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International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2011

Public sitting

held on Monday 28 March 2011, at 10 a.m., at the Peace Palace,

President Owada presiding,

***in the case concerning* Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia *v.* Greece)**

VERBATIM RECORD

ANNÉE 2011

Audience publique

tenue le lundi 28 mars 2011, à 10 heures, au Palais de la Paix,

sous la présidence de M. Owada, président,

***en l'affaire relative à l'*Application de l'accord intérimaire du 13 septembre 1995 (ex-République yougoslave de Macédoine c. Grèce)**

COMPTE RENDU

Present:	President	Owada
	Vice-President	Tomka
	Judges	Koroma
		Al-Khasawneh
		Simma
		Abraham
		Keith
		Sepúlveda-Amor
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Greenwood
		Xue
		Donoghue
	Judges *ad hoc*	Roucounas
		Vukas
	Registrar	Couvreur

Présents : M. Owada, président
M. Tomka, vice-président
MM. Koroma
Al-Khasawneh
Simma
Abraham
Keith
Sepúlveda-Amor
Bennouna
Skotnikov
Cançado Trindade
Yusuf
Greenwood
Mmes Xue
Donoghue, juges
MM. Roucounas
Vukas, juges *ad hoc*

M. Couvreur, greffier

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The PRESIDENT: Please be seated. The Court meets today to hear the second round of oral argument of the former Yugoslav Republic of Macedonia. I shall now give the floor to the first speaker, Professor Philippe Sands.

Mr. SANDS:

Introductory statement

1. Mr. President, Members of the Court, after the first round of oral hearings it is readily apparent that this *is* a simple case, and we therefore will not need to detain you for the full amount time allocated to us. The facts are central, and Professor Murphy will address the two key facts: that the Respondent *did* object to the Applicant's membership of NATO, and that it did *not* do so on the basis that the Applicant was to be referred to in NATO differently than in paragraph 2 of United Nations Security Council resolution 817. He will then draw the legal consequences of those facts, the plain violation of Article 11 (1) of the Interim Accord. The facts are also central to establishing why this Court has jurisdiction and why there are no obstacles to that exercise of jurisdiction, issues that will be then addressed by Professor Klein. I will then address the Respondent's excuses for its actions, and our Agent will then close our second round.

2. By way of introduction, to frame what comes, it is appropriate to place these straightforward issues in their context and to make a small number of preliminary observations, including with respect to the manner in which the Respondent has chosen to argue its case. It is apparent that the Respondent's case is not an easy one. Throughout the written pleadings, and again last week, its approach has been to complexify; so the arguments are in a state of constant flux and one can understand that approach. In their shoes one would have done the same thing. But what you heard last week was a fairytale. It was based on a series of artifices and improbable myths as to what did and did not occur in 1993, 1995, 2007 and 2008. To give that fairytale some colour, the Respondent relied on a number of observable techniques. It ignored facts that were unhelpful. It constructed new facts. It provided partial and misleading accounts of what had happened. It misquoted and it misrepresented third party sources. It dug deep into historical

matters — as far back as the 4th century BC[1] — that are of no relevance whatsoever to this case. It raised the spectre of this Court's involvement in political matters. These and other techniques were marshalled to encourage the Court towards a newspaper headline that reads: "World Court rules that Greece did not object to Macedonia's membership of NATO". Mr. President, it is obvious that such a headline would be preposterous. In support of this argument, the Respondent is required to adopt an approach that ignores a parade of elephants trampling through this Great Hall.

3. The first elephant is the Badinter Opinion. It is there in relation to the repeated claim by the Respondent that its objection was justified by the Applicant's "irredentism", the alleged desire to annex part of the Respondent's territory; the word was used on no less than 27 occasions by the Respondent last week. That is said to be at the heart of its actions, and it is said to undermine regional stability, yet another assertion for which there is not a shred of evidence before this Court. What is the evidence of irredentism? What is the evidence that the Applicant's constitutional name is a threat to regional stability? There is none before this Court. It is mere assertion; bald assertion, which has no basis in fact and no support from any third party source. To the contrary, applying criteria set by the European Community's Foreign Ministers, the Badinter Commission concluded on 14 January 1992 — nearly 20 years ago — that "the Republic of Macedonia has . . . renounced all territorial claims of any kind in unambiguous statements binding in international law; that the use of the name 'Macedonia' cannot therefore imply any territorial claim against another State"[2]. Although we raised this point last Tuesday, the Respondent had nothing to say in response[3]. And that opinion, as you will know, was a basis for the negotiations that led to the Interim Accord, as United Nations Secretary-General Boutros Boutros-Ghali made clear in his letter of 28 May 1993, to the President of the United Nations Security Council. Now, the Court of course is not bound in any way by the Badinter Opinion, but we do not see any basis on which you could find that its authoritative conclusion has been displaced. [Plate 1 on] There is no evidence in

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[1]CR 2011/8, p. 18, para. 21 (Telalian).

[2]Arbitration Commission on the Conference on Yugoslavia, Opinion No. 6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States, 14 Jan. 1992, United Nations doc. S/25855, Ann. III, para. 5, 28 May 1993: AM, Ann. 33; see also AM, paras. 2.13-2.14; AR, para. 4.81.

[3]CR 2011/6, pp. 46-47, para. 79 (Murphy).

support of the Respondent's contrary claim. Quite the opposite, as the United States State Department made clear in 2004, when it stated that:

> "these leaders, this government, have expressed many, many times that they have no territorial aspirations, their use of the name Macedonia for themselves does not have any implications for any neighbours or neighbouring territories or peoples. That is certainly a policy the United States has maintained, that they have maintained, and we don't see that those factors that were discussed 60 years ago come into play in any way with our decision today."[4] [Plate 1 off]

That same view appears to be held around the world, in capitals from Moscow to Beijing, from Mexico City to Freetown and even in Athens itself, as an interview granted in the Athens media last week by current Deputy Prime Minister Theodoros Pangalos makes clear. The opinion of the Badinter Committee stands totally unrebutted. It is the first elephant in this room.

4. The second elephant in the room is Mr. Nimetz, and I intend no disrespect at all in drawing the image, quite the contrary. The Respondent was notably discreet about the Personal Envoy of the United Nations Secretary-General. It had almost nothing to say about him, but not *quite* nothing. You will recall that last Monday I drew your attention to what Mr. Nimetz said on 18 September 1995, just five days after the Interim Accord was signed, and Professor Murphy returned to the point on Tuesday[5]. [Plate 2 on] In response to that, counsel for the Respondent castigated us for focusing on "the recollection of a remark by Mr. Nimetz, who was not in the Security Council and who, moreover, was not even addressing, in his remark, the question of what *the Applicant* was to call itself"[6]. Well, that response by counsel for the Respondent is not accurate. It is an unfortunate and further example of the Respondent's semi-detached relationship to evidence. Mr. Nimetz *did* address the question of what the Applicant was to call itself: [plate 2.2 on] he said — and you can read it for yourselves — that "

> [T]he people from [the Applicant's] country, when they talk about themselves, use their constitutional name, Republic of Macedonia. *And we have found this to be the case, that there is no requirement for them to use a name that they don't accept. But that doesn't mean that the organization accepts the name*."[7]

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[4]US Department of State, Daily Press Briefing, 4 Nov. 2004, available at: http://2001-2009.state.gov/r/pa/prs/dpb/2004/37819.htm.

