interim Accord [would then be] necessarily related to the name issue” is preposterous. The Interim Accord is a comprehensive *modus vivendi*: disputes about compliance with many of its obligations will not relate to the “difference” and hence were intended to be subject to the jurisdiction of the Court. These obligations include:

- Article 3's obligation not to “support the action of a third party directed against the sovereignty, the territorial integrity or the political independence of the other Party.”
- Article 4's obligation not to “assert claims to any part of the territory of the other Party or claims for a change of their existing frontier.”
- Article 5(2)'s obligations to “take practical measures, including dealing with the matter of documents, to carry out normal trade and commerce between them... .”
- Article 6's obligations with respect to the FYROM's undertaking not to interpret its constitution so as to claim any territory not within its existing borders.

⁷³

Ibid.

⁷⁴

See Counter-Memorial, paras. 3.38-3.49.

- Article 7(1)'s obligation to "take effective measures to prohibit hostile activities or propaganda by State-controlled agencies and to discourage acts by private entities likely to incite violence, hatred or hostility against each other."
- Article 7(2)'s obligation on the part of the FYROM to "cease to use in any way the symbol in all its forms displayed on its national flag"
- Article 7(3)'s obligations with respect to the use of "symbols constituting part its historical or cultural patrimony"
- Article 8(1)'s obligations to "refrain from imposing any impediment to the movement of people or goods between their territories"
- Article 12's obligation to apply the provisions of certain specified bilateral agreements to which the FYROM is not a party.
- Article 13's obligation on the part of Greece to apply the provisions of the Law of the Sea Convention with respect to the FYROM, as a land-locked State.
- Article 14's obligations with respect to road, rail, maritime and air transport and communications and to the transit of goods through territories and ports.
- Article 17's obligations with respect to environmental protection and the elimination of pollution in border areas.
- Article 20's obligations to cooperate in the fight against organized crime, terrorism, economic crimes, narcotics crimes, illegal trade in cultural property, offenses against civil air transport and counterfeiting.

Every one of these commitments is subject to the jurisdiction of the International Court, as they do not implicate the "except for" clause in Article 21(2). In sum, the FYROM's contention that Greece's reading of the ordinary meaning of the Interim Accord would deprive the Court of jurisdiction over everything in the

Accord is baseless. By contrast, it is the FYROM's proposed interpretation of Article 21(2) that would render the "except for" clause effectively meaningless.

3.22. The FYROM persists in construing the Interim Accord not as the synallagmatic agreement it is but as a device designed simply to require Greece to support the FYROM's membership in all international organizations,⁷⁵ despite Greece's own rights and obligations as a member of those organizations and despite the FYROM's noncompliance with other important elements of the agreement. The FYROM equally persists in misconstruing the basis of Greece's objections. At paragraph 3.16 of its Reply, the FYROM states

"If the Respondent is correct in stating that Article 21(2) reserves for it the right to object to the Applicant's membership of NATO because of the non-resolution of the difference over the name, then the very purpose of the Interim Accord and its Article 11(1) is undermined."⁷⁶

Greece's gravamen is not merely the non-resolution of the difference over the name, but the FYROM's consistent policy of violation of its obligation with respect to using the provisional name "for all purposes within the United Nations ... pending settlement of the difference".⁷⁷ The point is made clearly in the Counter-Memorial to which the Court's attention is respectfully directed.⁷⁸

3.23. To summarize, the FYROM's policy and practice with respect to its obligation under SC res. 817 (1993) and Interim Accord Article 5 are, and, by its own statement, will continue to be in manifest violation of its obligations under the Interim Accord. That policy and practice go to the heart of the "except for" clause in Interim Accord Article 21(2); the "except for" clause relates in

⁷⁵ Reply, para. 3.16.

⁷⁶ *Ibid.*

⁷⁷ SC res. 817 (1993), 7 April 1993.

⁷⁸ See Counter-Memorial, paras. 4.65-4.72. See also, below, paras. 7.26-7.41.

unqualified terms “to the difference referred to in Article 5” and not merely to the Court’s competence to determine the FYROM’s name. Assuming, purely for purposes of determining jurisdiction, that Greece objected to the FYROM’s application at the Bucharest meeting, the reason for its actions would have been related to the difference over the name, occasioned by the FYROM’s absence of good faith and its explicit policy of manifest violation of its obligations in that regard.

3.24. As against the ordinary meaning of the text here, the FYROM selects a few public statements by Greek officials which were made for a general audience and did not, in the fashion of a legal brief in a court, explicitly cite SC res. 817 (1993) or provisions of the Interim Accord. That is, of course, the nature of political statements which are adapted to the forum in which they are presented and the audience to which they are addressed. The FYROM chooses to ignore the actual terms of the Bucharest Declaration⁷⁹ and subsequent NATO statements,⁸⁰ all of which are set out in the Counter-Memorial. These demonstrate that the central issue at play in NATO’s decision to defer the FYROM’s application was the difference over the name; if Greece had objected to the FYROM’s membership, the reason would have been the difference and, as an aggravating part of the difference, the FYROM’s violation of its obligations as well as its express intention to violate them in the future. As the case submitted by the FYROM concerns the difference referred to in Interim Accord Article 5(1), it is outside the jurisdiction of the Court by operation of Interim Accord Article 21(2).

C. The Dispute is Excluded from the Court’s Jurisdiction by Article 22

3.25. Greece’s actions at the NATO Summit in Bucharest are also excluded from the Court’s jurisdiction by operation of Interim Accord Article 22. Article

⁷⁹ Counter-Memorial, paras. 5.49, 5.50.

⁸⁰ Counter-Memorial, paras. 5.51, 5.52.

22, which appears in the “Final Clauses” section of the Interim Accord, provides, in relevant part,

“This Interim Accord ... does not infringe on the rights and duties resulting from bilateral and multilateral agreements already in force that the parties have concluded with other States or international organizations.”

To clarify how Article 22 operates in relation to Article 11, paragraph 1, Greece conjoined them, in its Counter-Memorial, as follows:

“... the Party of the First Part agrees not to object to the application by or the membership of the Party of the Second Part in international, multilateral and regional organizations and institutions of which the Party of the First Part is a member ...[but] this Interim Accord ... does not infringe on the rights and duties resulting from bilateral and multilateral agreements already in force that the parties have concluded with other States or international organizations.”

3.26. Article 22 is so lethal to the FYROM’s case that the FYROM skipped it in its Memorial. Forced by Greece’s Counter-Memorial to confront it, the FYROM seeks, in the Reply, to evade addressing it in two different ways.

3.27. First, it affects not to understand why this objection goes to jurisdiction. But the reason why it does so is hardly arcane. In order for jurisdiction to obtain, a claim must base itself on the treaty in question; if it does not, there is no actionable claim upon which to rest jurisdiction.⁸¹ In its Counter-Memorial,

⁸¹ By the same token, Article 11(1) also has a clear jurisdictional dimension: even if Greece had objected because of the difference over the name, as the FYROM alleges, it would not give rise to an actionable claim inasmuch as Article 11(1) reserves for Greece “the right to object to any membership ... if and to the extent the Party of the Second Part is to be referred to in such

Greece explained in detail the NATO decision-making process as well as the enlargement process specifically, citing the North Atlantic Treaty and other official documents of NATO that make clear that all decisions taken by the Alliance with respect to enlargement are made by consensus subject to prescribed criteria. Indeed, under the North Atlantic Treaty, Greece's pre-existing obligations, protected by Article 22, included "participation in the consultation process within the Alliance and the principle of decision making by consensus, which requires a commitment to build consensus within the Alliance on all issues of concern to it".⁸²

3.28. Second, the FYROM seeks to evade the consequence of this jurisdictional deficit by invoking part of the Court's decision in *Avena*⁸³ as a purported basis on which to assert that Greece's Article 22 objection goes to the interpretation of the Interim Accord, as opposed to the Court's jurisdiction. But the purported distinction here is jejune. For one thing, there is no similarity between *Avena* and the instant case. In *Avena*, the second United States objection to jurisdiction related to the Respondent's proposed restrictive interpretation of Article 36(1) of the Vienna Convention on Consular Relations, which was the central substantive provision at issue in the dispute. The Court confirmed that "[t]his issue is a question of interpretation of the obligation"⁸⁴ and concluded that "[s]uch an interpretation may or may not be confirmed on the merits, but is not excluded from the jurisdiction conferred on the Court by Optional Protocol ...".⁸⁵ In the

organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)."

⁸² *Study on NATO Enlargement Issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council, Brussels, 3 September 1995 (published in NATO Handbook Documentation, NATO Office of Information and Press, 1999, pp. 335-369), chapter 4, para. 43: Counter-Memorial, Annex 19 (quoted in Counter-Memorial, para. 5.24).*

⁸³ *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004, p. 12, 32, cited by the FYROM, Reply, para. 3.27.*

⁸⁴ *Avena and Other Mexican Nationals (Mexico v. United States of America), Judgment, I.C.J. Reports 2004, p. 12, 32, para. 30.*

⁸⁵ *Ibid.*

instant case, Article 22 of the Interim Accord is not analogous to Article 36 of the Vienna Convention which was central in *Avena*; indeed, the Applicant itself has contended from its first submission that all that is at issue is Article 11 of the Interim Accord. More to the point, however, Greece elected not to require a separate jurisdictional phase; jurisdiction and merits are being treated in a single, consolidated proceeding. Hence nothing precludes the Court from deciding on the interpretation of Article 22 in conjunction with Greece’s jurisdictional arguments. The two are not mutually exclusive nor can a jurisdictional clause, especially one which explicitly incorporates other parts and premises of the agreement, be construed without reference to its “context”.

3.29. On the substance of the objection, Greece agrees with the FYROM that Greece must show that “its interpretation of Article 22 is correct and, further that it has rights and duties under the North Atlantic Treaty that trump its obligations under the Interim Accord”.⁸⁶ (In parallel fashion, once Greece has made its *prima facie* case, the burden shifts to the FYROM and it must show that its own interpretation of that provision is correct and that the rights and duties which Greece has under the North Atlantic Treaty and which are reserved in Article 22 do *not* prevail over inconsistent obligations in the Interim Accord.)

3.30. Greece submits that it has amply proved both points in its Counter-Memorial,⁸⁷ and that the FYROM has failed both to rebut them and to prove any alternative interpretation. As explained in the Counter-Memorial, NATO falls within the international organizational category of *organisations fermées*; in such organizations, Greece explained, “membership involves substantial mutual commitments and reliances, such that admission of each new member has the potential for significantly affecting the commitments and obligations of the prior

⁸⁶ Reply, para. 3.26.

⁸⁷ Counter-Memorial, pp. 96-104.

members”.⁸⁸ A member of such an organization has international legal responsibilities to the other members as well as to the organization itself with respect to its participation in membership decisions. Greece is a member of NATO. Interim Accord Article 22 affirms that the Accord does not infringe upon Greece’s rights or duties within NATO; such rights and duties undoubtedly include participation in new membership decisions.

3.31. If, as alleged by the FYROM and assumed *arguendo* for purposes of determining jurisdiction, Greece did object to the FYROM’s application to NATO in exercise of its rights and discharge of its obligations to NATO, then its action cannot fall within the jurisdiction of the Court by operation of Article 22. The relevance of this point to Greece’s third objection is taken up below.

3.32. In its Memorial, the FYROM contended, in defiance of both logic and the explicit language of the Interim Accord, that

“these proceedings are not concerned in any way ... with any provisions of the constituent instrument of NATO ... : the object and subject matter of these proceedings are exclusively related to the actions of the Respondent and their incompatibility with the Interim Accord.”⁸⁹

The FYROM has never explained how this can be or why it is so. In its Reply, the FYROM simply repeats its assertion.⁹⁰ But the language of the Interim Accord is clear beyond peradventure of doubt: Article 22 says that obligations of the Interim Accord do not infringe on the rights and duties of either party with respect to pre-existing multilateral agreements with international organizations.

⁸⁸ Counter-Memorial, para. 6.57.

⁸⁹ Memorial, para. 1.8.

⁹⁰ Reply, para. 3.4(3); *ibid.*, para. 3.30.

3.33. Nor does the FYROM address the criteria which NATO uses in its accession process and how such criteria might relate to a candidate such as the FYROM. “The Alliance,” NATO’s Handbook explains, “may require, if appropriate, specific political commitments in the course of accession negotiations.” The FYROM may be dissatisfied with those “specific political commitments” which NATO established for it and the consequence of the collective decision taken at Bucharest and at subsequent meetings in response to the FYROM’s failure to fulfil them. It appears that the FYROM is unwilling to accept the conditions that NATO has prescribed for it to advance in the accession process, but there is no indication that Greece, in fulfilling its duties in the MAP process as a member of the Alliance, acted in a way that was inconsistent with its rights and duties resulting from this multilateral agreement. In short, the Bucharest decision is a matter between the FYROM and NATO and, in any event, not a matter within the jurisdiction of the Court.

D. Because the Dispute Concerns Conduct Attributable to NATO, the Court Cannot Exercise Jurisdiction

3.34. Finally, Greece maintains that the dispute at hand is inextricably tied to conduct attributable to NATO, and is therefore outside the Court’s jurisdiction. Greece devoted pages 109 to 123 of its Counter-Memorial to this issue but will revisit some of the key points below, insofar as necessary to address the arguments raised in the FYROM’s Reply.

3.35. At the heart of this case is a *collective decision* taken unanimously by the members of NATO to defer the FYROM’s application for membership pending resolution of the difference over the name. The collective character of the Bucharest decision, as of other decisions, has been confirmed by many participants. Thus a news report in the FYROM media recounts a press conference held in the FYROM by the Czech Ambassador to NATO, Štefan Füle. Given that Ambassador Füle indicated that he was a supporter of the FYROM’s

accession to NATO, his political position and the venue of the conference make his comment all the more telling. Ambassador Füle is quoted as saying:

“‘What happened in the Summit was that member-states could not reach an agreement and consequently there was no voting procedure. There was no procedure during which one can say that this particular country or group of countries did not agree to,’ explained Füle.”⁹¹

The report continues that:

“He [Füle] warned journalists that, in so far as they will report on the veto, to be fully aware that ‘this is not in accordance with what really happened in Bucharest.’ Ambassador Füle stressed that as long as the name dispute is not resolved, Macedonia cannot expect to become a NATO member.”⁹²

This is a position confirmed by no less an authority than the President of the FYROM. President Ivanov’s clear attribution of the Bucharest Summit outcome to the member States as a collective body is set out below.⁹³

3.36. The fact that the case concerns a collective decision taken by NATO has presented the FYROM with a classic conundrum, for the exercise of jurisdiction in the instant case would require the Court to adjudicate upon matters with respect to a third party which has not consented to jurisdiction. An applicant caught on the horns of this dilemma invariably struggles to establish that its case is somehow quite distinct and separate from the issue involving the third-party. That is because the Court has long established that it will not exercise jurisdiction where

⁹¹ “The Czech Republic continues to support Macedonia in NATO”, *Utrinski Vesnik*, dated 22 November 2008, available at:

<http://www.utrinski.com.mk/?ItemID=FCA3114349781142BDFC9200560B889A>: Annex 54.

⁹² *Ibid.*

⁹³ See, below, para. 6.23.

the legal interests of an absent third party form “the very subject matter” of the jurisdiction.⁹⁴ For example, in *Monetary Gold*, the Court held that it cannot exercise jurisdiction over an indispensable third party without its consent.⁹⁵

“In order ... to determine whether Italy is entitled to receive the gold, it is necessary to determine whether Albania has committed any international wrong against Italy, and whether she is under an obligation to pay compensation to her, and, if so, to determine also the amount of compensation. In order to decide such questions, it is necessary to determine whether the Albanian law of January 13th, 1945, was contrary to international law. In the determination of these questions – questions which relate to the lawful or unlawful character of certain actions of Albania vis-à-vis Italy – only two States, Italy and Albania, are directly interested. To go into the merits of such questions would be to decide a dispute between Italy and Albania.

The Court cannot decide such a dispute without the consent of Albania. But it is not contended by any Party that Albania has given her consent in this case either expressly or by implication. To adjudicate upon the international responsibility of Albania without her consent would run counter to a well-established principle of international law embodied in the Court’s Statute,

⁹⁴ See, e.g., *Monetary Gold Removed from Rome in 1943*, I.C.J. Reports 1954, p. 19, 32; *Continental Shelf Case (Libyan Arab Jamahiriya/Malta)*, Application for Permission to Intervene, Judgment, I.C.J. Reports 1984, p. 3, 25; *Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras)*, Application to Intervene, Judgment, I.C.J. Reports 1990, p. 92, 114-116; and *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, I.C.J. Reports 1992, p. 240, 259-262. See also *Case Concerning East Timor (Portugal v. Australia)*, I.C.J. Reports 1995, p. 90, 102.

⁹⁵ *Monetary Gold Removed from Rome in 1943*, Judgment, I.C.J. Reports 1954, p. 19, 32.

namely, that the Court can only exercise jurisdiction over a State with its consent.”⁹⁶

Similarly in the *Case Concerning East Timor (Portugal v. Australia)*, the Court declined to rule on Portugal’s claims on the merits because to do so would have required it to rule on the lawfulness of Indonesia’s conduct in the absence of Indonesia’s consent to jurisdiction,⁹⁷ because “the effects of the judgment requested by Portugal would amount to a determination that Indonesia’s entry and continued presence in East Timor are unlawful ...”.⁹⁸ Both of those holdings address the FYROM’s dilemma and are dispositive of the claim to jurisdiction in the present case.

3.37. Given the clarity of the law on this matter, it is not surprising that in its Reply, the FYROM avoids any discussion whatsoever of the law. Rather, the FYROM struggles to extract its claim from the core issue in the dispute. In its Memorial, it states:

“This is a legal dispute that is premised on the continued applicability of Article 11(1), and is concerned exclusively with the actions of the Respondent and its objection to the Applicant’s application for NATO membership. The dispute before the Court does not require the Court to address the actions of any third states or any international organizations.”⁹⁹

In its Reply, the FYROM retreats from this assertion. There it states:

“The Applicant does not claim, and has never claimed, in these proceedings that ‘it has suffered an injury as the result of NATO’s

⁹⁶ *Ibid.*

⁹⁷ See *Case Concerning East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, p. 90, para. 36.

⁹⁸ *Ibid.*

⁹⁹ Memorial, para. 3.12.

unanimous decision’: the claim concerns only *the Respondent’s act of objection.*”¹⁰⁰

The Court will note that the assertion that the FYROM is not claiming that it suffered an injury from NATO’s Declaration is carefully qualified by the words “in these proceedings”, thereby avoiding a waiver of the central issue and attempting to preserve the FYROM’s ability to pursue it. As Greece will show, the FYROM’s effort to cure this jurisdictional defect by trying to resect the core issue from the case fails.

3.38. Consider the FYROM’s dilemma here as expressed in paragraph 3.31 of its Reply:

“The Applicant’s case is directed exclusively at the Respondent’s objection to the Applicant being invited to join NATO at the Bucharest Summit, an objection that crystallized on 3 April 2008. Any decisions by NATO following that objection are not and cannot be the subject of these proceedings. As stated repeatedly, the Applicant does not ask that the Court express any view on the legality of any acts of NATO or any of its other Members by reference to the standards established by the Interim Accord. To the extent that any acts of NATO or any other NATO Members Countries are relevant, it is only in shedding light on the Respondent’s objection, which is the subject of these proceedings. For the avoidance of any doubt, the Applicant does not invite the Court to express any view on the legality or propriety of the NATO Bucharest Summit decision. The only act that the Applicant submits that the Court must assess for legality by reference to Article 11(1) of the Interim Accord is the Respondent’s objection

¹⁰⁰ Reply, para. 3.4(1) (*italics in original, underlining supplied*). One notes that the word “injury” here is unqualified and includes any form of injury.

to the Applicant being invited to accede to NATO membership at the Bucharest Summit.”¹⁰¹

In the following paragraph, FYROM states “the Applicant has never suggested that NATO might be in breach of any obligation.”¹⁰²

3.39. But the Court cannot make a finding with respect to the lawfulness, under the Interim Accord, of the actions alleged to have been taken by Greece without a finding of the lawfulness *vel non* of the NATO decisions. This is because the determination of the lawfulness of the alleged action of Greece, under Article 22, is inseparably linked to the lawfulness of NATO’s collective decision at Bucharest under the North Atlantic Treaty. Moreover, it necessarily implicates other, subsequent NATO collective decisions about the FYROM’s application for membership. Greece, as a NATO member, participated in those decisions, which reached the same conclusion as the Bucharest Declaration.

3.40. If NATO’s Bucharest Declaration was a lawful, *intra vires* decision of NATO under the North Atlantic Treaty, then, it follows that any action which Greece had taken in its role as a member of NATO would have been within Interim Accord Article 22’s parameters of “the rights and duties resulting from ... multilateral agreements”; as such, Greece’s action would not be in contravention of the Interim Accord. Moreover, inasmuch as the substance of the Bucharest Declaration was reiterated, without allegations that Greece had motivated it (as the FYROM alleges with respect to the Bucharest meeting), a response by the Court to a claim that Greece’s alleged actions at Bucharest were in violation of the Interim Accord and not insulated by Article 22 would perforce involve a judgment about the lawfulness and *intra vires* character of NATO’s decisions. But this would be a matter beyond the Court’s jurisdiction.

¹⁰¹ Reply, para. 3.31.

¹⁰² Reply, para. 3.32.

3.41. Conversely, if Greece's alleged action at Bucharest were not concordant with its rights and duties under the NATO Treaty, those actions would also not be covered by Interim Accord Article 22. One cannot escape the fact that the decision at Bucharest was collective and, as acknowledged by the Czech Ambassador, Füle,¹⁰³ among others,¹⁰⁴ was not the result of Greece's action alone. Moreover, Bucharest was followed by other NATO collective decisions which were identical to it.¹⁰⁵ Hence a hypothetical finding by the Court in the instant case that Greece's action was not covered by Article 22 would necessarily include a judgment about the lawfulness of the action of other members of NATO and NATO itself. This, too, would be a matter beyond the Court's jurisdiction.

E. Conclusion

3.42. To summarize, the Court lacks jurisdiction in the instant case because:

- (i) the dispute concerns the difference referred to in Interim Accord Article 5(1) and, consequently, is outside the jurisdiction of the Court by operation of Interim Accord Article 21(2).
- (ii) the dispute is excluded from the Court's jurisdiction by operation of Interim Accord Article 22.
- (iii) the dispute concerns conduct attributable to NATO yet neither NATO nor its members have consented to the Court's jurisdiction.

¹⁰³ See above, para. 3.35.

¹⁰⁴ See below, para. 6.23 (statement of President Ivanov).

¹⁰⁵ See below, para. 6.10.

3.43. For the above reasons, Greece affirms its objections to jurisdiction and respectfully requests that the Court dismiss the FYROM's application for lack of jurisdiction.

CHAPTER 4: INHERENT LIMITATIONS ON THE EXERCISE OF THE COURT'S JUDICIAL FUNCTION

A. Introduction

4.1. In addition to the objections set out in Chapter 3 of this Rejoinder, it is respectfully submitted that there are other compelling reasons which should prevent the Court from giving a judgment on the matter that forms the substance of the FYROM's request. This is a case in which the Court should exercise judicial restraint in order to preserve the integrity of its judicial function.

4.2. As the Court recalled in the *Northern Cameroons* case:

“There are inherent limitations on the exercise of the judicial function which the Court, as a court of justice, can never ignore. There may thus be an incompatibility between the desires of an applicant, or, indeed, of both parties to a case, on the one hand, and on the other hand the duty of the Court to maintain its judicial character. The Court itself, and not the parties, must be the guardian of the Court's judicial integrity.”¹⁰⁶

4.3. These reasons, based on judicial propriety, flow from the other objections Greece has put forward, but it would be useful to explicate them briefly. They compel the Court to engage in an assessment of the consequences its judgment might have, should it find it has jurisdiction. They are objections to the admissibility of the Application¹⁰⁷ and, as such, they prevent the Court from dealing with the merits. As has been noted:

¹⁰⁶ *Northern Cameroons, Preliminary Objections, Judgment, I.C.J. Reports* 1963, p. 15, 29.

¹⁰⁷ This specification is intended to dissipate the Applicant's doubts concerning the nature of the Respondent's objections (Reply, para. 3.2). *Northern Cameroons, Preliminary Objections, Judgment, I.C.J. Reports* 1963, p. 15, 38.

« [I]l importe de relever que la Cour a explicité ... une catégorie plus large, qui a d'ailleurs toujours été sous-jacente dans sa jurisprudence, catégorie que l'on peut désigner par les termes 'recevabilité générale'.

En effet, la Cour peut parfois conclure à l'irrecevabilité de la demande en invoquant des considérations générales, allant au-delà des conditions spécifiques de recevabilité matérielle, en se fondant uniquement sur l'incompatibilité de la demande avec sa fonction judiciaire. Il s'agit d'une recevabilité générale qui, dans le cadre de la recevabilité matérielle, va au-delà des conditions spécifiques et représente un résidu du pouvoir discrétionnaire pour la Cour dans ce domaine, pouvoir qu'elle détient et exerce en vue de sauvegarder l'indépendance et l'intégrité de sa fonction judiciaire.»¹⁰⁸

4.4. From this point of view, the inadmissibility of the FYROM's Application in this case arises from two different grounds:

- *First*, if the Court were to grant the FYROM's request, its judgment would, by necessity, be devoid of any effective application inasmuch as it relates to the Applicant's admission to NATO (or to other international institutions).
- *Second*, the FYROM's submissions inescapably request the Court to interfere in the negotiation process and, moreover, to endorse the FYROM's negotiating objective. Such a result would be plainly incompatible with the Court's judicial function, for it would run contrary to Security Council resolutions 817 (1993) and 845 (1993), which direct the parties to settle the name dispute by

¹⁰⁸ Georges Abi-Saab, *Les exceptions préliminaires dans la procédure de la Cour internationale*, Paris, Pedone, 1967, p. 97.

negotiations. Moreover, it would have the paradoxical result of leading the Court to decide the name issue, which the FYROM itself insists is beyond the Court's jurisdiction.

B. The Court's Judgment Would Be Incapable of Effective Application

4.5. As recalled by the well-known *dictum* of the Court in the *Northern Cameroons* case:

“If the Court were to proceed and were to hold that the Applicant's contentions were all sound on the merits, it would still be impossible for the Court to render a judgment capable of effective application.”¹⁰⁹

This would be the case in the present instance: whatever the Court might decide in this case, it could not effect the Applicant's admission into NATO nor to other international institutions, although for different reasons.

1. The Judgment cannot have an effect upon the Applicant's admission to NATO

4.6. The Applicant's legal position in respect to admission to NATO is governed by requirements established by and in accordance with Article 10 of the North Atlantic Treaty.¹¹⁰ By the Bucharest Decision, the NATO Members States have already made a unanimous assessment in respect to the FYROM's non-fulfilment of the admission requirements, and especially of the requirement of good-neighbourly relations. They have at the same time expressed the condition which must be fulfilled in order for the FYROM to be considered as having met these requirements. This condition is that the Parties find a solution to the name dispute:

¹⁰⁹ *Northern Cameroons, Preliminary Objections, Judgment, I.C.J. Reports* 1963, p. 15, 33.

¹¹⁰ Counter-Memorial, paras. 5.16-5.17, 5.22-5.24; and below, paras. 6.4-6.10.

“Within the framework of the UN, many actors have worked hard to resolve the name issue, but the Alliance has noted with regret that these talks have not produced a successful outcome. Therefore we agreed that an invitation to the former Yugoslav Republic of Macedonia will be extended *as soon as a mutually acceptable solution to the name issue has been reached*. We encourage the negotiations to be resumed without delay and expect them to be concluded as soon as possible.”¹¹¹

4.7. By a kind of incantatory repetition in lieu of cogent argument, the Applicant attempts to convince the Court that its request is not directed against NATO’s decision.¹¹² However, it will be apparent that if the FYROM’s claim against Greece were accepted on the terms expressed in the Reply, then Greece would be held to have objected to the admission of the FYROM to NATO, but, at the same time, this alleged objection would not be “‘locate[d]... in NATO’s collective consensus decision’: the violation is related entirely to *the Respondent’s* distinct and prior objection, and that does not require the Court to express any view on any decision that may subsequently have been taken by NATO.”¹¹³ And yet it was the NATO Summit which decided to postpone the FYROM’s invitation to NATO, and for the express reason that no solution had been found to the name issue between the Parties.

4.8. The FYROM states its allegation as if it seeks a decision of the Court which will not in the least concern Greece’s obligations within NATO or the decision-making process of the Alliance concerning the FYROM’s candidacy in April 2008. These assertions are untenable on their face. Moreover they imply

¹¹¹ NATO Press Release (2008)049, *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*, para. 20: Memorial, Annex 65 (emphasis added). See also, Counter-Memorial, paras. 5.48-5.51.

¹¹² Reply, para. 2.35; para. 2.44; para. 2.54; paras. 3.29-3.33.

¹¹³ Reply, para. 3.4(3) (emphasis original).

recognition on the part of the FYROM that the Court cannot in the present proceedings give a direction to NATO to reverse a decision taken under NATO's decision-making procedures.

4.9. Although the FYROM is tenacious in its effort to shift the *ground of its claim*, its Reply repeatedly illustrates that the case is in essence a challenge against the decision taken at Bucharest, and it remains clear that this is a case about NATO. For example, the Reply notes that the matter now in dispute “crystallized on 3 April 2008”—the date of the NATO decision which the FYROM seeks to reverse.¹¹⁴ The case is concerned “solely” with Greece's alleged objection—but that is the objection “to the Applicant being invited to join NATO at the Bucharest Summit.”¹¹⁵ The NATO admission process is the focal point of the FYROM's claim.

4.10. Moreover, the relief sought by the Applicant aims to ensure that “the Applicant can continue to exercise its rights as an independent State... including the right to pursue membership of NATO and other international organizations.”¹¹⁶ There is no need for a judgment of the Court in order for the Applicant to be restored “to the *status quo ante* of a NATO aspirant State.”¹¹⁷ As underlined by the NATO documents, this is presently the FYROM's relation with NATO: “The country joined the Membership Action Plan (MAP) in 1999 and aspires to join the Alliance.”¹¹⁸ Thus expressed, the relief sought would be without object.

4.11. The ‘right to pursue’ implies a possibility of success. This is what the FYROM is actually seeking, although the contorted way in which the second

¹¹⁴ Reply, para. 3.31.

¹¹⁵ Reply, para. 3.32 (emphasis added).

¹¹⁶ Reply, para. 1.3.

¹¹⁷ Reply, para. 6.22.

¹¹⁸ NATO, “NATO's relations with the former Yugoslav Republic of Macedonia”, available at: http://www.nato.int/cps/en/natolive/topics_48830.htm?selectedLocale=en: Annex 68.

request is deployed in the Reply seeks to conceal it. But the possibility of success depends upon the Applicant's compliance with the requisites for admission, as established by NATO. The Bucharest Summit decision leaves the FYROM's candidacy intact. It simply makes clear that the condition *sine qua non* for its invitation, *unanimously adopted by the participants in the Summit*, is the solution of the name dispute. As the FYROM itself insists, that is not within the Court's jurisdiction.

4.12. The Applicant's legal position, in terms of rights and duties, is therefore determined—and determined only—by the Bucharest Decision insofar as the admission into NATO is concerned. In this respect, Greece cannot unilaterally change a unanimous decision by NATO and the Court cannot itself make that decision, or order NATO to do so. The Court's Judgment cannot annul or amend this decision, nor change the admission conditions contained therein. As explained further¹¹⁹, this decision is the result of a unanimous assessment of the NATO member countries as to the fulfilment by the FYROM of the pre-requisites to accession. Before the Application was brought before the Court, the then President of the FYROM admitted that:

“[W]e can initiate certain procedures in front of the United Nations or the international courts. I consider that these are options which should be seriously considered. But, at the same time we should be fully aware that it is *not going to solve our problem* with the blockade for our joining NATO and repeating the same scenario with the European Union. *These organizations cannot be joined with an UN resolution or with a court decision*, but with a

¹¹⁹ See below, paras. 6.4-6.10.

consensual decision by all their members, including the Republic of Greece”¹²⁰.

4.13. Therefore, as has been shown in the previous Chapter of this Rejoinder¹²¹, the Court cannot exercise jurisdiction, for the dispute concerns conduct attributable to NATO. However, the point made here by Greece is slightly different. It does not relate to the fact that the real author of the challenged decision is absent from the present proceedings, which in itself deprives the Court of jurisdiction in the present case; rather, it draws another consequence from this situation: insofar as NATO is concerned, the Judgment can only be *res inter alios acta*, with no binding force for the Organisation. Therefore, were the Court to decide that the disputed decision has been taken on the basis that Greece has not complied with its obligation under Article 11, paragraph 1, of the Interim Accord, such a statement would not have—and could not have—any effect on the situation. This is precisely the situation addressed by the Court in the *Northern Cameroons* case, where it observed that if it “were to hold that the Applicant’s contentions were all sound on the merits, it would still be impossible for the Court to render a judgment capable of effective application.”¹²² Should the Court order Greece to support the FYROM’s admission to NATO (an order which is not within the power of the Court), such a Judgment could have no practical effect in respect to that admission.

4.14. The Applicant’s request thus leads the Court to a dead end. If one accepts that the Applicant’s claims are not directed against NATO’s decision, artificial as this contrived allegation is, it is still impossible to perceive what concrete effect the Court’s ruling could have in this case. The Court’s dilemma is the same as it

¹²⁰ *Stenography notes from the 7th sequel of the 27th session of the Parliament of the Republic of Macedonia*, held on 3 November 2008, pp. 27-7/11:Counter-Memorial, Annex 104 (emphasis added).

¹²¹ See above, paras. 3.34-3.41.

¹²² See above, para. 4.5.

faced in the *Northern Cameroons* case, where the matters referred to the Court had been settled by a General Assembly resolution¹²³. Like the FYROM in the present case, the Republic of Cameroon also struggled to persuade the Court that its Application was not directed against the resolution. The Court concluded, as it had to, that a ruling would necessarily collide with the General Assembly's conclusions:

“The Applicant here has expressly said it does not ask the Court to revise or to reverse those conclusions of the General Assembly or those decisions as such, and it is not therefore necessary to consider whether the Court could exercise such an authority. But the Applicant does ask the Court to appreciate certain facts and to reach conclusions on those facts at variance with the conclusions stated by the General Assembly in resolution 1608 (XV).”¹²⁴

4.15. And, significantly, the Court added:

“The decisions of the General Assembly would not be reversed by the judgment of the Court.”¹²⁵

4.16. The same holds true in the present case. It is an “either or” situation: either the Applicant directs its case openly against the NATO decision, for which the Court is manifestly incompetent, or the Applicant does not call into question the NATO decision, in which case, the Court's ruling is incapable of effective application. In either formulation, the Court cannot entertain the case. In the first hypothesis, the Court lacks jurisdiction; in the second, it should refuse to exercise its jurisdiction in order to preserve the integrity of its judicial function.

¹²³ *Northern Cameroons, Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 15, 25.

¹²⁴ *Ibid.*, p. 32.

¹²⁵ *Ibid.*, p. 33.

2. Any extension of the Request to cover membership in other international institutions is inadmissible

4.17. As far as the admission to other international institutions is concerned, Greece has explained at some length in its Counter-Memorial that there is no dispute between the Parties in that respect; therefore in relation with such hypothetical situations the Application must be dismissed as inadmissible¹²⁶.

4.18. It should also be dismissed because the claim is frivolous. While vehemently maintaining that its “reservation of rights is entirely appropriate”,¹²⁷ the FYROM does not exercise its alleged “right to reserve its rights”. It simply threatens to do so and alleges that by extending its Submissions to a hypothetical “veto” by the Respondent to its admission to international organisations or institutions other than NATO it would not transform the “subject of the dispute originally before” the Court¹²⁸ since the subject-matter of the Application would be “the application of Article 11, paragraph 1 of the Interim Accord of 13 September 1995.”¹²⁹ To make matters even more confusing, the Reply puts this last phrase between quotation marks despite the fact that this is not what is said in the Application. There, the FYROM defines the subject of the dispute as follows:

“This dispute concerns the Respondent’s actions to prevent the Applicant from proceeding to be invited to join NATO, in clear violation of its obligations under the Interim Accord.”¹³⁰

And, at the very beginning of its Reply itself, the Applicant confirms that:

“At the heart of this case are two key issues of fact:

¹²⁶ Counter-Memorial, paras. 9.17-9.26.

