Application of the Interim Accord of 13 September 1995

Applicant's Comment on the Respondent's Reply to Judge Bennouna's Question

1. At the close of the oral hearings, Judge Bennouna asked the following question:

> "In the period preceding and during the NATO Summit in Bucharest from 2-4 April 2008, what was the position expressed by Greece in its contacts with other members of the organisation as regards the admission of the former Yugoslav Republic of Macedonia?"[1]

2. Judge Bennouna's question provided the Respondent a further – and clear – opportunity to state without ambiguity that it had not "objected to" the Applicant's membership in NATO in the period preceding and during the Bucharest Summit, having regard to the obligation imposed by Article 11 of the Interim Accord. The Respondent has not availed itself of this opportunity; at no point in the written or oral phase of these proceedings has it denied that it "objected to" the Applicant's membership in NATO. It cannot do so in circumstances in which it has repeatedly stated publicly that it objected to (and even "vetoed") the Applicant's membership.

3. In its reply of 7 April 2011 to Judge Bennouna's question there is no denial that it objected. To the contrary, the Respondent confirms that "[t]he position expressed by Greece in its contacts with the other member states of NATO before and in the period 2-4 April 2008 was that the Applicant ... was not ... eligible ... to accede to [NATO] membership ...".[2] The expression by the Respondent to the NATO membership that the Applicant "was not so eligible" constitutes an objection. In this way the Respondent has confirmed what is plainly established by the evidence before the Court, namely that it *did* object to the Applicant's membership in NATO.

4. Beyond this, the Respondent's reply to Judge Bennouna's question is notable for a number of reasons. *First*, it ignores the totality of the evidence as to the positions it

[1] CR 2011/12, 30 March 2011, p. 67.
[2] Respondent's Letter of 7 April 2011, para. 2.

expressed in the period preceding and during the NATO Summit in Bucharest: at paragraph 3 of its Reply it refers to just two documents, namely the *Aide Memoire* (Memorial, Annex 129) and the letter of 31 March 2008 from its Prime Minister (Reply, Annex 6). The Respondent has chosen to ignore all the other evidence that is unhelpful to its approach to the facts, including most notably the statement by its own Prime Minister on the day of the Bucharest Summit itself, in which he informed the "[m]en and women of Greece" that "[d]ue to Greece's veto, [the Applicant] is not joining NATO. ... Today and yesterday, during the meeting, we reiterated our strong arguments, clearly stating our positions and intentions."[3] The written pleadings include a large number of press articles, interviews, letters and statements made by the Respondent before, during and after the Bucharest Summit that confirm the Respondent's objection to the Applicant's membership to NATO, all of which is ignored by the Respondent in its reply to Judge Bennouna's question.[4]

5. *Second*, the Respondent has chosen to ignore the totality of the evidence before the Court of its own statements made in the period following the Bucharest Summit, confirming its objection in the lead up to and during the NATO Summit in Bucharest: this includes, most recently, the exchange that took place in the Respondent's Parliament just a few months ago on 24 January 2011.[5]

6. *Third*, the Respondent relies on a partial and misleading use of the evidence that it has referred to in its reply to Judge Bennouna's question. For example, whilst confirming that it circulated to NATO member States the *Aide Memoire* that appears at Annex 129 of the Applicant's Memorial, informing them of its position on the Applicant's candidacy for

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[3] Ministry of Foreign Affairs of the Respondent, *Message of Prime Minister Mr. Kostas Karamanlis*, (3 April 2008): Memorial, Annex 99.

[4] See Memorial, Chapter 2, paras. 2.58-2.64 and Reply, Chapter 2, paras. 2.4-2.25 and corresponding footnotes and annexes; see also Reply, Appendix 1. See in particular, Memorial Annexes 67, 71, 73, 80, 83, 88, 89, 90; Counter-Memorial, Annex 30; Reply, Annex 75.

[5] See Reply, Annexes 33, 79, 145, 147, 148, 189. See also the statement by Dimitrios Droutsas, Respondent's Minister of Foreign Affairs and that of Antonis Samaras, Leader of New Democracy (Respondent's Main Opposition Party), Session of the Greek Parliament, 24 January 2011, CR 2011/11, p. 34-35 (Murphy); the video and official transcript (excerpts are at pp. 94-95 and 126) are at: http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=24%2F01%2F2011&DateTo=24%2F01%2F2011.

NATO membership,[6] it omits to mention that part of the *Aide Memoire* that confirms the reasons for its objection to the Applicant's membership in NATO: the Court will recall that in the *Aide Memoire* the Respondent states that the "satisfactory conclusion of the [name] negotiations is a *sine qua non* in order to enable Greece to continue to support the Euro-atlantic aspirations of Skopje" and that "[t]his is going to be the decisive criterion for Greece to accept an invitation to FYROM to start the NATO accession negotiations". It made clear that what the Respondent was demanding of the Applicant was "in addition to any accession criteria."[7]

7. *Fourth*, whilst the reply to Judge Bennouna's question asserts that the reason for the objection was "continuing difficulties with the Applicant, *including but not limited to* the failure to resolve the name issue,"[8] the Respondent has not referred to any evidence before the Court to support the claim that its objection arose for any reason other than its frustration that the name difference had not yet been resolved on terms acceptable to the Respondent. Significantly, the reply does not claim that the objection was made on the sole basis permitted under Article 11(1), and it cannot do so. There is no evidence before the Court that the Respondent's objection was made on the purported basis that the Applicant was to be referred to in NATO differently than as provided for in resolution 817 (1993), and all the evidence shows that in its participation in NATO's Membership Action Plan (MAP) it was not so referred to.