[5]CR 2011/6, pp. 41-42, para. 66.

[6]CR 2011/8, pp. 54-55, para. 31 (Reisman); emphasis added.

[7]AR, para. 4.57; "Foreign Press Center briefing with Ambassador Matthew Nimetz, special White House Envoy subject: Macedonia-Greek agreements", *White House Briefing*, 18 Sep. 1995: AR, Ann. 87.

Mr. Nimetz's statement is as authoritative a statement as could possibly be given, given his role first as the Special White House Envoy to the United States President, on the negotiation of the Interim Accord in which he was very closely directly and personally involved. He was well aware of what the Security Council had and had not decided in 1993, he knew what the subsequent practice was on the use of the constitutional name, and of course he knew how the Interim Accord took up that practice, since he helped negotiate the instrument, including its Articles 5 and 11. [Plate 2.3 on] On 15 September 1995, two days after the signing of the Interim Accord, the President of the Security Council issued a statement — you can see it on the screen now — that "commends both parties, the Secretary-General, the Secretary-General's Special Envoy, Cyrus Vance, and the United States envoy, Matthew Nimetz, for their efforts in bringing about this important achievement, pursuant to Security Council resolutions 817 (1993) and 845 (1993)"[8]. [Plate 2 off]

5. But, Mr. President, when Mr. Nimetz says "there is no requirement for [the Applicant] to use a name that they don't accept" he speaks with a particular and unique authority. As with the Badinter Opinion, the Court is not bound by what Mr. Nimetz has to say, but in the absence of any evidence to the contrary — no evidence whatsoever — in the face of the conduct of the Parties and third States and the United Nations and other international organizations, there is simply no evidentiary basis for concluding that the Applicant was not entitled to use its constitutional name before the United Nations, every specialized agency and every other international organization in which both Parties are members.

6. Indeed, it might be said that the constant practice under resolution 817 and the Interim Accord — the use by the Applicant of its constitutional name in all of those organizations that I have just mentioned, consistently for more than fifteen years, without objection from a single secretariat or a single third State — that constant practice is the third elephant in the room. Professor Murphy will return to this subject shortly.

[8]Statement by the President of the Security Council, 15 Sep. 1995, United Nations doc. S/PRST/1995/46: judges' folder, tab 9.

7. The fourth elephant is the Vienna Convention on the Law of Treaties, the instrument that sets out the rules of international law that we say govern this case. The Respondent had never sought to invoke a right of suspension under the Vienna Convention, in whole or in part and it did never alert us to any alleged material breach on our part before it objected in 2007 and 2008. For present purposes, the key provision of that Convention is Article 60, which is, of course, a provision that this Court has had to deal with on numerous occasions, and, of course, one that you dealt with very fully in your Judgment in the case concerning the *Gabcikovo-Nagymaros Project*[9]. I am sure you will need no reminder. But Paragraph 100 of the Judgment strikes us as being particularly apposite, and we hope you will excuse us if we have taken the liberty of drawing on that text and applying it to the instrument and to the facts of this case. [Plate 3 on] If one goes through the exercise of replacing references to the 1977 Treaty with references to the 1995 Interim Accord, and if one substitutes references to the words termination, denunciation and withdrawal with a reference to the word suspension and makes no other changes, the text would reads as follows:

> "The [1995 Interim Accord] does not contain any provision regarding its [suspension]. Nor is there any indication that the parties intended to admit the possibility of [suspension]. . . . Consequently, the parties not having agreed otherwise, the Treaty could be [suspended] only on the limited grounds enumerated in the Vienna Convention." [Plate 3 off]

In our submission, that is, and would be in this case, an entirely accurate conclusion to draw. The Respondent has never sought to justify its objection by reference to any rights or procedures under the 1969 Vienna Convention and so it is stuck with paragraph 100 of your 1997 Judgment. The limited grounds of the Vienna Convention not having been invoked, and the conditions for their being invoked not having been satisfied, there was no lawful basis for the Respondent's objection: in plain breach of the clear language of Article 11. For the Respondent, there is no getting around that difficulty. That is why we say this case is a simple one.

8. Mr. President, in exercising its judicial function, the Court is necessarily bound to engage in an assessment of the facts as they actually exist in the record, the function is to sort its way through the conflicting arguments and the contradictions, to set aside mere assertion and deal with

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[9] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997,* pp. 62-63, para. 100.

the evidence on the record. The Respondent may be entitled to ignore the elephants, but the Court cannot, and we trust it will not, do so. It will exercise its judicial function as it has always done, and will not be put off by claims that it is allowing itself to be "instrumentaliser par le demandeur" as the Respondent's counsel put it[10]. That is not a fair charge. The Applicant is doing exactly what the Respondent should have done, coming to the Court, where there is a belief that the other Party is not fulfilling its legal obligations. And it is what both Parties expected when they agreed to Article 21 in 1995. The Applicant too could have taken matters into its own hands. It too could seek to suspend those parts of the Interim Accord that have become inconvenient. But it did not want to do so. It has followed the "rule of law" route: so we wrote to the Respondent, we alleged material breach, and then we instituted these proceedings, in exactly the manner provided by the Parties in the text they agreed in the language of Article 21, which gives this Court a central role. To criticize us for doing that is, in our submission, entirely inappropriate.

9. And to be clear, the only issue that the Parties did not wish the Court to address was the difference over the name: resolution 817 of the United Nations Security Council makes it crystal clear that the Parties agreed that the "difference over the name" — the difference over the name and not any other difference — is a matter for political settlement. It was never for the Court to determine or rule on the name of the Applicant, but that is the only matter excluded. I express my gratitude to Professor Burdeau, who has gone through the exercise of checking the language of the text in all other United Nations languages and it speaks of it in the singular in exactly same way. That is the only matter that is excluded. And it is clear from that language that the difference over the name is entirely distinct from other differences that may arise and are subject to the jurisdiction of the Court. As Professor Klein will make clear — once again — the Respondent would have been perfectly entitled to bring a claim to this Court that the Applicant was not fulfilling one of its obligations, for example, the obligation to negotiate, as required by Article 5. It could have done that if it had wished to do so. The obligation to negotiate is a distinct and separate matter from the difference over the name. Or the Respondent could have filed a counter-claim, but again it chose not to do so. It seems this was an eminently sensible decision, given that the Applicant plainly is

[10]CR 2011/9, p. 19, para. 29 (Pellet).

not in breach of Article 5 and has consistently negotiated in good faith with the Respondent. Once again, the Respondent is silent. We drew to their attention the statement of Mr. Nimetz who commended both Parties for, what he called, their "positive attitude towards moving forward on [the name] issue"[11], that was just six weeks ago, and he is, frankly, best placed to express a view on a claim that one Party has not engaged in good faith negotiations. All these approaches were available to the Respondent, to raise the concerns that they have now bombarded you with. The proper thing to do was not to take the law into its own hands. And to be very clear, on the exercise of the judicial function, we do not see how your Judgment would need to touch in any way on NATO decisions or actions, or on the continued negotiations under Article 5, a point to which we will return.