¹²⁷ Reply, para. 6.30.

¹²⁸ *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, I.C.J. Reports 2007, p. 659, para. 108. See also *Case concerning Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, 13 July 2009, para. 137.

¹²⁹ Reply, para. 6.29.

¹³⁰ Application of 13 November 2008, para. 20; see also Memorial, para. 6.6.

(1) Did the Respondent object to the Applicant being invited to become a *NATO member at the Bucharest Summit ... ?*

(2) Did the Respondent object to the Applicant's NATO membership ...?"¹³¹

4.19. The FYROM evades the relevant question—whether the intended future claims concerning its future applications to other organizations can be “considered as part of the original claim.” The FYROM asserts that “any additional claim” under the sweeping terms of its “reservation of rights” is a claim arising directly out of “the application of Article 11, paragraph 1”. This is the extent of the analysis.

4.20. The Court however has been clear that mere general links are not enough to sustain the admissibility of a new claim.¹³² Greece has already noted that a claim arising under Article 11, paragraph 1, in connection with the rights and obligations associated with a different international organization and therefore different factual circumstances would be materially distinct from the FYROM's claim before the Court. It transforms beyond recognition a claim concerning NATO and instituted on another set of facts.

4.21. An extension of the Applicant's submissions to a putative objection of the Respondent to its admission to international organisations other than NATO would depart from these “key issues” and would transform the nature of the case. Such an extension of the claim would be inadmissible—if only because Greece would have been deprived of the possibility of raising preliminary objections in respect to these new submissions and of discussing their substance during the

¹³¹ Reply, para. 1.17 (emphasis added).

¹³² *Territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, *I.C.J. Reports 2007*, p. 659, para. 104.

written phase of the procedure in violation of the “equality of arms” between the Parties.

4.22. At the date of this Rejoinder, the FYROM has not acted on its supposed reservation of rights nor changed its submissions. Should it do so, Greece maintains its objections to such a step and will insist on its right to lodge objections (including preliminary objections) against such revised submissions.

C. Interference with On-Going Diplomatic Negotiations Mandated by the Security Council would be Incompatible with the Court’s Judicial Function

4.23. A further reason founded on judicial propriety must lead the Court to decline to exercise its jurisdiction. Were it to find jurisdiction and pronounce on the issues raised by the FYROM, the Court would interfere with a diplomatic process mandated by the Security Council in resolution 817 (1993) and agreed by the Parties in the Interim Accord. Were it to accept any of the Applicant’s Submissions, then it would be imposing on one of the Parties—Greece in this scenario—a position which the Security Council had determined must be settled by negotiation.

4.24. This point is straightforward:

- (i) Security Council resolutions 817 (1993) and 845 (1993) imposed upon the Parties a duty to negotiate under the auspices of the Secretary-General as a means to “arrive at a speedy settlement of their difference” (“over the name of the State”);
- (ii) under Article 5 of the Interim Accord, both Parties have an obligation to continue negotiations on the name dispute “with a view to reaching an agreement”;

- (iii) it is Greece's view that, as will be further explained, the failure of these negotiations is the result of the FYROM's bad faith attitude during the negotiations process;¹³³
- (iv) faced with this attitude, Greece's reaction is to preserve the negotiation process from a dead-lock or a complete abuse of it.¹³⁴
- (v) in passing a judgment on the FYROM's requests, the Court would take sides in this diplomatic process and deprive Greece of an important means at its disposal to have Article 5 of the Interim Accord implemented in good faith by the FYROM.

4.25. This conclusion is not mere speculation: the FYROM, while pursuing the negotiations on the name, has sought general recognition, from third States or organizations, under its claimed name. Meanwhile, its attitude towards negotiations has been to delay any prospect of success through a constant refusal of any compromise, in the hope that this unilateral pursuit would ultimately secure the name it wanted by a *fait accompli*. At the same time, by pursuing a policy of a dual formula, the FYROM attempts to reduce the scope of negotiations to bilateral relations with Greece¹³⁵, thus paying lip service to the negotiation process, while actually depriving the negotiation process of its object and purpose. Such behaviour would violate Article 5(1) of the Interim Agreement, and would fly in the face of the Security Council Resolutions.¹³⁶

4.26. Greece's attitude towards the FYROM's admission in NATO was triggered, *inter alia*, by the FYROM's protracting the negotiation process at the expense of the search for a compromise solution. There is no point in arguing that the FYROM accepts compromise, if this compromise is not to be applied

¹³³ See below, paras. 7.53-7.70.

¹³⁴ See below, paras. 8.31-8.36.

¹³⁵ The dual formula, as presented by the FYROM's officials, was described in the Counter-Memorial, paras. 3.47, 4.8-4.9, 8.39. See also below, paras. 7.59-7.60.

¹³⁶ See below, paras. 7.55-7.56.

erga omnes but only in the FYROM's bilateral relations with Greece. This is not what the Security Council resolutions provide for, since they clearly identify the dispute as "a difference [that] has arisen over the name of the State". If the Court were to accede to the Applicant's submissions, this would amount to an endorsement of the dual formula. At the same time, Greece would be deprived of any effective remedy against these violations and of one of its essential rights under the Interim Accord, namely to have the dispute settled by negotiations. Through a decision in the FYROM's favour, the Court would endorse the Applicant's attempt to unilaterally impose for international use a name that would not have been negotiated and agreed upon.

4.27. This would create inextricable difficulties in respect to the situation established by the Security Council's and General Assembly's relevant resolutions. The Applicant was admitted to the United Nations under the provisional name of "the former Yugoslav Republic of Macedonia" pending settlement of the difference that has arisen over the name of the State"¹³⁷. The same holds true for the numerous international organizations in which the FYROM became a member under the same conditions. Unilateral practice of one of the Parties to the dispute cannot constitute a substitute to the negotiated settlement the resolutions provide for and no judicial assent could confirm this practice. If Article 21(2) of the Interim Accord extracts from the Court's jurisdiction the dispute over the name, it is because the settlement of that dispute pertains to the negotiation process under the Secretary-General's auspices. A decision of the Court in the FYROM's favour would necessarily interfere with that process, depriving it of its effectiveness.

¹³⁷ SC res. 817 (1993) of 7 April 1993; GA res. 47/225 of 8 April 1993.

D. Conclusion

4.28. It therefore appears that:

- (i) grounds of judicial propriety should lead the Court to decline the exercise of its jurisdiction in the present case, should it find that it has any;
- (ii) the first of these grounds is related to the fact that the judgment of the Court cannot have any effective application insofar as the Applicant's admission to NATO is concerned;
- (iii) inasmuch as its membership in other international institutions would be concerned, this request would simply be inadmissible;
- (iv) the second ground is based on the fact that a Judgment in favour of the FYROM would judicially seal a unilateral practice of imposing a disputed name and would thus run contrary to Security Council resolutions 817 (1993) and 845 (1993), requiring the Parties to reach a negotiated solution on this difference.

CHAPTER 5: THE INTERPRETATION OF ARTICLE 11, PARAGRAPH 1

A. Introduction

5.1. The heart of the FYROM's claim is that NATO's decision of 3 April 2008 at the Bucharest Summit entailed a breach by Greece of Article 11, paragraph 1 of the Interim Accord. The key facts are few and straightforward. FYROM was seeking an invitation under NATO's consensus procedure to join the Alliance as a new member State; the difference over the name of the FYROM, under negotiation for the previous thirteen years, was not yet settled; Greece had repeatedly expressed its deep concerns over the FYROM's intransigence in the negotiation process; and NATO at its 3 April 2008 Summit did not grant the FYROM the invitation it sought. However, because the parties interpret Article 11, paragraph 1 very differently, they come to opposite conclusions as to the legal consequences of these facts. Understanding the present dispute therefore requires a proper understanding of Article 11, paragraph 1, including its relation to Article 22 and to the object and purpose of the Interim Accord as a whole.

5.2. The FYROM implicitly accepts this: it dedicates a considerable part of the Reply to an attack on Greece's textual analysis of the Interim Accord.¹³⁸ The result however is not a convincing rebuttal of the analysis but a tangle of inconsistencies. The present Chapter disentangles the FYROM's Reply on Article 11, paragraph 1.

5.3. In the Counter-Memorial Greece examined Article 11, paragraph 1 comprehensively; except for some points of clarification that analysis will not be repeated.¹³⁹ Instead the Chapter proceeds as follows. Section B deals with the relation between Article 11, paragraph 1 and Article 22 of the Interim Accord.

¹³⁸ See e.g., Reply, paras. 4.8-4.23; 4.51-4.68; 4.73-4.77; 5.8-5.45.

¹³⁹ See Counter-Memorial, Chapter 7.

Section C identifies the content of the obligation “not to object.” Section D explains the operation of the safeguard clause, reserving Greece’s right to object under a specified condition—i.e., Greece’s right to object is not curtailed if the FYROM “is to be referred to in” an organization differently than as stipulated in SC res. 817 (1993).

B. The Relation Between Article 11, paragraph 1 and Article 22

5.4. The text of Article 11, paragraph 1 consists of a clause obliging Greece “not to object” to the membership of the FYROM in organizations of which Greece is a member; and a safeguard clause reserving to Greece its right to object in instances “if and to the extent” that the FYROM “is to be referred to in” such organizations differently than as stipulated in SC res. 817 (1993). The legal effect of Article 11, paragraph 1 is further determined by the context: this is one provision in an Interim Accord. Among other commitments of the parties, the Interim Accord establishes a jurisdictional regime (Article 21).¹⁴⁰ It commits the parties to bilateral negotiation as the exclusive mechanism by which to settle the difference concerning the name (Article 5(1)).¹⁴¹ It requires each to prohibit hostile activities or propaganda against the other (Article 7),¹⁴² and the FYROM gives certain undertakings to Greece affecting its Constitution (Article 6).¹⁴³

5.5. It is also clear that there are some legal relations which the Interim Accord does *not* affect. It is a bilateral treaty and therefore cannot infringe the existing rights and duties of Greece and/or the FYROM established under agreements already in force with third parties. As a provision of a bilateral agreement of Greece and the FYROM, Article 11, paragraph 1 self-evidently does not affect such rights and duties. This includes Greece’s rights and duties concerning its

¹⁴⁰ See Counter-Memorial, paras. 6.13-6.31; and above, Chapter 3.

¹⁴¹ See below, paras. 7.67-7.68; see also above, paras. 3.16-3.24.

¹⁴² See below, paras. 7.76-7.81.

¹⁴³ See below, paras. 7.73-7.75.

participation as a member State in a public international organization. Nor does Article 11, paragraph 1 even purport to express an intention that it should affect the processes of such an organization. Nevertheless, to dispel any possible doubt, the parties also incorporated a general provision, Article 22, which makes clear that the Interim Accord, *inter alia*, “does not infringe on the rights and duties resulting from bilateral and multilateral agreements already in force that the Parties have concluded with other States or international organizations.” The provision confirms that the effect of the bilateral Interim Accord is subject to the usual limits *inter partes*.

5.6. Though the limits of the Interim Accord in this respect are clear and follow from its own terms and general principles,¹⁴⁴ the FYROM vigorously contests that the limits exist.¹⁴⁵ Greece recalls first that on ordinary principles of interpretation Article 11, paragraph 1 should be read in its context, i.e., in conjunction with Article 22. The FYROM adopts a number of contentions, in its attempt to deny that Article 22 has anything to do with the textual interpretation of Article 11, paragraph 1. None of the FYROM’s contentions in this respect is valid.

1. The FYROM’s denial that Article 22 is an effective provision of the treaty

5.7. The FYROM’s first attack on Article 22 is to attempt to write it out of the Interim Accord. According to the FYROM, Article 22 is “simply a factual statement”—meaning, apparently, that Article 22 is a clause with no legal purpose, a mere recitation.¹⁴⁶ This is a curious way to interpret a provision belonging to the operative sections of a treaty. The Interim Accord contains a

¹⁴⁴ It has been observed that “the appropriateness of the use of *inter partes* legal principles” may be contestable where a case calls “for the resolution of problems with an *erga omnes* connotation such as environmental damage”: Separate Opinion of Vice-President Weeramantry, *Gabčíkovo-Nagymoros Project (Hungary/Slovakia)*, *Judgment, I.C.J. Reports 1997*, p. 7, 88. The special bilateral stipulation in Article 11, paragraph 1 of the Interim Accord is not such a problem.

¹⁴⁵ Reply, paras. 5.8-5.33.

¹⁴⁶ Reply, para. 5.12.

preamble of some length. That was the place for phrases “simply” serving as factual recitations. Article 22 is not part of the preamble; it belongs to the Final Clauses of the Accord.

5.8. On a different tack, the FYROM says that the placement of Article 22 in the section entitled “Final Clauses” goes to show that the parties intended Article 22 to have little or no relevance to Article 11, paragraph 1: according to the FYROM, its placement there identifies Article 22 as a “routine provision directed at declaring, as a matter of fact, the effect of the Interim Accord on third parties.”¹⁴⁷ This is a rather opaque statement: Article 22 is not declaratory in form, and the effect of a treaty provision on third parties is a matter of law, not fact. Article 22 states that the Interim Accord “does not infringe” on rights and obligations “resulting from” agreements in force between Greece and/or the FYROM on the one hand and third parties on the other. This is the natural form of words to denote all rights and obligations “resulting from” such agreements, not just the rights and obligations of the third parties. The Interim Accord leaves all of these unchanged.

5.9. As to the location of Article 22 under “Final Clauses”, this only supports the observation that Article 22 applies to *all* provisions of the Interim Accord. The FYROM however deprecates final clauses. By its logic, Article 21 (the jurisdictional provision) also would be written out of the treaty—i.e., if its location in the final clauses section of the treaty means that Article 22 has no effect on Article 11, paragraph 1, so too would Article 21 be without effect. Of course Article 21 is not an ineffective provision: it establishes the jurisdiction of the Court over “[a]ny difference or dispute that arises between the Parties concerning the interpretation or implementation of [the] Interim Accord... except for the difference referred to in Article 5, paragraph 1.” This is far from a

¹⁴⁷ Reply, para. 5.14.

“routine provision.”¹⁴⁸ Nor is Article 22: it is an effective clause, removing any doubt that Greece’s rights and obligations established under agreements with third parties already in force as at 13 September 1995 are not infringed by any provision of the Interim Accord. Article 11, paragraph 1, as a provision of the Interim Accord, thus does not infringe any such rights or obligations, including Greece’s rights and obligations as a member State of NATO.

5.10. In an attempt to bolster its confused position that Article 22 has no effect on Article 11, paragraph 1, the FYROM contends that Greece’s interpretation of Article 22 would “negate” or “eviscerate” Article 11, paragraph 1.¹⁴⁹ Greece’s interpretation does nothing of the sort. The FYROM, by contrast, ignores the text of the provision which it seeks to interpret. It pleads that the drafting history of Article 22 compels the conclusion that Article 11, paragraph 1, will “operate in harmony with Article 22” only if the latter provision is deprived of its effect on the former.¹⁵⁰ The text of Article 22, however, is clear, obviating the need for consulting the *travaux*, which, in any event, as Greece has shown, affirm the text.¹⁵¹ Article 22 makes clear that the parties’ rights and obligations under existing agreements have priority over Article 11, paragraph 1. This includes the rules of the international organizations in which Greece participates. Thus the rules, e.g., of NATO, qualify the Article 11, paragraph 1 obligation. At the same time, the obligation “not to object” means that the FYROM, in effect, holds a *droit de regard* over Greece’s participation in the decision-making of the organization, for Greece undertook to the FYROM that it would act in accordance with the organization’s rules, when the time came to consider the FYROM’s application to membership. However, neither Greece nor the FYROM, unilaterally or bilaterally, could amend or suspend those rules.

¹⁴⁸ See above, Chapter 3.

¹⁴⁹ Reply, paras. 5.31, 5.32.

¹⁵⁰ *Ibid.*

¹⁵¹ See Counter-Memorial, paras. 7.15-7.19.

2. *The FYROM's denial of the correlative character of rights and obligations*

5.11. As shown in Chapters 3 and 4, the FYROM struggles with the dilemma that the rights and obligations of NATO are inextricably intertwined with its present claim. Article 22 poses a particular problem for the FYROM in this regard. The FYROM therefore attempts to obliterate the effect of Article 22, a tactic which, as noted above, defies the plain meaning of the text. The FYROM, further in its attempt to deny that Article 22 is an effective provision to be applied in conjunction with Article 11, paragraph 1, denies the correlative character of rights and obligations in international law, a principle which would seem too basic to be disputed.¹⁵²

5.12. According to the FYROM, however, the meaning of Article 22 is that the rights and obligations of the parties to the Interim Accord

“are not intended to ‘infringe’ on any rights and duties of *third States and entities* that exist under treaties that the Applicant and Respondent have with those third parties. Article 22 does not, as such create or reserve rights for the Applicant or the Respondent, and does not alter the obligations of the Applicant or the Respondent that appear elsewhere in the Interim Accord.”¹⁵³

The FYROM concedes that Article 22 concerns the rights and obligations of third parties which have entered into treaties with the parties to the Interim Accord; but contends that the provision is silent about the rights and obligations of Greece or the FYROM under the same treaties. In accordance with the FYROM's

¹⁵² It has been recalled, on occasion, in judgments of the Court: see, e.g., *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960*, p. 6, 27. See also Separate Opinion of Judge Sir Percy Spender, *Northern Cameroons, Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 15, 82; Separate Opinion of Judge Weeramantry, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Preliminary Objections, Judgment, I.C.J. Reports 1996*, p. 595, 648.

¹⁵³ Reply, para. 5.12 (emphasis original).

contention, there would be no correlative aspect in the legal relations of the parties under the treaties in question. But, of course, treaty rights and obligations, including the rights and obligations to which Article 22 refers, are inherently correlated with one another.

5.13. The denial by a party of such a basic principle of law is striking. Its explanation here is that the FYROM, throughout its Reply, is frantic to sever every legal relation connecting the dispute to NATO. For example, as seen above, the jurisdictional rule of the indispensable third party causes the FYROM to deny that its claim has anything to do with NATO.¹⁵⁴ Here, the affirmation in Article 22 that the Interim Accord does not supplant Greece's rights and obligations under third party agreements—e.g., Greece's rights and obligations in NATO—leads the FYROM to assert that Article 22 has nothing to do with the parties to the Interim Accord. The FYROM's interpretation of Article 22 is untenable. Article 22 means what it says: no provision of the Interim Accord infringes “on the rights and duties resulting from bilateral or multilateral agreements already in force that the Parties have concluded with other States or international organizations.”

3. The FYROM's misleading interpretation of the European Union clauses in Articles 14 and 19

5.14. The FYROM would have the Court infer that the absence in Article 11, paragraph 1 of a clause referring to specific obligations of Greece under other treaties means that Article 11, paragraph 1 supervenes the obligations of Greece under other treaties.¹⁵⁵ The FYROM purports to advance this contention, by referring to Articles 14 and 19 of the Interim Accord.¹⁵⁶ These are provisions which relate to Greece's obligations as a Member State of the European Union. Article 14, which provides for reciprocal promotion of road, rail, maritime and air transport communication and links, “tak[es] into account the obligations of

¹⁵⁴ See above, paras. 3.36-3.39.

¹⁵⁵ Reply, para. 5.14.

¹⁵⁶ See e.g., Reply, paras. 5.15-5.16.

[Greece] deriving from its membership in the European Union and from other international instruments”; Article 19 provides that the parties’ “joint efforts” in the fields of business and tourism shall be “[c]onsistent with the obligations of [Greece] arising from its membership in the European Union and from relevant instruments of the Union.” Articles 14 and 19, however, say nothing about Article 11, paragraph 1 and nothing about Article 22. They are special provisions calling on Greece to establish, with a non-EU State, bilateral regimes affecting areas of EU competence. The clauses in Articles 14 and 19 are *clauses usuelles*, protecting the EU regimes in the fields those articles concern. Under the FYROM’s reading, Articles 14 and 19, concerning EU obligations, are the pivotal context for purposes of interpreting Article 22. But neither the text nor the context support the FYROM’s reading, for it is Article 22 which explicitly applies to all provisions of the Interim Accord and Articles 14 and 19 which apply only to particular fields of activity (transport, tourism, etc.). Nor, reciprocally, is there anything, whether a single word or an implication, in Article 22 itself to qualify its general language.

5.15. Strange consequences would ensue if the FYROM’s interpretation of Article 22 were accepted. First, if the FYROM’s interpretation were correct, then only the rights and duties of third parties would be protected under Article 22, even as Greece and the FYROM would have changed or nullified many of their own rights and duties *toward* third parties. This, of course, as noted above,¹⁵⁷ is unintelligible, for, by changing their own rights and duties, Greece and the FYROM would also have changed the correlative legal position of others. A second illogical effect of the FYROM’s interpretation is that the Interim Accord would prevail over other rights and duties of Greece and the FYROM under any treaties not mentioned in its text. Article 9 for example lists certain human rights

¹⁵⁷ See above, paras. 5.11-5.13.

instruments; but under the FYROM's interpretation, the Interim Accord would derogate from those not listed.¹⁵⁸ Article 22 was adopted to avoid just such confusion. Article 22 applies to all provisions of the Interim Accord, and thus clarifies that, *inter alia*, Article 11, paragraph 1 does not supplant Greece's rights and obligations under *any* pre-existing agreement.

4. *The FYROM's interpretation of Article 22 is inconsistent with the Admissions Opinion*

5.16. The FYROM wishes the Court to conclude from the Advisory Opinion on *Conditions of Admission* that a decision of NATO may entail the international responsibility of Greece to the FYROM.¹⁵⁹ Nothing in the Advisory Opinion on *Conditions of Admission* supports the FYROM's contentions about international responsibility, which is not surprising: the Court in the Advisory Opinion had not been asked about the relation between the responsibility of the organization and the responsibility of its Member States in respect of conduct toward third parties. Indeed the General Assembly's question did not refer to international responsibility at all.¹⁶⁰ The Court in the Advisory Opinion in 1948 was concerned with the rules of the organization which regulated a decision concerning admission—in particular, the rules contained in Article 4 of the UN Charter and their binding character.

5.17. Rather than supporting the FYROM's position on responsibility, the Advisory Opinion on *Conditions of Admission* refutes its position on Article 22.

¹⁵⁸ Reply, para. 5.14.

¹⁵⁹ Reply, para. 4.30.

¹⁶⁰ The question was as follows:

“Is a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph I of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?” (GA res. 113(II)(B), 17 November 1947).

The Advisory Opinion was clear that the particular conditions for admission were rules which the Member States were obliged to apply despite the “parliamentary” or deliberative context. These were not rules which a member State might supplant or displace under an agreement with a third party. For that matter, a member State could not enter into a political bargain with another member State to override the admission rules of the organization. This was the time of Cold War deadlock over admission of States, and member States were insisting that the admission of some candidates be conditioned upon the simultaneous admission of their favoured candidates.¹⁶¹ The FYROM ignores that a principal consideration of the Court (and several States submitting written observations in the advisory proceedings¹⁶²) was that the rules of the organization are obligatory in respect of the process of admission of new members: Article 4, paragraph 1 of the Charter, “by reason of the close connexion which it establishes between membership and the observance of the principles and obligations of the Charter, clearly constitutes a legal regulation of the question of the admission of new States.”¹⁶³ The main concern at the time was that some States might introduce additional political criteria to those under Article 4(1) of the Charter, but the reasoning that the admission system of the Charter was a “legal regulation of the question” equally applied to attempts to subtract from the specified criteria.

5.18. The FYROM says that, in the proceedings in 1947-48, Greece “focused on the right of each Member of the United Nations when voting on a request for

¹⁶¹ See *Conditions of Admission*, Observations Submitted by Governments, Letter from the Australian Minister at the Hague to the Registrar of the Court, dated 9 February 1948, *I.C.J. Pleadings 1948, Part I*, pp.30-32.

¹⁶² See, e.g., *Conditions of Admission*, Observations Submitted by Governments, Letter from the Secretary of State of the United States of America to the Registrar of the Court, dated 29 January 1948, *I.C.J. Pleadings 1948, Part I*, p. 20; Public Sitting of 23 April 1948, Exposé de M. Scelle (France), *I.C.J. Pleadings 1948, Part II*, p. 66; Exposé de M. Bartoš (Yugoslavia), *ibid.*, p. 81.

¹⁶³ *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion, 1948, *I.C.J. Reports 1947-1948*, p. 57, 63.

admission, not on the decision of the organs of the United Nations.”¹⁶⁴ This mischaracterizes what Greece in its written observations actually said. The complete text of the relevant passage is as follows:

« Qu’aucun État non membre des Nations Unies ne pourra être admis comme Membre de l’Organisation s’il ne remplit pas les conditions d’admission prévues par l’article 4, alinéa I, susmentionné. Par conséquent, aucun Membre des Nations Unies, en votant, soit dans l’Assemblée générale, soit dans le Conseil de Sécurité, sur une demande d’admission d’un État non membre de l’Organisation n’a le droit de donner un vote affirmatif tant qu’il ne s’est pas persuadé que l’État demandant l’admission ait rempli toutes les conditions d’admission prévues par l’article 4, alinéa I, de la Charte. »¹⁶⁵

The passage concerned votes taken in forming “the decision of organs of the United Nations”—the FYROM elided the words “soit dans l’Assemblée générale, soit dans le Conseil de Sécurité.”¹⁶⁶ It is misleading to say that Greece’s Observations were not “focused” on “the decision of [those] organs.” It is also inaccurate to say that, instead, the passage was focused on a “right” possessed by each member State. In truth, the passage “focused” on an *obligation* of each member State; and on the *absence* of a right in the non-member State. There was no right of admission for a non-member State not fulfilling the conditions of admission; and there was no duty for a member State to vote affirmatively on admission, if it was not persuaded that the conditions were fulfilled. This is not a statement about member State autonomy from the organization but an affirmation of the obvious point that the constitutive instrument contains legally-binding rules

¹⁶⁴ Reply, para. 4.30.

¹⁶⁵ See, e.g., *Conditions of Admission*, Observations Submitted by Governments, Exposé du Gouvernement Hellénique, dated 2 February 1948, *I.C.J. Pleadings 1948, Part I*, p. 21.

¹⁶⁶ Reply, para. 4.30, note 207.

which the member State, as a participant in the organization's decision-making, must respect. The rules for admission of States to the universal international organization, though open rules, are nevertheless binding; the rules for admission to NATO, a military alliance regulating its membership under substantive criteria, are, *a fortiori*, not to be overthrown by a single member State through a bilateral agreement.

C. The Content of the Obligation “not to object”

5.19. In agreeing to the Interim Accord, Greece accepted an obligation set out in Article 11, paragraph 1. This is worded as follows:

“Upon entry into force of this Interim Accord, the Party of the First Part [Greece] agrees not to object to the application by or the membership of the Party of the Second Part [the FYROM] in international, multilateral and regional organizations and institutions of which the Party of the First Part is a member.”

Greece's interest in the maintenance of the interim arrangement and the negotiation process, under which the FYROM had committed to settle the name difference by agreement, is a legal interest, and it is protected by the second clause of Article 11, paragraph 1, the safeguard clause. This provides as follows:

“[H]owever, the Party of the First Part reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993).”

The present section considers again the plain meaning of the specific phrase “not to object” and corrects serious misinterpretations by which the FYROM would seek to materially change the scope of Greece's obligations.

1. The FYROM's attempt to expand the plain meaning of "not to object"

5.20. The FYROM ignores the plain meaning of the non-objection clause and insists instead on its own contrived view of objects and purposes. The result, if the FYROM's expansive approach were accepted, would be in effect to impose on Greece an open-ended obligation to support the FYROM's admission to any and all organizations,¹⁶⁷ despite the limited and clear meaning of the negative obligation "not to object". According to the FYROM, the object and purpose of Article 11, paragraph 1 "was... to enable and facilitate the Applicant's integration into the international community," and thus the obligation "not to object" is virtually an obligation on Greece to support the achievement of the FYROM's "accession to international, multilateral and regional organization and institutions."¹⁶⁸ If the FYROM is correct, then whether or not Greece has satisfied its obligation under Article 11, paragraph 1 on this occasion is to be judged, not by Greece's conduct, but by the result attained (or not) under the NATO admissions process. The FYROM would answer one of the core questions of interpretation presented by the Interim Accord by treating the result of a NATO summit as the deciding factor.¹⁶⁹ The text of Article 11, paragraph 1, however, is clear: Greece's obligation, conditioned by its obligations to third parties, is an obligation "not to object", not an obligation to secure a particular result for the other party.

5.21. Having found no support in the text for its attempt to expand the plain meaning of "not to object," the FYROM in its Memorial sought assistance in the drafting history.¹⁷⁰ It relied there on an incomplete record, to which Greece added the relevant missing documents in the Counter-Memorial.¹⁷¹ In any event, though

¹⁶⁷ Reply, paras. 4.19-4.20.

¹⁶⁸ See e.g., Reply, para. 4.16.

¹⁶⁹ Greece addresses the centrality, as concerns the FYROM's claim to membership of NATO, of the decision of NATO at the Bucharest Summit: see above, paras. 3.35, 4.7.

¹⁷⁰ Memorial, paras. 4.15-4.18.

¹⁷¹ Counter-Memorial, Annex 148.

drafting history of course can help resolve ambiguities in a text or confirm the text's plain meaning, it cannot change a meaning already clearly expressed. The FYROM asserts that all proposed drafts of Article 11, paragraph 1 "point[ed] in the same direction."¹⁷² But the earlier drafts clearly would have imposed a much wider obligation. Under those drafts, there would have been an obligation not to hamper, not to impede, or, affirmatively, to support the full participation of the FYROM.¹⁷³ These proposed formulations were rejected, a fact both meaningful and unsurprising: the Interim Accord of 1995 was a compromise, not a capitulation. The essential compromise is contained in Article 11, paragraph 1: Greece accepted an obligation "not to object," not a wider obligation under other language which might have been adopted.

2. *The practice of other organizations does not expand the meaning of "not to object"*

5.22. The FYROM, unable to find support in the text but further seeking to expand the meaning of "not to object", devotes a subsection of its Reply to the "Object and Purpose of Article 11(1)."¹⁷⁴ Yet the FYROM uses virtually the whole of that section to describe the earlier practice of other international organizations. The FYROM recalls that a number of international organizations have admitted it to membership.¹⁷⁵ According to the FYROM, the decisions, *inter alia*, by the OSCE and the Council of Europe after 1995, "completely transformed the *status quo* that existed at the time of the signing of the Interim Accord, when the Applicant's membership in such organizations and institutions had been completely blocked by the Respondent."¹⁷⁶ It is unclear what exactly this has to do with the "object and purpose" of Article 11, paragraph 1. It would seem that

¹⁷² Reply, para. 4.21.

¹⁷³ See Counter-Memorial, para. 7.18.

¹⁷⁴ Reply, paras. 4.16-4.20.

¹⁷⁵ Reply, para. 4.16, cross-referencing list of organizations in Memorial, para. 2.40, and further discussion at paras. 4.17-4.20.

¹⁷⁶ Reply, para. 4.16.

the FYROM means the Court to infer that, because the FYROM had been delayed in gaining admission to certain organizations before the adoption of the Interim Accord, but then met with success afterward, that it must be the case that the “object and purpose” of Article 11, paragraph 1 is *not* simply to oblige Greece “not to object” but, beyond that, to require Greece to bring about the concrete result which, in the FYROM’s words, it “was most keen to secure.”¹⁷⁷ If this is the FYROM’s contention, then it is defective for the following reasons.

5.23. First, each organization has its own rules and consistent with these, criteria for membership, effectively defining which States it may choose for membership; and each organization has its own procedures for making the choice. From the fact that other organizations have admitted the FYROM, it seems that the FYROM would have the Court conclude that NATO’s decision to postpone its candidacy amounted to a breach by Greece of Article 11, paragraph 1—and a breach by NATO of its own rules. But this would be to ignore that the decision at Bucharest was a decision of NATO, not of Greece. Moreover, each organization, especially in its membership processes, is governed according to its own constitutive instrument and rules. The Interim Accord did not intend to, and could not, change anything in this regard.

5.24. Second, each organization considers an application in view of the circumstances at the time, as they relate to its own requirements for admission. The organizations to which the FYROM refers admitted it under different circumstances. Since the period immediately following the conclusion of the Interim Accord, instead of adhering to the agreed process of negotiation, the FYROM has pursued one bilateral settlement after another—with States other than Greece.¹⁷⁸ Its own attempts to convince third States to use a certain name not

¹⁷⁷ Reply, para. 4.20.

¹⁷⁸ The FYROM’s breach of Article 5(1) is addressed below, paras. 7.53-7.70. See esp. paras. 7.61, 7.70.

agreed between the FYROM and Greece is itself a significant contextual change, one party to the Interim Accord having ceased to abide by the terms of Article 5, paragraph 1 providing that the difference will be resolved by agreement and not otherwise. To the FYROM, the Interim Accord was an inconvenience, especially its requirement of negotiation, which the FYROM sought to side-step by agitating for more general use of the very name that precipitated the difference with Greece and gave rise to the Interim Accord.¹⁷⁹

5.25. The FYROM seeks to confuse the matter by saying that SC res. 817 (1993) never required it to use the designation “the FYROM.”¹⁸⁰ This is not correct, but even if true, this is irrelevant to the main point: the FYROM committed itself to deal with the name difference with Greece in a particular way, not to insist in every available setting that a certain name not agreed by Greece must be used as a condition of dealing with itself. Nor is it necessary to seek the meaning of the phrase “not to object” by drawing inferences from international organization practice at that earlier stage when much different circumstances existed: the phrase is a straight-forward, negative obligation, to be applied in accordance with any other relevant rights and obligations, such as those of Greece as a member State of NATO.

3. The FYROM’s rejection of other evidence confirming the plain meaning of the text

5.26. In the Counter-Memorial Greece noted a number of examples of “objection” in practice.¹⁸¹ The examples show that the plain meaning of the words has been applied with a high degree of consistency. The FYROM, however, dismisses not only the plain meaning but all the other evidence.

¹⁷⁹ See below, para. 6.37 and examples at para. 6.40.

¹⁸⁰ See Reply, paras. 4.40-4.61 (Chapter IV, Section II(B), (C)).

¹⁸¹ See Counter-Memorial, paras. 7.13-7.14.

5.27. First, the FYROM rejects the practice of the UN Security Council as shedding any light on the matter. In the Security Council under UN Charter Article 27, active rejection—i.e., the veto—is distinguished from passivity—i.e., an abstention. The FYROM says this is irrelevant, because it is the *result* of the procedure, not the procedure itself, which counts.¹⁸² But the FYROM, again, ignores the plain text. Article 11, paragraph 1 of the Interim Accord might have required, for example, that Greece take certain positive action, such as voting in favour. It might have said—as an earlier draft did say—that Greece shall “endeavour to support” the FYROM’s applications.¹⁸³ These formulations are more concerned with outcome than with process. Where the parties to the Interim Accord wished to impose an obligation of result, they did so in plain terms: thus, in Article 5, paragraph 1, the obligation to negotiate is one which the parties accepted “with a view to reaching agreement on the difference.”¹⁸⁴ The text of Article 11, paragraph 1 as adopted, by contrast, says simply that Greece is “not to object”.

5.28. The FYROM argues that the law of treaties, where objection to a reservation is a formal, active procedure, does not support Greece’s interpretation of the phrase.¹⁸⁵ According to the FYROM, “there is nothing inherent about the words ‘to object’ in Article 11(1) that requires the formalities present in the Vienna Convention with respect to objections to reservations; those formalities are driven by the particular processes of that particular legal regime.”¹⁸⁶ But this is not the point. Greece was not saying that a “particular legal regime” containing formalities for dealing with reservations under the Vienna Convention was transposed onto the Interim Accord. The point, instead, was to show that

¹⁸² Reply, para. 4.12.