8. All the evidence before the Court, as set forth in the totality of the written and oral pleadings,[9] points to the Respondent's frustration as to the failure to resolve the difference over the name as the sole basis for its objection. The Respondent's reply ignores this evidence, and seeks to cloud the issue by making vague references to the Applicant's supposed lack of "good neighbourliness," "irredentist feelings", and "failure to work towards achieving mutually agreed solutions".[10] Yet the evidence establishes –

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[6] Respondent's Letter of 7 April 2011, paras. 4-5.
[7] Memorial, Annex 129, pp. 3-4.
[8] Respondent's Letter of 7 April 2011, paras. 4-5 (emphasis added).
[9] Memorial, Chapter 2 and Annexes 65-106 and 123-135; Reply, Chapter 2 and Annexes 5-7, 75-82 and 89-153; CR 2011/5, pp. 43-52, paras. 18-49 (Murphy); CR 2011/11, pp. 23-27, paras. 11-23 (Murphy).
[10] Respondent's Letter of 7 April 2011, paras. 4-5.

particularly in the form of statements by the Respondent's own senior officials – that such references are mere code for the Respondent's complaint about the outstanding name difference, the very basis for objection that Article 11(1) was drafted to prevent.

9. The Respondent's reply appears crafted to convince the Court that the position expressed by the Respondent to NATO member States was merely confirming or abiding by a decision already taken by NATO with respect to the Applicant's admission. As such, the Respondent asserts that its position was simply indicating that the Applicant "must satisfy the criteria and requirements agreed by the Alliance and indicated in its communiqués and related communications concerning the enlargement process."[11] The Respondent's reply fails to address the question posed by Judge Bennouna: despite the best efforts of the Respondent to recharacterize the nature of the Applicant's claim, or indeed the question posed by the learned judge, the conduct of other NATO Members and of NATO as an organization is not at issue in this case, nor was it the object of the question. The sole conduct at issue is that of the Respondent. The Respondent either did or did not object to the Applicant's membership; if it did object, then such conduct violated Article 11(1), regardless of the positions taken by other States or by NATO itself.

10. Moreover, the Respondent's reply is erroneous as a matter of fact: it seeks to perpetuate the misrepresentation of NATO accession criteria concerning the Applicant advanced by the Respondent in its written and oral pleadings. The evidence before the Court makes clear that prior to the Respondent's objection, as expressed in 2007 and 2008, there was no NATO decision, formal or informal, establishing the resolution of the name difference as a criterion or requirement for membership. None of the documents cited by the Respondent in paragraph 3 of its reply demonstrate the existence of any such criterion or requirement. Had such a criterion or requirement existed, it would make no sense for the NATO spokesman, at the Bucharest Summit, to say that

> "[t]he *Greek government* has been very clear, including in this evening's discussions, that until and unless the name issue is resolved, there cannot be any

[11] *Ibid.*

> consensus on an invitation for the former Yugoslav Republic of Macedonia to begin accession talks."[12]

If the Respondent's account were correct, the NATO spokesman would have said that "NATO has been very clear…".

11. Similarly, had such a NATO criterion or requirement existed, it would make no sense for the Respondent's Prime Minister, at the Bucharest Summit, to say:

> "Due to *Greece's* veto, FYROM is not joining NATO."[13]

Instead, all of the evidence before the Court – including NATO documentation, the Respondent's statements, statements of other NATO Members,[14] and contemporary press accounts – point without ambiguity to the fact of the Respondent's objection, and the reason for it.

12. The weakness of the Respondent's position is confirmed by its reliance on a statement by the Applicant's Prime Minister in 1999, referred to in paragraph 6 of its reply, that is entirely unrelated to Judge Bennouna's question. Leaving aside the fact that the leader of a non-NATO member is hardly in a position to establish a NATO criterion or requirement for admission of a new member, the Prime Minister's letter of 21 January 1999 pre-dated the Applicant's participation in the NATO MAP and did not acknowledge any criteria contained therein. The Prime Minister did not assert that the Applicant's accession to NATO "was dependent upon reaching a solution of the name difference."[15] No confirmation that the settlement of the name issue was a NATO accession criterion is reflected in the Prime Minister's statement of January 2008, also referred to in paragraph 6. The reason in January 2008 that some NATO ambassadors mentioned "potential risks" in not resolving the name difference was precisely because, by that time, the Respondent had embarked on a vigorous and systematic campaign to give effect to its objection,

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[12] Counter-Memorial, Annex 30, p. 3 (emphasis added).
[13] Memorial, Annex 99 (emphasis added).
[14] See, e.g., Memorial, Annex 126 (testimony in March 2008 by a U.S. Assistant Secretary of State that "[o]ne issue threatens Macedonia's NATO candidacy—the dispute between Greece and Macedonia over Macedonia's name. Without a resolution of the issue, Greece has said it would block an invitation for Macedonia to join NATO…", at p. 10).
[15] Respondent's Letter of 7 April 2011, para. 6.

informing other NATO members that it would block the Applicant's accession to NATO unless the name difference was resolved. The Prime Minister's statement merely refers to what was happening, and acknowledges the Respondent's ability to block the Applicant's NATO membership.

13. The totality of the evidence before the Court points inexorably to only one conclusion: in the period preceding and during the NATO Summit in Bucharest from 2-4 April 2008, the position expressed by the Respondent in its contacts with other members of NATO was that it objected to the admission and membership of the Applicant to the organisation, and that it did so for a reason that was not permitted by Article 11 of the Interim Accord, in circumstances where the Applicant was to be referred to, and continues to be referred to in the organization as 'the former Yugoslav Republic of Macedonia'.