10. Mr. President, this brings me to the conclusion of this introductory statement. Listening to the Respondent's counsel we were struck by their constant inconsistency, which is the fifth elephant in the room. They are simply unable to get their story straight. One moment they are not going to invoke countermeasures, the next moment they do. One counsel expresses the view that Article 11 says one thing, then his co-counsel tells you that it says something else. The written pleadings say the Respondent has never sought to suspend the Interim Accord, and then counsel tells you that actually that is exactly what they did: they partially suspended it. The Respondent's former Prime Minister says that he objected to the Applicant's membership of NATO by exercising a veto, but one of their counsel tells you that he is not telling you the truth. The Respondent's former Foreign Minister says that they acted to avoid the constraints of the Interim Accord to avoid a charge of "political cowardice", but counsel tell you the Accord was followed to the letter at all times. They agree that we are allowed to use our constitutional name in our bilateral dealings with them, under the 1995 Memoranda on which they were completely silent, but they say we cannot use our constitutional name with them if those bilateral dealings are taking place in the United Nations. That is an absurd position to adopt. And they say that we have to call ourselves "the former Yugoslav Republic of Macedonia" before the United Nations and any of its organs, including this Court; but then, as you heard for yourselves, on numerous occasions they are

[11] "Nimetz: No New Proposal", *VOA News*, 9 Feb. 2011, available at: http://www.voanews.com/macedonian/news/Macedonian-VOA-Macedonia-Greece-UN-Negotiations-Mathew-Niemitz-115695309.html.

allowed to use the acronym "FYROM" or "ARYM", which is not the provisional reference described in resolution 817, and has been the subject of official protest[12]. It is difficult for us simply to listen constantly to the use of the acronym in that way, but as you will also know we sought an understanding and we have stuck with references to "Applicant" and "Respondent", precisely to avoid putting the Court in an uncomfortable situation. But the point is this, Mr. President: their practice is flatly inconsistent with the claim that the only acceptable name for the Applicant or anybody else to use is "the former Yugoslav Republic of Macedonia", that we are not entitled to call ourselves the Republic of Macedonia, whether in the United Nations or in any other international organization, or before this Court; it is one contradiction after another.

11. Mr. President, that concludes this introduction. I invite you now to call Professor Murphy to the Bar. Thank you very much for your attention.

The PRESIDENT: I thank Professor Philippe Sands for his statement: and now I invite Professor Sean Murphy to take the floor

Mr. MURPHY:

THE RESPONDENT'S BREACH OF ARTICLE 11 (1) OF THE INTERIM ACCORD

Introduction

1. Thank you, Mr. President. We listened attentively to the arguments of the Respondent last week regarding the facts and the law associated with our claim that the Respondent violated Article 11 (1) of the Interim Accord. Those arguments generally restated the points set forth in the Respondent's written pleadings, which is to say there were considerable gaps, inconsistencies, implausibilities, and regrettably some misrepresentations.

2. In particular, the Respondent remains incapable of confronting, in any serious way, the indisputable evidence before you establishing the Respondent's systematic and unrelenting opposition to the Applicant's membership in NATO. Instead, the Respondent persists in characterizing *our* claim as a claim against NATO itself, so as to then raise defences against a fabricated claim that is not actually before this Court. Remarkably, the Respondent still insists that

[12] AR, Ann. 42.

the Applicant is prohibited from using its constitutional name in its dealings with international organizations, and further, conjures up in some dramatic way a change that occurred in the mid-2000s — a devious plot that was hatched — which justified the Respondent's conduct in relation to NATO in 2007 to 2008. I say that is remarkable, because the evidence quite clearly shows that the Applicant has used the constitutional name consistently in all of its external practice since 1991 — a practice left untouched by resolution 817, and a practice accepted by the entire universe other than the Respondent.

3. We have already thoroughly rebutted all of the Respondent's points in our written pleadings[13] and in our first round presentation[14]. We fully maintain our positions. Rather than just repeat why the Respondent's points are wrong, we think it is of more assistance to the Court to do so in the course of identifying the ten central points upon which our claim rests.

Ten propositions established in the evidence and legal arguments before the Court with respect to the Respondent's violation of Article 11 (1)

A. The Applicant was in the final stages of NATO's admission process

4. *Our first point.* From 1995 to 2007, the Applicant proceeded with the various steps necessary to be considered for admission to NATO and, by early 2008, was approaching the final stage of that admission process[15]. By the summer of 2007, NATO member States were poised to invite the Applicant to accede to NATO. This is reflected in several statements by NATO members in this time period, none of which have been contested by the Respondent[16].

B. Any NATO member State could object to the Applicant's admission

5. *Our second point.* A decision to invite the Applicant to join NATO required a consensus of all existing NATO member States at the April 2008 Summit; opposition by *any* single NATO member State would preclude the Applicant from being invited. The Parties are in accord on the requirement for consensus in NATO decision-making. The Parties are also in accord that a formal

[13]AM, Chaps. II (V), IV, and V; AR, Chaps. II & IV.

[14]CR 2011/5, pp. 39-56, paras. 1-64 (Murphy); CR 2011/6, pp. 21-49, paras. 1-88 (Murphy).

[15]CR 2011/5, pp. 40-43, paras. 8-17 (Murphy).

[16]See, e.g., AM, para. 2.53.

vote is never taken and never recorded within NATO, such that an objection by the Respondent would not manifest itself in that manner. Yet there is equally nothing about the admission process at NATO that precludes a member State from opposing admission of a new member. The process is predicated upon the idea that *any* member State can, by expressing its opposition, object and prevent the admission of a new member. The consensus rule ensures that decisions, including enlargement decisions, remain "the ultimate prerogative of the sovereign member states"[17]. As the NATO Handbook underscores, "[e]ach member country represented at the Council table . . . retains complete sovereignty and responsibility for its own decisions"[18].

6. Article 11 (1) is concerned with whether the Respondent "objected"; it matters not for this case whether that objection comes in the form of a "veto", either as that term is used formally or informally. As for the use of that term at NATO, if by a "veto" one means a negative vote formally cast by a member State that serves to block a decision that otherwise has a requisite majority, then there is no such "veto" at NATO. Quotes of NATO's Secretary-General to the effect, which the Respondent noted last week, are speaking to a "veto" in that sense. But, if the term "veto" is used as in common parlance, so as to mean opposition by a member State that prevents a consensus decision from emerging, then there is such a "veto" at NATO, as NATO itself has often recognized[19].