¹⁸³ See Counter-Memorial, para. 7.17.

¹⁸⁴ See below, para. 7.67.

¹⁸⁵ Reply, para. 4.13.

¹⁸⁶ Reply, para. 4.13.

“objection” has a certain meaning, and that that meaning has been applied in various international legal relations in a broadly consistent way.

5.29. Nor does the FYROM address the practical difficulties which would arise from its extended, additive interpretation of “not to object”. Greece noted that under the FYROM’s interpretation the phrase would be vast and ill-defined. Under the FYROM’s interpretation, virtually any State conduct—including abstention or inactivity—would be swept up in the phrase.¹⁸⁷ Issues of interpretation would arise with each new act and with each new omission. The FYROM dismisses the practical difficulties by the rather weak assurance that the Court “need not explore all the outer margins of what conduct might fall within the scope of Article 11(1).”¹⁸⁸ This is no answer for a judicial body which, under the FYROM’s interpretation, could well be drawn into disputes over fine gradations of support and opposition, participation and abstention, avowal and disavowal—each arising under the decision-making process of an organization governed by distinct rules.

5.30. The FYROM rejects every attempt by Greece to shed light from international practice on the meaning of the phrase “not to object.” To be clear, Greece’s purpose in reviewing the practice in the Counter-Memorial was not to cast doubt on the plain meaning of the text: the practice instead was confirmatory. The FYROM, by contrast, asks the Court to set the default position as the maximalist position: “not to object” means as much as the FYROM says it means, so that Greece must refrain from any expression of concern, must never articulate its considerations of policy; in effect, must support the FYROM’s applications to

¹⁸⁷ Counter-Memorial, para. 7.12.

¹⁸⁸ Reply, para. 4.15.

bodies such as NATO with affirmative acts of assent.¹⁸⁹ This contradicts the specific terms of the adopted text.

5.31. Objection in international organizations has a definite meaning, which is clear from the practice of States. For example, there was the objection of China to the admission of Bangladesh as a member State of the United Nations. China said that the separation of Bangladesh was the result of an illegal armed conflict; that the new State was dependent on external intervention; and that Bangladesh's treatment of prisoners-of-war was not in accordance with international humanitarian law.¹⁹⁰ The United States objected to admission of Viet Nam, saying that it had "serious doubts" about its willingness to carry out UN Charter obligations.¹⁹¹ South Yemen objected to Qatar's admission, referring to "pseudo-independence which perpetuates indirect colonial influence and internal suppression."¹⁹² Morocco, somewhat earlier, had said "this region of Shengit, called Mauritania, forms, with the rest of Morocco, one single country with clear and precise geographical and historical boundaries"¹⁹³—and, in the General Assembly, objected to Mauritania's admission.¹⁹⁴ These were not casual

¹⁸⁹ Reply, para. 4.20:
"If the Respondent is correct that 'withholding assent' does not fall within the scope of 'to object', then Article 11(1) would provide no meaningful benefit to the Applicant in relation to any of the major organizations and institutions of which it was most keen to secure membership, such as the Council of Europe, the European Union, NATO or the OSCE. That is because each of those organizations and institutions only admits new members based upon a consensus procedure; if the Respondent were correct in asserting that it could 'withhold assent' without violating Article 11(1), then it could continue to object to the Applicant's accession to all of these organizations in a manner fully consistent with its Article 11(1) obligation. As such, the Respondent's narrow interpretation of 'to object' in Article 11(1) is wholly inconsistent with the object and purpose of that provision."

¹⁹⁰ Mr. Huang Hua (China) SCOR 27th year 1658th meeting 10 Aug 1972, pp. 7-8 paras. 77-87; *ibid*, 1660th meeting 25 Aug 1972, p. 7, para. 73, p. 9, para. 82.

¹⁹¹ Mr. Scranton (USA) SCOR 31st year 1972nd meeting 15 Nov 1976, pp. 13-4 para. 122.

¹⁹² See GA res 2753 (XXVI), 21 Sept 1971 (126-1:0); GAOR 26th sess. 1934th plenary meeting p. 36.

¹⁹³ Mr. Boucetta (Morocco) SCOR 15th year 911th meeting 3 Dec 1960, para. 194.

¹⁹⁴ See GA res 1631 (XVI), 27 Oct 1961 (68-13:20); GAOR 16th sess. 1043rd plenary meeting 27 Oct 1961, para. 195.

expressions of dissatisfaction or political declarations for atmospherics. They were instead formal protests and demarches adopted in unambiguous language and joined with actual votes under the parliamentary procedures of an organization, cast with the intention of objecting to the candidacies of the States in question. The forums in which the statements were lodged left no doubt as to the audience to which they were addressed or to their character as objections. Greece has never lodged any such statements against the FYROM.

4. Conclusion as to the FYROM's Reply on the phrase "not to object"

5.32. To conclude, the FYROM's Reply offers no satisfactory analysis of the phrase "not to object". The treatment of that phrase in the Reply presents the following problems:

- (i) the FYROM would add terms to Article 11, paragraph 1 which are not contained in the text and which can in no way be inferred from the objects and purposes of the Interim Accord as a whole or from the drafting history;
- (ii) the FYROM's admission to other international organizations took place under each organization's rules, and therefore is irrelevant to the application of Article 11, paragraph 1 in conjunction with the rules of NATO;
- (iii) the FYROM rejects without substantive analysis the other evidence from international practice supporting the plain meaning, while failing to set out any evidence to support its own attempt to transform the plain meaning; and
- (iv) the FYROM's interpretation would impose an ambiguous and open-ended test, rather than asking the simple question whether Greece has lodged an objection or not.

D. The Safeguard Clause

5.33. The second clause of Article 11, paragraph 1 acts as a balance to protect Greece's interests under the Interim Accord.¹⁹⁵ If the condition for applying the safeguard clause is satisfied, then Greece, acting under its retained right, may object to the FYROM's admission to an organization of which Greece is a member State. The condition is expressed simply: Greece may object, "if and to the extent [the FYROM] is to be referred to in such organization or institution differently" than as stipulated.

5.34. The FYROM rejects the plain meaning of these words. The FYROM wishes to deny that Greece can object when the FYROM "is to be referred to in", e.g., NATO, differently than as stipulated. And it wishes to add a procedural requirement to the safeguard clause nowhere to be seen in the clause as written: according to the FYROM, Greece may object only after making a formal declaration that it has determined that the FYROM "is to be referred to in" the organization differently than as stipulated.¹⁹⁶ Yet the FYROM also contends that Greece has no discretion to determine on the evidence whether the FYROM "is to be referred to in" the organization differently than as stipulated. In the FYROM's view, though there was no procedure at all specified in the clause, the FYROM has the power to conjure a mandatory procedure out of thin air; and, though Greece, by the terms of Article 11, paragraph 1, had a well-adapted right to respond to the FYROM's campaign to escape the requirements of a negotiated settlement of the name difference, the FYROM has the power to make Greece's rights disappear. In the present section, Greece addresses the FYROM's unsustainable interpretation of the safeguard clause.

¹⁹⁵ See Counter-Memorial, paras. 7.3, 7.68-7.69.

¹⁹⁶ Memorial, paras. 5.10-5.11, 5.12-5.20; Reply, paras. 4.34-4.38.

1. *The FYROM ignores the syntax of the safeguard clause*

5.35. The FYROM in its Reply utterly ignores the syntax of the safeguard clause, with the effect that the clause is drained of all meaning. It is therefore necessary here to recall that there are three elements of syntax in the safeguard clause which signal the scope of its application:

- (i) The clause expresses the condition for its operation in the passive voice. This indicates that the condition covers all possible actors. If the FYROM “is to be referred to in” an organization differently than as stipulated, then the clause is triggered. Thus the clause is triggered when it appears that the organization is to refer to the FYROM differently than as stipulated. But the clause is also triggered when it appears that the FYROM itself or any other State is to refer to the FYROM differently.
- (ii) The condition which triggers the clause is conduct *in* the organization. The “in” denotes all that takes place within the organization and is therefore consistent with and reinforces the use of the passive voice: the clause concerns all possible actors *in* the organization. This is not limited to conduct “by” the organization.
- (iii) The clause is in the future tense—“is to be referred to in”. This means that the condition triggering the clause exists when it appears that the FYROM will be referred to in the organization differently. Inherent in this is that Greece must form an appreciation, based on a good faith evaluation of current facts, whether the FYROM is to be referred to in an organization differently at a future time. The future element in the condition is consistent with the Interim Accord as a whole. If Greece could object only after a name not agreed by Greece and the FYROM had entered into use in the organization, the balance struck under the

Interim Accord would already have been lost. Greece would have no means to object to the membership of the FYROM at such a late stage. The balance struck under the Interim Accord would already have been lost.

A number of factual situations therefore exist in which Greece may object in accordance with Article 11, paragraph 1.

5.36. The breadth of the safeguard clause is inimical to the FYROM's pursuit of the general use of a name not agreed by Greece. The FYROM has insisted in virtually all of its relations that the non-agreed name be used, and, as a result, that name has proliferated, notwithstanding the FYROM's continuing obligation to settle the difference over the name through the agreed modality of bilateral negotiation. This factual situation in itself is enough to permit Greece, under the safeguard clause, to conclude that the FYROM "is to be referred to in" organizations differently than as stipulated: a widening use of the non-negotiated designation inevitably will affect practice in international organizations.

5.37. In response, the FYROM introduces in particular three changes to the syntax of the phrase defining the safeguard clause condition. First, it changes "in" to "by". Second, it changes the passive construction "to be" to an active construction. And, finally, the FYROM says that the condition exists only *after* the FYROM has been so referred to, not when the FYROM "is to be referred to": this converts future contingencies into past *faits accomplis*.

5.38. The first change the FYROM introduces without explanation. It treats "in NATO" and "by NATO" to mean exactly the same thing.¹⁹⁷ The FYROM does not say a word as to why they should be so treated. It simply uses "in", in several paragraphs in a row, as if it were interchangeable with "by". It even acknowledges, in so many words, the actual position, when it says, that the clause

¹⁹⁷ Reply, paras. 4.33-4.36.

“allows the Respondent to object to the Applicant’s ‘membership’ if the Applicant is to be referred to ‘in’ the organization or institution differently...”¹⁹⁸ Putting “in” in inverted commas does not however change its grammatical function. Apparently, the FYROM believes that simply asserting a view often enough will establish that view, even as against an existing meaning in the language.

5.39. The FYROM criticizes Greece’s analysis in heightened terms, but offers none of its own. It calls Greece’s interpretation “contorted” and, worse still, “imaginative”.¹⁹⁹ It says that Greece’s analysis is an attempt “to parse various pieces of the second clause of Article 11, paragraph 1... to establish a meaning that—if it really had been so intended—could (and should) have been established simply by writing the clause to say as much.”²⁰⁰ In the Counter-Memorial, however, Greece carefully considered the actual words of the phrase which set out the safeguard clause condition; and, moreover, showed that earlier drafts had proposed “to say as much”—to say exactly as much as the FYROM says the adopted clause now says—but that that earlier formulation was abandoned.²⁰¹

5.40. The FYROM, ignoring both the drafting history and the plain meaning of the adopted text, says as follows:

“The text does not reserve a right to object if the Applicant ‘is to be referred to in such organization or institution, *or intends to call itself in its relations with the organization or institution*, differently than’ the provisional reference. The clause might have been written that way, but it was not. Instead, the language addresses

¹⁹⁸ Reply, para. 4.33.

¹⁹⁹ Reply, para. 4.52.

²⁰⁰ Reply, para. 4.52.

²⁰¹ Counter-Memorial, paras. 7.70-7.72.

how the Applicant is to be ‘referred to in such organization or institution’, not how it is to call itself.”²⁰²

This is spurious. The FYROM has taken the actual language of the safeguard clause, and then, purportedly to illustrate its point, adds a hypothetical subordinate clause—“or intends to call itself... [etc]”. The hypothetical subordinate clause, however, is literally contained within the main clause. The safeguard clause condition is satisfied if the FYROM “is to be referred to in...” This clause is all-inclusive. It covers all cases of practice which would tend to undermine the negotiations on the name difference, and it was adopted to assure such completeness. The hypothetical subordinate clause adds nothing whatsoever to the clause actually adopted. The FYROM denies the logic of the English language, when it denies that the clause as adopted is somehow less inclusive than the proposed extended version. The FYROM repeats its assault on ordinary grammar, when it says that the “language addresses how the Applicant is to be ‘referred to in such organization or institution,’ *not how it is to call itself.*”²⁰³ Moving the quotation mark back to its original place, so as to include the passive verb “to be” (which the FYROM here has left out of the inverted commas), the phrase “to be referred to in such organization or institution” literally and clearly includes the clause “how it is to call itself.”

5.41. The FYROM’s contention is that the safeguard clause covers no instance of “is to be referred to in”, unless the instance is explicitly articulated in the provision. This is the point behind the FYROM’s insertion of the clause “*or intends to call itself.*” Thus, according to the FYROM’s special grammar, the safeguard clause as adopted does not cover any organ, any organization, any institution, any member State, any individual, any third State, or the FYROM itself—for none of these actors are specifically nominated as referees whose

²⁰² Reply, para. 4.53 (emphasis original).

²⁰³ Reply, para. 4.53 (emphasis added).

departure from the stipulated name could trigger Greece's reserved right. It is consistent with the FYROM's one-sided interpretation of the Interim Accord that this should be the meaning of the safeguard clause. It is not however consistent with the text, with the context or with drafting logic. The syntax of the safeguard clause is clear, and it achieves the purpose that the safeguard clause is intended to perform as a balancing provision within the Interim Accord.

2. *The future tense of the safeguard clause condition*

5.42. One element of the syntax of the safeguard clause merits further remark. Greece explained in the Counter-Memorial that the safeguard clause looks to the future.²⁰⁴ Curiously, the FYROM acknowledges, perhaps inadvertently, that the phrase must concern future references to the FYROM and not just how the FYROM is referred to for the moment. The FYROM says that it has “demonstrated that the Applicant was referred to in NATO as ‘the former Yugoslav Republic of Macedonia’ prior to 2008, *and that it would have continued to be so referred as a Member Country.*”²⁰⁵ The only reason that the FYROM would make this assertion (Greece rejects the assertion in any event) is that the condition in the safeguard clause indeed is met when it appears from present facts that the FYROM would *not* “continue[] to be so referred as a Member Country”.

5.43. The FYROM contends that the safeguard clause has nothing to do with the conduct of third States;²⁰⁶ that it has nothing to do with the conduct of the FYROM itself;²⁰⁷ and that only the already-established practice *by* an international organization of referring to the FYROM differently can trigger it.²⁰⁸ If this were so, then the Interim Accord would be a fool's bargain—a *marché de dupes*. If Greece could object only *after* the FYROM “is *being* referred to” in an

²⁰⁴ Counter-Memorial, paras. 7.63-7.64.

²⁰⁵ Reply, para. 4.34 (emphasis added).

²⁰⁶ Reply, para. 4.75.

²⁰⁷ Reply, para. 4.73 (saying that it is “an unusual and unsupportable theory” that “the Applicant [must] meet the condition set forth” in the safeguard clause); and see above, para. 5.38.

²⁰⁸ Reply, paras. 4.33-4.36.

organization differently than as stipulated, then the objection would be vacuous. The FYROM would be free and unchecked in its pursuit of the general entrenchment of a designation not agreed with Greece. A proper interpretation of the safeguard clause avoids this result: Greece's right to object under the safeguard clause is triggered, when present facts support the appreciation that the FYROM is now, or is to be, referred to in an organization differently than as stipulated.

3. Greece's margin of appreciation to consider relevant factors when judging whether the FYROM "is to be referred to in" NATO differently than as stipulated

5.44. When called upon to determine whether a specified legal condition obtains, States must consider factors relevant to the existence of the condition. This is the case, for example, for States when determining whether the criteria for admission of a State to the United Nations under Article 4 of the Charter have been met:

“Article 4 does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down in that Article. The taking into account of such factors is implied in the very wide and very elastic nature of the prescribed conditions; no relevant political factor—that is to say, none connected with the conditions of admission—is excluded.”²⁰⁹

Member States must take into account the conditions which the constituent instrument of the organization stipulates, and act in good faith. Subject to this, they also may take into account “such factors” as are “implied in the very wide and very elastic nature of the prescribed conditions”.

²⁰⁹ *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion, 1948, *I.C.J. Reports 1947-1948*, p. 57, 63.

5.45. Despite the plain meaning of the safeguard clause, FYROM says, in effect, that no such margin of appreciation exists: Greece has no role in “estimat[ing]... whether and to what extent the condition comprised in the Safeguard Clause is to be met”; it would eviscerate Article 11, paragraph 1 “if such a determination were left to the Respondent.”²¹⁰ According to the FYROM, Greece’s right to object is preserved under the safeguard clause only when three specific conditions are met: (i) the FYROM has been admitted to an organization; (ii) the FYROM is now referred to in the organization differently than as stipulated; and (iii) the non-conforming reference is the policy of the organization itself. According to the FYROM, it would be “unreasonable and absurd” for Greece to consider evidence *before* the FYROM is actually referred to differently.²¹¹ But a reservation of right expressed in the manner of the safeguard clause has no effect if the State which it is intended to benefit is denied the right to consider whether its triggering condition exists. So limited, Greece’s allowable objection would be an academic exercise, mere commentary from the gallery.

5.46. Confusing a margin of appreciation with unfettered and arbitrary freedom, the FYROM says that Greece claims a right to object simply based on “discontent that the difference over the name had not yet been resolved.”²¹² Evidently the name difference persists, but Greece nowhere contends that this constitutes a sufficient condition under the safeguard clause. The persistence of the difference is relevant, instead, for two reasons: (i) the FYROM’s efforts to entrench a non-agreed name despite its commitment to negotiate an agreed resolution of the difference are a relevant factor, when Greece considers whether the safeguard clause condition is met; and (ii) the existence of the difference, inimical as it is to good-neighbourly relations, was an obstacle to admission which had to be taken into account by a NATO member State exercising its function in the admission

²¹⁰ Reply, paras. 4.65.

²¹¹ Reply, para. 4.65.

²¹² Reply, para. 4.93.

process under the North Atlantic Treaty.²¹³ The FYROM itself notes a number of further factors which support an appreciation that the condition triggering the safeguard clause existed, but the FYROM says that whenever Greece acknowledges such factors, Greece is breaching the Interim Accord! Greece considers each of these factors in turn in Chapter 6 below.²¹⁴

E. Conclusion

5.47. The proper interpretation of Article 11, paragraph 1 of the Interim Accord may be summarized as follows:

(i) Article 11, paragraph 1 does not, and could not, change existing treaty relations of Greece with third parties, a point confirmed by Article 22 of the Interim Accord, which applies to all provisions of the Interim Accord; Greece's rights and obligations as a member State of NATO thus are not affected by Article 11, paragraph 1.

(ii) The obligation "not to object" is only as extensive as the plain language of Article 11, paragraph 1 would indicate: it is not an obligation to secure a successful result for the FYROM's candidacies in international organizations, nor is it an obligation not to abstain or not to withhold support in any consensus process.

²¹³ The relevance of the difference under NATO's rules for admission is distinct from its relevance to the safeguard clause condition, the former is further considered separately below: paras. 6.3-6.13.

²¹⁴ Greece notes, in the alternative, that even if it were established that the FYROM itself has no obligation to use its stipulated name—a contention which Greece strenuously rejects (see below, paras. 7.13-7.24)—the safeguard clause condition, under the circumstances prevailing as at 3 April 2008, would equally have been met. The safeguard clause imports the expression "the former Yugoslav Republic of Macedonia" from SC res. 817 (1993) into Article 11, paragraph 1—not just to recall that the FYROM is obliged to use that name; but also to define an overall *condition* particular to the regime of Article 11, paragraph 1. The safeguard clause adopts the Security Council's terms as its own terms in order to define its own condition, and, when the condition is met, the obligation under the first clause of paragraph 1 does not apply. The safeguard clause, to that extent, can operate independently of the FYROM's obligations.

(iii) The second clause of Article 11, paragraph 1, the safeguard clause, balances Greece's obligation with a continuing right to object, in circumstances where the FYROM is to be referred to in an international organization differently than as stipulated under SC res 817 (1993). This is a conditional right, and, as such, Greece has a margin of appreciation to determine whether the condition exists.

CHAPTER 6: GREECE DID NOT BREACH ITS OBLIGATION UNDER ARTICLE 11, PARAGRAPH 1

A. Introduction

6.1. In the Counter-Memorial Greece already addressed the FYROM's fundamental problem that its claim is in truth (and despite its protestations) a claim against a decision of an international organization. The decision of NATO at the Bucharest Summit was a collective decision taken under the consensus procedure of the organization and based on the criteria articulated by NATO for invitation of the FYROM to membership. As an international legal person, NATO is responsible for its own acts.²¹⁵ As discussed in Chapters 3 and 4 of the present Rejoinder, the claim concerns conduct attributable to NATO yet neither NATO nor its members have consented to the Court's jurisdiction. Nor is the conduct of NATO attributable to Greece.

6.2. This answer to the FYROM's claim is complete. However, in the event that the Court were to determine that the FYROM has articulated an admissible claim, Greece now addresses its participation in the NATO decision of 3 April 2008, demonstrating that this was in accordance with its obligations under the North Atlantic Treaty and the Interim Accord.

B. Greece participated in the NATO decision of 3 April 2008 in accordance with its obligations under the North Atlantic Treaty

6.3. Greece's participation in the NATO decision of 3 April 2008 was subject to the rules of NATO. The FYROM's case at heart concerns the requirements for NATO expansion and the application of those requirements in 2008. The FYROM contests whether NATO stipulated as a requirement for invitation to membership that the difference concerning the name be settled in the interests of

²¹⁵ *Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 174, 184.

good-neighbourly relations in the region. The FYROM contends that there was no such stipulation and, in any event, any obligation of Greece in respect of participation in NATO decision-making was supplanted by Article 11, paragraph 1 of the Interim Accord. Greece in the Counter-Memorial already addressed NATO's membership requirements.²¹⁶ The FYROM in its Reply contests nearly every aspect of NATO rules and NATO process.²¹⁷ In the present section, Greece responds to the FYROM's contentions (a) about NATO requirements; (b) about the effect of the Interim Accord on Greece's obligations as a participant in NATO decision-making; and (c) about the application of NATO requirements by Greece when considering the FYROM's candidacy.

1. NATO was clear as to the requirements which the FYROM had to meet to be eligible for an invitation to accede to the organization

6.4. In the Counter-Memorial Greece recalled the criteria which the FYROM had to meet to be eligible for an invitation to accede to NATO.²¹⁸ These included the requirement under the principle of good-neighbourly relations that the difference over the name be definitively settled. NATO has been clear in general that bilateral differences can delay an aspirant State's progress to admission; and, conversely, that the definitive settlement of those differences, once achieved, opens the way for the Alliance to extend an invitation to membership. Referring in 1997 to the candidacies of States in Central and Eastern Europe, the NATO Secretary-General said the following:

“Enlargement... is not a one-off process. NATO's doors will remain open, and we expect to extend further invitations in the future... The incentive, therefore, remains for aspiring members to continue down the road of democracy and economic reform. The possibility of NATO membership has already given many nations

²¹⁶ Counter-Memorial, Chapter 5, and esp. paras. 5.37-5.47.

²¹⁷ Reply, paras. 2.34-2.66.

²¹⁸ Counter-Memorial, paras. 5.37-5.47, 5.50.

of Central and Eastern Europe an incentive to put to an end old quarrels, border disputes or other unresolved security-related issues.”²¹⁹

6.5. NATO’s position was that the aspiring States had “to put to an end” a variety of “unresolved security-related issues”, before the process of enlargement could accommodate their wish to be invited to membership. Thus, for example, the President of Hungary, when addressing the North Atlantic Council in 1996, observed that his State had definitely resolved its major bilateral issues with Romania and with Slovakia, in furtherance of the “process of acceding to the structures of Euro-Atlantic integration.”²²⁰ Candidate States like Hungary understood that, under NATO rules, their most significant differences could not continue if they were to receive invitations to membership. The FYROM, however, says when it comes to its own aspirations that NATO did not require settlement of the difference concerning its name as a condition for invitation to membership.²²¹

6.6. There are three assertions in particular that must be addressed: (a) the FYROM ignores the plain meaning of NATO’s various statements affirming that a settlement of the bilateral difference is a *sine qua non* of admission; (b) the FYROM confuses the act of settling the difference (which it is not for NATO to perform) with the fact of its continuance (which prevents NATO from accepting the FYROM’s candidacy); and (c) the FYROM, substituting its own judgment for that of NATO, the UN Security Council and numerous States, denies that the

²¹⁹ “NATO Beyond Enlargement,” Remarks by the Secretary General of NATO, Dr. Javier Solana, to the UK Atlantic Council, dated 19 November 1997: Annex 52.

²²⁰ Address by H.E. Mr. Arpad Gönez, President of the Republic of Hungary at the Meeting of the North Atlantic Council, dated 16 September 1996: Annex 51.

²²¹ Reply, para. 2.56.

name difference gives rise to any issue of regional security.²²² These assertions seriously misconstrue the situation.

(a) NATO statements on the need for a settlement

6.7. The FYROM cites the relevant NATO statements but ignores their meaning. The FYROM cites, for example, the NATO Membership Action Plan, which stipulates that the candidate State “settle ethnic disputes or external territorial disputes including irredentist claims or internal jurisdictional disputes by peaceful means in accordance with OSCE principles and [...] pursue good neighbourly relations.”²²³ But it passes over this statement without analysis, despite the fact that the Counter-Memorial explained the significance and content of the requirement that the candidate “pursue good neighbourly relations”.²²⁴

6.8. The FYROM ignores entirely the statement of the NATO Secretary-General some months before the Bucharest Summit:

“Euro-Atlantic integration of course also demands and requires good neighbourly relations and it is crystal clear that there were a lot of pleas from around the table to find a solution for the name issue, which is not a NATO affair. This is Mr. Nimetz, Ambassador Nimetz, under the UN roof. [Finding a solution for the name issue] is not a NATO affair, NATO responsibility. But I would not give you a complete report if I would not say referring to the communiqué by the way of the NATO Foreign Ministers last

²²² Reply, paras. 2.34-2.66.

²²³ Reply, para. 5.8, quoting Membership Action Plan, Chapter I para. 2c, 24 April 1999: Counter-Memorial, Annex 21.

²²⁴ Counter-Memorial, paras. 5.25, 7.36.

December where there is this line on good neighbourly relations and the name issue.”²²⁵

The Secretary-General thus expressly recognized that the “pleas from around the table to find a solution to the name issue” were directly connected with the need (“demands and requires”) for “good neighbourly relations”. This was the NATO Foreign Ministers’ “line” at the Brussels Ministerial Meeting of 7 December 2007. The FYROM ignores it. Even more striking is the FYROM’s failure to consider its own Prime Minister’s statement, issued in tandem with the Secretary-General’s observations:

“We are encouraged to continue to work on the solving of the problems and implementing the reforms. And of course probably the main issue that many of the Ambassadors mentioned is potential risks *and the issue that has to be solved is the name issue with the Greece* where many of them said that it’s necessary to intensify the discussions. That of course we will do. We will intensify the discussions in the Mr. Nimetz process in UN and in all other possible ways. And of course we will do the best to solve as soon as possible this 17-year problem, but also there is understanding I believe that this problem is not so easy...”²²⁶

The concern that the name issue had not yet been settled was expressed by “many” Ambassadors in NATO. The issue “ha[d] to be solved” if the FYROM was to achieve the result it wanted at the then-forthcoming Bucharest Summit.

²²⁵ Joint Press Point with NATO Secretary General Jaap de Hoop Scheffer and the Prime Minister of the FYROM, Nikola Gruevski, 23 January 2008: Counter-Memorial, Annex 26.

²²⁶ *Ibid.* Effectively the same understanding was expressed by the FYROM Prime Minister in a press conference after the Bucharest Summit with de Hoop Scheffer’s successor, NATO Secretary-General Anders Fogh Rasmussen. See “Rasmussen: Name issue settlement, key to NATO accession”, *Macedonian Information Agency*, dated 18 June 2010: Annex 56.

These are clear positions, acknowledged in the FYROM Prime Minister's own words.²²⁷

6.9. It is not surprising that the Prime Minister acknowledged such requirements; their importance had been clearly recalled in official Declarations and Communiqués of the Alliance. There was the Riga Summit Declaration of 29 November 2006, stating that:

“In the Western Balkans, Euro-Atlantic integration, based on solidarity and democratic values, remains necessary for long-term stability. This requires cooperation in the region, good-neighbourly relations, and working towards *mutually acceptable solutions to outstanding issues*.”²²⁸

Then there was the Brussels Declaration 2 December 2007, reiterating that integration “involves promoting cooperation in the region, good-neighbourly relations, and *mutually acceptable, timely solutions to outstanding issues*.”²²⁹

6.10. The FYROM also ignores NATO's subsequent statements on its candidacy, even though these set out concise explanations of the requirement that had yet to be satisfied. At its meeting in Brussels on 3 December 2008, the North Atlantic Council discussed the possibility of extending an accession invitation to

²²⁷ The FYROM in respect of other organizations has admitted the importance of good neighbourly relations in the region as well, e.g., in ECOSOC: see Statement of FYROM Ambassador Naste Calovski, 29 June 1994, p. 4, citing GA res 48/84-B, 16 December 1993 in Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs on the statement of the Greek Representative at the High Level Segment of the Economic and Social Council on the “Agenda for Development”: Annex 4.

²²⁸ NATO Press Release (2006) 150, *Riga Summit Declaration, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Riga on 29 November 2006*, para. 28: Counter-Memorial, Annex 23 (emphasis added).

²²⁹ NATO Press Release (2007) 130, *Final Communiqué. Ministerial meeting of the North Atlantic Council held at NATO Headquarters Brussels, 7 December 2007*, para 14: Counter-Memorial, Annex 25 (emphasis added).

the FYROM.²³⁰ Paragraph 17 of the Final Communiqué of that meeting provides as follows:

“We reiterate the agreement of Heads of State and Government in Bucharest Summit *to extend an invitation to the former Yugoslav Republic of Macedonia as soon as a mutually acceptable solution to the name issue has been reached* within the framework of the UN and urge intensified efforts towards that goal. At the same time, we will continue to support and assist reform efforts of the Government of the former Yugoslav Republic of Macedonia.” (Emphasis added).

The Strasbourg/Kehl Declaration issued by the Heads of State and Government participating in the meeting of the NAC on 4 April 2009 reiterated this.²³¹ Paragraph 22 of the Declaration states:

“We reiterate our agreement at the Bucharest Summit to extend an invitation to the former Yugoslav Republic of Macedonia as soon as a mutually acceptable solution to the name issue has been reached within the framework of the UN ...

In accordance with Article 10 of the North Atlantic Treaty, NATO’s door will remain open to all European democracies which share the values of our Alliance, which are willing and able to assume the responsibilities and obligations of membership, and whose inclusion can contribute to common security and stability.”²³²

²³⁰ NATO Press Release (2008) 153, *Final Communiqué. Meeting of the North Atlantic Council at the level of Foreign Ministers held at NATO Headquarters, Brussels*, 3 December 2008: Counter-Memorial, Annex 32.

²³¹ NATO Press Release (2009) 044, *Strasbourg/Kehl Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Strasbourg/Kehl on 4 April 2009*: Counter-Memorial, Annex 35.

²³² *Idem*, para. 21.

Greece presented much of this material in the Counter-Memorial, in explanation of the NATO requirement applied at the Bucharest Summit. Some of it the FYROM acknowledges in the Reply. Much of it, however, it ignores, and the Reply offers no alternative interpretation.

(b) The act of settling the difference is not for NATO to perform

6.11. The FYROM says that NATO was clear that settlement of the name difference was “simply never perceived to be ‘NATO’s business’”.²³³ But NATO never said that it was the job of the Alliance to *settle* the difference. What NATO has said is that the fact that the difference endures is a material consideration in assessing the FYROM’s suitability as a candidate for invitation. NATO has a right to consider the continuing fact of the difference, when it evaluates a candidate for invitation to membership. The FYROM is desperate to ignore this. Indeed, it is for the very reason that it is not for NATO to assume the task of reconciling States between which such differences subsist that NATO stipulated that the FYROM and Greece would have to settle the difference themselves, *before* an invitation could be adopted.

6.12. Regrettably, it is necessary here to examine in detail the precise manner in which the FYROM tries to obscure the point—for the FYROM’s tactic is to make an utterly groundless allegation of bad faith against Greece. The FYROM says that the Counter-Memorial “redacts [a] statement [of the NATO Secretary-General] so as to remove... crucial clauses which underscore that the difference over the name was *not* a NATO matter”.²³⁴ The redaction, which the FYROM says was deliberate and “entirely distorts the Secretary-General’s comments”, was as follows:

²³³ Reply, para. 2.48.

²³⁴ Reply, para. 2.57.

“...[the name issue,] *which is not a NATO affair*. This is Mr. Nimetz, Ambassador Nimetz, under the UN roof. *This is not a NATO affair, NATO responsibility.*”²³⁵

But the material redacted is irrelevant to the point—and entirely obvious. As noted, Greece agrees that it is not for NATO to *settle* the name difference. If there is any doubt that *settlement* is what the Secretary-General was referring to, then one need only observe that the Secretary-General here was referring to Ambassador Nimetz—the UN Special Representative who has the mandate concerning settlement. While NATO does not have the task of settling the difference, NATO does have considerable concerns about the fact that the name difference endures. This is not a subtle distinction, but, in service of its theory that NATO has no concern over the endurance of a simmering bilateral dispute in its region (a dispute the seriousness of which led to the adoption of SC res 817 and SC res 845), the FYROM manages to confuse it.

6.13. The FYROM is frantic to deny that NATO required anything of the FYROM beyond a *pro forma* exercise of lip service to only the most general Alliance principles. NATO, however, as shown above, was clear that an aspiring State must adhere in substance to those principles, including the principle of good-neighbourly relations, which a candidate has not satisfied if it indefinitely postpones the resolution of an important bilateral difference. This follows logically from the character of NATO as an integrated military alliance, requiring considerable co-ordination of policy among its members.

(c)The FYROM’s denial that the name difference presents any regional security concern

6.14. The FYROM, apparently not satisfied that its account of NATO practice will suffice to re-write the requirements of NATO admission, asserts that, in any case, there were no security issues or issues of good-neighbourliness surrounding

²³⁵ Reply, para. 2.57, citing Counter-Memorial, Annex 26, p. 1.

the FYROM's candidacy to the organization. Apparently, in the FYROM's view, its own judgment of the security needs of the region prevail over the judgments of any other organs or States.

6.15. First, the FYROM asserts that its admission to the UN removed the possibility that the FYROM itself might be the source of a regional security concern. The FYROM says that the recommendation of the Security Council to admit the FYROM to the UN, and the admission of the FYROM by the General Assembly, show that the FYROM is "peace-loving".²³⁶ Article 4 of the Charter indeed requires that an applicant for admission be "peace-loving"; admission however is not a certification that the State is then immune from any concerns about international peace and security, for example under Chapter VII. That the FYROM attempts to defend seventeen years of conduct by recalling that it was admitted in 1993 as a UN member State says nothing at all about NATO's concern that the persisting difference over the name might pose difficulties within the Alliance.

6.16. Then the FYROM asserts that international concern had to do with threats to the FYROM, but not threats to other States in the region. The FYROM states as follows:

"[I]t was the *Applicant's* particular vulnerability and exposure to tensions and conflict in the region that was of primary concern to the international community when resolution 817 was adopted, not any purported vulnerability of the *Respondent* in relation to non-existent territorial ambitions on the part of the Applicant. The real threat to regional peace in question at preambular paragraph 3 was the threat to *the Applicant...*"²³⁷

²³⁶ Reply, para. 4.84.

²³⁷ Reply, para. 4.86 (emphasis original).

The FYROM adds to this the contention that UNPROFOR was deployed in December 1992 in the FYROM's territory "to address a threat perceived by the United Nations to the *Applicant's* territory".²³⁸ This is solipsistic. Just as the FYROM would have the Interim Accord serve no object or purpose except to protect the FYROM's interests, so it describes the entirety of international practice concerning the Balkans as directed at solving its own internal problems. On this view, the deployment of UNPROFOR had nothing to do with the threat emanating *from* the FYROM's internal problems; or that the independence of yet another potentially unstable former Yugoslav republic might contain the seeds of a wider regional breakdown.

6.17. The FYROM's one-sided view of events is contradicted by the sources on which the FYROM itself relies. For example, the United Nations Commission on Human Rights in 1993 said that the situation in the FYROM "may lead to a military conflict with far-reaching consequences *for the whole region*".²³⁹ This is the opposite of the FYROM's view that it was the "*Applicant's* particular vulnerability" which motivated the international community to react. In truth, the problem was regional peace and security. The FYROM's relevance to regional peace and security—and the international community's interest in the FYROM—was that the state of affairs in that territory threatened to have repercussions for the region as a whole. This is the state of affairs which the FYROM refers to as *its* "particular vulnerability".

6.18. According to the FYROM, the main cause of its "particular vulnerability" was that other States had not immediately recognized its independence,²⁴⁰ a situation for which the FYROM implicitly holds Greece blameworthy. But international actors observing the situation were clear that non-recognition,

²³⁸ Reply, para. 4.87.

²³⁹ Reply, Annex 13, quoted at Reply, para. 4.85 (emphasis added).

²⁴⁰ Reply, paras. 4.85-4.86.

though perhaps *contributing* to the difficulties, was not the main cause for concern: inter-ethnic disturbances in the FYROM had origins of their own, and the disturbances were the reason a guarded approach needed to be taken toward the new State. On the subject of its recognition, the FYROM refers to the recommendations of the Badinter Committee as “the official legal opinion of an arbitration commission”.²⁴¹ The Badinter Committee recommendations, however, came before the Interim Accord and before SC res. 817 (1993). After the Badinter Committee recommendations, the Security Council indicated that the issue of the name was a regional security issue—one that needed to be resolved in the “interest of the maintenance of peaceful and good-neighbourly relations in the region.”²⁴² This is an authoritative determination; the earlier recommendations of the Committee, based on earlier circumstances, had been overtaken by events. It is symptomatic of its cavalier attitude towards obligations freely assumed, that the FYROM, notwithstanding SC res. 817 (1993) and the Interim Accord, would present the earlier Badinter Committee’s recommendations as the final authority judging the conduct of States in the region.²⁴³ Seventeen years ago, the Badinter Committee considered the FYROM’s conduct in connection with a particular issue—recognition of the FYROM as a new State. The Committee said at that time that the FYROM’s conduct (at the time) presented no obstacle to recognition of the FYROM as a State. According to the FYROM, neither its conduct nor the context have changed since then, and admission of a State to an integrated military alliance is no different from recognition of the State for general purposes.

6.19. The FYROM posits that its insistence on a certain name not agreed with Greece under the required negotiation process has nothing to do with the name difference. According to the FYROM, “the wording of resolution 817 makes clear that it was the *difference* concerning the Applicant’s name that was deemed

²⁴¹ Reply, para. 4.81.

²⁴² SC res. 817 (1993), 7 April 1993, preamble.

²⁴³ See Reply, para. 4.81.

capable of undermining peaceful and good-neighbourly relations in the region, not the *constitutional name* [sic] itself”.²⁴⁴ This is peculiar logic. A “difference” exists when two or more parties hold incompatible views of a matter. If the difference is a problem of regional relations, then the existence of the incompatible views is the source of the problem. If only one view existed, there would be no problem. So it is nonsense to say that the FYROM’s insistence on a name not agreed with Greece under the required negotiation process—a name with irredentist potential in a region long-plagued by irredentist conflict—is not “capable of undermining peaceful and good-neighbourly relations...” In any event, SC res. 817 (1993) makes no reference to the FYROM’s internal problems; it is a determination concerning the *international* issue of the name difference and the risk this posed in the region.

6.20. Finally, the FYROM contends that Greece “seek[s] to minimize or deny the crisis in the region.”²⁴⁵ This is an astonishing assertion, in the same Reply in which it said that UNPROFOR was concerned only with the FYROM’s problems, and not with regional security;²⁴⁶ that the difference over the name had nothing to do with its insistence on a non-agreed name;²⁴⁷ and that NATO had no interest in the regional security implications of the difference.²⁴⁸

2. Greece’s participation in NATO decision-making is not predetermined by a third party agreement

6.21. As Greece has explained, its participation in decision-making in NATO cannot be predetermined under an agreement between Greece and a third party.²⁴⁹ The FYROM, however, contends that Greece agreed to ignore the NATO criterion of good-neighbourliness, as reflected by the requirement that the name difference

²⁴⁴ Reply, para. 4.85 (emphasis original).

²⁴⁵ Reply, para. 4.88.

²⁴⁶ Reply, para. 4.87.

²⁴⁷ Reply, para. 4.85.

²⁴⁸ Reply, para. 2.48.

²⁴⁹ Counter-Memorial, paras. 7.32-7.39, 7.95; and above, paras. 5.5-5.6.

be settled before NATO could invite the FYROM to accede. According to the FYROM, “the difference over the name alone was not a basis” for delaying the FYROM’s candidacy in NATO;²⁵⁰ and, further, Greece agreed to relinquish discretion as to its participation in NATO’s decision-making process on the membership of the FYROM: “any discretion... was already exercised when the Respondent concluded the Interim Accord...”²⁵¹ Neither of these contentions is sustainable.

6.22. No member State of NATO can supplant the membership requirements of the Alliance by entering into a bilateral agreement with a third party. The FYROM contends that the criteria for its NATO accession did not include that it demonstrate good-neighbourly relations by settling the outstanding regional difference. Greece has shown that this is factually incorrect: NATO accession in truth was conditional upon the settlement. The FYROM also contends—tacitly accepting that there was such a requirement—that, in any event, Greece waived it by entering into the Interim Accord. This contention fails: Greece did not waive any NATO criterion by entering into the Interim Accord, nor could it have done so. Article 22 is clear and reflects a general principle: the Interim Accord, as a third party agreement, does not affect the rules of NATO. This includes the rules governing admission, such as the stipulated conditions which NATO requires be met by the FYROM as a candidate State; and also the rules governing the process of decision-making under which the admission requirements are applied. It is of no avail for the FYROM to say that Greece surrendered its discretion as a participant in the NATO decision-making process when it adopted Article 11, paragraph 1 of the Interim Accord.

²⁵⁰ Reply, para. 5.6.

²⁵¹ *Ibid.*

3. *The NATO member States, including Greece, applied NATO's accession criteria when they reached consensus on the FYROM's candidacy*

6.23. In the claim originally presented by the FYROM, it was in the Bucharest Summit proceedings that Greece allegedly “objected to” the FYROM’s admission to NATO. The FYROM however has adduced no evidence that Greece made an objection during the proceedings of the Bucharest Summit. To the contrary, it is clear that the outcome of the Summit derived from a much broader consensus. The FYROM’s own President has affirmed this:

“Macedonia has suffered much from the indecision of the European countries. We saw last year in the NATO Summit in Bucharest the face of a Europe which did not honour its name. We saw how a trivial dispute dominated the debate which should have been directed towards the great idea of a united and whole Europe, a safe and protective Europe.

We could hardly comprehend the ignorant silence encountered by Macedonia—as well as by Georgia and Ukraine and some other States.

This silence, this lack of support by the *whole Europe* is much more dangerous for the euro-atlantic idea in Macedonia than the noisy attempts of a single country to find deficiencies and mistakes in my country.

We are accustomed to suffering negativity from Greece.

But the cold shoulder of the rest of Europe, and the USA, surprised us. From the EU and from NATO, we expect support.”²⁵²

According to President Ivanov, the delay to the FYROM’s candidacy at the Bucharest Summit was not the result of any act of Greece; it resulted from an omission (“the cold shoulder”) of a large cross-section of NATO countries. This is, as far as it goes, an accurate description of the decision taken at the Bucharest Summit: it was a consensus decision of NATO.²⁵³

6.24. In its Reply the FYROM nevertheless attempts to impugn Greece’s participation in the summit proceedings in other respects. It suggests that Greece deliberately ignored the fact that NATO had acknowledged the FYROM’s progress in fulfilling NATO membership criteria.²⁵⁴ The FYROM attempts in this way to portray the Counter-Memorial as factually inaccurate and one-sided. The accusation that Greece ignored the evidence of the FYROM’s progress also implies that Greece was careless toward the FYROM’s candidacy at the Bucharest Summit. In fact, however, Greece expressly noted that NATO had acknowledged significant developments in the FYROM advancing that State toward an invitation to membership. As the Counter-Memorial noted, the NATO Press Release, issued on behalf *inter alia* of Greece, “recognise[d] the hard work and the commitment demonstrated by the former Yugoslav Republic of Macedonia to NATO values

²⁵² “Macedonia on the Road to Europe”: Speech by the President of the FYROM Mr. Gjorge Ivanov at the Konrad Adenauer Foundation, Berlin, 14 September 2009: Annex 55 (emphasis added).

²⁵³ See also remarks of Štefan Füle, who was ambassador of the Czech Republic to NATO at the time: “Füle: Veto in Bucharest was not just a Greek affair,” *Vest*, 22 November 2008: Annex 53; and above, para. 3.35. The FYROM itself has been clear that the consensus process was the operative modality of decision-making at NATO and that it was through consensus that NATO decided to delay its candidacy. Thus the FYROM ambassador appointed to NATO in July 2010, Martin Trenevski, said that the “conclusions from the NATO Summit in Bucharest... based on principles of consensus and solidarity are *absurd and untenable*” (emphasis added). The Ambassador also said that the FYROM would attempt to get NATO to change those principles, see “New Macedonian Ambassador to NATO presents platform for diplomatic activities”, *Macedonian Information Agency*, Newsletter number 2764, dated 30 July 2010: Annex 57.

²⁵⁴ Reply, para. 2.56.

and Alliance operations. We commend them for their efforts to build a multi-ethnic society.”²⁵⁵ Greece agreed that the FYROM’s progress had been significant. Though at the time of the Bucharest Summit the NATO consensus was that the FYROM had not satisfied the requirements for invitation, by no means did NATO ignore the positive indications. The difficulty is that the Alliance only admits candidates who fulfil all its requirements; the FYROM as at 3 April 2008 had not done so.

C. The Safeguard Clause Condition was met at all Relevant Times

6.25. The FYROM insists that as at 3 April 2008 there was no factual or legal basis for Greece to have objected to its candidacy in NATO. This ignores the FYROM’s insistent practice of using a name not agreed with Greece, which shows literally that the FYROM is referred to in organizations other than as stipulated. It further ignores the FYROM’s persistent effort “to be referred to” in all its relations differently than as stipulated in SC res. 817 (1993). The present section of the Rejoinder addresses the FYROM’s misconception of Greece’s rights under Article 11, paragraph 1 and explains the relevance of the FYROM’s use, and its quest to proliferate the use by other States and institutions, of a non-agreed name. This practice is significant in triggering the safeguard clause, quite apart from the multiple and continuing violations by the FYROM of the Interim Accord, a matter which will be addressed in Chapter 7.

1. Factors had been present for some time indicating that the safeguard clause condition were met

6.26. The FYROM alleges that Greece objected, and did so without saying that the FYROM is “to be referred to in” NATO differently than as stipulated.²⁵⁶

²⁵⁵ See Counter-Memorial, e.g. at para. 5.49, quoting NATO Press Release (2008)049, *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*, paragraph 20 : Memorial, Annex 65.

²⁵⁶ Reply, paras. 3.7.

Greece has already addressed the FYROM's erroneous contention that the safeguard clause contains a procedural condition requiring Greece to articulate whether it is resorting to the reserved right to object.²⁵⁷ With reference to statements by various high-level officials of the Government of Greece, the FYROM says that Greece violated Article 11, paragraph 1:

- (i) The FYROM asserts that Greece sought to justify an objection by observing that the name difference had not yet been settled.²⁵⁸ For example, the Prime Minister of Greece stated in Parliament that “[w]ithout a mutually acceptable solution to the name issue, there can be no invitation to participate in the... alliance”.²⁵⁹
- (ii) The FYROM asserts that Greece sought to justify an objection on grounds of “general allegations of lack of good neighbourliness or ‘irredentism’”.²⁶⁰ For example, Greece said in the Counter-Memorial:

“The Security Council, in SC res 817 (1993), understood that settlement of the difference concerning the name is necessary ‘in the interest of the maintenance of peaceful and good-neighbourly relations in the region.’... The serious difficulties encountered in other parts of the former Socialist Federal Republic of Yugoslavia further drew attention to the delicacy of the situation and the

²⁵⁷ Counter-Memorial, paras. 7.73-7.77.

²⁵⁸ Reply, paras. 4.70-4.72.

²⁵⁹ Reply, para. 4.70.

²⁶⁰ Reply, paras. 4.78-4.88.

potential of irredentist claims, however stated or implied, to destabilise international relations.”²⁶¹

- (iii) The FYROM asserts that Greece sought to justify its conduct by saying that an objection was necessary so as to correct the balance of interests in the Interim Accord.²⁶² For example, Greece in the Counter-Memorial said that the FYROM’s “defection [from the negotiation process for settling the name difference] may be taken into account by Greece in determining whether the Safeguard Clause applies to a new membership application...”²⁶³

From this catalogue it appears that the FYROM contends that Article 11, paragraph 1 forbids Greece from referring to any factual or legal circumstance concerning the FYROM’s candidacies in international organizations, not to mention the multiple breaches of the FYROM of the Interim Accord.

6.27. The first point to be made in response is that the NATO decision of 3 April 2008 was a consensus decision; and Greece was therefore never put in a position of having to lodge an objection.²⁶⁴ In any event, the FYROM’s characterizations are flawed. The FYROM sees virtually no situation as triggering the right to object, except, possibly, where the organization itself already has referred to the FYROM by a non-agreed name. Greece has explained already why this is an untenable view of the safeguard clause—untenable from the syntax and untenable from the object and purpose of the Interim Accord.²⁶⁵ Rather, Greece may object when, acting reasonably and in good faith, it reaches the appreciation that the FYROM “is to be referred to in” an organization differently than as stipulated.

²⁶¹ Ellipses inserted by the FYROM. Reply, para. 4.79 note 260, quoting Counter-Memorial, para. 2.15 (omitting internal citation).

²⁶² Reply, paras. 4.73-4.77.

²⁶³ Reply, para. 4.76, quoting Counter-Memorial, para. 7.60.

²⁶⁴ Counter-Memorial, para. 5.56.

²⁶⁵ Counter-Memorial, paras. 7.59-7.72.

6.28. The first statement noted by the FYROM (a statement by the Prime Minister of Greece) is plain fact: there had been no settlement of the difference as at 3 April 2008 and this prevented NATO from adopting an invitation. The second observation simply reiterates the position of NATO. These, then, are principally observations about the NATO process and the constraints upon that process—not observations about the safeguard clause at all. The third is an observation about the consequences for the Interim Accord of the FYROM’s repeated violations, especially of Article 5(1): the FYROM seeks to liquidate the negotiation process and thus impose, on all actors for all international purposes, a non-agreed name.²⁶⁶ Greece is entitled to conclude from this situation that the FYROM “is to be referred to in” NATO differently than as stipulated.

6.29. Insisting, however, that Greece must make a formal declaration before the safeguard clause can operate,²⁶⁷ the FYROM compiles a history of Greek official and quasi-official communications.²⁶⁸ It construes diverse statements by Greek officials as evidence of Greece’s misapplication of the safeguard clause.²⁶⁹ But these statements identified factors supporting the judgment that the FYROM “is to be referred to in” NATO differently than as stipulated. The safeguard clause, as explained, expresses a condition, but it does not specify the factors relevant to whether the condition exists.²⁷⁰

6.30. Where a text expresses a condition for State conduct, it cannot be correct to interpret the text as depriving a State of the margin of appreciation necessary to determine the existence of the condition or otherwise. The failure to date to settle the name difference (and the reasons for the failure); the risk to which regional good neighbourliness was exposed by the FYROM’s irredentist conduct, and the

²⁶⁶ See below, para. 7.62.

²⁶⁷ Memorial, paras. 5.10-5.11, 5.12-5.20; Reply, paras. 4.34-4.38.

²⁶⁸ Reply, Appendix I.

²⁶⁹ Reply, paras. 4.69-4.88.

²⁷⁰ See above, paras. 5.44-5.46.

disruption of the balance of the Interim Accord caused by the FYROM's conduct—not to mention the multiple breaches by the FYROM of the Interim Accord²⁷¹—are all factors which Greece could properly take into account when considering whether the condition under the safeguard clause was satisfied. To adapt the words of the Court in the *Admission* opinion, the treaty in question does not forbid “the taking into account of *any factor* which it is possible reasonably and in good faith to connect with the conditions laid down.”²⁷²

6.31. The condition in the safeguard clause is that the FYROM “is to be referred to in” the organization differently than as stipulated. The grammar of the phrase makes clear that this entails a judgment by Greece as to how the FYROM will be referred to in the organization—i.e., a judgment as to future conduct. Moreover, the logic of the safeguard clause, as a protection for Greece against possible erosion of the mechanisms and principles of the Interim Accord, is that it must allow Greece to react, not only after a non-conforming reference to the FYROM has become entrenched in an organization, but also (indeed principally) beforehand. So Greece may consider “any factor” bearing a rational connection to the specified condition—any factor “which it is possible reasonably and in good faith to connect with the [condition] laid down.”

6.32. The FYROM complains that Greece's interpretation of the safeguard clause erodes the obligation “not to object”.²⁷³ But the condition—that the FYROM “is to be referred to in” an organization differently than as stipulated—connects logically, first, to the requirement that the stipulated designation be used for all purposes (SC res. 817 (1993) and Article 11, paragraph 1, of the Interim Accord); and, second, to the requirement that the name difference be settled through negotiation with Greece (Article 5, paragraph 1). Greece is constrained to

²⁷¹ See Chapter 7.

²⁷² *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion, 1948, *I.C.J. Reports 1947-1948*, p. 57, 63 (emphasis added).

²⁷³ See e.g. Reply, para. 4.77.

apply the safeguard clause in good faith, not arbitrarily, and in response to the conduct of the FYROM. This is why it is relevant that Greece saw that the FYROM's conduct was disrupting the balance of interests in the Interim Accord; indeed, in material respects, the FYROM's conduct was in breach of the Interim Accord. The FYROM's conduct, in light of its effect on the agreed arrangements as a whole, presented the imminent prospect that the FYROM would be referred to in NATO differently than as stipulated.

6.33. The FYROM erroneously asserts that Greece tries to re-write the condition triggering the safeguard clause. According to the FYROM, Greece contends that the condition triggering the safeguard clause was that the name difference had not been resolved. The FYROM says that Article 11, paragraph 1 "cannot possibly be interpreted as allowing the Respondent... to refuse to abide by [the obligation not to object] because it is unhappy that the interim period has not ended".²⁷⁴ This is a further exercise in building straw men: Greece in the Counter-Memorial observed that the name difference has persisted, not in connection with the safeguard clause, but in connection with NATO's criteria for admission.²⁷⁵ This was a consideration which made it impossible at that time for NATO to invite the FYROM to membership.²⁷⁶ Under the FYROM's interpretation, Greece would have breached the Interim Accord simply by stating the central and most obvious fact of the situation: i.e., that the difference concerning the name has not been resolved. This is an absurd interpretation of Article 11, paragraph 1.

2. The relevance of the FYROM's persistent failure to use the stipulated name

6.34. The FYROM is adamant that it retains unbridled discretion to use a name not agreed with Greece under the required negotiation process. It ignores (i) that the Interim Accord, by Article 5, paragraph 1, commits the parties to find an

²⁷⁴ Reply, para. 4.72.

²⁷⁵ See e.g. Counter-Memorial, para. 7.45.

²⁷⁶ Counter-Memorial, para. 7.45.

agreed name through negotiation; and (ii) that Article 11, paragraph 1, proceeds on the basis that the FYROM will support the use of the Security Council name pending an agreed resolution of the difference. Chapter 7 addresses the FYROM's erroneous view that the use of the stipulated name is irrelevant to the FYROM's own conduct. On the contrary, the FYROM's creeping use of a non-agreed name is in violation of the obligation to negotiate: this is a State going through the motions of a diplomatic process, while vigorously pursuing a *fait accompli* in a manner which is intended to render that process irrelevant and nugatory. The FYROM is entirely silent in the Reply when presented with the stunning admission by President Crvenkovski that the FYROM "had a strategy which, due to understandable reasons, was never publicly announced".²⁷⁷ This is the FYROM's self-confessed strategy effectively to by-pass negotiations and entrench a name never agreed with Greece. It is hard to imagine any clearer indication to support the conclusion that the FYROM would be referred to, wherever it chose, differently than as stipulated.

3. *The FYROM's institutional and bilateral diplomacy since 1995 supports the conclusion that the FYROM "is to be referred to in" NATO differently than stipulated*

6.35. The FYROM asserts that "in 1995, there was a *fully established institutional and State practice*" concerning the name.²⁷⁸ The proposition is vital to the FYROM's case that things as they stood in 1995 are exactly as they stand today. But things clearly have changed; and they have changed as a result of the FYROM's diligent pursuit of the entrenchment—in every forum and every bilateral relation—of a name not agreed with Greece. The manner in which the FYROM has used a non-agreed name is directly relevant to Greece's appreciation that the FYROM "is to be referred to in" NATO differently than as stipulated.

²⁷⁷ See *Stenography notes from the 7th sequel of the 27th session of the Parliament of the Republic of Macedonia*, held on 3 November 2008 (emphasis added), p. 27-7/10 : Counter-Memorial, Annex 104. See further, below, para. 7.62.

²⁷⁸ Reply, para. 4.50 (emphasis added).

6.36. Ambassador Nimetz understood that the use of the stipulated designation was an important feature of State practice at the time the parties adopted the Interim Accord. According to Ambassador Nimetz, the stipulated designation...

“just means that there’s some disagreement. And internationally, until that agreement [*sic*] is resolved, international organizations and certain countries like the U.S. will not feel comfortable using that name because of the delicacy of the relationship. So we use a temporary reference, but we don’t pretend that FYROM is the name of a country...”²⁷⁹

This is the statement of one State’s representative, but the FYROM relies on it as an authoritative interpretation of the FYROM’s obligations. In any event, rather than supporting the FYROM’s case, the statement undermines it. The Ambassador said that States did “not feel comfortable using the name”—meaning that, in 1995, they had misgivings about using a name not agreed between the FYROM and Greece as required. In practice, at that time, most of them indeed refrained from using it. The same cannot be said of the time immediately before the Bucharest Summit. By then, following the FYROM’s campaign to render the use of a non-agreed name a *fait accompli*, far fewer States observed the *status quo* of SC res. 817 (1993). A considerable number still do so; but, as at 3 April 2008, the time was approaching when, owing to the FYROM’s disregard of the Interim Accord and SC res. 817 (1993), the FYROM would be referred to irrevocably differently than stipulated.

6.37. According to the FYROM, the stipulated name serves certain practical purposes only—e.g., relative to name plates, seating plans and the like, of a purely administrative character and without serious implications.²⁸⁰ Greece has already

²⁷⁹ Press Briefing of 18 September 1995, reprinted in Reply, Annex 87, quoted at Reply, para. 4.57.

²⁸⁰ See, e.g., Reply, para. 4.42.

addressed this fundamentally flawed view of SC res 817 (1993) and the Interim Accord.²⁸¹ The stipulated name in truth serves to stabilize the situation pending an agreed settlement under the agreed settlement process. It was intended to hold in place the circumstances as they existed in 1995, until a final name would be agreed by the FYROM with Greece—and, by so doing, to avoid any prejudice to the negotiation process. While the FYROM vociferously denies the general purposes for which the stipulated name was adopted and required, its Reply is silent about the purposes for which it uses a certain non-agreed name. One such purpose however is plain: it uses that name in order to propagate its use *erga omnes*. The FYROM has become more and more overt about this generally (even as it is silent on the point in its pleadings). For example, in 2005, the FYROM Permanent Mission to the United Nations in New York said as follows:

“We accept only our constitutional name—Republic of Macedonia—for use within the UN and *in overall international communication*.”²⁸²

This was addressed to “All Permanent Missions to the United Nations,” “All Permanent Observer Missions”, “All Intergovernmental Organizations”; and “All Specialized Agencies and Related Organizations”.²⁸³ The FYROM’s intention is comprehensive. It has a clear vision as to the purpose for which it employs the non-agreed name. This is in clear breach of the obligation to negotiate the difference: while it sits at the negotiating table, the FYROM seeks to make a non-agreed name general in usage. This further supports an appreciation that the FYROM “is to be referred to in” NATO and in every other relevant organization differently than as stipulated.

6.38. It is also a significant change in circumstances, directly relevant to Greece’s rights under the safeguard clause. In the years leading to the Bucharest

²⁸¹ Counter-Memorial, para. 3.44.

²⁸² Verbal Note of the Permanent Mission of the FYROM to the United Nations, addressed to all Permanent Missions, No. 63/2005, dated 15 April 2005: Annex 21 (emphasis added).

²⁸³ *Ibid.*

Summit in 2008, the FYROM's purpose became manifest. Especially since 2005, its use of a non-agreed name illustrates that its purpose is to secure that name in general use, while undermining the possibility of a negotiated solution to which it obligated itself. The FYROM's insistence on a name not agreed with Greece had become a clear indication of the FYROM's intent to be referred to as it wished for all purposes in all relations. The circumstances by 2008 indicated plainly that the condition for the application of the safeguard clause condition had been satisfied.²⁸⁴

²⁸⁴ The FYROM's subsequent practice indicates the same conclusion. In 2010, the FYROM was engaged in talks with Supreme Headquarters Allied Powers Europe (SHAPE), the headquarters of NATO's military organization. The talks were with a view to concluding a tripartite agreement between SHAPE, the FYROM, and Greece concerning Air Situation Data Exchange (ASDE). SHAPE proposed that the agreement be concluded in a standard MOU format, which it said the FYROM had used in at least two prior agreements: see SHAPE Letter addressed to the PLT of the former Yugoslav Republic of Macedonia, SH/MIC/CG/ION/20100823, dated 23 August 2010, para. 3. However, the FYROM resisted the use of this format, which would have complied with the FYROM's obligations with respect to the name stipulation. The Head of the Department for International Cooperation of the Ministry of Defence of the FYROM, on 15 September 2010 wrote to the SHAPE Deputy Chief of Staff, Military Cooperation Division, saying that it "remains unclear why... the Military Cooperation Division within [SHAPE] is referring to the practice of the Republic of Macedonia for concluding agreements in UN format and disregards the constant practice that the Republic of Macedonia uses for signing agreements with NATO": see Letter of Biljana Eftimova, Head of FYROM Department of International Cooperation, to Major General Frantisek Maleninsky, Deputy Chief of Staff, Military Cooperation Division, dated 15 September 2010. The FYROM went on to list a number of agreements it had entered into in the framework of its participation in NATO (e.g., Status of Forces Agreements related to the FYROM's participation in the NATO Partnership for Peace), without using the "UN format". The FYROM wished, instead of using the "UN format", to conclude the ASDE MOU as well by means of an exchange of letters—or, if SHAPE did not agree to an exchange of letters, by means of a unilateral dispatch of a letter by the FYROM—which, of course, would mean a letter from the FYROM on its own letterhead bearing the "constitutional" name, not the stipulated name. It also would mean that the FYROM would evade signing a NATO MOU bearing the correct, stipulated name of the FYROM. According to the FYROM Head of Department:

"We propose this modality (a letter as a replacement of a signature) as an alternative solution to the exchange of letters, which means that we would submit a letter of acceptance for the concrete document, that is, the subject Memorandum of Understanding and by that we would be considered as a signatory to the document."

(see Letter of the Deputy Chief of Staff of the Military Cooperation Division of NATO, dated 23 August 2010, addressed to the Ministry of Defence of the FYROM and Letter of the Head of the Department for International Cooperation of the Ministry of Defence of the FYROM, No 11/1-36/199, dated 15 September 2010 in reply: Annex 67).

4. Greece's prior statements identified that the safeguard clause condition was met

6.39. The FYROM asserts that Greece had no right to object to the FYROM's membership in NATO, because Greece did not invoke the safeguard clause in advance of the Bucharest Summit.²⁸⁵ The FYROM is persistent that every particular early incident obliged Greece to object, or else the safeguard clause in effect would disappear as an effective provision. But it has already been shown that there was no procedural pre-condition to the exercise of its rights under the safeguard clause.²⁸⁶ Even so, the FYROM fails accurately to relate the record: Greece repeatedly noted that the FYROM sought to be referred to in international organizations other than as stipulated, and on some occasions in fact was referred to in that manner.

6.40. An example is Greece's response to the FYROM's bilateral use in the United Nations of a certain name not agreed with Greece. The FYROM adopted a Joint Communiqué with the Independent State of Samoa on 18 August 2005, in which the two States announced their establishment of bilateral diplomatic relations—and in which the FYROM was referred to differently than as stipulated.²⁸⁷ The FYROM and Samoa then communicated this to the Secretary-General, requesting that it be circulated as a United Nations document to all

This practice is significant, because the agreements which the FYROM listed are agreements *in* NATO, as would be a future ASDE MOU. But the existing agreements were, and the ASDE MOU would be, concluded under the FYROM's preferred modality—i.e., the FYROM would infiltrate into NATO practice specimens of FYROM letterhead, not merely in the course of official correspondence with NATO, but as integral components of a NATO agreement. As such, the FYROM is using its participation in NATO to promote the use of a name in NATO not agreed in accordance with Article 5(1) of the Interim Accord.

²⁸⁵ Reply, para. 4.38.

²⁸⁶ Counter-Memorial, paras. 7.73-7.77.

²⁸⁷ Joint Communiqué on establishment of diplomatic relations between the Independent State of Samoa and the FYROM, transmitted through United Nations Communication NV 2005/50, dated 29 August 2005: Annex 24.

member States.²⁸⁸ Greece's Permanent Representative on 2 September 2005 wrote to the Permanent Representative of Samoa to "kindly request that in the future the denomination FYROM be exclusively used for the designation of our neighbouring country."²⁸⁹ The issue was not that the FYROM was being referred to by the United Nations differently than as stipulated. It was that the FYROM was being referred to *in* the United Nations by member States, including by the FYROM itself, differently than as stipulated. For several years before the Bucharest Summit, Greece drew attention to similar incidents at the UN.²⁹⁰ Other similar examples will be referred to in the following chapter, which deals with the FYROM's breaches of the Interim Accord.

D. Conclusion

6.41. To summarize:

- (i) The decision of NATO at the Bucharest Summit on 3 April 2008 to defer the FYROM's candidacy is the focal point of the FYROM's claim.
- (ii) Greece is not responsible for the decision of NATO, which was a collective one, as recognized by the President of the FYROM.²⁹¹
- (iii) NATO clearly identified as a criterion for the FYROM's admission that the difference concerning the FYROM's name be settled. The reason that the FYROM was not invited to accede to NATO was that the difference had not been settled and, accordingly, NATO's

²⁸⁸ Letter dated 18 August 2005, to H.E. Mr. Kofi Annan, from H.E. Mr. Igor Dzundev, FYROM Permanent Representative; and H.E. Mr. Ali'iaoiga Feturi Elisaia, Samoa Permanent Representative: Annex 24.

²⁸⁹ Letter of the Permanent Representative of Greece to the United Nations, addressed to the Permanent Representative of the Independent State of Samoa to the United Nations, dated 2 September 2005: Annex 25.

²⁹⁰ See also similar correspondence from Greece's Permanent Representative to the Permanent Representatives of Peru (6 July 2005, Annex 23); Iraq (29 June 2005, Annex 22); Saint Vincent and the Grenadines (23 May 2003, Annex 17); and Nigeria (16 May 2003, Annex 16).

²⁹¹ See above, para. 6.23.

member States as a whole reached a consensus to defer consideration of the candidacy.

- (iv) The condition triggering the safeguard clause was met at all material times. As the safeguard clause requires no formal declaration by Greece, it is irrelevant whether or not Greece earlier had invoked the FYROM's failures of performance (notably in relation to Article 5), or the other factors indicating that the condition of the safeguard clause had been met. Nevertheless, in fact, Greece had communicated its concerns repeatedly before 3 April 2008, and continued to do so afterwards.
- (v) But the safeguard clause is relevant only in the alternative: Greece in fact never objected to the FYROM's NATO candidacy in the sense contained within the first clause of Article 11, paragraph 1 of the Interim Accord.

CHAPTER 7: THE FYROM'S BREACHES OF THE INTERIM ACCORD

A. Introduction

7.1 The FYROM obstinately seeks to depict the present case as limited to one single issue: that of an alleged breach by Greece of Article 11, paragraph 1 of the Interim Accord: “[T]he Applicant”, the FYROM solemnly pronounces, “brought these proceedings to the Court... to hold the Respondent to the obligation it undertook under Article 11 of the Interim Accord, which it violated through its objection to the Applicant’s membership of the North Atlantic Treaty Organization (NATO)”.²⁹² The FYROM adds: “This case... is not about the historic circumstances that have given rise to the difference over the Applicant’s name, or about the conduct of negotiations between the Parties.”²⁹³ This gives a grossly distorted picture of the case: as the Counter-Memorial showed, by no means can Article 11, paragraph 1, be envisaged in isolation (see also above, Chapter 1).

7.2 These tactics of denial²⁹⁴ are doomed to fail: the obligations assumed by Greece under the Interim Accord, and primarily the commitment not to “object” to the FYROM’s candidacy to international organizations, were assumed in exchange for several related engagements on the part of the FYROM. They were *sine qua non* conditions for Greece to sign the Accord, and the Respondent had insisted upon them throughout the process of negotiation.

7.3 Even before the commencement of these negotiations, an early letter of Greece’s Minister of Foreign Affairs bears witness:

“One thing must be clear at the very outset. Together with the resolution of the issue of the name, Greece attaches the highest

²⁹² Reply, para.1.3, quoting Memorial, para.1.1.

²⁹³ Reply, para. 1.18.

²⁹⁴ Reply, para. 5.82.

importance to the adoption and implementation of a set of appropriate confidence-building measures by the new state vis-à-vis Greece...The CBMs must aim at securing, *inter alia*:

- Legal and political guarantees that the new state harbours no territorial claims against Greece (which should include amendments of certain provisions of the 1991 Constitution of the FYROM, as references to the ‘protection’ of non-existing minorities in the neighbouring countries of this new Republic), and guarantees of the existing borders by both sides.
- The cessation of all hostile propaganda, particularly acts which could provoke public opinion and impede efforts towards establishing good neighbourly relations.
- The termination of the use of Greek symbols—such as the Sun of Vergina—as symbols of the new Republic. This is of paramount importance to the Greek people.²⁹⁵

7.4 In this context, it is clear that the FYROM’s material breaches of many of its obligations established therein may have an impact on Greece’s performance of its own obligations. This impact will be analysed in Chapter 8.

7.5 As the previous Chapter has emphasized, the NATO member States made a collective assessment of the FYROM’s non fulfilment of the requirement of good-neighbourly relations in light of the undue prolongation of the long-standing dispute over the name. As this Chapter will show, this perpetuation is entirely due to the FYROM’s bad faith attitude in the negotiations and to its strategy of

²⁹⁵ Letter dated 6 April 1993 from the Respondent’s Permanent Representative to the United Nations, Antonios Exarchos, to the President of the Security Council, forwarding a letter dated 6 April 1993 to him from the Respondent’s Minister for Foreign Affairs, Michael Papaconstantinou, UN doc. S/25543 (6 April 1993): Memorial, Annex 30.

creating a *fait accompli* depriving the negotiations of their agreed object. Besides, the multiple violations by the FYROM of its treaty obligations in respect of the use of the provisional name agreed in the Interim Accord are as many reasons for considering that the condition triggering the safeguard clause was met.