7. I will not repeat our arguments on this point[20]. However, I feel compelled to respond to statements by the opposing Agent that may have left the wrong impression. Agent for the Respondent stated last Thursday that "'blocking' or 'vetoing' a NATO decision is out of the question"[21]. In support of his position, the Agent pointed to a 1995 Study on NATO Enlargement, a portion of which he included in your judge's folder. [Plate 1 on] The portion of that Study that he presented to you was as follows:

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[17]RCM, Ann. 145.

[18]*Ibid.*, Ann. 22, p. 33.

[19]See, e.g., RCM, Ann. 15; see also "Canadian Defense Minister Asks for Change in NATO Consensus on Admitting New Members": AR, Ann. 153; "Time to Abolish the National Veto on New NATO and EU Members,": AR, Ann. 78.

[20]CR 2011/5, pp. 52-53, paras. 51-54 (Murphy).

[21]CR 2011/8, p. 23, para. 8 (Savvaides).

> "Decisions on enlargement will be for NATO itself . . . Ultimately Allies will decide by consensus whether to invite each new member to join according to their judgment of whether doing so will contribute to security and stability in the North Atlantic area at the time such decision is made . . . No country outside the Alliance should be given a veto or *droit de regard* over the process of decisions."[22]

8. Three aspects of this language are worth noting. First, while the Respondent suggests that this language somehow encompasses the Applicant, a complete reading of the Study demonstrates that the country at issue in that final sentence was not the Applicant but, rather, a much larger and more powerful country, considerably further north and to the east. Second, while that major power outside the Alliance is not to have a "veto", the clear implication in this language is that *existing* members *within* the Alliance *do* have the ability to oppose the admission of new members. Third, in any event, the concern expressed here is with a non-member blocking admission, a circumstance clearly not at issue in this case. [Plate 1 off]

9. The Respondent's Agent, though waxing quite eloquently about his own personal involvement at NATO, unfortunately did not inform you of other, more relevant, parts of the 1995 Study. [Plate 2 on] By way of example, consider paragraph 30, which reads in part:

> "Countries could be invited to join sequentially or several countries could be simultaneously invited to join, bearing in mind that all Allies will decide by consensus on each invitation, i.e. new Allies must join consensus for subsequent invitations . . . Simultaneous accessions would avoid the possibility of veto by new members on others joining at the same time . . ."[23]

10. This passage confirms that, even in the context of a consensus decision, individual member States of NATO *can object* to admission of a new member. Whether styled as a "veto" or, as is done later in the same paragraph, styled as an existing member "closing the door" to a new member, it makes no difference. The point is that it is eminently possible for a single NATO member State to oppose the admission of a candidate State. So the idea that "NATO knows no veto", promoted heavily by the Respondent last week, is not quite accurate. [Plate 2 off]

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[22]CR 2011/8, p. 25, para. 16 (Savvaides).

[23]Study on NATO Enlargement, issued by the Heads of State and Government Participating in the Meeting of the North Atlantic Council, Brussels, 3 Sept. 1995, available at: http://www.nato.int/docu/basictxt/enl-9501.htm.

C. The Respondent engaged in vigorous opposition to the Applicant's admission

11. Our third point. During 2007 and 2008, the Respondent engaged in a vigorous, systematic, diplomatic and public campaign against the Applicant's admission to NATO[24]. This is not in dispute. Further, the Respondent concedes that its position on NATO membership for the Applicant changed in the mid-2000s[25]. By the summer of 2007, the Respondent embarked on a strategy to oppose the Applicant's membership in NATO, and it did so exclusively because the name difference had not yet been resolved to the satisfaction of the Respondent. We took you through several examples of the extensive evidence of the Respondent's opposition. On both Thursday and Friday, we sat at our table and noted the remarkable silence of the Respondent on this key issue. At no point, in its oral presentation, did the Respondent deny opposing the Applicant's admission to NATO. The words did not pass the Respondent's Agent's lips. They did not pass the lips of the Respondent's counsel.

12. The reason is likely that no one can doubt that the Respondent did oppose the Applicant's admission in NATO; the evidence speaks for itself and it takes many forms: statements by the Respondent at formal NATO meetings; statements by the Respondent to NATO members in advance of NATO meetings; statements by the Respondent in its Parliament or with parliamentary groups, confirming the position taken at NATO and with NATO members; statements by the Respondent to the media or published in the media. Counsel for the Respondent, last week, helpfully conceded: "The fact that these statements were made is uncontested" and "In no way do we resile from them."[26]

13. I invite you to recall, in particular, the statement of the Respondent's Foreign Minister in the Fall of 2007, when asked whether the Respondent was "willing to go to extremes, to exploit Skopje's prospects of accession to NATO, to use all the means and options at its disposal?", she answers simply: "Yes. The answer is yes."[27] Two days later, the Foreign Minister says in an interview that adhering to the Interim Accord, and thereby allowing the Applicant to join NATO,

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[24]CR 2011/5, pp. 43-50, paras. 18-44 (Murphy).

[25]CR 2011/9, pp. 54-55, paras. 23-24 (Crawford).

[26]*Ibid.*, p. 48, para. 5 (Crawford).

[27]AM, Ann. 73.

might be the politically easy path to take, but would be an act of "political cowardice"[28]. Rather striking: the Foreign Minister of a country saying that following its international obligations is "cowardice". Counsel for the Respondent seems to think that such statements by the Foreign Minister do not constitute evidence of the Respondent's opposition but, with respect, the words speak for themselves.

14. I invite you to recall as well, the Respondent's lengthy *aide mémoire* at Annex 129 of the Memorial. The Respondent concedes that it sent this *aide mémoire* to NATO member States, and concedes that it was "intended" to communicate the Respondent's views to those States[29]. In the *aide mémoire,* the Respondent states that "*in addition* to any accession criteria . . . [t]he 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"[30], and then it goes on further to say that this will be "the decisive criterion"[31], a clear signal that without a resolution of the name issue, the Respondent would object. Again, the fact of the Respondent's strong opposition to the Applicant's membership in NATO, absent resolution of the name issue, is readily apparent.

15. And recall finally, the numerous statements repeatedly made by the Respondent's Prime Minister vividly demonstrating the "strategic goal" of the Respondent: as he put it: "Our position, 'no solution — no invitation', is clear. If there is no solution, our neighbouring state's aspirations to participate in NATO will remain unrealised."[32]

16. Now, how does counsel for the Respondent deal with these statements? Politicians blowing smoke, they say; nothing with which this Court must concern itself. Really? Is that the way this Court should treat a Prime Minister's statements? If so, it will require a significant change of direction in the Court's treatment of facts and evidence, given that you have previously made ample use of such statements when establishing a State's wrongdoing. An example of this that immediately comes to mind, though there are many others, is the case of *Nicaragua* v. *United States*, your merits decision in 1986, which we raised last Monday and which Professor Crawford

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[28]AR, Ann. 167.