7.6 The present Chapter will establish the materiality of these breaches, in response to the FYROM's unconvincing denials to the contrary.²⁹⁶ These violations fall into several categories:

- the FYROM's violations of the Interim Accord through the international use of its claimed name, which violates Articles 5 and 11, paragraph 1 (Section C).
- the FYROM's violation of the obligation to negotiate in good faith, which violates Article 5(1) and of the corresponding customary rule of international law (Section D).
- the FYROM's irredentist and hostile attitude, which involves breaches of Articles 6 and 7 and of the principle of good-neighbourliness (Section E).

Each of these types of violations will be examined in turn, after some brief remarks on the admissibility of the evidence (Section B).

B. Remarks on the Admissibility of the Evidence

7.7 The FYROM categorically asserts that:

“A significant proportion of the Respondent's allegations postdate the Bucharest Summit. They are incapable, as a matter of fact, of having impacted on the Respondent's breach of Article 11(1), which crystallized on 3 April 2008.”²⁹⁷

This assertion is unfounded for several reasons.

²⁹⁶ Reply, paras. 5.84-5.99.

²⁹⁷ Reply, para. 5.84, footnote omitted.

7.8 First, Greece had been protesting against the FYROM's violations of the Interim Accord long before, as well as after, the Bucharest Summit. The FYROM's violations are part of a pattern of conduct that has persisted for several years and entails several continuous breaches of the Interim Accord. Facts originating before as well as after the Summit are relevant to the dispute before the Court, since these acts have a continuous, repetitive and systematic character:

“Subsequent acts should also be considered by the Court, unless the measure in question was taken with a view to improving the legal position of the Party concerned. In many respects activity in regard to these groups had developed gradually long before the dispute as to sovereignty arose, and it has since continued without interruption and in a similar manner. In such circumstances there would be no justification for ruling out all events which during this continued development occurred after the years 1886 and 1888 respectively.”²⁹⁸

As will be demonstrated later in this Chapter, the FYROM's violations have been not only on-going, but worsened after the Bucharest Summit.

7.9 Second, by pointing to April 2008 as a date for the crystallization of the dispute, the FYROM is evading its real object. According to the Applicant, “[its] case is directed exclusively at the Respondent's objection to the Applicant being invited to join NATO at the Bucharest Summit, an objection that crystallized on 3

²⁹⁸ *Minquiers and Ecrehos, Judgment, I.C.J. Reports* 1953, p. 47, 59-60. See also. I. Brownlie: “The critical date is a concept linked to the admissibility and weight of evidence. The critical date is the point at which the dispute has crystallized and is apparent to the parties. Evidence emanating from the parties after this date is presumed to be self-serving and unreliable. However, subsequent actions may evidence consistency, and inconsistent conduct and admissions against interest will be taken into account.” (I. Brownlie: “International Law at the Fiftieth Anniversary of the United Nations: General Course on Public International Law”, *RCADI*, vol. 255, 1995-V, p. 156, footnote omitted).

April 2008”.²⁹⁹ This assertion is telling of the Applicant’s contradictory approach. On the one hand, it affirms that the case is not directed against NATO’s decision in Bucharest. On the other hand, this very statement identifies the Bucharest Summit decision of NATO as the basis of its claim. There is an inherent contradiction in these statements that cannot go unnoticed: it confirms that the real object of the FYROM’s Application is the decision taken that day by NATO.

7.10 Besides that, the Applicant not only requires the Court to attribute a decision of NATO to Greece, but also to ignore the context of this decision. By arguing that the Interim Accord does not impose upon it any obligation concerning the use of its claimed name³⁰⁰ and that the other obligations are irrelevant to this dispute,³⁰¹ the Applicant insists that the Court analyse this decision in clinical isolation from the reality. The FYROM’s violations of the Interim Accord are nevertheless doubly relevant:

- (i) inasmuch as they relate to the use of the FYROM’s constitutional name in other organisations in breach of its commitment under Article 11, paragraph 1 of the Interim Accord, they allow Greece to avail itself of previous breaches by the FYROM of its commitment regarding the non-use of its “constitutional” name in other organisations, and consequently to invoke the safeguard clause;³⁰²
- (ii) moreover, the violations of other prescriptions of the Accord confirm Greece’s claim that the FYROM has definitely not

²⁹⁹ Reply, para. 3.31.

³⁰⁰ Reply, paras. 4.40-4.61, para. 5.88.

³⁰¹ Reply, para. 5.81 and para. 5.83.

³⁰² See above, paras. 6.35-6.38.

fulfilled the condition of good-neighbourly relations,³⁰³ *a sine qua non* for admission to NATO.

7.11 As the Court has said, facts posterior to its seisin may be relevant for the assessment of the situation:

“The critical date for determining the admissibility of an application is the date on which it is filed (cf. *South West Africa, Preliminary Objections, I.C.J. Reports* 1962, p. 344). It may however be necessary, in order to determine with certainty what the situation was at the date of filing of the Application, to examine the events, and in particular the relations between the Parties, over a period prior to that date, and indeed during the subsequent period.”³⁰⁴

Moreover, while the FYROM denies that any documents postdating the Summit are relevant, it does not hesitate itself to make reference to such documents.³⁰⁵ This is inconsistent with the misplaced procedural rigour it professes.

C. The FYROM’s Violations of Article 11

7.12 The FYROM attempts to demonstrate that Article 11

“is directed to just one of the Parties. As such, Article 11(1) imposes an obligation solely upon the Respondent: despite the Respondent’s efforts to establish the contrary, the Applicant cannot be in breach of Article 11(1), given that the Article imposes no obligation upon it.”³⁰⁶

³⁰³ See above, paras. 6.4-6.10.

³⁰⁴ *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports* 1988, p. 69, 95, para. 66.

³⁰⁵ Reply, vol. II, Annexes 34 to 56.

³⁰⁶ Reply, para. 5.98.

This reading of Article 11 is entirely one-sided. It is flawed to the core. Article 11, paragraph 1 cannot be read as imposing obligations solely on Greece. The FYROM ignores the inherent synallagmatic nature of international obligations resulting from bilateral treaties. This synallagmatic character is first expressed through the general balance of obligations throughout the whole treaty;³⁰⁷ and reciprocal obligations are sometimes manifested in a single provision as well. This is the case with Article 11. The safeguard clause expresses the *quid pro quo*, the guarantee which Greece received in exchange for the commitment it gave. Greece is indeed bound “not to object to the application by or the membership of [the FYROM] in international multilateral and regional organizations and institutions of which” it is a Party. However, it is absurd to contend that Greece undertook this obligation without requiring any commitment in exchange for this major concession. And, indeed, Greece did not agree to leave itself exposed in such a way: Article 11, paragraph 1 articulates the FYROM’s correlative obligation, equally functioning as a safeguard clause and this is the FYROM’s acceptance and commitment “not to be referred to differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)” in those organisations.

1. Article 11, paragraph 1, Imposes Obligations upon the Applicant as to the Use of the Provisional Name

7.13 Incorporated as part of a bilateral treaty, Article 11, paragraph 1, obviously imposes no obligations upon third parties (neither to the mentioned international organisations and institutions nor to third States) but, just as obviously, it is directed to the FYROM itself. Article 11, paragraph 1 conditions the implementation of the obligation undertaken by Greece on respect by the FYROM for its own indisputably binding commitment.³⁰⁸ This *quid pro quo* is the very *raison d’être* of Article 11: this is a conditional clause,³⁰⁹ making the fulfilment of

³⁰⁷ See above, paras. 2.3 *ff.*

³⁰⁸ See above, paras. 2.6, 2.19-2.21.

³⁰⁹ See above, para. 5.35.

Greece's undertaking conditional upon the fulfilment of the FYROM's corresponding obligation. From this point of view, Article 11 is different from, for instance, Article 7 (2),³¹⁰ which was adopted to protect only one of the Parties, namely Greece. That provision clearly encompasses a unilateral obligation bearing on the FYROM alone. And, indeed, this obligation entails no counter-commitment in that provision.³¹¹ Greece has not, and could not have, undertaken any commitment in that respect, and, so, violation of Article 7(2) could entail only the FYROM's responsibility.

7.14 Going even further, and oblivious to logic, the FYROM in its Reply categorically denies that the Interim Accord even imposes upon it an obligation not to use its constitutional name in international relations:

“The Applicant rejects in particular any assertion by the Respondent that its own use of its constitutional name in international organizations or in official correspondence, and/or its recognition by third States under its constitutional name, demonstrated or were capable of demonstrating ‘intransigence’ in the name negotiations, in breach of Article 5(1). As set out in Chapters II and IV of this Reply, the Applicant gave no undertaking under resolution 817, the Interim Accord or otherwise to call itself by the provisional reference.”³¹²

7.15 The FYROM's repeated efforts to impose a disputed name in international organisations in which it has been admitted within the framework of Article 11, paragraph 1, constitutes a direct violation of this provision; it also violates the

³¹⁰ Article 7 (2) : “Upon entry into force of this Interim Accord, the Party of the Second Part shall cease to use in any way the symbol in all its forms displayed on its national flag prior to such entry into force.”

³¹¹ This however, does not mean that Article 7 (2) is not part of the global *quid pro quo* achieved by the 1995 Interim Accord.

³¹² Reply, para. 5.88, footnote omitted.

principle of good-faith negotiation, provided for in Article 5 of the Interim Accord.³¹³ It is not disputed that Greece committed itself not “to object to the application by or the membership of ” the FYROM in international institutions of which it was a member; but this was not an unrequited commitment. It was given in exchange for the related obligation by the FYROM not to refer to itself in the international organisations mentioned in Article 11 to which it is admitted by a non-agreed name. This is the only possible interpretation of Article 11, paragraph 1, read in its context.

7.16 This reading is confirmed by the circumstances surrounding the adoption of the Interim Accord, including contemporaneous statements of Greek officials. In a letter addressed to the Secretary-General of the United Nations shortly after the signature of the Interim Accord, protesting several statements which the Permanent Representative of the FYROM had made before the Security Council in a separate matter, the Permanent Representative of Greece emphasized:

“I would only like to point out that the *repeated use, by Ambassador Maleski, of an incorrect denomination when referring to his country is contrary not only to the well-known provisions of Security Council resolution 817 (1993), but also to those of the Interim Accord.*”³¹⁴

7.17 In the same vein, the Greek delegation in a conference of the Red Cross and the Red Crescent, in 1995, protested the attempt by Skopje to impose the use of the FYROM’s claimed name in that organization. Greece’s protest was unequivocal as to the scope of the FYROM’s obligations under the Interim Accord:

³¹³ See below Section III.

³¹⁴ Letter dated 1 December 1995 from the Permanent Representative of Greece to the United Nations, addressed to the Secretary-General, document S/1995/1005: Annex 10 (emphasis added).

“[T]he FYROM, by signing the Interim Accord of September 13, 1995, has conventionally acknowledged the existence of a difference over the name and has accepted to continue bilateral negotiations under UN auspices aiming at the settlement of the issue. This difference has, unfortunately, not been settled yet, despite the signing of the aforementioned Accord. I would also like to stress that, *as long as the difference remains unresolved, this country is not entitled to use any other name different from the one referred to in the said [817 and 845 (1993)] resolutions.*”³¹⁵

7.18 The FYROM makes a number of further attempts to shore up its assertion that SC res. 817 (1993) does not require the FYROM to use the stipulated name.³¹⁶ It provides documents of uncertain origin and content.³¹⁷ It introduces in the Reply a statement, taken in May 2010, from Sir Jeremy Greenstock, a British diplomat based in London at the time Security Council resolution 817 (1993) was adopted but now retired. Besides the fact that affidavits of former diplomats are not listed in any textbook as a means of interpretation of legal texts, this statement in particular is of little help to the FYROM. Sir Jeremy’s statement relates to his recollections of discussions seventeen years earlier as to the meaning of the Security Council text. Sir Jeremy says that:

“*as I recall*”, “[i]t was... *informally recognized* that the new member would be likely to continue to refer to itself [differently than as stipulated]. Similarly, it was understood that any third state

³¹⁵ Right of Reply of the Hellenic Delegation to the 26th International Conference of the Red Cross and the Red Crescent, Commission II, dated 5 December 1995: Annex 37 (emphasis added).

³¹⁶ Reply, paras 4.40-4.50.

³¹⁷ See for example Reply, para. 4.42 referring to: Kingdom of Morocco, *Non Paper* (6 February 1993): Reply, Annex 12 and with the caveat: “due to the poor quality of this document, a contemporaneous translation from the French text to the Macedonian language is appended, along with a translation of the Macedonian language text to English” (Reply, footnote 213).

might also refer to the new United Nations member as it considered appropriate...”³¹⁸

By his own words, this was speculation: it was “likely” that the FYROM would do something; third states “might” do so as well. Further it was speculation exclusively concerned with possible future *facts* – i.e., with what the FYROM and other States might in the future possibly *do*. The recollection does not even pretend to analyze the legal meaning of the text of Security Council resolution 817 (1993), nor does it pay any attention to the rights of Greece in that eventuality.

7.19 The Applicant is also deliberately misrepresenting reality when, from the conduct of Mr Vance in relation to the signature of the Interim Accord³¹⁹ or from an alleged lack of reaction from Greek officials, or from memories of remote facts drafted in speculative terms³²⁰, it purports to draw the conclusion that the Interim Accord does not impose upon it any obligation as to its international use of a name other than the provisional name.³²¹ These inferences are patently undermined by unambiguous statements to the contrary.³²²

7.20 The FYROM is also wrong when it states that the Respondent’s interpretation on this point of the Interim Accord is *ex post facto*.³²³ On the contrary, Greece has made known its interpretation of the Interim Accord from nearly the start of the interim period since its adoption; and Greece never has accepted a contrary interpretation.

7.21 Thus, in a Verbal Note addressed by the Permanent Mission of Greece to:

“[a]ll Permanent Missions to the United Nations, to all Permanent Observer Missions to the United Nations, all Intergovernmental

³¹⁸ Statement by Sir Jeremy Greenstock (29 May 2010): Reply, Annex 59 (emphasis added).

³¹⁹ Reply, para 4.56.

³²⁰ Reply, para. 4.43.

³²¹ Reply, paras. 4.56 and 4.61.

³²² See above, paras. 7.16-7.17.

³²³ Reply, para. 4.54.

Organizations and all Specialized Agencies and related Organizations”³²⁴

the Respondent recalled, *urbi et orbi*, that the resolutions and the Interim Accord (through its Articles 5 and 11), providing for negotiations, constitute the legal background against which the dispute over the name must be assessed:

“The negotiations envisaged in SC Res 817 (1993) and 845 (1993) aim at resolving the difference over the name of the State of the FYROM, ‘difference which needs to be resolved in the interest of the maintenance of peaceful and good-neighborly relations in the region’... On 13 September 1995, Greece and the FYROM signed an Interim Accord, which foresees that...[quotation of articles 5 and 11 following].”³²⁵

Given this situation, Greece makes clear that unilateral acts from one side, namely the FYROM, could only endanger the process:

“Bearing in mind the above and pending solution of the difference that has arisen over the name of this state, which regretfully is not yet resolved, the Permanent Mission of Greece kindly requests Permanent Missions to consider positive endeavours and to avoid any action due to incomplete information... that may not be helpful to a speedy solution of the issue.”³²⁶

7.22 These statements are by no means isolated. Greece’s practice is to make known in every international organization that the FYROM must refer to itself and be referred to under the provisional name, pending settlement of the dispute

³²⁴ Verbal Note of the Permanent Mission of Greece to the United Nations, addressed to all Permanent Missions to the United Nations, Ref.:F.4608/179/AS 1075, dated 15 April 2005: Annex 20.

³²⁵ *Ibid.*

³²⁶ *Ibid.*

and in order to preserve the negotiation process. This is underlined, for instance, in a statement of the Greek Ambassador to the Council of Europe:

“In view of the persistent practice of the Permanent Representative of that State to the Council of Europe, I must confess—not without a substantial proportion of regret—that the patience of my Authorities is beginning to wear rather thin. For, as you can verify, despite the fact that the difference between Greece and the Former Yugoslav Republic of Macedonia over the name of the latter country remains, as you know, still unresolved, with intensive diplomatic negotiations ongoing, the Permanent Representation of that country to the Council of Europe *insists on referring to itself*—and that in official correspondence with the Secretariat and the other Permanent Missions in Strasbourg—*under a name totally unknown for all Council of Europe purposes...*

In the meantime, negotiations under the auspices of the United Nations are once again underway... It is precisely this process that the attitude of the Permanent Representation of the Former Yugoslav Republic of Macedonia undermines.”³²⁷

7.23 Interestingly, the FYROM does not deny that it has breached this obligation; on the contrary, it tries to take advantage of its own wrongdoing:

“At the same time, the Applicant has always called itself by its constitutional name of the ‘Republic of Macedonia’ in its dealings with NATO and with NATO Member Countries, as it is entitled to do. The Applicant reiterates that it is *not required to call itself* ‘the former Yugoslav Republic of Macedonia’ in NATO, or in its dealings with the Respondent or other third parties, including

³²⁷ Letter of the Permanent Representative of Greece to the Council of Europe, addressed to the Secretary General, Ref.: F.6705B/169/AS 1148, dated 23 December 2004: Annex 46 (emphasis added).

international organizations and institutions, nor did it ever agree to call itself such.”³²⁸

Here the FYROM effectively acknowledges its wrongful conduct under the Interim Accord. It is therefore not in dispute between the Parties that the FYROM has constantly referred (and continues to refer) to itself under its prohibited name in the international organisations to which it has been admitted by application of Article 11, paragraph 1 of the Interim Accord and of the Security Council resolutions.

7.24 Numerous further examples of violations are provided below. These demonstrate a pattern of conduct on the part of the FYROM’s officials which they pursued as a unilateral practice intended to enlarge the recognition of a disputed name. This flow of breaches demonstrates the magnitude of the bias of the Applicant’s Reply, where it states:

“The Applicant has never been required to call itself by the provisional reference at the United Nations; has never been required to call itself by the provisional reference at United Nations specialized agencies; has never been required to call itself by the provisional reference since the opening of diplomatic relations with the Respondent in 1995; and since 1995 has not been required to call itself by the provisional reference at any international, multilateral or regional organization or institution to which it has secured membership, including the OSCE, the Council of Europe, the Organization for the Prohibition of Chemical Weapons, the European Charter for Energy, the Permanent Court of Arbitration, and the World Trade Organization.”³²⁹

³²⁸ Reply, para. 2.30—footnote omitted (emphasis in the text).

³²⁹ Reply, para. 4.61.

Not only is it established that the FYROM was not entitled to call itself by a claimed name, but also, in doing so in international fora, the FYROM created a situation where it was referred to otherwise than under the provisional name in clear violation of its obligation under Article 11, paragraph 1.

2. *Repeated Efforts by the FYROM to Impose the Use of its Claimed Name*

7.25 The formal confession by the FYROM of the repeated use of its claimed name exempts Greece from proving the materiality of this fact. Suffice it to say that this use, the unconcealed aim of which is to impose international recognition of the State under that name, constitutes a violation of the Agreement and, by the same token, of the relevant Security Council resolutions.

7.26 The litany of the FYROM's violations is long. Greece will concentrate upon some of most egregious examples, showing the FYROM's attempt to bypass the obligations imposed upon it by the Interim Accord and Security Council resolutions 817 (1993) and 845 (1993).

7.27 These violations took place first in the United Nations system. There, on virtually every possible occasion, the FYROM used its position within institutions of the UN system in order to promote the use of its claimed name within that organization and by its organs. Examples of such violations long predate the Bucharest Summit and have continued up to 2008 as well as subsequently. The very fact that the FYROM lodged the Application before this Court under a non-agreed name is telling in the extreme.³³⁰

7.28 Greece in its Counter-Memorial already recalled the episode of the speech by the FYROM's President to the General Assembly.³³¹ This was a particularly revealing example of the FYROM's misuse of international institutions. It

³³⁰ See Application of 13 November 2008; see also Counter-Memorial, para. 7.93.

³³¹ Counter-Memorial, para. 4.67.

constituted a patent violation of Article 11, paragraph 1. By way of reminder, it can be related here that, in September 2007, during the general debate of the 62nd session of the United Nations General Assembly, the President of the Assembly, Mr Srgjan Kerim, a national of the FYROM, introducing the President of his country, Mr Crvenkovski, referred to him as the “President of the Republic of Macedonia” and repeatedly used that same name to designate his country in the United Nations. This was a gross misuse of an official UN post by a FYROM national,³³² and it showed a complete disregard for the impartiality required by his status.

7.29 The Applicant offers no explanation for the abuses by its nationals of their capacity as office-holders in international organizations. One can only conclude that any reasonable explanation is beyond reach. In any case, the Kerim episode demonstrates how untenable the FYROM’s protests of innocence are: in this instance, the FYROM was being referred to as ‘Republic of Macedonia’ by the highest official—its President—of the supreme organ—the General Assembly—of the most eminent international organization—the United Nations and doing this, there could be no doubt that he was, at the same time, acting as a FYROM national and a UN official. It is clear that this FYROM national misused his official function as the officer of an international organization in order to advance his country’s unilateral agenda.

7.30 At times, the FYROM has tried to impose its claimed name on UN organs, despite the clear terms of Resolution 817 that “this State [will be] 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.” Thus, when a Protocol of Cooperation was to be signed between the United Nations Interim Administration in Kosovo, Albania, Bosnia

³³² United Nations, *Official Records of the General Assembly, Sixty Second Session, 4th Plenary Meeting*, doc. A/62/PV.4 at p. 27: Counter-Memorial, Annex 5.

and Herzegovina, Croatia and the FYROM, for the establishment of a Regional School of Public Administration with the financial support of the European Union, the authorities in Skopje refused to sign the Protocol, unless the country was to be referred to by the name of ‘Republic of Macedonia’.³³³ The FYROM did not hesitate to sabotage a regional process of cooperation under UN and European Union aegis in order further to evade its obligation to negotiate a mutually acceptable solution to the name difference.

7.31 In similar vein, in a Report published by the United Nations Development Program in 1997, the “constitutional” name of the FYROM was being used. In response to a Letter of Protest by the Greek Mission³³⁴, the UNDP underlined that:

“[T]he preparation of NHDRs is led entirely by the Programme Countries themselves following an elaborate participatory process.”³³⁵

This letter further makes clear that the FYROM Government’s participation in the preparation of the Report is important:

“The Government appointed a National Committee for the Project on 29 April 1996 which consisted of several ministries and scientific institutions.”³³⁶

³³³ See Letter of the Permanent Representative of Greece to the United Nations, addressed to the Secretary General of the United Nations, Ref.: F. 4608/95/AS 1507, dated 27 April 2006: Annex 29.

³³⁴ Letter of the Permanent Representative of Greece to the United Nations, addressed to the Administrator of the United Nations Development Program, doc. APF.1130/613/AS 4421, dated 25 November 1997: Annex 13.

³³⁵ Letter of the Associate Administrator of the United Nations Development Program, addressed to the Permanent Representative of Greece to the United Nations, dated 9 January 1998: Annex 14.

³³⁶ Letter of the Associate Administrator of the United Nations Development Program, addressed to the Permanent Representative of Greece to the United Nations, dated 9 January 1998: Annex 14.

Despite the Greek protest note, the UNDP office in Skopje continued to misuse the non-agreed name in reports that were designed to be published under UN aegis, thus violating the FYROM's obligation not to be referred to otherwise than under the provisional name.³³⁷ It is clear that the FYROM insisted that the UNDP use its "constitutional" name, as a pre-condition of the FYROM's participation in the project.

7.32 At times, the FYROM's officials have resorted to behaviour, designed to impose the disputed name in international organizations, which best can be described as childish. For example, during a Conference of the World Meteorological Organization, they played a new form of hide and seek, by covering the plate with the name of their State so that only the last part, Macedonia, was left visible. This required the usual protests on the part of Greece³³⁸ and a subsequent reaction on the part of the Organization.³³⁹

³³⁷ See Letter of the Permanent Representative of Greece to the United Nations, addressed to the Administrator of the United Nations Development Program: "Regrettably, it is not the first time that the UNDP office in Skopje is using the erroneous denomination 'Macedonia'. May I add that, up to now the response given to our serious concerns is far from satisfactory." (Letter Ref.: F. 1130 (6261)/103(36)/AS 4488, dated 13 November 2000, Annex 15). See also the Letter of the Permanent Representative of Greece to the United Nations, addressed to the Administrator of the United Nations Development Programme, Ref.: F. 4608/295/AS 1761, dated 29 June 2007: Annex 32; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Spokesperson for the Secretary General of the United Nations, Ref.: F. 4608/324/AS 1853, dated 9 July 2007: Annex 33. Another example of abuse by Skopje of its membership in an international organization in order to promote and gradually impose its claimed name is offered by its organization of WTO activities under that name, see Letters of the Permanent Representative of Greece to the World Trade Organization, addressed to the Deputy Director General of the WTO and to the Permanent Representative of the European Communities to the WTO, dated 17 October 2007: Annex 44.

³³⁸ See Verbal Note of the Permanent Mission of Greece to the United Nations Office and other International Organizations in Geneva, addressed to the Secretary-General of the World Meteorological Organization, Ref. No: 6394.1 (1130)/72/AS 1116, dated 10 May 2007: Annex 43.

³³⁹ See Verbal Note of the Office of the Secretary General of the WMO, addressed to the Permanent Mission of Greece in Geneva, Ref.: 7825-07/SG/MDG, dated 12 May 2007 : Annex 43. And the FYROM's tactics have not just been for outward display. For example, in the OSCE, they attempted to embed their use of a non-agreed name in the documents of the organization, the FYROM delegate "wish[ing] this statement [of the non-agreed name] to be recorded in the [OSCE Official] Journal of the day": 79th Plenary Meeting of the Council, PC Journal No. 79, Interpretative Statement PC.DEC/ Annex 1/18 July 1996: Annex 60. See also, above, para. 6.38,

7.33 On occasion, whether through unconscious imitation or just by ignorance, some officials of the UN or other international organizations, have used the FYROM's "constitutional" name. But Greece has conspicuously objected to such conduct, which was subsequently corrected by the international institution in question. Thus, when the FYROM's constitutional name was published in official UN documents or websites, and after Greece drew attention to the error, the institutions corrected it, in compliance with United Nations Resolution 817 (1993).³⁴⁰

7.34 The FYROM is simply wrong when it states that:

“And at no time has the Security Council, the General Assembly, or any other United Nations organ ever voiced official concern

the example of the FYROM attempting to maneuver NATO into using the non-agreed name in NATO's international agreements in September 2010.

³⁴⁰ It was the case with a series of pictures of the FYROM's officials participating in UN activities captured by the U.N. website, under headings where initially the constitutional name was appearing. Responding to a Letter of the Permanent Representative of Greece to the United Nations, addressed to the Under-Secretary-General for Communications and Public Information of the United Nations, Ref.: F.4608/435/3112, dated 6 October 2005: Annex 26, the Under-Secretary-General for Communications and Public Information informed that the name error "has been corrected... I have asked the supervisor concerned to ensure that this error does not recur." (Letter of the Under-Secretary-General for Communications and Public Information of the United Nations, addressed to the Permanent Representative of Greece to the United Nations, dated 22 November 2005: Annex 27). On the same occasional error, see Verbal Note of the Permanent Mission of Greece, addressed to the Executive Secretary of the U.N. Economic Commission for Europe, Ref.: 6270/69/AS 2549, dated 20 November 2006, Annex 41, and the response provided by the Commission, Ref. No: ECE/OES/227/2006, dated 30 November 2006: Annex 41. The same error could occur in documents of the World Intellectual Property Organization (see Verbal Note of the Permanent Mission of Greece in Geneva, addressed to the International Bureau of the W.I.P.O., Ref.: 6778.52/2/AS 813, dated 16 May 1997: Annex 39; and the response, Verbal Note of the International Bureau of the W.I.P.O., addressed to the Permanent Mission of Greece, dated 5 June 1997: Annex 39), in the World Health Organization (see Verbal Note of the Permanent Mission of Greece in Geneva, addressed to the Director-General of the W.H.O., Ref.: 6395/8/AS 212, dated 7 February 2005: Annex 40, and the response provided in the Verbal Note addressed by the W.H.O. to the Permanent Mission of Greece in Geneva, dated 15 February 2005: Annex 40) or in the International Organization for Migration (see Letter of the Représentant Permanent Adjoint of Greece to the I.O.M., addressed to the Director General of I.O.M., Ref.: 6825 GEN/17/AS 867, dated 10 April 2007: Annex 42).

over, let alone rejection of, the Applicant's use of its constitutional name."³⁴¹

On the contrary, UN officials have expressed concern that the international use of the constitutional name would prejudice the outcome of negotiations. Thus, for example, the Under-Secretary-General for Peace-Keeping Operations, in response to a Note Verbale by the Permanent Representative of Greece³⁴² concerning the misuse of the name, stated:

"I fully understand the sensitivity of the issue raised in your letter and wish to assure you that language in the report... is in no way intended to prejudice the outcome of negotiations between Greece and the former Yugoslav Republic of Macedonia held under the auspices of the Secretary-General, in accordance with Article V of the Interim Accord of 13 September 1995. You may also rest assured that we will ensure that your concerns are taken into account in future reports of the United Nations Preventive Deployment Force."³⁴³

7.35 In the same spirit, and following the incident in the General Assembly referred to above³⁴⁴, UN officials contacted Mr. Nimetz, in his capacity as mediator in the negotiations, in order to coordinate with him. As their statements

³⁴¹ Reply, para. 4.49.

³⁴² See Letter of the Permanent Representative of Greece to the United Nations, addressed to the Under-Secretary-General for Peacekeeping Operations, Ref.: F. 1130/246/AS1725, dated 21 May 1997: Annex 11.

³⁴³ Letter of the Under-Secretary-General for Peace-Keeping Operations to the Permanent Representative of Greece to the United Nations, dated 23 May 1997: Annex 12. In the same vein, during the episode mentioned above in para.7.31, the UNDP official stated: "We will, therefore, certainly notify the authors of the NHDR that if they wish to continue benefiting from UNDP's support, they too must strictly adhere to all relevant General Assembly and Security Council Resolutions concerning the name of the Former Yugoslav Republic of Macedonia, or any other relevant matter." (Letter of the Associate Administrator of the United Nations Development Program addressed to the Permanent Representative of Greece to the United Nations, dated 9 January 1998: Annex 14).

³⁴⁴ Para. 7.28.

show, they were plainly aware that this type of conduct could prejudice the ongoing negotiations:

“As you know, the SG has a personal envoy for the Greece-FYROM talks... And we’ve talked to him and he said that what happened in the GA yesterday demonstrates why a permanent solution is needed and he is continuing to work with the parties on this issue. For his part, the SG urges both parties to redouble their efforts to resolve their differences through the established mediation efforts. Within the UN the SG and the Secretariat observe the practice of using the name ‘the Former Yugoslav Republic of Macedonia’ or ‘FYROM’, as referred to in the SC resolution.”³⁴⁵

7.36 The FYROM displayed the same attitude in international organizations outside the UN system. Greece’s Counter-Memorial provides an insight into the FYROM’s constant practice in its relations with the European Union³⁴⁶ and NATO³⁴⁷. For instance, with respect to NATO, the FYROM’s strategy of seeking recognition under the “constitutional” name from as many States as possible has meant that in NATO the FYROM was referred to otherwise than under the provisional name, since all the documents have to bear a footnote that “Turkey recognises the Republic of Macedonia with its constitutional name.”³⁴⁸ The

³⁴⁵ United Nations, Spokesperson’s Noon Briefing. Daily Press Briefing by the Office of the Spokesperson for the Secretary-General and the Spokesperson for the General Assembly President, dated 26 September 2007, Department of Public Information, News and Media Division, New York: Annex 34.

³⁴⁶ See Counter-Memorial, paras. 4.68-4.69.

³⁴⁷ See Counter-Memorial, paras. 4.70-4.71.

³⁴⁸ See NATO, Executive Secretary, *Treatment of the Name of the Former Yugoslav Republic of Macedonia*, document ES(2000)30, dated 29 February 2000: Annex 61. On the FYROM’s latest behaviour in relations with NATO, see above, para. 6.38.

FYROM has not denied this practice, which predates the Bucharest Summit. It simply refuses to draw the conclusions it requires.³⁴⁹

7.37 A most recent example demonstrates how the FYROM is misusing its membership in international organizations in order to promote its constitutional name, thus confirming Greece's concern that the FYROM will take any opportunity to be referred to otherwise than under the provisional name. In May 2010, the FYROM took the presidency of the Committee of Ministers of the Council of Europe, an organisation in which it had been invited to become a member under its provisional name.³⁵⁰ The FYROM, instead, imposed on the Committee of Ministers the name of 'Macedonian Chairmanship', even though Greece opposed it.³⁵¹ The FYROM's Minister of Foreign Affairs, Mr Milososki, assured that:

“We do not in any sense seek to chair the Committee of Ministers using our constitutional name...”³⁵²

One of the FYROM's highest officials thus implicitly acknowledged that the use of its constitutional name in international institutions is problematic with respect to the Security Council Resolutions and the Interim Accord. However, despite

³⁴⁹ See also Counter-Memorial, paras. 4.71-4.72.

³⁵⁰ Council of Europe, Committee of Ministers, Resolution (95) 23 (Adopted by the Committee of Ministers on 19 October 1995 at the 547th meeting): Application of 13 November 2008, Annex V, Section B.

³⁵¹ See Letter of the Alternate Minister of Foreign Affairs of the Hellenic Republic Mr. Dimitrios Droutsas, addressed to the Minister of Foreign Affairs of the FYROM Mr. Antonio Milososki, dated 4 May 2010, transmitted through Verbal Note No. F.143.5/77/AS 606 of the Hellenic Republic Liaison Office in Skopje, dated 4 May 2010: Annex 66.

³⁵² See Letter of the Minister of Foreign Affairs of the FYROM Mr. Antonio Milososki, dated 30 April 2010, addressed to the Prime Minister and Minister of Foreign Affairs of the Hellenic Republic Mr. George Papandreou, communicated through Document No DD (2010)234 of the Secretariat of the Committee of Ministers of the Council of Europe, dated 3 May 2010: Annex 50.

this assurance, the website of the FYROM's Chairmanship uses not only the adjective "Macedonian", but equally the claimed "constitutional" name.³⁵³

7.38 This was a blatant clash between public professions of compliance—and the clear, simultaneous continuation of a breach—and not just any breach, but the imposition of the non-agreed name on the Chairmanship of one of the principal European international institutions. The answer which FYROM officials formulated to explain this behaviour only displayed further that the FYROM, in truth, rejects its central commitment pending settlement of the difference. The officials of the FYROM defended their country's misuse of the disputed name by attacking the relevant Security Council resolutions. Hence, answering Greece's protest against the "lack of respect [of the president of the General Assembly³⁵⁴] for the impartiality required of his office",³⁵⁵ the FYROM's Chargé d'affaires to the United Nations complained that the Security Council resolutions "imposed an unprecedented additional condition for membership" and "ran contrary to the Advisory Opinion of the International Court of Justice of May 1948."³⁵⁶ In the same vein, the FYROM's President simply dismissed the pertinent point of order raised by the Greek delegation:

³⁵³ See Ministry of Foreign Affairs of the FYROM, "Council of Europe, Macedonian Chairmanship 2010" available at: <http://www.coe-chairmanship.mk/>: Annex 65. The FYROM also endeavours to establish its non-agreed name in organizations through the practice of the member States. Thus, for example, the "bilateral" use of its non-agreed name with Turkey and Bulgaria eventually led to those States "recognizing" that name *in* the OSCE: see PC.DEC/446/Corr.1, Attachment 4, 4 December 2001 (Interpretative Statement of the Delegation of Bulgaria) : Annex 62; PC.DEC/446/Corr.2, Attachment 3, 4 December 2001 (Interpretative Statement of the Delegation of Turkey) : Annex 62.

³⁵⁴ See above, para. 7.28.

³⁵⁵ Letter dated 4 October 2007 from the Permanent Representative of Greece to the United Nations, John Mourikis, addressed to the Secretary-General, doc. A/62/470-S/2007/592, dated 5 October 2007: Counter-Memorial, Annex 6.

³⁵⁶ Letter dated 17 October 2007 from the Chargé d'affaires a.i. of the Permanent Mission of the FYROM to the United Nations, addressed to the Secretary-General, doc. A/62/497-S/2007/621, dated 19 October 2007: Counter-Memorial, Annex 7.

“Finally—with or without point of order—the name of my country is the Republic of Macedonia and will be the Republic of Macedonia.”³⁵⁷

This was tantamount to contending that the resolutions requiring use of a provisional name were irrelevant and, worse, illegal.

7.39 It is thus an unfortunate feature of the Applicant’s attitude, when charged with violations of its obligations, to incidentally question the validity of the acts that constitute the basis of its admission to the United Nations and have been applied ever since 1993, pending settlement of the dispute.

7.40 Greece has vigorously denounced this abuse by the FYROM of its membership in international organizations in which it was admitted under the provisional name and against the violations of the relevant resolutions:

“At the same time, in indirectly but blatantly disregarding the provisions of Committee of Ministers’ Resolution 23 of the 19th October 1995, on the basis of which—and I stress this—the Former Yugoslav Republic of Macedonia was admitted to the Council of Europe, the Permanent Representation of that country mocks not only our Organisation itself, but all its other member-states who assented that the Former Yugoslav Republic of Macedonia be admitted to the Council of Europe, which it was as its 38th member-state on 9th November 1995, under the terms of the said Resolution.”³⁵⁸

7.41 In any case, contrary to the Applicant’s thesis, there is no question whether the Security Council resolutions impose upon it an obligation not to use its constitutional name within international organisations of which it has become a

³⁵⁷ United Nations, *Official Records of the General Assembly, Sixty Second Session, 4th Plenary Meeting*, doc. A/62/PV.4 at p. 29: Counter-Memorial, Annex 5.

³⁵⁸ Letter of the Permanent Representative of Greece to the Council of Europe, addressed to the Secretary General of the Council of Europe, Ref.: F.6705B/169/AS 1148, dated 23 December 2004: Annex 46.

member. The resolutions are binding. The question is if, by using a name other than that prescribed in the Security Council resolutions, the FYROM is in breach of its commitment under Article 11, paragraph 1 of the Interim Accord. As shown above,³⁵⁹ the answer is indisputably in the affirmative. *Ex delicto jus non oritur*.

3. Greece Has Protested against the Use by the FYROM of the Claimed Name

7.42 Against this background, it is clear that the FYROM misrepresents reality when it asserts in its Reply:

“Only after the current dispute between the Parties crystallized in late March / early April 2008 at the Bucharest Summit did the Respondent seek to make to the Applicant formal, written allegations of breach of the Interim Accord, in response to the Applicant’s formal claim that the Respondent was itself in material breach of the Interim Accord. The Respondent’s new and late allegations are reflected in a steady stream of diplomatic *notes verbales*, post-dating the Bucharest Summit, and often relating to matters that arose long before April 2008.”³⁶⁰

7.43 In reality, Greece did protest, through a “steady stream of *notes verbales*” that *predate* and *postdate* the Bucharest Summit, against the practice of the FYROM’s using its constitutional name in international *fora* or the attempts by the FYROM to obtain international recognition of that non-agreed name.

7.44 The examples of verbal notes addressed to the UN or other international institutions and to third States, when they established diplomatic relations with the Applicant under its claimed name, are numerous. These repeated protests make clear that it has been Greece’s constant understanding that the provisional name was to be used internationally pending the resolution of the dispute. Their

³⁵⁹ Paras. 7.19-7.24.

³⁶⁰ Reply, para. 5.100.

recitation here would burden the Rejoinder. Greece annexes some of the most relevant documents³⁶¹ and confines itself here to some examples.

7.45 Most of these protests were addressed to the FYROM's officials, through the channels of the organizations in which the FYROM was acting in violation of its obligation. The protests long predate the Bucharest Summit and were duly lodged by Greece when the situation lent itself to raising such a procedural point. Two examples will suffice to show that Greece's opposition to the FYROM's attempts may be traced to the very year of the adoption of SC res. 817 (1993), even pre-dating the conclusion of the Interim Accord:

- In 1993, during the session of the Sixth Committee:

“Mr Economides (Greece), speaking on a point of order, protested vigorously, from a procedural point of view, against the use of the name ‘Republic of Macedonia’ by the representative of the former Yugoslav Republic of Macedonia, as it was a blatant violation of both Security Council and General Assembly resolutions on the question, under which the Republic of Skopje had been provisionally admitted into the United Nations under the name of the former Yugoslav Republic of Macedonia, which should be used

³⁶¹ Some of them have already been referred to in the previous paragraphs. Other examples can be cited: Letter of the Chargé d’Affaires a.i. of the Permanent Mission of Greece to the United Nations, addressed to the Under-Secretary-General for Communications and Public Information of the United Nations, Ref.: F. 4608/742/AS 3228, dated 26 November 2007: Annex 36; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Under-Secretary-General for Communications and Public Information, Ref.: F. 4608/571/AS 2701, dated 18 October 2007: Annex 35; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Spokesperson for the Secretary General of the United Nations, Ref.: F. 4608/324/AS 1853, dated 9 July 2007: Annex 33; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Under-Secretary-General for Communications and Public Information of the United Nations, Ref.: F. 4608/118/885, dated 10 April 2007: Annex 30; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Under-Secretary-General for Peacekeeping Operations of the United Nations, Ref.: F.4608/004/AS 0011, dated 4 January 2006: Annex 28; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Secretary General of the United Nations, Ref.: F.4608/72/546, dated 25 February 2005: Annex 18; OSCE, 79th Plenary Meeting of the Council, PC Journal No. 79, PC.DEC/Annex 3, dated 18 July 1996: Annex 60.

in the United Nations without any exception, limitation, reserve or nuance pending settlement of the dispute between Greece and the Republic of Skopje, which was precisely a dispute over the name of that Republic.”³⁶²

- In 1994, exercising a right of reply:

“I would like to mention that there is no question of interpretation of the Security Council Resolution 817, as its text is self-explanatory. If it were interpreted to imply that the Former Yugoslav Republic of Macedonia could be referred to otherwise, the Resolution would have been devoid of any meaning.”³⁶³

7.46 This position was upheld after the signature of the Interim Accord, as the Letter of 1 December 1995 from the Permanent Representative of Greece to the United Nations addressed to the Secretary-General, whose content was rendered above,³⁶⁴ clearly shows. Equally, in 1997, on the occasion of a speech of the FYROM’s representative in the Economic Commission for Europe, raising a point of order, the Greek representative declared that:

³⁶² United Nations, *Official Records of the General Assembly, Forty-Eighth Session, Sixth Committee, Summary Record of the 22nd Meeting*, document A/C.6/48/SR.22, dated 7 December 1993, para. 66: Annex 2.

³⁶³ Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs, on the statement made during the work of the main Committees of the General Assembly, in relation to the use of the name “Macedonia”, Ref. : F.1130(6395)/196/AS 2486 bis, dated 7 June 1994: Annex 3. See also Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs, on the statement by the Greek Representative at the High Level Segment of the Economic and Social Council on the “Agenda for Development”, in relation to the use of the name “Macedonia”, Ref. : F.1130/223/AS 2818, dated 30 June 1994: Annex 4; the Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs, on the statement by the Greek Representative at the Third Committee of the General Assembly, in relation to the use of the name “Macedonia”, Ref. : F.6179.1(1130)/25/AS 4482, dated 11 October 1994: Annex 5; the Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs, on the statement by the Greek Representative at the World Summit for Social Development, in relation to the use of the name “Macedonia”, Ref. : F. 1130/74/AS 921, dated 8 March 1995: Annex 8.

³⁶⁴ See above, para. 7.16.

“[T]he Mission of the FYROM is the one that should have avoided the use of a denomination which is not recognized by the present Forum.”³⁶⁵

7.47 Immediately in the aftermath of the Bucharest Summit, in response to the FYROM’s unfounded charges of violation of Article 11, paragraph 1, Greece underlined that the FYROM’s previous constant violations of the same provision created the conditions for the application of the safeguard clause:

“[I]t is the former Yugoslav Republic of Macedonia that has not respected the principle *pacta sunt servanda* with regard to the implementation of Article 11, par. 1 of the Interim Accord and Security Council resolution 817 (1993), par. 2, which provides that the former Yugoslav Republic of Macedonia will be provisionally referred to for all purposes within the United Nations with this denomination, pending settlement of the difference that has arisen over the name of the State.”³⁶⁶

7.48 Such a list of unequivocal statements could be extended. The more recent example, related to the episode in the General Assembly referred to above,³⁶⁷ only confirms a general practice of protests on the part of Greece. In that circumstance, the Greek Representative stated:

“I would... request that the proper name, the former Yugoslav Republic of Macedonia, be used for all purposes within the United Nations, pursuant to the aforementioned resolutions and in view of

³⁶⁵ Fax Message of the Permanent Mission of Greece in Geneva to the Ministry of Foreign Affairs, on the objection of the Mission of Greece in Geneva in relation to the use of the name “Macedonia” during the solemn (1997) session of the United Nations Economic Commission for Europe, Protocol No 1130/36/AS 627, dated 22 April 1997: Annex 38. See also above, para. 7.27.

³⁶⁶ Verbal note dated 15 May 2008 from Greece’s Liaison Office in Skopje to the FYROM’s Ministry of Foreign Affairs: Memorial, Annex 51. See also below, para. 8.23.

³⁶⁷ See above, para. 7.28.

the fact that there are ongoing negotiations between the two countries.”³⁶⁸

This episode led Greece to try to anticipate further similar violations by the FYROM and thus warn the organs of international institutions of possible abuses.³⁶⁹

7.49 The Respondent equally opposed the Applicant’s strategy of obtaining recognition by third States under a name other than the one it was required to use. It made clear that this strategy conflicted with the Security Council resolutions *and* the Interim Accord. The express referral to those texts in the Verbal Notes to the third States having established diplomatic relations with the FYROM under its invoked “constitutional” name leaves no doubt that, in Greece’s understanding, the FYROM was not entitled to use that name internationally. To take only one example among many others:

“It is with some surprise that I have noticed that Security Council Resolutions 817 (1993) and 845 (1993) have not been duly taken into consideration. Resolution 817 stresses that pending settlement of the difference that has arisen over the name of the state [FYROM], the state will be referred to, for all purposes within the United Nations, under the provisional name ‘the former Yugoslav Republic of Macedonia’. Resolution 845 urged the parties to continue their efforts under the auspices of the Secretary-General to arrive at a speedy settlement of the remaining issues [the name issue].

³⁶⁸ United Nations, *Official Records of the General Assembly, Sixty Second Session, 4th Plenary Meeting*, doc. A/62/PV.4 at p. 27: Counter-Memorial, Annex 5.

³⁶⁹ See Verbal Note of the Permanent Mission of Greece in Geneva, addressed to the Executive Secretary of the Meeting of States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and on their Destruction, Ref. No: 6162.1(1130)/25/AS 2803, dated 12 December 2007: Annex 45

I take this opportunity to inform you that Article 5.1 of the 1995 Interim Accord between Greece and the FYROM stipulates that ‘The Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 854 (1993) with a view to reaching agreement on the difference [over the name] described in that resolution and in Security Council resolution 817 (1993).’ These negotiations are still in progress and have not yet produced fruitful results.”³⁷⁰

7.50 On their part, Greece’s protests are relevant from several points of view. *First*, they make known to the FYROM, as well as to the international community, that Greece had by no means acquiesced in the practice of the international use by the Applicant of its “constitutional” name. And it must be noted again that these numerous protests predate the Bucharest Summit.

7.51 *Second*, Greece’s protests confirm that its position is based upon the Security Council resolutions and the Interim Accord. In these circumstances, it is incomprehensible that the FYROM considers that:

“At *no* stage prior to the institution of these proceedings did the Respondent ever seek to assert formally to the Applicant that the manner in which the Applicant called itself in NATO *was non-compliant with the Interim Accord*.”³⁷¹

³⁷⁰ Letter of the Permanent Representative of Greece to the United Nations, addressed to the Permanent Representative of Peru, Ref.: 4608/321/AS 1996, dated 6 July 2005: Annex 23. See also Letters of the Permanent Representative of Greece to the United Nations, addressed to the Permanent Representatives of Jamaica, Portugal, Latvia, Palau and the United Republic of Tanzania, Ref.: F.4608/208/AS 1382, dated 24 May 2007: Annex 31; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Permanent Representative of the Independent State of Samoa, Ref.: 4608/391/AS 2692, dated 2 September 2005: Annex 25; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Permanent Representative of Saint-Vincent and the Grenadines, dated 23 May 2003: Annex 17; Letter of the Permanent Representative of Greece to the United Nations, addressed to the Permanent Representative of Nigeria, dated 16 May 2003: Annex 16.

³⁷¹ Reply, para. 2.27. See also *ibid.*, para. 4.68 (emphasis added).

Quite to the contrary, Greece has long underlined that the international use of the so-called “constitutional” name runs against the resolutions and the Interim Accord.³⁷² The Applicant did not show that it intended to change its insistent practice in NATO. In light of this pattern of conduct, initiated in 1993 and protracted ever since, Greece was entitled to conclude that the violations which had occurred in all the other organizations (and in relation to NATO as well)³⁷³ would be repeating within the NATO. The same causes trigger the same effects.

7.52 *Third*, the Greek protests vigorously underline that both the misuse of the “constitutional” name and the FYROM’s strategy of securing recognition under that name were prejudicing the on-going negotiations, depriving them of their purpose and thus violating the relevant resolutions and the Interim Accord. By contrast to the FYROM’s violations of the Interim Accord, one must note that in none of the *notes verbales* did Greece attempt to impose on international institutions or on third States its preference over a name. It constantly referred to the FYROM by the name stipulated in the Security Council resolutions and it in no way sought to establish a different name through any mechanism apart from the agreed process of bilateral negotiation. Greece’s protests are thus clearly directed to ensuring compliance with the resolutions and the Interim Accord.

D. The FYROM’s Breaches of Article 5, paragraph 1 of the Interim Accord and of the Principle of Good Faith Negotiations

7.53 It is indisputable that the on-going negotiations between the Parties focus on the name of the “Party of the Second Part”, as resolution 817 and Article 5, paragraph 1 of the Interim Accord stipulate. Such is their object. Their purpose is to reach an agreement between the Applicant and the Respondent over this name, thus creating the conditions for full normalization of their relations and stabilization in the region. The FYROM’s constant use of its “constitutional

³⁷² See above, paras. 7.17-7.21 and 7.44.

³⁷³ See above, para. 7.36.

name” and its deliberate policy of securing recognition under that name actually deprive those negotiations of their object and purpose, and, by the same token, violate SC res. 817 (1993) and SC res. 845 (1993) and Article 5, paragraph 1 of the Interim Accord. This is a deliberate strategy on the part of the FYROM manifested in persistent efforts to impose the international use of its preferred name and to secure international recognition under that name, thus bypassing the negotiation process.

1. The FYROM’s Unilateral Attempts to Redefine the Scope of the Ongoing Negotiations

7.54 The blunt attempt by the FYROM to unilaterally redefine the object and purpose of these negotiations must fail. Years after the beginning of the process, the FYROM tries to persuade the international community and the Court that the actual purpose of the negotiations is limited solely to finding a name for use in the bilateral relations of the Parties. This position is untenable. A name does not fulfil its function if it is not *erga omnes*.³⁷⁴ It is neither a pseudonym, nor a nickname to be used only between the two States.

7.55 This interpretation is upheld by undisputed, objective statements of officials involved in the conclusion of the Interim Accord. The Report to the Security Council presented by the Secretary-General in 1993, following the admission of the FYROM to the United Nations, presents the positions of the Parties and, notably, the opinion of the Special Envoy as well, in respect of the scope of the negotiations over the name. Thus:

³⁷⁴ The FYROM also argues (Reply, para. 4.45, footnote 217), that its provisional name is just a ‘designation’ and not a name, by misinterpreting the French text of the resolution 817. This misinterpretation becomes obvious while reading in its entirety the French version of the corresponding resolution of the General Assembly (A/RES 47/225 of 27 April 1993: Annex 1), where the word ‘*nom*’ (and not ‘*désignation*’) is used twice, once for the provisional name and once for the difference about the name.

“(a) The Greek delegation stated its position that the other party should not use a name [in its international relations]³⁷⁵, that included the word ‘Macedonia’; it indicated, however, that if that term were to be included in a *name to be used for both domestic and international purposes*, then the name ‘Slavomacedonia’ could be envisaged.

(b) The delegation of the former Yugoslav Republic of Macedonia prefers that the name used for all purposes be that set out in the Constitution: ‘The Republic of Macedonia’; it was, however, prepared to discuss the modalities of the *use of a name for international purposes only*.

Mr Vance and Lord Owen consider that the name to be used should be *the same for all official purposes, both domestic and international*.³⁷⁶

7.56 The negotiating positions of the Parties, and the margin of compromise they allowed for, were thus clear in the wake of signing of the Interim Accord: the difference was not whether the negotiated name was to be used solely in the bilateral relations, but if that name would be in general use on the international and domestic levels. The Co-Chairman of the Steering Committee interpreted his mandate as covering a single name, to be used internationally as well as internally. This is consistent with SC res. 817 (1993), which provides for a reference, to be used pending settlement of the difference. The implication was that once the

³⁷⁵ Footnote in the text: “Mr Vance and Lord Owen understood that the Greek position included the bracketed phrase. However, on checking this point with the Greek delegation after Lord Owen had already left for Moscow, the delegation indicated that the bracketed phrase should be excluded”.

³⁷⁶ *Report of the Secretary-General pursuant to SC res 817 (1993)*, doc. S/25855, 28 May 1993, p. 4, paras. 12-13: Memorial, Annex 33 (emphasis added).

parties, through bilateral negotiations, agreed to a name, the provisional name would be replaced by the negotiated solution.

7.57 The picture did not change with the signature of the Interim Accord. The Interim Accord settled a number of outstanding issues, but left the difference over the name within the same parameters. It is moreover widely known that Greece had signed the Interim Accord under the *sine qua non* condition that the FYROM would not seek international recognition under the disputed name during the pendency of the negotiations. Consequently, the Respondent had firmly rejected the Applicant's attempt to unilaterally redefine the commitment imposed by the Security Council and accepted by the FYROM in the Interim Accord.

7.58 Mr Nimetz interpreted his mandate in the same way as had his predecessor, Mr Vance.³⁷⁷ In the view of the Mediator, the purpose of the negotiations was to find a name for international use—not a special designation limited to the relations between the Parties:

“[N]egotiations on this issue have been in progress for a number of years in New York, under the auspices of the Secretary-General of the United Nations, who has appointed Mr Nimetz as his Special Representative. Now, Mr Nimetz has presented his proposal for the settlement of this issue.

In accordance with this proposal, the name ‘Republika Makedonija-Skopje’, written in this way, untranslated—will be *adopted for international use. This name will be valid in all the bodies of the UN, and the UN will recommend that the other*

³⁷⁷ See above, para. 7.56.

*international organizations and states adopt it for international use.*³⁷⁸

2. The FYROM's Strategy to Deprive the Negotiations of their Object and Purpose

7.59 In spite of the clear content of the FYROM's obligation under Article 11, paragraph 1 of the Interim Accord, the FYROM's officials began to espouse what they called the "dual formula" and even presented it as if it were a major concession. But this so-called "major concession" actually conceded nothing. To the contrary, it was a brazen attempt to expand the FYROM's freedom to use its "constitutional name" in any and all relations it pleased, in total disregard of the commitments the FYROM had undertaken at the time of its admission to the United Nations and its conclusion of the Interim Accord.³⁷⁹

7.60 The so-called "dual formula" was considered unacceptable at the time when the Security Council resolutions were adopted and the Interim Accord was concluded. But, having secured its admission to international organizations (with full Greek support) and having obtained Greece's concessions under the Interim Accord concerning a wide field of bilateral issues, the FYROM was emboldened to return to a position that had been explicitly rejected at the outset. The government of Greece thus protested:

"In this context, I should particularly like to draw your attention to the fact that no new proposal or counter-proposal was submitted by the Former Yugoslav Republic of Macedonia as an alternative. Instead, the said country has reverted to a position advanced in 1992 by then President Kiro Gligorov concerning the adoption of a

³⁷⁸ Verbal Note of the Permanent Mission of Greece to the United Nations, addressed to all Permanent Missions to the United Nations, Ref.: F.4608/127/AS 997, dated 8 April 2005: Annex 19.

³⁷⁹ See above, para. 7.56.

‘double formula’, providing for one name for use in relations with Greece (‘FYROM’) and another—the ‘official name’—for all other purposes in bilateral and international affairs (‘Macedonia’ or ‘Republic of Macedonia’). This proposition had been rejected by Greece at the time, yet now it has been literally ‘exhumed’ and is being proposed as ‘a generous compromise’.³⁸⁰

7.61 Indeed, in reaction to a proposal made by Ambassador Nimetz, the FYROM’s Minister of Foreign Affairs, Ms Mitreva, referring to the number of States which the FYROM had succeeded in getting to recognize it under the claimed name, effectively announced that the Applicant would henceforward confine the object of negotiations to a name to be used in the bilateral relations with Greece:

“Under the principle of equality enshrined in the United Nations Charter, each country has the sovereign right to decide about its name and identity. Accepting this fundamental right of the Republic of Macedonia, 109 countries worldwide including three permanent members of the United Nations Security Council have fully accepted the constitutional name of our country.

In light of the fact that the Hellenic Republic is the only country that objects to our constitutional name, we consider that the appellation *Republika Makedonija-Skopje* may serve only as a basis for constructive talks *aimed at finding a formula for bilateral communication* between the Republic of Macedonia and the Hellenic Republic.”³⁸¹

³⁸⁰ Letter of the Permanent Representative of Greece to the Council of Europe, addressed to the Secretary General of the Council of Europe, Ref. F.6705B/130/AS 690, dated 5 July 2005: Annex 47.

³⁸¹ Statement of the Minister of Foreign Affairs of the FYROM, Verbal Note of the Permanent Mission of the FYROM to the United Nations, addressed to all Permanent Missions to the United Nations, No. 63/2005, dated 15 April 2005: Annex 21 (emphasis added).

7.62 This was clearly a premeditated strategy of the FYROM's officials. The "constitutional name" was no longer an innocent artefact of the FYROM's preferences (if ever it was). It now had become a solvent to wash away any vestige of the FYROM's commitment to bilateral negotiation. This was admitted in a statement made by President Crvenkovski in front of the FYROM's Parliament in 2008:

"I would further precise, we need a new state strategy regarding this issue. Why? Because in the recent years Republic of Macedonia had a *strategy which, due to understandable reasons, was never publicly announced*, but it was a strategy that all governments and chiefs of state stick to so far, regardless of their political orientation. *A strategy which was functional and which gave results.*

What were the basic principles of that concept?

First of all, in the negotiations under the UN auspice we participated actively, but our position was always the same and unchanged. And that was the so called dual formula. That means use of the Republic of Macedonia constitutional name for the entire world, for all international organizations and in the bilateral relations with all countries, and to find a compromise solution only for the bilateral relations with the Republic of Greece.

Secondly, to work simultaneously on constant increase of the number of countries which recognize our constitutional name and thus strengthen our proper political capital in international field which will be needed for the next phases of the process.

It must be stated that in this field we were exceptionally successful. With constant engagements, we reached the number of more than

120 member states and three of the five permanent members of the UN Security Council which recognize and use our constitutional name on bilateral and multilateral plan.”³⁸²

Greece referred to this confession of a policy of *fait accompli* in its Counter-Memorial.³⁸³ It exposes the FYROM’s Janus-faced posture in the negotiation process and its hypocritical attitude to the Interim Accord negotiating procedure. The FYROM did not address it in its Reply.

7.63 In furtherance of this purpose, the FYROM showed no flexibility in the negotiation process, prior to the Bucharest Summit. Rather, the FYROM sought to exploit the formal negotiation process to delaying the resolution of the difference in the hope that it could use the time thus “gained” in order to gradually lobby third States to recognise its so-called “constitutional” name.³⁸⁴

7.64 The FYROM tries to obscure a 10-year history of obstruction and evasion by asserting repeatedly that in April 2008 it had accepted the name of “Republic of Macedonia (Skopje)”.³⁸⁵ In reality, the purported concession was never made by the FYROM since the proposal was never officially accepted by its Government. This so-called concession is one more example of smoke and mirrors. The FYROM’s expressed intention to consider that proposal was nothing more than an attempt to secure the Applicant’s position in Bucharest. In this context, the reliability of this 11th hour “concession” is doubtful. It is worth recalling that in November 2007—only five months before—the FYROM’s Prime Minister had rejected a *similar* proposal by Ambassador Nimetz, insisting again

³⁸² *Stenography notes from the 7th sequel of the 27th session of the Parliament of the Republic of Macedonia*, held on 3 November 2008 (emphasis added), pp. 27-7/10 and 27-7/ 11: Counter-Memorial, Annex 104.

³⁸³ Counter-Memorial, para. 4.8.

³⁸⁴ See Counter-Memorial, para. 4.9.

³⁸⁵ Reply, paras. 2.63-2.64, 5.87.

that “we cannot accept that ... the Republic of Macedonia should accept a name different from its constitutional one for international use”.³⁸⁶

7.65 Greek officials warned that the FYROM—through the combined effect of the use of a disputed name in all international fora, pursuing a policy of recognition under that name, and its correlative intransigence in direct negotiations—was in fact depriving the agreed process of its object and purpose:

“The substance of the matter is that any approach to the name issue between Greece and the Former Yugoslav Republic of Macedonia by the organs and institutions of the Council of Europe other than that outlined in Resolution (95)23 *de facto* prejudices the final outcome of negotiations on the matter since it encourages the unilateral approach and strengthens the recalcitrant and intransigent approach of the *altera pars* to the matter and thus renders the Interim Accord of the 13th September, 1995 (Article 5), which our two countries signed, null and void in practice. It is a matter of the utmost political significance, so you will no doubt understand that we cannot simply sit back and watch the erosion, little by little, of any chance of reaching the settlement (i.e., by definition, compromise) which the Interim Accord imposes.”³⁸⁷

7.66 As Greece has underlined, the FYROM’s intransigent position could only bring negotiations to a deadlock, a point of which the FYROM’s officials were well aware of.³⁸⁸ Indeed, they were seeking to prolong this deadlock. Thus,

³⁸⁶ See Counter-Memorial, para. 4.6. See also for a similar position in 2005, the Statement of the Minister of Foreign Affairs of the FYROM, Verbal Note of the Permanent Mission of the FYROM to the United Nations, addressed to all Permanent Missions to the United Nations, No. 63/2005, dated 15 April 2005: Annex 21.

³⁸⁷ Letter of the Permanent Representative of Greece, addressed to Secretary General of the Council of Europe, Ref.: F.6705B/48/AS 730, dated 30 August 2007: Annex 48.

³⁸⁸ See for instance a statement of the then President of the FYROM: “And besides all previous indications, by the mediator and by our friends and supporters, that the dual formula is not an approach for negotiations and solving the dispute but a formula for freezing them, the Prime

contrary to what the FYROM tries to show in its Reply,³⁸⁹ it is not the objective failure of negotiations, but its own bad faith attitude, which cast a doubt over the possibility for Greece to establish fully normalized relations with the Applicant. Contrary to the FYROM's assertion,³⁹⁰ Greece's understanding of the former's intransigence did not crystallize immediately before, or for the purposes of, the Bucharest Summit. It emerged gradually, and Greece, after many efforts, reluctantly concluded that the FYROM had no intention to abide by its commitments under the Interim Accord. In particular, Greece recognized that the FYROM sought to escape its commitment to negotiate a settlement of the chief bilateral difference impeding the full realization of good-neighbourly relations between them.

3. *The Violation of an Obligation of Result under the Interim Accord*

7.67 The FYROM's attitude has been in clear violation of Article 5, paragraph 1 of the Interim Accord. This provision imposes upon the Parties an obligation to continue negotiation "with a view to reaching agreement on the difference". This wording implies, as the Court has found in a different context, that the Parties are under an obligation of result, and not merely an obligation of conduct:

"The legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result... by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith."³⁹¹

Minister decided that it should be exactly our position." (Annual Address of Branko Crvenkovski, President of the FYROM in Parliament, *Stenography Notes from the 37th Session of the Parliament of the Republic of Macedonia*, held on 18 December 2008 p. 37-00/3: Counter-Memorial, Annex 105). See also Counter-Memorial, paras. 4.9 and 8.39.

³⁸⁹ Reply, para. 2.60 and para. 2.63.

³⁹⁰ Reply, para. 2.53.

³⁹¹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, 264, para. 99.

7.68 This means that the Parties are obliged to continue negotiations until the result is reached, at least as long as the Accord is in force—and it is. It equally means that the Parties must abstain from unilateral acts that would deprive these negotiations of their object; any such unilateral act would constitute a violation of the relevant provision of the treaty. This is a long-standing consequence that the international jurisprudence has drawn from the obligation to negotiate with a view of reaching a certain result:

“Pending instruction from the three treaty Powers... those Powers were bound upon principles of international good faith to maintain the situation thereby created until by common accord they had otherwise decided.”³⁹²

7.69 It is a basic principle of jurisprudence that no one can profit from his own wrong. In Justinian’s *Digest* this principle is expressed in these words: “*Nemo ex suo delicto meliorem suam condicionem jacere potest*”³⁹³ (No one can improve his position through his own wrong). The same principle finds expression in the maxim *nemo auditur propriam turpitudinem allegans*, which applies at the international level.³⁹⁴

7.70 Yet this is precisely what the FYROM is attempting to do. Through constant manoeuvres, the FYROM has prevented negotiations from reaching any

³⁹² Decision given by His Majesty Oscar II, King of Sweden and Norway, as Arbitrator, 14 October 1902, *Samoa Claims (Germany, Great Britain, United States)*, *Reports of International Arbitral Awards*, vol. IX, p. 25. In this case, a provisional government was established in Samoa and recognized by the Consular agents of the administrative Powers of the Samoa Islands. The three Powers had to consult each other with a view to adopt the relevant instructions for a constitutional regime. However, before the adoption of those instructions by a common agreement, the United Kingdom and the United States of America proceeded to a unilateral military intervention without consulting the third Power invested with rights on the territory, in that case Germany. The sole arbiter, the King of Sweden and Norway, Oscar II, condemned this military intervention as contrary to the principle of good faith.

³⁹³ *Digest of Roman Law* 50.17.134.1.

³⁹⁴ See e.g. : *Nottebohm, Second Phase, Judgment, I.C.J. Reports 1955*, p. 4, 20 ; *Inceysa Vallisoleтана S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, at paras. 240 – 241, available at <http://icsid.worldbank.org/ICSID/Index.jsp>.

result. At the same time, it has attempted gradually to deprive them of their object and purpose, through pursuit of its policy of recognition under its claimed name. The duty to negotiate the country's name is, in this case, not just an application of the general principle of international law that international disputes must, at least, be the subject of *bona fide* negotiations:³⁹⁵ it is a treaty obligation expressly provided for in Article 5, paragraph 1, of the Interim Accord. It was the guarantee under which the FYROM was admitted to the United Nations and in the light of which Greece assumed the obligations stipulated by the Interim Accord.³⁹⁶ Now the FYROM is trying to have the Court add its seal and approval to this policy of *fait accompli*, thus depriving Greece of essential rights granted to it by the Interim Accord. This strategy, which constitutes an abuse of process,³⁹⁷ cannot be allowed to succeed.

E. Material Breaches by the FYROM of Other Articles of the Interim Accord

7.71 As already explained in some detail, the provisions of the Interim Accord are to be read as a whole and not in clinical isolation.³⁹⁸ In this respect, the name dispute is only part of the Respondent's larger concern in respect of the Applicant's irredentist attitude in the region. The point was made, for example, by the then Prime Minister in a letter sent to all NATO governments on 31 March 2008:

“I would like, on this occasion to stress that for Greece the name issue of FYROM does not constitute a problem of a merely

³⁹⁵ See principle 5 of the *Manila Declaration on Peaceful Settlement of Disputes between States*, A/RES/37/10 (15 November 1982). See also: *Delimitation of the Maritime Boundary in the Gulf of Maine Area, Judgment*, *I.C.J. Reports 1984*, p. 246, 292, para. 87; *Affaire du lac Lanoux (Espagne/France)*, Award of 16 November 1957, United Nations, *Reports of International Arbitral Awards*, Vol. XII, p. 307. The scope and extent of this obligation have been dealt with in Counter-Memorial, paras. 8.35-8.36.

³⁹⁶ See above, paras. 2.29, 2.34.

³⁹⁷ See *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, *Preliminary Objections, Judgment*, *I.C.J. Reports 1992*, p. 240, 255, para. 38.

³⁹⁸ See above, Chapter II, paras. 2.2-2.31.

historic, psychological or sentimental dimension. It is a real political issue. Remaining unresolved, it poisons bilateral and good neighbourly relations in the Balkans, an area torn for centuries by both inter ethnic and civil wars, hatred and instability. Through the insistence on the name Macedonia and given that the latter pertains to a broader geographical area with its largest part belonging to Greece, the former Yugoslav Republic pursues irredentist and hardly disguised policies in the Southern Balkans with apparent negative results for its security and stability.”³⁹⁹

7.72 In its Counter-Memorial,⁴⁰⁰ Greece provided extensive examples of the FYROM’s breaches of provisions other than Articles 5 and 11 of the Interim Accord. Despite the overwhelming factual evidence submitted there, the FYROM deployed a strategy of blunt denial: “The Applicant is not in breach of any article of the Interim Accord.”⁴⁰¹ Greece can only refer back to its Counter-Memorial where it proved that there is a pattern of conduct on the part of the FYROM’s authorities that constitutes direct and indirect breaches of the Interim Accord. The facts pointed to in the Counter-Memorial constitute violations, through actions and omissions,⁴⁰² of the FYROM’s obligations under the Interim Accord and, as such, engage the FYROM’s international responsibility. In the next Chapter of this Rejoinder, Greece will show that the FYROM’s violations permit it to stay execution of its own obligations under the Interim Accord.

³⁹⁹ Letter dated 31 March 2008 from the Prime Minister of Greece Kostas Karamanlis sent to all NATO Member Countries: Reply, Annex 6.

⁴⁰⁰ Counter-Memorial, paras. 8.44-8.58.

⁴⁰¹ Reply, para. 5.84.

⁴⁰² See Article 2 of the Draft Articles on Responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session (2001), *Report of the Commission to the General Assembly on the work of its fifty-third session, Yearbook of the International Law Commission, 2001, volume II, part two*, p. 26.

7.73 *First*, the Applicant is in violation of Article 6, paragraph 2 of the Interim Accord.⁴⁰³ It fails to give a substantiated response to Greece’s claims in this regard. More specifically the Applicant asserts that its concern for the human rights situation of “minority groups” cannot be reasonably treated as interference in the internal affairs and it seeks to legitimize its concern with minority rights in Greece by comparing its role with the tasks of human rights monitoring organs.