[29]CR 2011/9, p. 50, para. 11 (Crawford).

[30]AM, Ann. 129; emphasis added.

[31]*Ibid*.

[32]AR, Ann. 97.

studiously avoided in his presentation. In that case, the Court saw particular significance in statements by the individual who is "constitutionally responsible for the foreign policy of" the State (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), I.C.J. Reports 1986*, p. 92, para. 170), even when made in the domestic sphere. Rather than putting such statements down as "puffery" of some sort, the Court made extensive use of evidence originating in a "national political forum" (as the Respondent puts it)[33] for proving a State's wrongdoing, including statements made by the President of the United States and other senior United States officials, to Congress. And it did so to establish the fact of a policy that violated United States obligations under international law[34].

17. By way of alternative argument, the Respondent says all these statements are irrelevant because they are not "NATO documentation". It is a curious defence: Article 11 (1) is concerned with the *Respondent's* "objection" not that of NATO. Further, this Court has never required evidence of a State's malfeasance be recorded in some particular documentary form when finding an international violation.

18. But if the Respondent wants NATO documentation, it need look no further than Annex 30 of its own Counter-Memorial. There it will find a NATO document, issued on 3 April 2008, clearly stating that "the Greek delegation made it very clear that until the name issue is resolved, it has not yet been resolved, that will not be possible"[35] and further stating: "[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 consensus on an invitation for the former Yugoslav Republic of Macedonia to begin accession talks"[36].

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[33]CR 2011/9, pp. 49-50, para. 10 (Crawford).

[34]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. 21, para. 20 ("it was made clear, not only in the United States press, but also in Congress and in official statements by the President and high United States officials, that the United States Government had been giving support to the *contras* . . ."); *ibid*., p. 70, para. 125 ("According to the President's message to Congress, this emergency situation had been created by 'the Nicaraguan Government's aggressive activities in Central America'."); *ibid*., p. 90, para. 169 ("The view of the United States as to the legal effect of these events is reflected in, for example, a Report submitted to Congress by President Reagan on 10 April 1985 in connection with finance for the *contras.*"); *ibid*., p. 124, para. 241 ("It appears to the Court to be clearly established first, that the United States intended, by its support of the *contras,* to coerce the Government of Nicaragua . . .").

[35]RCM, Ann. 30, pp. 1-2.

[36]*Ibid*., p. 3.

19. As my son typically says after he has thrashed me on the Nintendo, "game over".

20. The singling out of the Respondent by NATO is telling. The Respondent invites you to conclude that somehow the NATO membership, as a whole, decided against the Applicant's application independently of the Respondent, and in the absence of any objection by it. But the Respondent is directly and repeatedly fingered by NATO and by other NATO member States as having made an objection[37]. This fact is substantiated in literally hundreds of contemporary press reports. And it is really no surprise that all accounts point to the Respondent, given that the Respondent itself repeatedly declared that it had objected; that it had single-handedly blocked the Applicant's entry into NATO. The Respondent's Foreign Minister said it in Brussels[38]. The Respondent's Prime Minister said it at Bucharest; he said it simply and clearly: "Due to Greece's veto, FYROM is not joining NATO."[39]

D. The Respondent's opposition has an "objection" under Article 11 (1)

21. Our fourth point. Under Article 11 (1), the Respondent had a clear and unequivocal obligation not to object. The relevant language is simple and direct and admits of no ambiguity. By its conduct, the Respondent deliberately and unequivocally violated that obligation[40].

E. An objection under Article 11 (1) is only permissible in one limited circumstance

22. Our fifth point. Article 11 (1) carves out one — and only one — circumstance where the Respondent may lawfully object: only if the Applicant "is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817".

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[37]AM, para. 2.61; AR, para. 2.22.

[38]*Ibid.*, Ann. 83; see also AM, Ann. 89.

[39]*Ibid.*, Ann. 99; emphasis added.

[40]CR 2011/6, pp. 22-30, paras. 6-32 (Murphy).

23. The Applicant's admission to NATO would have been on the same terms as its admission to the United Nations under resolution 817[41]. Indeed, the Applicant was already participating in NATO programmes on the basis of that provisional reference[42]. There is no dispute between the Parties on that point. Consequently, the Respondent had no basis for objecting and should not have objected, just as it had not for many other international organizations since 1995.

F. Respondent, on the facts, did not object for the reasons permitted in Article 11 (1)

24. Our sixth point. All of the evidence shows that the Respondent's opposition in this period was based upon its concern about non-resolution of the difference concerning the Applicant's name[43]. There is no evidence that the Respondent's opposition was based upon a concern that NATO would refer to the Applicant by anything other than the provisional reference. There is no evidence, in any of the Respondent's many statements, that its opposition was based upon a concern that, in communications with NATO, the Applicant would call itself by its constitutional name or that third States would do so[44]. Indeed, there is no evidence of any Note Verbale from the Respondent to the Applicant complaining about such practice within NATO in the period leading up to April 2008.

G. The Applicant's use of the constitutional name cannot justify an Article 11 (1) objection

25. Our seventh point. Even if the evidence showed that the Respondent's opposition was based upon a concern that, in the Applicant's communications with NATO the Applicant would call itself by its constitutional name. That concern would not be a lawful reason for objecting under the second clause of Article 11 (1)[45]. The ordinary meaning of that clause is not addressing the use of the Applicant's constitutional name before international organizations[46]. The

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[41]AM, Ann. 69, p. 2.

[42]CR 2011/6, p. 31, paras. 33-36 (Murphy).

[43]CR 2011/5, pp. 51-52, paras. 45-49 (Murphy).

[44]CR 2011/6, pp. 32-34, paras. 40-43 (Murphy).

[45]*Ibid.*, pp. 31-32, paras. 33-39 (Murphy).

[46]*Ibid.*, pp. 34-37, paras. 44-51 (Murphy).

Respondent thinks otherwise based upon an idiosyncratic view as to the meaning of resolution 817, to which the second clause of Article 11 (1) refers, but the Respondent's view has no support.

26. How should this Court interpret resolution 817? (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 53, para. 114.) The language of resolution 817 nowhere says that the Applicant cannot use its constitutional name in its dealings with the United Nations, nor that it must use the provisional reference. Indeed, there is no language of any kind, in resolution 817, directed at the Applicant. In your Advisory Opinion relating to Kosovo, the Court carefully analysed certain Security Council resolutions, making sharp distinctions between those that expressly address themselves to, and therefore imposed restrictions on non-State actors and those that did not (*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion of 22 July 2010, General List No. 141, paras. 114-118). Here, resolution 817 contains no language directed at the conduct of the Applicant and none should be implied.