7.74 Article 6, paragraph 2 originates from a proposal made by the co-chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, who, in the exercise of their good offices under the auspices of the United Nations, deemed it appropriate to include a specific provision precluding claims of the former Yugoslav Republic of Macedonia “specifically to protect the status and rights of any persons in other States who are not its citizens”.⁴⁰⁴ This was done to provide international guarantees of non-interference in the internal affairs of Greece. The existing Article 6, paragraph 2 of the Interim Accord is stricter than the corresponding article of the 1993 Vance-Owen plan, to the extent that (a) it explicitly mentions and encompasses in its scope the amendment to Article 49 of the Constitution of the FYROM and (b) it refers directly to the principle of non-interference in the internal affairs of another State. The object and purpose of Article 6, paragraph 2, as well as the amendment of Article 49 of the Constitution of the former Yugoslav Republic of Macedonia, was precisely to avert any conduct on the part of the latter that would endanger good neighbourly relations between the two countries and hence the stability of the region. Seen as a whole, Article 6 of the Interim Accord clearly identifies the prohibition of both territorial claims on the part of the former Yugoslav Republic of Macedonia

⁴⁰³ Counter-Memorial, paras. 4.14-4.26 and paras. 8.44-8.45.

⁴⁰⁴ Article 6 (2) of the Draft Treaty Confirming the Existing Frontier and Establishing Measures for Confidence Building, Friendship and Neighbourly Cooperation (UN doc. S/25855, Annex V: Memorial, Annex 33).

(paragraph 1) and interference by the latter in the internal affairs of another State (paragraph 2) as a prerequisite for the development of friendly relations.

7.75 In paragraph 5.90 of its Reply, the FYROM recalls that it finances domestic non-governmental organizations and supports citizens in their claims to the European Court of Human Rights. However, the said citizens and NGOs are the so-called “Macedonians from the Aegean Part of Macedonia”, some of whom promote irredentist policies and engage in hostile propaganda against Greece.⁴⁰⁵ Thus the FYROM, under the pretext of championing human rights of its own citizens, advances its claims and ambitions against Greece. This cannot be considered a genuine human rights concern. By assisting Slav-Macedonians who fled Greece after the end of the Civil War (1946-1949) and their descendants and officially endorsing their claims of return of property and restoration of their citizenship and by raising allegations of oppression of a “Macedonian minority”, the FYROM is in breach of Article 6, paragraph 2.

7.76 *Second*, the FYROM has breached its obligations under *Article 7, paragraph 1* of the Interim Accord in many respects. In particular, it has repeatedly failed to protect the premises of the Greek Liaison Office in Skopje and its personnel against harassment by FYROM citizens.⁴⁰⁶ The FYROM’s explanations of these breaches⁴⁰⁷ are unsatisfactory, only minimizing the importance of such repetitive acts.

7.77 The FYROM is also, in breach of Article 7, paragraph 1 of the Interim Accord by reason of its continuous irredentist propaganda presenting its current borders as the result of historical injustice.⁴⁰⁸ The FYROM’s only defence here is

⁴⁰⁵ See Counter-Memorial, para. 4.16.

⁴⁰⁶ Counter-Memorial, paras. 4.46-4.56 and paras. 8.47-8.49.

⁴⁰⁷ Reply, paras. 5.92-5.93.

⁴⁰⁸ Counter-Memorial, paras. 4.27-4.37 and para. 8.50.

that it proposed a joint committee on education and history.⁴⁰⁹ This proposal, weak as it is, only came in 2009, presumably in order to secure the legal position of the Applicant in the proceedings now before the Court.

7.78 *Third*, in respect to *paragraph 2 of Article 7*, the FYROM is in continuous breach of this provision which prohibits the use by the Applicant of the Sun of Vergina.⁴¹⁰ The Applicant has tried to evade its responsibility by asserting that, in one case, it was a private entity which used this symbol.⁴¹¹ However:

- (i) it is unsatisfactory to argue that “the Article is binding only on the Applicant, not on the Applicant’s citizens”:⁴¹² it is incumbent on the Applicant to respect its treaty obligations and to secure respect for those obligations by its citizens and all persons in its territory;⁴¹³
- (ii) the case behind which the FYROM tries to take shelter was only one instance among many in which the symbol was used; the Applicant has offered no explanation for the many times when the symbol was used by its highest officials⁴¹⁴ or its ministries.⁴¹⁵ In respect of its refusal to withdraw the objection to the registration by Greece of the Sun of Vergina as a State symbol,⁴¹⁶ FYROM gives a tortured explanation that in doing so, it seeks to preserve the use of the symbol by private persons.⁴¹⁷ However, the FYROM’s

⁴⁰⁹ Reply, para. 5.94.

⁴¹⁰ Counter-Memorial, paras. 4.57-4.60 and paras. 8.52-8.56.

⁴¹¹ Reply, para. 5.95.

⁴¹² *Ibid.*

⁴¹³ *Tellini case*, League of Nations, *Official Journal*, 5th Year, No. 4 (April 1924), p. 524 ; *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 3, 31-32, paras. 63 and 67 ; *Commission of the European Communities v French Republic*, case C-265/95, *European Court of justice Reports 1997*, p. I-06959, paras. 31 and 66.

⁴¹⁴ Counter-Memorial, para. 4.58-4.59.

⁴¹⁵ Counter-Memorial, para. 4.59 footnotes 146, 148 and 149.

⁴¹⁶ See Counter-Memorial, paras. 4.57-4.58.

⁴¹⁷ Reply, para. 5.95, footnote 430.

explanation is *ex post facto* and contrary to its original explanation (the objection in WIPO was *not* to protect citizens' rights but to reserve the right to use the symbol by the State); and it is invalid since the FYROM cannot abstract its citizens from the ambit of Article 7, paragraph 2.⁴¹⁸ Moreover, the Applicant continues at present to violate this provision, despite Greece's objections.⁴¹⁹

- (iii) The FYROM continues to insist on the use of the Star or Sun of Vergina in a newly edited school textbook. The textbook contends that the 'Kutlesh star' ('Kutlesh' being the Slavic name of Vergina) represents the 'national flag of all Macedonians' and that the present State flag is a modification from the flag with the Star of Vergina.⁴²⁰

7.79 *Fourth* and more generally, the FYROM is in continuous breach of Article 7, paragraph 3, which prohibits the use of "one or more symbols constituting part of [Greece's] historic or cultural patrimony". The FYROM's officials would insist that Greece's grievances are concocted or insincere and, in any event, not to be given credence before a judicial organ. But the FYROM has named the main national airport after Alexander the Great (conqueror of vast reaches of the ancient world), and it has named its main national sports stadium after Philip II (Alexander's father and consolidator of Greek States under the Kingdom of Macedonia). It has raised public statues to such figures as well. That third parties may not grasp the underlying significance to Greece of such misappropriation of its cultural patrimony is completely beside the point—though it is the main point which the FYROM counts on, when appealing to third States and international

⁴¹⁸ Counter-Memorial, para. 4.57.

⁴¹⁹ See Verbal Note of the Hellenic Republic Liaison Office in Skopje, No F.141.1B/22/AS 1152, dated 13 September 2010 addressed to the Ministry of Foreign Affairs of the FYROM: Annex 63.

⁴²⁰ Hristina Kraljeva, Vesna Pavlovic, Elena Stanojkovic, Sonia Kirkovska, *Society, for the Fifth Grade Nine Years Studies Primary Education*, 2010, p. 10 : Annex 69.

organizations. But the FYROM agreed to respect these symbols, and this is a binding international commitment. That is the meaning of Article 7, paragraph 3 of the Interim Accord. The FYROM attempts to prove the contrary first through an imaginative interpretation of Article 7, paragraph 3, appealing *en passant* to the *travaux préparatoires*. Its main “defence,” if such a non-responsive reply can be referred to as a defence, is to say that statues and names are not “symbols”.⁴²¹ The word “symbol”, in all languages, covers the elements Greece was referring to, as attested by the definitions of the word “symbol” given in the main reference dictionaries. Thus, for example, the *Oxford English Dictionary* defines the term as:

“Something that stands for, represents, or denotes something else (not by exact resemblance, but by vague suggestion, or by some accidental or conventional relation); esp. a material object representing or taken to represent something immaterial or abstract, as a being, idea, quality, or condition; *a representative or typical figure, sign, or token.*”⁴²²

The same goes for the *Petit Robert*:

« *Ce qui représente autre chose en vertu d'une correspondance...
Personne qui incarne, qui personnifie de manière exemplaire.* »⁴²³

It cannot be doubted that the disputed names were actually chosen for their high symbolic value and it is indeed a most common practice for a State to give the name of figures who symbolize important concepts to the most important buildings or streets or to raise statues depicting them.

7.80 The FYROM equally attempts to trivialize the importance of the obligations imposed by Article 7, paragraph 3 by reducing them to simple

⁴²¹ Reply, para. 5.96.

⁴²² *Oxford English Dictionary*.

⁴²³ *Le Petit Robert de la langue française*.

procedural obligations.⁴²⁴ It is true that the prohibition is not stated in absolute terms, but it is equally true that the Party charged with a violation by the other has to take “corrective action” in response to the grievances. In this case, it cannot be disputed that the airport is still called *Alexander the Great*, the stadium *Philip II* and that the statues are still in place, despite Greece’s repeated protests. In these circumstances, it cannot be said that the FYROM is in compliance with Article 7, paragraph 3.

7.81 Confronted with the evidence of these violations, the FYROM attempts to escape its responsibility by elusory devices. It either pretends that the facts are immaterial or that they postdate the Bucharest Summit. As Greece has shown, these facts predate the Summit. When reference is made to posterior facts, it is in order to show their continuous character and their aggravation after the Summit. Despite the FYROM’s minimalizing approach, these facts amount to material breaches of the Interim Accord, enabling Greece to invoke the *exceptio non adimpleti* principle and to apply countermeasures.

F. Conclusion

7.82 Greece has shown in the present Chapter that:

- (i) Article 11, paragraph 1, of the Interim Accord, in accordance with Security Council resolutions 817 (1993), imposes upon the Applicant an obligation to use, at the international level, the provisional name;
- (ii) the Applicant has violated and still violates Article 11, paragraph 1, by the repeated use of its claimed “constitutional” name in international *fora* and the correlative attempt to obtain international recognition under it;

⁴²⁴ Reply, para. 5.97.

- (iii) Greece asserted its treaty rights and opposed, through numerous protests, the Applicant's practice of violating them;
- (iv) the FYROM is in breach of Article 5, paragraph 1 of the Interim Accord by reason of its intransigent and procrastinating practice during and between the negotiations;
- (v) the FYROM has attempted, unilaterally, to transform the subject matter of the negotiations with Greece, from finding a mutually acceptable name for the FYROM for general international and domestic use (as the parties agreed to do), to restricting its final designation to bilateral relations with Greece alone;
- (vi) taken in conjunction with its attempts to impose a general international use of the disputed name, the FYROM's attempted transformation of the subject matter of the negotiations constitutes, in turn, an attempt to deprive Article 5, paragraph 1, and more largely the Interim Accord, of one of its crucial objects and purposes;
- (vii) other acts and omissions of the FYROM also involve violations of Article 6, paragraph 2, and Article 7, paragraphs 1, 2 and 3 of the Interim Accord.

CHAPTER 8: DEFENCES TO THE FYROM'S CLAIM OF BREACH OF THE INTERIM ACCORD

A. Introduction

8.1. Greece's principal submission is that its attitude at the NATO Bucharest Summit does not amount to or constitute an "objection" in the sense of Article 11, paragraph 1, of the Interim Accord, particularly given the nature of NATO and its decision-making process and rules. But even if the Court does not follow Greece's interpretation on this point, Greece submits, in the alternative, that in the circumstances it had the right to apply the safeguard clause of Article 11, paragraph 1, since it was clear that the FYROM's intention was to be referred to in NATO otherwise than under the provisional name. The present Chapter is therefore only a very subsidiary submission, should the Court adopt a different interpretation of Article 11, paragraph 1.

8.2. None of the matters discussed in this Chapter is to be interpreted as an admission by Greece that it has breached any obligation incumbent upon it under Article 11, paragraph 1, of the Treaty which (as explained in Chapter 5⁴²⁵) expressly provides a particular remedy for non-observance of the condition stipulated therein:

"the Party of the First Part [Greece] reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)."

⁴²⁵ See in particular above, paras. 5.33-5.46.

8.3. Should the Court find that any such objection occurred contrary to the provisions of Article 11 itself, Greece relies on two defences which exclude the wrongfulness of the acts of the Respondent in the context of the Bucharest Summit: the *exceptio non adimpleti contractus* and the right to countermeasures. Pertaining to the law of State responsibility, these defences do not imply any claim to suspension or termination of the Interim Accord on the basis of Article 60 of the Vienna Convention.⁴²⁶

8.4. Considering that the conditions for the application of the principle *exceptio non adimpleti contractus* are met, Greece did not invoke the right to apply countermeasures in its Counter-Memorial. It nevertheless indicated that it is an available ground for defence against the FYROM's breaches of the Interim Accord:

“[I]f the allegations of the FYROM concerning its breach of Article 11 were well founded—*quod non*—then Greece could invoke counter-measures as a circumstance precluding wrongfulness. However, since all the conditions for invoking the *exceptio non adimpleti contractus* are met, there is no need for the Respondent to expressly invoke counter-measures as a defence.”⁴²⁷

8.5. The FYROM has objected to the principle of *exceptio non adimpleti*. Greece rejects those criticisms and will further establish in the present Chapter that the conditions for the application of countermeasures would have equally

⁴²⁶ However, faced with numerous material breaches of the Interim Accord on the part of the Applicant, Greece reserves its right to suspend or terminate the Accord in the future, in accordance with Article 60 of the Vienna Convention or Article 23(2) of the Interim Accord. Stressing the reciprocal nature of the Accord, Greece has invoked the principle *pacta sunt servanda* (see, e.g., Verbal Note dated 15 May 2008 from the Hellenic Republic Liaison Office in Skopje to the Ministry of Foreign Affairs of the FYROM: Memorial Annex 51, and Letter dated 23 May 2008 from the Permanent Representative of Greece to the United Nations, John Mourikis, to the United Nations Secretary-General, UN doc. S/2008/346 (28 May 2008): Memorial, Annex 43). See also Counter-Memorial, para. 8.2.

⁴²⁷ Counter-Memorial, para. 8.29.

been met. If Greece's conduct were considered to have been in breach, that conduct would also be justified on this ground.

B. The Exception of Non-Performance is an Available Defence

8.6. The FYROM's case rests upon the denial of the existence of the *exceptio* as a general principle of international law:

“The Respondent is confronted with the reality that the *exceptio* is not to be found in the 1969 Vienna Convention (other than in the form reflected in Article 60) or in the 2001 ILC Articles on State Responsibility. The *exceptio* has never been recognized by the International Court of Justice.”⁴²⁸

On the contrary, as will be demonstrated, the *exceptio* is an operative principle of the law of international responsibility.

1. The Exceptio Would Authorise Greece to Stay the Execution of Article 11, paragraph 1, under the Law of State Responsibility

8.7. In its Counter-Memorial,⁴²⁹ it was shown that the *exceptio* is an available defence under the law of State responsibility which permitted Greece to stay the application of its commitments insofar and for so long as the FYROM itself was not complying with its own commitments under the Interim Accord. The core of the principle, as already established, rests upon the notion of reciprocity:

“It would seem to be an important principle of equity that where two parties have assumed an identical or a *reciprocal obligation*, one party which is engaged in a continuing non-performance of

⁴²⁸ Reply, para. 5.48 (footnote omitted).

⁴²⁹ Counter-Memorial, paras. 8.6-8.28.

that obligation should not be permitted to take advantage of a similar non-performance of that obligation by the other party.”⁴³⁰

Therefore, facing the non-execution of the Interim Accord by the FYROM, Greece could have had recourse to the *exceptio*, which permits it to withhold the execution of its own obligations which are reciprocal to those not performed by the FYROM.⁴³¹ In particular it allows Greece, while not suspending the Accord as such and globally, to stay the application of its obligation under Article 11, paragraph 1, not to object to the FYROM’s candidacy in international organisations since the *quid pro quo* for this conditional obligation is not fulfilled, and as long as the violation of this condition persists.

8.8. The FYROM presents two arguments to deny the applicability of this principle to the present case: first it rejects the *exceptio* as a general principle of international law. Second, it adds that in any case the obligations violated by it were not related to that incumbent upon Greece by virtue of Article 11, paragraph 1. Both arguments are unfounded.

(a) The *exceptio* is a general principle of international law applicable in the field of State responsibility

8.9. The *exceptio* is a recognised principle of general international law. Greece will not repeat here the arguments already made in its Counter-Memorial,⁴³² which demonstrate the existence of such a principle in general international law. It will focus on responding to the FYROM’s arguments denying the existence of such a principle. These arguments rest, broadly, on the assumption that the ILC

⁴³⁰ Individual Opinion of Judge Hudson in the case concerning the *Diversion of Water from the Meuse, Judgment, 1937, P.C.I.J., Series A/B, No. 70*, p. 4, 77 (emphasis added).

⁴³¹ See Counter-Memorial, para. 8.15.

⁴³² Counter-Memorial, paras. 8.6- 8.28.

excluded the *exceptio* from the Articles on State Responsibility.⁴³³ This is not the case.

8.10. The ILC did not reject the *exceptio* in its Articles on State Responsibility. It acknowledged its existence as a general principle of law and, as such, considered it to be covered by this source of international law. The ILC's commentary underlines that:

“Chapter V sets out the circumstances precluding wrongfulness presently recognized under general international law. Certain other candidates have been excluded. For example, the exception of non-performance (*exceptio inadimpleti contractus*) is best seen as a specific feature of certain mutual or synallagmatic obligations and not a circumstance precluding wrongfulness.”⁴³⁴

The FYROM therefore does not give an accurate account of the drafting history of the ILC Articles.⁴³⁵ In reality, as explained in the ILC's commentary, the *exceptio* was integrated in the ILC Articles by referral (*renvoi*): insofar as the *exceptio* is to be applied as a separate principle, with a special regime and a scope different from that of countermeasures, it falls within the ambit of Article 56.

8.11. Indeed, while the Special Rapporteur renounced a specific article on the *exceptio*, he underlined that the principle forms part of the rules that continue to apply as principles of general international law:

⁴³³ Reply, para. 5.72.

⁴³⁴ ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001*, vol. II, part two, p. 72. However, insofar as the ILC made no distinction between “reciprocal” and “non-reciprocal” counter-measures (see *ibid.*, p. 129, para. 5 of the commentaries to Chapter II (Countermeasures)), the former (reciprocal counter-measures) can be seen as a special illustration of the *exceptio* (see also below, para. 8.34).

⁴³⁵ See Reply, paras. 5.72-5.80.

“[Th]e position with the narrower principle recognized by the Court in *Factory at Chorzów (Jurisdiction)* is different. Here the relationship is not between synallagmatic obligations but between the conduct of the two parties: a breach by one party has ‘prevented’ the other from fulfilling the obligation in question. This is but an application of the general principle that a party should not be allowed to rely on the consequences of its own unlawful conduct. In the Special Rapporteur’s view that principle is capable of generating new consequences in the field of State responsibility, consequences which would be preserved by article 38 adopted on first reading.”⁴³⁶

The word “prevented” is placed within inverted commas here since it should not be understood as an absolute impossibility to perform (in which case the hypothesis would be covered by *force majeure*). Instead, as in the *Factory at Chorzów* case, the word “prevented” suggests that performance of the obligation by the party invoking the *exceptio* would be nugatory, since it would not allow it to fulfil the object and purpose of the treaty provision whose application is sought. In the Special Rapporteur’s words:

“In cases where the exception applies, the reason why State A is entitled not to perform is simply that, in the absence of State B’s

⁴³⁶ *Third Report on State Responsibility by James Crawford, Special Rapporteur, fifty-second session of the ILC, 2000*, U.N. Doc. A/CN.4/507/Add.3, para. 366. Draft article 38 provided that: “The rules of customary international law shall continue to govern the legal consequences of an internationally wrongful act of a State not set out in the provisions of this Part.” (*Report of the Commission to the General Assembly on the work of its fifty-first session, Yearbook of the International Law Commission, 1999*, vol II, part two, p. 25, footnote 34). This article eventually became Article 56 of the ILC Articles on State Responsibility.

performance of the related obligation, the time for State A's performance has not yet come"⁴³⁷.

8.12. In consequence, Article 56 of the Articles on State Responsibility (based on draft Article 38) must be understood as preserving the application of the *exceptio*:

“Article 56

Questions of State responsibility not regulated by these articles

“The applicable rules of international law continue to govern questions concerning the responsibility of a State for an internationally wrongful act to the extent that they are not regulated by these articles.”

This article expressly reserves the application of the rules of international law not captured by the ILC Articles. The *exceptio* is such a principle.

(b) The obligations at issue arise out of synallagmatic relations

8.13. In the case now before the Court, the FYROM's multiple and continuous violations of the Interim Accord could have an impact on Greece's own application of the Interim Accord. These violations relate first and above all to the FYROM's abusive use of its claimed name at the international level, including within the international organisations of which it is now a member. These violations were inventoried in Chapter 7, where it is shown that they constitute breaches of Article 5, paragraph 1, and Article 11, paragraph 1.⁴³⁸

8.14. The same holds true for the breaches of Article 7 and especially the continuous use of the Sun of Vergina, despite the clear and unconditional

⁴³⁷ *Third Report on State Responsibility by James Crawford, Special Rapporteur, fifty-second session of the ILC, 2000*, U.N. Doc. A/CN.4/507/Add.3, para. 364.

⁴³⁸ See above, paras. 7.53-7.70, 7.13-7.41.

commitment to the contrary undertaken by the FYROM in 1995. The preparatory drafting of these articles demonstrates how interlinked Article 7 and Article 11 were, in the minds of the drafters.⁴³⁹ The FYROM has admitted in its Reply their reciprocal character; the matter needs no further discussion.⁴⁴⁰

8.15. Faced with these breaches, Greece was entitled to stay performance of its own obligations under Article 11 as long as the FYROM did not comply with its own corresponding commitments.

2. *The application of the exceptio is not dependent upon prior notification*

8.16. It is a characteristic of the *exceptio* that it does not have to be notified or established beforehand. The FYROM tries to minimize and distort this important feature, contending that the *exceptio* “has one great advantage for the Respondent, namely that it is supposedly available on a unilateral basis and without limits being imposed by the prior fulfilment of procedural requirements or conditions.”⁴⁴¹ This misstates both the *exceptio* and the Respondent’s argument: the purpose of the *exceptio* is not to avoid the procedural safeguards, but to ensure a (valid) defence in face of a claim of non-compliance. As a defence, it can only be raised when a party is charged with the violation of an international obligation. Any requirement of a prior notification is then simply inconceivable. The sources the Respondent has relied on in the Counter-Memorial themselves prove it⁴⁴².

8.17. This is further supported by Article 65(5) of the Vienna Convention on the Law of Treaties, which can be applied by analogy, since it is based on the same rationale as the *exceptio*. Article 65(5) provides:

⁴³⁹ See the two versions of New Article 7 in the third draft (c) of the Interim Accord : Counter-Memorial, Annex 148 or Reply, Annex 61.

⁴⁴⁰ Reply, para. 5.82, footnote 376. In respect to the FYROM’s violations of Article 6, see above, paras. 7.73-7.75.

⁴⁴¹ Reply, para. 5.46. See also Reply, para. 5.53.

⁴⁴² Counter-Memorial, paras. 8.22-8.25.

“Without prejudice to article 45, the fact that a State has not previously made the notification prescribed in paragraph 1 shall not prevent it from making such notification in answer to another party claiming performance of the treaty or alleging its violation”.

8.18. The ILC, in its final comments on the Draft Articles on the Law of Treaties, explained the rationale of draft Article 62(5), the immediate ancestor of Article 65(5) of the Vienna Convention on the Law of Treaties (which reproduces it verbatim), in the following terms:

“*Paragraph 5* reserves the right of any party to make the notification provided in paragraph 1 by way of answer to a demand for its performance or to a complaint in regard of its violation, even though it may not previously have initiated the procedure laid down in the article... [A] State might well not have invoked the ground in question before being confronted with a complaint—perhaps even before a tribunal—subject to the provisions of article 42 [art. 45 in the VCLT], it would seem right that a mere failure to have made a prior notification should not prevent a party from making it in answer to a demand for performance of the treaty or to a complaint alleging its violation.”⁴⁴³

8.19. Article 60, paragraph 1, represents the “sword” face of the answer to the violation of a treaty under the law of treaties, whereby a claim is lodged against the other party, whilst Article 65, paragraph 5, is its “shield” face, serving as a defence against a claim by the other party for the performance of the treaty or an allegation of its violation.

⁴⁴³ *Yearbook of the International Law Commission, 1966*, vol. II, p. 263.

8.20. The different roles of the two faces of the *exceptio*-like defence embedded in the Vienna Convention on the Law of Treaties entail logically differences in the process and conditions of their application. One of the most important concerns the time of invoking this possibility as a basis of a claim or as a defence.

8.21. Where the non-performance is invoked as a basis for a *claim* for the termination or suspension, this claim has to be notified to the other party or parties, according to Article 65, paragraph 1, and the procedures provided for in paragraphs 2 and 3 of that article must be followed, before any measure can be taken by the Claimant. Where, on the other hand, the other party's non-performance is invoked as a *defence*, pursuant to Article 65, paragraph 5, against "another party claiming performance of the treaty or alleging its violation", the invocation of the violation is "in answer to" the other party making such a claim or allegation, and chronologically can only take place once the claim or allegation is put forward. When invoked, it permits the partial suspension of a treaty, and certainly the partial staying of related obligations.

8.22. In such circumstances, logically, no prior notification could be required. Indeed, the whole idea of paragraph 5 of Article 65 is to waive the requirement of prior notification of paragraph 1 of the same article, in this situation. Whilst the requirement of a notification (though not "prior") remains, it has necessarily to be adapted to the different context.

8.23. As was presciently foreseen by the ILC in its commentary on the draft provisions of what became Article 65, paragraph 5, "[a] State might well not have invoked the ground in question before being confronted with a complaint—perhaps even before a tribunal". In such a case, which corresponds to Greece's position in the present case, the notification of the invocation of the violation of the treaty and its consecutive suspension, can only, by logical necessity, take place in the first piece of pleading by the party invoking the violation of the treaty,

following the complaint. The same is also true when a State invokes the non-performance of the treaty obligations as a ground for the *exceptio*. In the present case, this has been done in the Counter-Memorial of Greece, which thus fulfils the function of notification pursuant to Article 65, paragraph 5. In point of fact, however, Greece has frequently protested against the repeated violations by the FYROM of the Interim Accord,⁴⁴⁴ as demonstrated in its Counter-Memorial and as will be shown again below in respect to counter-measures.⁴⁴⁵

C. In the Alternative, Greece was Entitled to Resort to Countermeasures

8.24. This section of the Rejoinder has a doubly subsidiary character. In the first place, it is Greece's position that it did not violate Article 11, paragraph 1, of the Interim Accord. Any defence becomes then without object.⁴⁴⁶ Secondly, the *exceptio* is the main defence the Respondent would rely on, if the Court were to find it to be in violation of Article 11, paragraph 1. The countermeasures would play a role only if the arguments based on the *exceptio* were in turn rejected.

8.25. The FYROM's misreading of the Respondent's Counter-Memorial led it to the erroneous conclusion that "the Respondent recognizes that it cannot meet either set of conditions, and therefore has not sought to invoke Article 60 or the law on countermeasures".⁴⁴⁷ Quite the opposite, the Respondent had underlined that the conditions for both defences are met.⁴⁴⁸ However, the FYROM's rejection of the *exceptio* as an established principle leads Greece to demonstrate

⁴⁴⁴ See e.g. Counter-Memorial, para. 8.27; see also above, paras. 7.43-7.49. See in particular Verbal Note dated 15 May 2008 from the Hellenic Republic Liaison Office in Skopje to the Ministry of Foreign Affairs of the FYROM: Memorial Annex 51, and Letter dated 23 May 2008 from the Permanent Representative of Greece to the United Nations, John Mourikis, to the United Nations Secretary-General, UN doc. S/2008/346 (28 May 2008): Memorial, Annex 43.

⁴⁴⁵ See paras. 8.24-8.40.

⁴⁴⁶ See above, paras. 8.1-8.3.

⁴⁴⁷ Reply, para. 5.80.

⁴⁴⁸ See above, paras. 8.4- 8.5.

more fully that the conditions for resorting to countermeasures have also been met.

8.26. Countermeasures are admitted as a circumstance precluding wrongfulness in the law of international responsibility. Article 22 of the ILC Articles on State Responsibility defines them as follows:

“Countermeasures in respect of an internationally wrongful act

“The wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of part three.”

8.27. It follows that, if Greece were held to be in violation of Article 11, paragraph 1 notwithstanding the safeguard clause, the wrongfulness of its conduct would, nevertheless, be precluded as it constitutes a countermeasure and, as such, is lawful, provided that the conditions for recourse to the countermeasure are met.

8.28. These conditions were set out by the ILC in Articles 49 to 53 of the Articles on State Responsibility. Among these provisions, three are especially relevant for the case now before the Court: Articles 49, 51 and 52. These articles require that countermeasures be “taken with a view to procuring cessation of and reparation for the internationally wrongful act...”⁴⁴⁹; that they be “temporary in character and... as far as possible reversible in their effects in terms of future legal relations between the two States (arts. 49, paras. 2 and 3; 53).”⁴⁵⁰ “Countermeasures must be proportionate” (art. 51).⁴⁵¹ In respect of the procedural conditions provided for in Article 52, it appears that “[c]ountermeasures must be

⁴⁴⁹ ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001*, vol. II, part two, p. 129, para. 6.

⁴⁵⁰ *Ibid.*

⁴⁵¹ *Ibid.*

preceded by a demand by the injured State that the responsible State comply with its obligations under Part Two, must be accompanied by an offer to negotiate, and must be suspended if the internationally wrongful act has ceased and the dispute is “submitted in good faith to a court or tribunal with the authority to make decisions binding on the parties” (art. 52, para. 3).⁴⁵²

8.29. In the hypothetical scenario in which the Court were to decide that Greece had objected in Bucharest to the FYROM’s membership in NATO and had done so in violation of its obligation under Article 11, paragraph 1, of the Interim Accord, Greece’s supposed objection would fulfil the requirements for countermeasures. Faced with major and repeated violations of the Interim Accord, but still committed to its application, Greece would have been seeking to persuade the FYROM to respect its commitments under the Interim Accord. The realization of the object and purpose of the Interim Accord lies at the heart of Greece’s concerns. This goal of bringing the FYROM back to its commitments and in particular the settlement of the dispute over the name is of the utmost importance to Greece. Many statements by the Respondent before and in the aftermath of the Bucharest Summit emphasized that the goal of bringing the FYROM back to its commitment and in particular settlement of the name issue is of primary importance.⁴⁵³

8.30. That possibility was already foreseen by Article 11, paragraph 1, by means of the safeguard clause. For that reason, Greece maintains that it has not violated that Article. However, should the Court consider otherwise, it will recognize that the FYROM’s attitude in negotiations left it with no choice but to exert pressure on the FYROM in order to induce it to cease its violations and to comply with its treaty obligations. Greece could not otherwise obtain the implementation of the Accord, in particular one of the core provisions: the one providing for negotiations

⁴⁵² *Ibid.*, para. 7.

⁴⁵³ See above, para. 7.66.

between the Parties in order to reach agreement on the name. Through the “dual formula”, the FYROM deprives the negotiations of their object, and through its strategy of securing international recognition under the “constitutional name”, which continues unabated, the FYROM is seeking to present Greece with a *fait accompli*.⁴⁵⁴

8.31. This policy of the FYROM led Greece not only to ascertain that the principle of good neighbourliness could not be satisfied—this is a matter relevant for the requirements for admission and does not fall as such under the countermeasures principle—but also that the negotiation process was progressively becoming meaningless. In effect, Greece was facing the evanescence of a negotiation process to which it was most committed and in respect of which the FYROM had assumed obligations that it consistently tried to erode. Statements of Greek officials underline these legitimate concerns.

8.32. According to Prime Minister Karamanlis:

“Efforts to reach a mutually acceptable solution on the name issue as mandated by the UN Security Council have proven fruitless so far, due to Skopje’s intransigence and lack of political will to arrive at an outcome which could be a win-win for all.

As we meet this week in Bucharest, hopes to redress this situation and arrive at a three nations invitation consensus, seem really limited. If this proves finally to be the case, I sincerely believe that negotiations under UN auspices continue after Bucharest and the NATO’s Open Door policy remains meaningfully open for any

⁴⁵⁴ See above, para. 7.62.

European aspirant which really shares our values, principles and common objectives.”⁴⁵⁵

In the aftermath of the Bucharest Summit, Greek officials, again cited by the Applicant, made clear that to resume good-faith negotiations was the goal they were pursuing:

“Our readiness to immediately resume negotiations. The UN process is a given. It has been mandated by the Security Council resolutions. It is this process that will lead to a solution. All that is needed is for the other side to come to the table in good faith and with a willingness to compromise.”⁴⁵⁶

8.33. Greece’s attitude during the preparation of the Bucharest Summit, the stated and clear purpose of which was to convince the FYROM to resume good faith negotiations, falls strictly within the ambit of countermeasures, as required by Article 49 of the ILC Articles.

8.34. Furthermore, Article 51 of the ILC Articles imposes proportionality as a condition for the lawfulness of a countermeasure. As the ILC explained in respect of “reciprocal countermeasures”,⁴⁵⁷ the principle of proportionality is presumed to be fulfilled in presence of such countermeasures:

⁴⁵⁵ Letter dated 31 March 2008 from the Prime Minister of Greece, Kostas Karamanlis, as sent to all NATO Member Countries (31 March 2008): Reply, Annex 6.

⁴⁵⁶ Embassy of the Respondent in Washington, DC, *FYROM: Article by FM spokesman Mr G. Koumoutsakos in the Athens daily Kathimerini, entitled ‘Bucharest: The Day After’* (9 April 2008): Reply, Annex 145.

⁴⁵⁷ “That term refers to countermeasures which involve suspension of performance of obligations towards the responsible State ‘if such obligations correspond to, or are directly connected with, the obligation breached’. There is no requirement that States taking countermeasures should be limited to suspension of performance of the same or a closely related obligation.” (ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001*, vol. II, part two, p. 129, para. 5 of the Commentaries to Chapter II (Countermeasures), footnotes omitted.

“Countermeasures are more likely to satisfy the requirements of necessity and proportionality if they are taken in relation to the same or a closely related obligation, as in the *Air Service Agreement* arbitration.”⁴⁵⁸

8.35. In the present instance, an objection by Greece would have been a proportional counter-measure. The interrelation between the FYROM’s insistence on a non-agreed name, the use of the Sun of Vergina and the FYROM’s admission in international institutions is beyond peradventure of doubt.⁴⁵⁹

8.36. The FYROM’s other violations of the Interim Accord show its failure to fulfil the requirement of good-neighbourliness. Respect for this principle is at the heart of the Interim Accord, as its Preamble attests: “Desiring to develop their mutual relations and to lay firm foundations for a climate of peaceful relations and understanding”. Any objection by Greece would have fulfilled the requirement of proportionality, since it does not substantially affect the rights of the Applicant. It does not change its position in relation to NATO, since it remains an aspiring State, and the FYROM could and no doubt would become a member once the requirement in this regard is fulfilled.

8.37. Finally, Article 52, paragraph 1, of the ILC Articles requires a series of procedural steps to be followed when countermeasures are taken. Its scope was detailed by the Commentaries:

“The first requirement, set out in *paragraph 1* (a), is that the injured State must call on the responsible State to fulfil its obligations of cessation and reparation before any resort to countermeasures. This requirement (sometimes referred to as

⁴⁵⁸ ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook 2001*, vol. II, part two, p. 129, para. 5 of the Commentaries to Chapter II (Countermeasures), footnote omitted.

⁴⁵⁹ See above, paras. 8.13-8.14.

“*sommation*”) was stressed both by the tribunal in the *Air Service Agreement* arbitration and by ICJ in the *Gabčíkovo-Nagymaros Project* case. It also appears to reflect a general practice.”⁴⁶⁰

8.38. As the ILC explained, it is not necessary for the Respondent to formally notify the Applicant of its intention to resort to countermeasures:

“In practice, however, there are usually quite extensive and detailed negotiations over a dispute before the point is reached where some countermeasures are contemplated. In such cases the injured State will already have notified the responsible State of its claim in accordance with article 43, and it will not have to do it again in order to comply with paragraph 1 (a).”⁴⁶¹

In the present case, the Parties have been engaged in a negotiation process since the signature of the Interim Accord. No formalistic condition of *sommation* applies in this case.