27. To the contrary, the resolution makes clear that the Council has "examined" United Nations doc. S/25147, a document to which is annexed the application for admission filed by the Applicant, in which the Applicant *used its constitutional name*, [plate 3 on]. Now, attached to that application for admission to the United Nations, there was an appendix containing the following declaration by the Applicant in this case. That declaration said:

> "In connection with the appliction by the *Republic of Macedonia* for membership in the United Nations, I have the honour, on behalf of the *Republic of Macedonia*, and in my capacity as President, to declare that the *Republic of Macedonia* accepts the obligations contained in the Charter of the United Nations and solemnly undertakes to fulfil them."[47] (Emphasis added.)

28. In other words, the Security Council, in resolution 817, received and "examined" the application for membership, which included this declaration in which the constitutional name is used three times, and then proceeded to act favourably on the application[48], as did the General Assembly. [Plate 3 off]

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[47] A/47/876-S/25147 (1993), in AM, Ann. 25.

[48] See also Note by the President of the Security Council, S/25545 (1993), in AM, Ann. 32.

29. In considering the Respondent's position, that the Council's resolution ordered particular conduct by the Applicant when engaging in its external relations, the Court will be aware that the resolution was in the form of a recommendation to the General Assembly. Only by that latter organ's "decision", adopted a day later, was the Applicant admitted to the United Nations; only then, by the Assembly's action, did the provisional reference become operative in the United Nations[49].

30. What about the discussions leading up to the adoption of resolution 817? When the President of the Security Council circulated the draft of what would become resolution 817 containing the provisional reference, one might have expected him to say something like, if the Respondent is correct, "this requires the country who has applied for United Nations membership to call itself by a new name, at least when appearing before the United Nations", or something like that. Well, there is no evidence before the Court that such a thing happened, or that it did in fact happen, as is clear from the following statement by Morocco, [plate 4 on] which held the Council's presidency at that time. This statement circulated with the draft of what became resolution 817. What does the statement say?

> "the draft resolution envisages that the state have a provisional reference in the UN ('the former Yugoslav Republic of Macedonia'). This is not a matter of imposing a name on the new state, or conditions for its admission to the UN, but it merely concerns the manner in which it will be provisionally referred to in its activity in the United Nations (plaque, official documents, 'bluebook')."[50]

31. This statement, contemporaneous with the adoption of the resolution, confirms the resolution's meaning and effect. [Plate 4 off] Others involved in the negotiation have attested to the same. While counsel for the Respondent seeks to minimize the role of Sir Jeremy Greenstock's recollection of what resolution 817 was all about, the compromise developed for resolution 817 emerged from an initiative undertaken by a troika of European member States of the Security Council at that time, including the United Kingdom. Ambassador Greenstock, as Under Secretary of the United Kingdom Foreign Office, though based in London, was instructing United Kingdom

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[49] A/RES/47/225 (1993).

[50] AR, para. 4.42 and Ann. 12.

diplomats in New York. This was hardly a matter about which capitals were taking no interest. Ambassador Greenstock's statement is clear and it is not rebutted by any contrary evidence[51].

32. Practice at the United Nations under resolution 817 between 1993 and 1995, when the Interim Accord was concluded, also confirms that the Respondent was fully entitled to use its constitutional name in its dealings with the United Nations[52]. There are literally hundreds of examples of the Applicant submitting letters and documents to the United Nations, or making speeches before it, using its constitutional name, starting from the very first day of the Applicant's admission to the United Nations in a speech by its President to the General Assembly[53], none of these statements eliciting any objections from the United Nations Secretariat or from any third States. Several of these communications are in evidence before you. For example, three weeks after admission to the United Nations, the Applicant sent letters to the Secretary-General which, in turn, were sent to the Security Council, in which the Applicant used its constitutional name[54]. The Secretary-General did not send the letters back to the Applicant unopened. The Security Council did not send the letters back to the Secretary-General, chastising him for passing them along. Indeed, when the Security Council later adopted resolution 845 (1993), it said nothing about what the Respondent now regards as unlawful and deviant practice under resolution 817. Nor has the Council said so at any time since then[55].

33. The negotiating history of the Interim Accord does not support the Respondent's theory as to the meaning of the second clause[56]. I will not repeat all our prior points on this[57]. Professor Sands noted at the outset of our presentation, Ambassador Nimetz's 1995 statement that confirms the practice that had emerged after resolution 817 and it suggests that no change was expected in that practice in the course of concluding the Interim Accord. I do want to draw the

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[51] *Ibid.*, Ann. 58.

[52] CR 2011/6, pp. 37-41, paras. 53-64 (Murphy).

[53] See Statement of President Kiro Gligorov to the General Assembly, UN doc. A.47.PV.98, p. 22 (1993) ("At this solemn moment, I am happy and excited to express, on behalf of ·the people and Government of the Republic of Macedonia, our gratitude for the support demonstrated by the admission of the Republic of Macedonia to the United Nations as an equal Member.")

[54] See AR, Anns. 33-34.

[55] *Ibid.*, paras. 4.46-4.50.

[56] CR 2011/6, pp. 41-42, paras. 65-66 (Murphy).

[57] See especially AR, paras. 4.51-4.61.

Court's attention to one point with respect to this negotiating history. The Respondent tries to make something out of the language proposed by the Respondent toward the end of the Interim Accord negotiations. This draft language would have written the second clause of Article 11 (1) a little bit differently so as to allow an objection "if the provisional reference under which [the Applicant] is to be admitted to such organizations" differs from that of resolution 817. The reason that that language was dropped in favour of what actually emerged as the second clause of Article 11 (1) was not for the reason now advanced by the Respondent. Rather, as we pointed out in our Reply[58], the draft language was rejected and what we now have was adopted because the draft language did not reflect reality. The Applicant is not "admitted" to an international organization under the "provisional reference": the Applicant is admitted to the organization based on an application that bears its constitutional name. Thereafter, the Applicant is provisionally referred to in that organization by the provisional reference. At whatever future point when the difference over the name is resolved, it is not envisaged that the Applicant must reapply to the international organization under an agreed name; it is already a member of the organization. The only change that will occur is that the provisional reference need no longer be used in that organization.

34. Finally on this seventh point, the practice of the Parties subsequent to the Interim Accord — from 1995 to 2008 — also does not support the Respondent's theory as to the meaning of the second clause of Article 11 (1)[59]. Whether one looks at the Council of Europe or the OSCE or at Unesco or at any of the numerous other organizations that the Applicant has joined from 1995 to the present, there has been no problem for any of those organizations with the Applicant's consistent use of its constitutional name in communications with the organization, nor any concern expressed by third States. Even in their bilateral relations, the Respondent accepts that the Applicant is entitled to use its constitutional name[60]. The Respondent, rather weakly, tries to explain away this "bilateral" practice as just that, bilateral, and therefore somehow not relevant, although in the very next breath the Respondent declared as somehow relevant to Article 11 (1) the

[58]AR, para. 4.66-4.67.

[59]CR 2011/6, pp. 42-43, paras. 67-68 (Murphy).

[60]*Ibid.*, pp. 43-45, paras. 69-74 (Murphy).

bilateral practice of more than 100 States with the Applicant, in which those States use the constitutional name. Apparently bilateral practice does matter, so long as it is not that of the Respondent.

H. Other reasons stated by the Respondent cannot justify an Article 11 (1) objection

35. Our eighth point. The Respondent continues to advance other reasons for why it was entitled to object under Article 11 (1), such as the Applicant's alleged "lack of good neighbourliness" or "irredentism". These reasons are totally unsupported by the evidence and, in any event, they are not permitted bases for an objection under Article 11 (1) [61].

I. NATO's conduct is not relevant to the unlawfulness of the Respondent's objection

36. Our ninth point. The decision reached by NATO at Bucharest is simply not at issue before this Court. This case concerns exclusively the legality of the Respondent's conduct in 2007 to 2008 under the Interim Accord; that conduct is either lawful or unlawful regardless of the positions taken by other States.

37. Nevertheless, the Respondent persists in its inaccurate characterization as to NATO's posture with respect to the Applicant prior to the Bucharest Summit. Contrary to the repeated assertions by the Respondent, there is simply nothing in the record — no evidence of any kind — stating that NATO adopted as a criterion for accession that the name difference be resolved, nor that any requirement for "good neighbourly relations" meant that the name difference must first be resolved; there is nothing in the record to establish that[62]. Counsel last Friday chastised us for a "profound misunderstanding of the gravity of decision-making in the councils of the military alliance"[63], and then proceeded to profoundly miscomprehend himself what NATO has actually said about the relevance of the name difference to the Applicant's membership in NATO. NATO's 2006 Riga Summit Declaration *does not say* that resolution of the name difference is a requirement for the Applicant's membership. NATO's December 2007 Communiqué *does not say it*. The Secretary-General of NATO *did not say it*, nor say that resolving the difference was a

[61]CR 2011/6, pp. 45-47, paras. 75-82 (Murphy).

[62]CR 2011/5, pp. 53-55, paras. 55-58 (Murphy); AR, para. 2.58.

[63]CR 2011/9, p. 45, para. 17 (Reisman).

"performance-based standard". Yes, NATO has acknowledged the existence of the name difference. Yes, NATO has expected all candidate States to pursue "good neighbourly relations". But counsel for the Respondent have to engage in extraordinary connect-the-dots analysis, divining all sorts of hidden meanings and sudden innuendo in NATO's statements, so as to reach their ultimate conclusion, hardly a display of respect for the "gravity of decision-making in the councils of the military alliance". The reality is that, rather than setting up the name difference as a membership criterion, NATO members were pleading with the Respondent in this time period to stick to its obligations under the Interim Accord.

J. The Applicant is entitled to a declaration of a violation and that the Respondent conform

38. Finally, our tenth point. In light of the Respondent's deliberate and knowing breach of Article 11 (1), the Court should grant the relief that we request. We are asking you to declare that the Respondent has violated its obligation under Article 11 (1); the violation is clearly established on the facts and on the law. We further ask that you order the Respondent to immediately take all necessary steps to comply with its obligation, including that it cease and desist from objecting in any way to the Applicant's membership in NATO. Yet our request extends beyond just NATO; by its conduct, the Respondent has demonstrated a conviction about Article 11 (1) that implicates the Applicant's position with respect to other international organizations, including most crucially the European Union. As such, our request asks that you order the Respondent in a manner that encompasses the Respondent's conduct with respect to any international organization falling within the scope of Article 11 (1).

Conclusion

39. Mr. President, before I conclude, allow me to note that senior leaders of the Respondent have recently confirmed — once again — that the Respondent did in fact engage in what constitutes an objection in the period leading up to and at Bucharest; indeed, they themselves continue to refer to such conduct as a "veto."

40. On 24 January of this year — just two months ago — Mr. Antonis Samaras, the Leader of the Respondent's main opposition party, New Democracy, took to the floor of the Respondent's Parliament. New Democracy was the ruling party of the Respondent's Government at the time of

Bucharest, and Mr. Samaras was defending one of the foreign policy steps taken by the members of his Government when they were in power. On the floor of the Parliament, he said: [plate 5 on]

> "[I]n Bucharest they set the 'red lines' for the Macedonian issue. . . . Greece clarified its position. It explained that it would accept one name for all uses, *erga omnes*. It excluded the ethnological qualifier with a name that implies irredentist claims. It put aside all proposals for double and triple names. *It exercised a veto on the entry of FYROM into NATO and the EU.* . . . And today, we firmly stick to these 'lines'."[64] (Emphasis added.)

24 January of this year.

41. The Respondent's opposition — indeed, its "veto" — is fully confirmed in Athens today, just as it was in the spring of 2008, as is the reason for its opposition, a reason totally unrelated to the manner in which NATO will refer to the Applicant. Moreover, consider again that final sentence, which confirms that the "red lines" are set; they will be adhered to in the future, casting implications not just for the Applicant's entry into NATO, but the European Union as well. [Plate 5 off]

42. Well this is a most inconvenient and untimely confirmation, so it is no surprise that the Respondent's Minister for Foreign Affairs, Dimitrios Droutsas, felt compelled to respond to Mr. Samaras's statement right away, emphasizing his concern about the use of the term "veto". What may be a surprise is that this Court itself features in what he had to say. This is what Mr. Droutsas said on the same day in Parliament: [plate 6 on]

> "Since we speak about veto, allow me to call upon everyone not to use this term in relation to the issue of Skopje. However patriotic the use of this word might sound it hurts our national interests in the case of Skopje before the International Court in the Hague. You should have known that as a minister of the previous Government, Mr. Samaras. And I genuinely call on you not to sacrifice everything on the altar of easy impression and party politics, without any respect for the country's real interests."[65]

43. I ask the Court to note that the Foreign Minister does not deny that the Respondent opposed the Applicant's admission to NATO. He does not correct the stated justification for this

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[64]Statement by Antonis Samaras, Leader of New Democracy (Respondent's main opposition party), Session of the Greek Parliament, 24 Jan. 2011. Both the video and official transcript (excerpt is at p. 39) are available at: http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=24%2F01%2F2011&DateTo=24%2F01%2F2011.