8.39. Greece notified, *urbi et orbi*, its position in respect to the FYROM’s admission. The number of statements on which the Applicant relies,⁴⁶² although their meaning is distorted, proves this. Before Bucharest, it was clear that the FYROM was actually stalling rather than pursuing in good faith the long-standing negotiations held under the auspices of the Secretary-General of the United Nations in application of resolution 817 (1993) of the Security Council and of the Interim Accord. In spite of the FYROM’s attempt to erode the obligation of negotiations, it cannot be said that Greece sought to exploit this intransigent

⁴⁶⁰ ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001*, vol. II, part two, p. 136, para. 3 of the Commentaries to Article 52, footnotes omitted.

⁴⁶¹ ILC, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Yearbook of the International Law Commission, 2001*, vol. II, part two, p. 136, para. 4 of the Commentaries to Article 52, footnotes omitted.

⁴⁶² Reply, para. 2.11.

position in the wake of the Summit. On the contrary, it had made known its dissatisfaction at least since 2004⁴⁶³, and reiterated it since then. It continued negotiations until the last minute, in the hope that the FYROM would relinquish its so-called “dual formula” that was depriving the negotiations of their object.⁴⁶⁴

8.40. Greece has stated in its Counter-Memorial that it “remains fully attached to the Interim Accord and, far from willing to suspend it, it intends to have it fully respected by the FYROM”.⁴⁶⁵ The Counter-Memorial also refuted the allegation by the FYROM that Greece has violated its conditional obligation under Article 11, paragraph 1, of the Interim Accord.⁴⁶⁶ Greece stands by these affirmations. All it is endeavouring to demonstrate here is that, even if, *arguendo*, the Court were to find that Greece has not complied with its conditional obligation under Article 11, paragraph 1, of the Interim Accord, Greece would still have had the right to stay the performance of this obligation on the basis of the *exceptio* or on the ground of countermeasures; and that the conditions for their invocation by Greece are fully satisfied in the present case.

D. Conclusion

8.41. By way of conclusion, it can be noted that:

- (i) Greece’s attitude during or around the Bucharest Summit does not amount to an objection in violation of Article 11, paragraph 1, of the Interim Accord. Therefore, Greece cannot be found to have violated that provision and the present chapter, presenting the defences available to Greece, is of a subsidiary character and only applies if the Court were to reject Greece’s main submission.

⁴⁶³ Reply, Annex 91.

⁴⁶⁴ Above, paras. 7.59 -7.61.

⁴⁶⁵ Counter-Memorial, para. 8.2.

⁴⁶⁶ See Counter-Memorial, Chapter 7.

- (ii) The *exceptio non adimpleti contractus* is the first available defence. This is a principle pertaining to the law of State responsibility that would allow Greece to stay performance of its obligation not to object to the FYROM's application or membership in NATO insofar and as long as the FYROM does not respect its own obligations, reciprocal to Greece's commitment. Being a defence, the *exceptio* does not require any prior notification of exercise.
- (iii) The FYROM has violated its obligation not to be referred to in international institutions otherwise than under the provisional name, to engage in good-faith negotiations over the name dispute or, *inter alia*, not to use the Sun of Vergina symbol. The conditions for Greece to invoke the application of the *exceptio* are thus met.
- (iv) In the alternative, Greece could rely on the law applicable to counter-measures. The substantial and procedural requirements for the exercise of countermeasures are met in the present case.
- (v) Despite the FYROM's violations, Greece remains committed to the Interim Accord and its goal has always been to ensure the realization of its object and purpose, namely the normalization of the relations between the Parties, which entails the settlement of the name dispute.

CHAPTER 9: REMEDIES

A. Introduction

9.1. In the Counter-Memorial Greece showed as follows:

- The Court has no jurisdiction to decide on the merits of the case brought by the FYROM and the FYROM's claim is inadmissible;
- Even if the Court has jurisdiction, *quod non*, Greece has not breached its obligation under Article 11 of the Interim Accord;
- Even if Greece had breached this obligation, *quod non*, it would have been entitled to do this, given the numerous material breaches of the Interim Accord attributable to the FYROM.

In the present Rejoinder, Greece has reiterated these points and addressed the contentions contained in the FYROM's Reply.

9.2. The FYROM requests in its Reply the same remedies it did in the Memorial,⁴⁶⁷ and adds a request that the Court "reject the Respondent's objections as to the jurisdiction of the Court and the admissibility of the Applicant's claims".⁴⁶⁸ The FYROM's Submissions in the Reply thus read as follows:

"[The FYROM] Requests the Court:

to reject the Respondent's objections as to the jurisdiction of the Court and the admissibility of the Applicant's claims;

to adjudge and declare that the Respondent, through its State organs and agents, has violated its obligations under Article 11, paragraph 1 of the Interim Accord; and

⁴⁶⁷ See Reply, Submissions (ii), (iii); Memorial, Submissions (i), (ii).

⁴⁶⁸ Reply, Submissions (i).

to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1 of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant’s membership of the North Atlantic Treaty Organization and/or of any other ‘international, multilateral and regional organizations and institutions’ of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organization or institution by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993).”

9.3. In this Chapter Greece will discuss successively each of these requests, addressing in particular the FYROM’s treatment of them in the Reply. Greece has addressed in Chapter 4 the “Reservation of Rights”, by which the FYROM purported to reserve “its right ‘to modify and extend the terms of this Application, as well as the grounds involved.’”⁴⁶⁹ The FYROM when reiterating its requests in its Reply refers to items (ii) and (iii) as the “First Request” and the “Second Request” (i.e., retaining the references from the Memorial), and Greece will refer to them in the same way.

B. The FYROM’s Request to Reject Objections to Jurisdiction and Admissibility

9.4. Greece has set out objections to jurisdiction and admissibility in the Counter-Memorial,⁴⁷⁰ and has reiterated these in the present Rejoinder.⁴⁷¹ Though, in the interests of the expeditiousness of these proceedings, these objections are not preliminary objections in a separate phase, they nevertheless are objections firmly maintained. The FYROM’s Reply, in its sections on jurisdiction

⁴⁶⁹ Memorial, para. 6.26, quoting Application of 13 November 2008, para. 25; cited at Reply, para. 6.25. See above paras. 4.17-4.22.

⁴⁷⁰ Counter-Memorial, Chapter 6, pp. 89-123.

⁴⁷¹ See above Chapters 3 and 4.

and admissibility,⁴⁷² for the reasons set out above, is not convincing. It is respectfully submitted that the Court should determine that it does not have jurisdiction to decide on the merits of the FYROM's claim.

C. The FYROM's First Request

9.5. As before, the FYROM's request that the Court "adjudge and declare that the Respondent, through its State organs and agents", has acted illegally⁴⁷³ does not call for extensive rebuttal. Greece explained in the Counter-Memorial that a hypothetical favourable finding for the FYROM could have no effect at all, and therefore would be incompatible with the exclusively judicial function of the Court, since it is only NATO, which is absent from this proceeding, which could give effect to the Court's decision.⁴⁷⁴ In reply, the FYROM merely repeats its assertion that the relief it requests concerns only Greece and not NATO.⁴⁷⁵ Greece has addressed this assertion already.⁴⁷⁶

9.6. Even if the Court were to find that it has jurisdiction to decide on the merits of the FYROM's case and that Greece had breached Article 11, paragraph 1 of the Interim Accord, it would be necessary to address the FYROM's numerous material breaches. The FYROM in the Reply however denies that its claim in any way entails consideration of the FYROM's own conduct under the Interim Accord. The crux of the FYROM's denial is to repeat the contention that Greece's rights under the Interim Accord are qualified by various formal requirements—i.e., that Greece, now the Respondent in proceedings instituted by the FYROM, cannot refer to misconduct of the FYROM unless Greece had made note of it before. The FYROM says as follows:

⁴⁷² Reply, Chapter III, pp. 65-79.

⁴⁷³ Reply, para. 6.4.

⁴⁷⁴ Counter-Memorial, paras. 9.4-9.5, citing *Northern Cameroons, Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 15, 37; *Legality of Use of Force (Serbia and Montenegro v. Belgium), Preliminary Objections, Judgment, I.C.J. Reports 2004*, pp. 295-296, para. 38.

⁴⁷⁵ Reply, para. 6.8.

⁴⁷⁶ See above, paras. 3.34-3.41.

“The second reason advanced by the Respondent is that ‘it would be unjust for the Court to make the declaration requested by’ the Applicant ‘without, at the same time, taking account’ of the Applicant’s own conduct. This is wholly without merit. Prior to the Respondent’s objection to the Applicant’s admission to NATO, the Respondent could have formally asserted in writing to the Applicant—in accordance with established procedures—that the Applicant was in material breach of the Interim Accord; it did not do so. The Respondent could have brought proceedings before the Court in respect of those assertions; it did not do so. At no point prior to April 2008 did the Respondent make any such formal, written allegation to the Applicant, as its Counter-Memorial now confirms, and it brought no proceedings before this Court, or engaged in any other means of settlement available to it. It did not invoke any rights or procedures available under the 1969 Vienna Convention (including Articles 60 and 65) or invoke the right to bring lawful counter-measures under the law of state responsibility.”⁴⁷⁷

The point has already been made in Chapter 8 above that the invocation of a defence under Article 65 of the Vienna Convention on the Law of Treaties is not constrained by lack of prior notification of withdrawal from or suspension of the operation of a treaty.⁴⁷⁸ Nor does the doctrine of the *exceptio non adimpleti contractus* require it. The FYROM, while denying that Greece ever made note of its extensive and on-going violations of the Interim Accord, rests its request for a remedy on the unfounded theory that Greece has surrendered any right to make such observations. The FYROM says nothing as to the basic principle that “the Court possesses an inherent jurisdiction enabling it to take such action as may be

⁴⁷⁷ Reply, para 6.9, quoting Counter-Memorial, para. 9.6.

⁴⁷⁸ See above, paras. 8.17-8.23.

required... to provide for the orderly settlement of *all matters* in dispute...”⁴⁷⁹ The FYROM’s breaches are “matters in dispute”; and Greece repeats the observation that they cannot be ignored.

D. The FYROM’s Second Request

9.7. The FYROM’s Second Request is that the Court “order that the Respondent take all necessary steps to restore the Applicant to the *status quo ante* and to refrain from any action that violates its obligation under Article 11(1) in the future.”⁴⁸⁰ The FYROM is clear that this relief is linked to NATO:

“The Applicant seeks an Order in this form to ensure that the Court’s judgment is not merely retrospective but that it will restore the Applicant to the *status quo ante* and prevent the Respondent in the future from acting incompatibly or inconsistently with its obligations under Article 11(1), particularly in relation to the Applicant’s continuing desire to receive an invitation to join NATO.”⁴⁸¹

9.8. The prospective element of the Second Request (“in the future”) is also linked “to other ongoing or future applications on the part of the Applicant for membership of ‘any other international, multilateral and regional organizations and institutions’, including any procedures related to the Applicant’s application for membership of the European Union.”⁴⁸²

9.9. An initial difficulty with the FYROM’s second request is its reference to “necessary steps to restore the Applicant to the *status quo ante*.” The events

⁴⁷⁹ *Nuclear Tests (Australia v. France)*, Judgment, I.C.J. Reports 1974, p. 253, 259, para. 23; *Nuclear Tests (New Zealand v. France)*, Judgment, I.C.J. Reports 1974, p. 457, 463, para. 23 (emphasis added).

⁴⁸⁰ Reply, para. 6.18.

⁴⁸¹ Memorial, para. 6.19.

⁴⁸² Memorial, para. 6.21 (internal quotation marks omitted).

which took place in respect of the FYROM's candidacy in NATO at the Bucharest Summit of 3 April 2008 were the result of a NATO decision. It is beyond the power and authority of Greece or of the Court to challenge or to change a NATO decision. But, even if this limitation did not exist, it is unclear what the FYROM means when it says that a new situation came into being as at 3 April 2008, which, unless reversed (i.e., unless the *status quo* is restored), will cause the FYROM injury. The FYROM's candidacy never entailed a right to be admitted under the rules of NATO. As for Article 11, paragraph 1 of the Interim Accord, this did not give, and could not have given, the FYROM a right to be admitted. It is what it always was, a serious candidate for membership under the MAP. Whether it will actually be admitted, as it always was, remains for NATO to decide. It would be meaningless for the Court to give a direction to "restore" a *status quo* which never changed.

9.10. The FYROM contends that its submissions make a fairly standard request for an instruction of non-repetition, "consistent with the approach reflected in Article 30 of the ILC Articles [on the Responsibility of States for Internationally Wrongful Acts]".⁴⁸³ As an initial observation, it is clear that the ILC viewed a request for non-repetition as having a "rather exceptional character... indicated by the words 'if the circumstances so require'".⁴⁸⁴ The ILC further said that "[m]uch will depend on the circumstances of the case, including the nature of the obligation and of the [alleged] breach."⁴⁸⁵ It added:

"The obligation of the responsible State with respect to assurances and guarantees of non-repetition is formulated in flexible terms in order to prevent the kinds of abusive or excessive claims which

⁴⁸³ See Reply, para. 6.12; Memorial, para. 6.21.

⁴⁸⁴ ILC, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, para. 13 of the Commentaries to Art 30, *Report of the International Law Commission on the work of its Fifty-third session, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10)*, p. 222.

⁴⁸⁵ *Ibid.*

characterized some demands for assurances and guarantees by States in the past.”⁴⁸⁶

The particular difficulty with the FYROM’s request in the present case is that it would enjoin future conduct in respect of different, possibly very different, factual situations and in respect of other institutions with their own eligibility rules.

9.11. As to possible future factual situations, these are inseparable from the proper application of the safeguard clause. Greece’s right to object is preserved provided factors are in evidence showing that the safeguard clause condition exists. Namely, when the FYROM “is to be referred to in” an organization differently than as stipulated, Greece may object to that State’s membership. Greece has explained the significance of this when Article 11, paragraph 1 is applied.⁴⁸⁷ It is one thing to request a remedy for prospective future breaches of a constant obligation; it is another to assume the obligation to be constant, when under the terms of the relevant agreement, the obligation is conditional on certain mutable facts.

9.12. As Article 11, paragraph 1 potentially concerns a diversity of factual situations, so too does it potentially concern more than one set of conventional obligations. Greece has explained the relation between Article 11, paragraph 1 and Article 22 of the Interim Accord.⁴⁸⁸ Article 22 confirms that Article 11, paragraph 1 “does not infringe on the rights and duties resulting from bilateral and multilateral agreements already in force that the Parties have concluded with other States or international organizations.” If, hypothetically, there had been an objection with respect to the FYROM’s candidacy in NATO under the North Atlantic Treaty, then whether the objection amounted to a breach of Article 11, paragraph 1 could not be determined without considering the relevant “rights and

⁴⁸⁶ *Ibid.*

⁴⁸⁷ Paras. 6.25-6.40, above.

⁴⁸⁸ Paras. 5.4-5.18, above.

duties” in respect of that organization. The FYROM’s requested relief, however, would explicitly extend an injunction against objections with respect to the FYROM’s present or future candidacies in other organizations—the European Union “most notably”.⁴⁸⁹ The rights of the FYROM under the Interim Accord, which the FYROM says a forward reaching remedy “is absolutely necessary to safeguard”,⁴⁹⁰ are not rights to override the membership processes of the European Union or, for that matter, any other organization. A hypothetical future objection in respect of the FYROM’s candidacy in other organizations operating under their own constitutive instruments is certainly not an act continuing from a past hypothetical objection to its candidacy in NATO. This is not a situation falling within the sense of Article 30, paragraph (a) of the ILC Articles (dealing with a continuing wrongful act). Nor is it a situation in which circumstances are suited to a guarantee of non-repetition (Article 30, paragraph (b)): the factual and legal complexion of the posited future breach differs so much from that of the posited present breach that it would be wrong for the Court to subject the two to the same judgment.⁴⁹¹

9.13. Faced with the difficulties inherent in its request for remedies as originally pleaded, the FYROM seeks to shift the focus of its claim. The FYROM insists that “[n]one of the arguments advanced by the Respondent in its Counter-Memorial have caused the Applicant to seek to modify or revisit its prior

⁴⁸⁹ Reply, para. 6.20.

⁴⁹⁰ *Ibid.*

⁴⁹¹ The material difference remains, even where two organizations have set down cognate membership criteria: the interpretation of the criteria and the mechanisms for their application are unlikely to be identical in any two organizations. Greece recalls that the General Affairs Council of the EU said, *inter alia*, as follows in 2009: “33. Maintaining good neighbourly relations, including a negotiated and mutually acceptable solution on the name issue, under the auspices of the UN, remains essential...” (Conclusions of the 2984th General Affairs Council meeting on enlargement/stabilization and association process, Brussels, 7 and 8 December 2009, endorsed by the European Council, Conclusions, 10/11 December 2009, para. 39: Counter-Memorial, Annex 14).

submissions in any way”.⁴⁹² However, the FYROM in the Reply has expressly sought to locate its claim outside NATO. The artificiality of this tactic is obvious, for, throughout the Reply, the FYROM pinpoints the act of which it complains in NATO’s decision, on 3 April 2008, to delay inviting the FYROM to accede to membership. Greece in the present Rejoinder has addressed the connection between the FYROM’s claim and NATO.⁴⁹³

9.14. That the events of 3 April 2008 at the NATO Bucharest Summit are the focal point of the FYROM’s claim is evident. The FYROM stated in its Memorial that it “is concerned only with the international responsibility of the Respondent, arising out of the actions attributable to it in relation to its objection to the Applicant’s membership of NATO.”⁴⁹⁴ The FYROM could not have been more clear: its claim “is concerned *only* with” legal consequences which the FYROM believes resulted from alleged actions of Greece in the NATO membership process. The FYROM in the Reply only confirms this by quoting a passage of the *NATO Handbook* saying that each member State retains “complete sovereignty and responsibility for its own decisions.”⁴⁹⁵ From this statement, the FYROM would draw sweeping and unsupported conclusions as to the legal responsibility of NATO member States for NATO decision-making—conclusions the FYROM needs to reach, only because its claim has always concerned the events at the Bucharest Summit.

9.15. It is beyond the Court’s judicial function to adopt a remedy entirely dependent on NATO, an entity not party to the proceedings. In any case, it would serve no purpose for the Court to say simply that the Interim Accord must be

⁴⁹² Reply, para. 6.3.

⁴⁹³ See paras. 3.25-3.41, 6.22.

⁴⁹⁴ Memorial, para. 6.6.

⁴⁹⁵ *NATO Handbook*, Public Diplomacy Division, 2006, pp. 33-41, 183-190: Counter-Memorial, Annex 22, page 35, quoted at Reply, para. 6.8.

complied with. The obligation to observe the Interim Accord is obvious, and Greece does not contest it.

E. Conclusion

9.16. As summarized above, as to remedies it may be concluded as follows:

- (i) The FYROM has failed to address Greece's objections as to jurisdiction and admissibility, which should be sustained;
- (ii) The FYROM's First Request would be necessarily without effect and thus would be incompatible with the judicial function of the Court;
- (iii) The FYROM's request for a return to the *status quo ante* is meaningless, for the FYROM's situation before the Bucharest Summit was the same as it was after;
- (iv) The FYROM fails to show why it would be appropriate to grant relief in respect of future membership applications involving different facts and different rights and duties;
- (v) The FYROM's Second Request is an appeal against a decision of NATO and, as such, is outside the scope of the Court's jurisdiction and inadmissible in any event;
- (vi) In the event that the Court were to decide that it has jurisdiction to address the merits of this case, Greece has shown that it never objected to the FYROM's membership in NATO in the sense of the obligation contained in Article 11, paragraph 1 of the Interim Accord;
- (vii) Further, the FYROM's violations of the Interim Accord would have entitled Greece to object; and

- (viii) The FYROM's assertion that Greece was entitled to object only upon prior notification of the FYROM's violations is without merit.

CHAPTER 10: SUMMARY

Character of the Interim Accord

10.1. The Interim Accord is a synallagmatic agreement, representing a comprehensive legal transaction or exchange of rights and obligations on a *quid pro quo* basis. As a result, these rights and obligations are interdependent and share a community of destiny.

10.2. This reciprocal and interdependent character applies particularly to the obligation of Greece under Article 11, paragraph 1, “not to object” to the admission of the FYROM to international organizations and institutions. This constitutes a significant commitment on the part of Greece in the comprehensive *quid pro quo*. This obligation cannot be treated in isolation from its immediate context, *i.e.*, the other provisions of the Interim Accord, and the state of compliance by the FYROM with its obligations under these provisions.

10.3. The Interim Accord also functions in part as a provisional protective framework designed to maintain the name in the state in which it was at the time of the conclusion of the agreement and until it is resolved by an agreement between the Parties on a mutually acceptable name. Any violation of this arrangement, whether directly or indirectly, by undermining the possibilities of achieving such a result, would frustrate the whole legal transaction, sanctioned by the Interim Accord, and open the way for immediate action by the aggrieved party.

Jurisdiction of the Court and admissibility of the claim

10.4. The dispute concerns the difference referred to in Interim Accord Article 5(1) and, consequently, is outside the jurisdiction of the Court by operation of

Interim Accord Article 21(2). The dispute is also excluded from the Court's jurisdiction by operation of Interim Accord Article 22.

10.5. The dispute concerns conduct attributable to NATO yet neither NATO nor its members have consented to the Court's jurisdiction.

10.6. Grounds of judicial propriety should lead the Court to decline the exercise of its jurisdiction in the present case, should it find that it has any:

(a) The first of these grounds is related to the fact that the judgment of the Court cannot have any effective application insofar as the Applicant's admission to NATO is concerned.

(b) Inasmuch as its membership in other international institutions would be concerned, this request would simply be inadmissible. This is because a Judgment in favour of the FYROM would judicially seal a unilateral practice of imposing a disputed name and would thus run contrary to Security Council resolutions 817 (1993) and 845 (1993), requiring the Parties to reach a negotiated solution on this difference.

Interpretation and application of Article 11

10.7. Article 11, paragraph 1 does not, and could not, change existing treaty relations of Greece with third parties, a point confirmed by Article 22 of the Interim Accord, which applies to all provisions of the Interim Accord; Greece's rights and obligations as a member State of NATO thus are not affected by Article 11, paragraph 1.

10.8. The obligation "not to object" is only as extensive as the plain language of Article 11, paragraph 1, would indicate. It is not an obligation to secure a successful result for the FYROM's candidacies in international organizations, nor

is it an obligation not to abstain or not to withhold support in any consensus process.

10.9. The second clause of Article 11, paragraph 1, the safeguard clause, balances Greece's obligation with a continuing right to object, in circumstances where the FYROM is to be referred to in an international organization differently than as stipulated under SC res. 817 (1993). This is a conditional right, and, as such, Greece has a margin of appreciation to determine whether the condition exists.

10.10. The decision of NATO at the Bucharest Summit on 3 April 2008 to defer the FYROM's candidacy is the focal point of the FYROM's claim. Greece is not responsible for the decision of NATO, which was a collective one, as recognized by the President of the FYROM, and as reflected by the FYROM's later statement that it sees NATO's principles and procedures as the obstacle to its admission.⁴⁹⁶ NATO clearly identified as a criterion for the FYROM's admission that the difference concerning the FYROM's name be settled. The reason that the FYROM was not invited to accede to NATO was that the difference had not been settled and, accordingly, NATO's member States as a whole reached a consensus to defer consideration of the candidacy.

10.11. The condition triggering the safeguard clause was met at all material times. As the safeguard clause requires no formal declaration by Greece, it is irrelevant whether Greece earlier had invoked the FYROM's failures of performance or the other factors indicating that the condition of the safeguard clause had been met. Nevertheless, in fact, Greece had communicated its concerns repeatedly before 3 April 2008, and continued to do so afterwards.

⁴⁹⁶ See above, para. 6.23 and footnote 253.

10.12. But the safeguard clause is relevant only in the alternative: Greece in fact never objected to the FYROM's NATO candidacy in the sense contained within the first clause of Article 11, paragraph 1 of the Interim Accord.

The FYROM's other breaches of the Interim Accord and Greece's defences

10.13. Article 11, paragraph 1, of the Interim Accord, in accordance with Security Council resolutions 817 (1993), imposes upon the Applicant an obligation to use, at the international level, the provisional name.

10.14. The Applicant has violated and continues to violate Article 11, paragraph 1, by the repeated use of its claimed "constitutional" name in international forums, and the correlative attempt to obtain international recognition under that name.

10.15. Greece asserted its treaty rights and opposed, through numerous protests, the Applicant's breaches. In particular:

- (a) The FYROM is in breach of Article 5, paragraph 1 of the Interim Accord by reason of its intransigent and procrastinating practice during and between the negotiations.
- (b) The FYROM has attempted, unilaterally, to transform the subject matter of the negotiations with Greece, from finding a mutually acceptable name for the FYROM for general international and domestic use (as the parties agreed to do) to restricting its final designation to bilateral relations with Greece alone.
- (c) Taken in conjunction with its attempts to impose a general international use of the disputed name, the FYROM's attempted transformation of the subject matter of the negotiations constitutes an attempt to deprive Article 5, paragraph 1, and more largely the Interim Accord, of one of its crucial objects and purposes.
- (d) Other acts and omissions of the FYROM also involve violations of Article 6, paragraph 2, and Article 7, paragraphs 1, 2 and 3 of the Interim Accord.

10.16. For its part, and independently of the safeguard clause, Greece can rely on several defences to the allegation of breach of Article 11, paragraph 1. In particular:

- (a) The *exceptio non adimpleti contractus* is a principle pertaining to the law of State responsibility that would allow Greece to stay performance of its obligation not to object to the FYROM's application or membership in NATO insofar and as long as the FYROM does not respect its own obligations, reciprocal to Greece's commitment. Being a defence, the *exceptio* does not require any prior notification of exercise.
- (b) The FYROM has violated its obligation not to be referred to in international institutions otherwise than under the provisional name, to engage in good-faith negotiations over the name dispute and, *inter alia*, not to use the Sun of Vergina symbol. The conditions for Greece to invoke the application of the *exceptio* thus are met.
- (c) In the further alternative, Greece could rely on the law applicable to counter-measures. The substantive and procedural requirements for the exercise of countermeasures are met in the present case.
- (d) Despite the FYROM's violations, Greece remains committed to the Interim Accord and its goal has always been to ensure the realization of its object and purpose, namely the normalization of the relations between the Parties, which entails the settlement of the name dispute.

Remedies and the FYROM's "reservation of rights"

10.17. As to remedies:

- (a) The FYROM has failed to address Greece's objections as to jurisdiction and admissibility, which should be sustained.
- (b) The FYROM's First Request, for a declaration of breach of Article 11, paragraph 1 of the Accord, would be without effect and thus would be incompatible with the Court's judicial function.
- (c) The FYROM's request for a return to the *status quo ante* is meaningless, for the FYROM's situation before the Bucharest Summit was the same as it was afterwards.
- (d) As to the FYROM's Second Request, concerning future consideration of its application for NATO membership, the FYROM fails to show why it would be appropriate to grant relief in respect of future membership applications involving different facts and different rights and duties. The FYROM's Second Request is an appeal against a decision of NATO and, as such, is outside the scope of the Court's jurisdiction and is inadmissible in any event.
- (e) In the event that the Court were to decide that it holds jurisdiction to address the merits of this case, Greece has shown that it never objected to the FYROM's membership in NATO in the sense of the obligation contained in Article 11, paragraph 1 of the Interim Accord.
- (f) The FYROM's violations of the Interim Accord would have entitled Greece to object, if Greece had so chosen. In particular,

the FYROM's assertion that Greece was entitled to object only upon prior notification of the FYROM's violations is without merit.

10.18. Likewise, the FYROM's purported "reservation of rights" is without object, and in any event inadmissible. It is hypothetical and concerns future conduct on which the Court cannot rule.

SUBMISSIONS

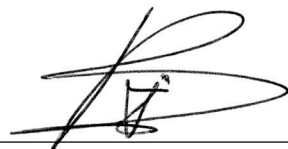
On the basis of the preceding evidence and legal arguments, the Respondent, the Hellenic Republic, requests the Court to adjudge and declare:

- (i) That the case brought by the FYROM before the Court does not fall within the jurisdiction of the Court and that the FYROM's claims are inadmissible;
- (ii) In the event that the Court finds that it has jurisdiction and that the claims are admissible, that the FYROM's claims are unfounded.

27 October 2010



Georges Savvaides



Maria Telalian

Agents of the Hellenic Republic

CERTIFICATION

We certify that the annexes are true copies of the documents referred to and that the translations provided are accurate.

A handwritten signature in black ink, consisting of a long horizontal line with a diagonal stroke crossing it from the bottom left, and a wavy line below it.

Georges Savvaides

A handwritten signature in black ink, featuring a large loop at the top, a vertical stroke, and a horizontal stroke at the bottom.

Maria Telalian

Agents of the Hellenic Republic

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- Annex 2** United Nations, *Official Records of the General Assembly, Forty-Eighth session, Sixth Committee, Summary Record of the 22nd Meeting*, document A/C.6/48/SR. 22, dated 7 December 1993
- Annex 3** Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs, on the statement made during the work of the main Committees of the General Assembly, in relation to the use of the name "Macedonia", Ref. : F.1130(6395)/196/AS 2486 bis, dated 7 June 1994
- Annex 4** Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs, on the statement by the Greek Representative at the High Level Segment of the Economic and Social Council on the "Agenda for Development", in relation to the use of the name "Macedonia", Ref. : F.1130/223/AS 2818, dated 30 June 1994
- Annex 5** Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs, on the statement by the Greek Representative at the Third Committee of the General Assembly, in relation to the use of the name "Macedonia", Ref. : F.6179.1(1130)/25/AS 4482, dated 11 October 1994
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- Annex 7** Fax Message of the Permanent Mission of Greece to the United Nations to the Ministry of Foreign Affairs, on the statement by the Greek Representative at the Second Committee of the General Assembly, in relation to the use of the name “Macedonia”, Ref. : F.6116.2(1130)/51/AS 5686, dated 16 November 1994
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- Annex 34** United Nations, Spokesperson's Noon Briefing. Daily Press Briefing by the Office of the Spokesperson for the Secretary-General and the Spokesperson for the General Assembly President, dated 26 September 2007, Department of Public Information, News and Media Division, New York, available at: <http://un.org/News/briefings/docs/2007/db070926.doc.htm>
- Annex 35** Letter of the Permanent Representative of Greece to the United Nations, addressed to the Under-Secretary-General for Communications and Public Information of the United Nations, Ref.: F.4608/571/AS2701, dated 18 October 2007
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- Annex 38** Fax Message of the Permanent Mission of Greece in Geneva to the Ministry of Foreign Affairs, on the objection of the Mission of Greece in Geneva in relation to the use of the name “Macedonia” during the solemn (1997) session of the United Nations Economic Commission for Europe, Protocol No 1130/36/AS 627, dated 22 April 1997
- Annex 39** Verbal Note of the Permanent Mission of Greece to the United Nations Office and other International Organisations in Geneva, addressed to the International Bureau of the World Intellectual Property Organisation, Ref. no: 6778.52/2/AS 813, dated 16 May 1997 and Verbal Note of the World Intellectual Property Organization, dated 5 June 1997 in reply
- Annex 40** Verbal Note of the Permanent Mission of Greece to the United Nations Office and other International Organisations in Geneva, addressed to the Director General of the World Health Organisation, Ref. No: 6395/8/AS 212, dated 7 February 2005, and Verbal Note LEG of the World Health Organisation, dated 15 February 2005, in reply
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- Annex 50** Letter of the Minister of Foreign Affairs of the FYROM Mr. Antonio Milososki, dated 30 April 2010, addressed to the Prime Minister and Minister of Foreign Affairs of the Hellenic Republic Mr. George Papandreou, distributed through Document No DD(2010)234, dated 3 May 2010, of the Secreteriat of the Committee of Ministers of the Council of Europe

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- Annex 51** NATO, Address by H.E. Mr. Arpad Gonez, President of the Republic of Hungary at the Meeting of the North Atlantic Council, dated 16 September 1996, available at: <http://www.nato.int/docu/speech/1996/s960916b.htm>
- Annex 52** NATO, "NATO Beyond Enlargement", Remarks by the Secretary General of NATO, Dr. Javier Solana, to the UK Atlantic Council, dated 19 November 1997, available at: <http://www.nato.int/docu/speech/1997/s971119a.htm>
- Annex 53** "Fule: Veto in Bucharest was not just a Greek affair", *Vest*, dated 22 November 2008, available at: <http://star.vest.com.mk/default.asp?id=159984&idg=8&idb=2531&rubrika=Makedonija>
- Annex 54** "The Czech Republic continues to support Macedonia in NATO", *Utrinski Vesnik*, dated 22 November 2008, available at: <http://www.utrinski.com.mk/?ItemID=FCA3114349781142BDFC9200560B889A>
- Annex 55** "Macedonia on the road to Europe": Speech by the President of the FYROM Mr. Gjorge Ivanov at the Konrad Adenauer Foundation, Berlin, 14 September 2009, available at: http://www.kas.de/upload/veranstaltungen/2009/09/090916_ivanov.pdf
- Annex 56** "Rasmussen: Name issue settlement, key to NATO accession", *Macedonian Information Agency*, dated 18 June 2010, available at <http://www.mia.com.mk/default.aspx?mId=125&vId=74837413&IId=2&title=EURO-ATLANTIC+INTEGRATION>
- Annex 57** "New Macedonian Ambassador to NATO presents platform for diplomatic activities", *Macedonian Information Agency*, Newsletter number 2764, dated 30 July 2010, available at: <http://www.mia.com.mk/default.aspx?mId=41&vId=75859295&IId=2&title=BULLETINS+++NEWSLETTER>
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- Annex 60** Organization for Security and Cooperation in Europe (OSCE), Permanent Council, PC Journal No 79, Interpretative Statement, under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, by the Delegation of the FYROM, PC.DEC Annex 1, and Statement of the Delegation of Greece, PC.DEC Annex 3, dated 18 July 1996
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- Annex 62** Organization for Security and Cooperation in Europe (OSCE), Special Meeting of the Permanent Council (371st Plenary Meeting), Interpretative Statement, under paragraph 79 (Chapter 6) of the Final Recommendations of the Helsinki Consultations, by the Delegation of Bulgaria, PC.DEC/446/Corr. 1, Attachment 4, by the Delegation of the FYROM, PC. DEC/466/Corr. 2, Attachment 2, and by the Delegation of Turkey, PC.DEC/446/Corr. 2, Attachment 3, dated 4 December 2001
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- Annex 65** Ministry of Foreign Affairs of the FYROM, 'Council of Europe, Macedonian Chairmanship 2010', available at: <http://www.coe-chairmanship.mk>
- Annex 66** Letter of the Alternate Minister of Foreign Affairs of the Hellenic Republic Mr. Dimitrios Droutsas, addressed to the Minister of Foreign Affairs of the FYROM Mr. Antonio Milososki, dated 4 May 2010, transmitted through Verbal Note No F.143.5/77/AS 606 of the Hellenic Republic Liaison Office in Skopje, dated 4 May 2010

- Annex 67** Letter of the Deputy Chief of Staff of the Military Cooperation Division of NATO, dated 23 August 2010 addressed to the Ministry of Defence of the FYROM and Letter of the Head of the Department for International Cooperation of the Ministry of Defence of the FYROM, No 11/1-36/199, dated 15 September 2010 in reply
- Annex 68** NATO, "NATO's relations with the Former Yugoslav Republic of Macedonia", available at: http://www.nato.int/cps/en/natolive/topics_48830.htm?selectedLocale=en
- Annex 69** Hristina Kraljeva, Vesna Pavlovic, Elena Stanojkovic, Sonia Kirkovska, *Society, for the Fifth Grade Nine Years Studies Primary Education*, 2010, p. 10