[65]Statement by Dimitrios Droutsas, Respondent's Minister of Foreign Affairs, Session of the Greek Parliament, 24 Jan. 2011. Both the video and official transcript (excerpt is at pp. 94-95) are available at: http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=24%2F01%2F2011&DateTo=24%2F01%2F2011.

opposition. All he does is urge that the term "veto" not be used because that particular characterization of what happened hurts the Respondent in its position before this Court. As one of our learned opponents might say when waxing eloquently about young Hamlet, "thus conscience does make cowards of us all"[66]. [Plate 6 off]

44. But this is not the end. Mr. Samaras felt compelled to respond in turn. He knows what happened at Bucharest; he is astounded that the Foreign Minister is running away from the truth in its arguments before this Court. [Plate 7 on] Among other things, Mr. Samaras took to the floor again in Parliament and said the following:

> "I also heard that we never exercised a veto on the Macedonian issue. I think it was your Minister who said that. Perhaps the word 'Bucharest' is unknown to him. This is his problem. He doesn't want to remember what happened then, who opposed, who exercised the real veto."[67]

45. Mr. President, these proceedings demonstrate that Mr. Samaras is quite right. The Respondent *does* wish to forget its conduct at Bucharest, at least before this Court. The Respondent *does* wish to forget who opposed the Applicant's admission to NATO. And it wishes to forget who exercised "the real veto". [Plate 7 off]

46. The Respondent may wish to forget, but we ask that this Court not forget what the clear, copious, and unequivocal facts demonstrate about the Respondent's conduct in 2007-2008, and that those facts establish a clear violation of Article 11 (1) of the Interim Accord.

47. Mr. President, Members of the Court, I thank you for your patience. If it please the Court, you may wish to have your coffee break at this time. Professor Klein will be the next up in our presentation.

The PRESIDENT: Thank you, Professor Sean Murphy, for your statement. I believe this is the appropriate moment for the Court to have a brief coffee break. I just remind the audience that, for the second round of oral pleadings by the Applicant, the time is from 10 o'clock to 1 o'clock

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[66]Shakespeare, *Hamlet*, Act 3, Scene 1.

[67]Statement by Antonis Samaras, Leader of New Democracy (Respondent's Main Opposition Party), Session of the Greek Parliament, 24 Jan. 2011. Both the video and official transcript (excerpt is at p. 126) are available at: http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=24%2F01%2F2011&DateTo=24%2F01%2F2011.

and I hope we will be able to abide by that framework. So the Court will have a short coffee break of ten minutes. We come back at quarter to twelve.

The Court adjourned from 11.35 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. The Court resumes its session. I now invite Professor Pierre Klein to make his statement.

M. KLEIN : Merci, Monsieur le président.

Le différend n'entre pas dans le champ de l'exception contenue dans l'article 21, paragraphe 2, il relève pleinement de la compétence de la Cour et la requête est entièrement recevable

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, l'adage est bien connu : on n'est jamais aussi bien servi que par soi-même. C'est sans aucun doute cette pensée que nos estimés contradicteurs ont eue à l'esprit en développant leur argumentation relative aux exceptions préliminaires dans la présente affaire. Dans l'une de ses plaidoiries de la semaine passée, le professeur Pellet a indiqué à ce sujet que la Cour était confrontée à ce qu'il a appelé un «nœud gordien», qu'elle n'avait pas le pouvoir de trancher[68]. Mais, en réalité, Monsieur le président, Mesdames et Messieurs les Membres de la Cour, il n'y a de nœuds dans ce dossier que ceux que la Partie adverse s'est efforcée de nouer elle-même — en y ajoutant au fil du temps quelques boucles supplémentaires — pour tenter de persuader la Cour qu'elle n'était pas compétente à l'égard du litige qui lui est soumis, ou qu'il sortait de ses fonctions judiciaires de se prononcer sur ce litige. Ces nœuds prétendument inextricables ne sont en fait pas bien difficiles à dénouer. Et dès lors qu'ils n'existent pas, la Cour n'aura pas à se demander si elle peut — ou non — les trancher. Je vous propose de vous en assurer successivement en ce qui concerne les questions de compétence et de recevabilité.

2. Dans sa plaidoirie de jeudi passé, le professeur Reisman s'est employé à convaincre la Cour qu'elle était privée de compétence à l'égard du présent litige, car celui-ci conduirait inévitablement la Cour à se prononcer sur le différend relatif au nom de l'Etat de l'Etat requérant.

[68] Voir CR 2011/9, p. 18, par. 22 (Pellet).

Or, comme vous le savez maintenant, il s'agit là d'une question qui est clairement exclue du champ de la clause compromissoire contenue dans l'article 21, paragraphe 2, de l'accord intérimaire, en vertu du premier membre de phrase de cette disposition[69]. Ainsi que j'ai eu l'occasion de l'exposer la semaine dernière[70], l'Etat défendeur retient un critère particulièrement large pour l'interprétation de cette clause. [Projection.] Je rappelle que, selon ce critère — et même si nos contradicteurs paraissent avoir des doutes à cet égard[71], c'est bien celui qu'ils ont eux-mêmes identifié —, le différend relatif au nom, exclu de la compétence de la Cour, devrait inclure «tout litige dont le règlement préjugerait, directement ou par implication, du différend relatif au nom[72]». [Fin de la projection.]

3. Nos contradicteurs pensent pouvoir tirer avantage du fait que la ligne d'argumentation de l'Etat requérant sur ce point aurait évolué. Alors que la requête introductive d'instance indiquait que «l'objet du litige ne concerne pas, de manière directe ou indirecte, le différend auquel il est fait référence dans l'article 5, paragraphe 1, de l'accord intérimaire»[73], ces termes («directement ou indirectement») ne figurent plus dans la réplique, qui garderait un «silence embarrassé»[74] sur ce point. Monsieur le président, il n'y a là aucun silence, et aucun embarras. Aujourd'hui comme hier, l'Etat requérant maintient que la Cour n'a pas compétence pour résoudre le différend relatif au nom — et seulement ce différend. Tous les autres litiges potentiels liés à quelque autre aspect de l'accord intérimaire entrent par contre pleinement dans la compétence de la Cour — y compris, par exemple, un différend quant à la *manière* dont les Parties s'acquittent de leur obligation de négocier au sujet du nom.

4. Ce qui importe ici, ce n'est pas de savoir si la position du requérant peut avoir évolué quant à l'existence d'un lien plus ou moins direct entre le présent litige et le différend sur le nom mais bien, plus fondamentalement, de savoir si le critère retenu par l'Etat défendeur pour l'interprétation de l'exception contenue dans la clause compromissoire est le bon. En d'autres

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[69] Voir CR 2011/8, p. 48, par. 7 et suiv. (Reisman).

[70] Voir CR 2011/5, p. 58, par. 5 (Klein).

[71] Voir CR 2011/8, p. 48, par. 7 (Reisman).

[72] RR, par. 3.13.

[73] Requête, p. 8, par. 10.

[74] Voir CR 2011/8, p. 49-50, par. 11 et 12 (Reisman).

termes, suffit-il qu'il existe un lien, même indirect, même «par implication» entre le litige porté devant la Cour et le différend relatif au nom de l'Etat requérant pour qu'un tel litige soit d'office exclu de la compétence de la Cour ? L'Etat requérant soutient clairement — et il a toujours soutenu — que tel n'est pas le cas, et que seul le différend relatif au nom lui-même — c'est-à-dire à la détermination du nom — est exclu du champ de la clause compromissoire.

5. Le professeur Reisman et moi-même vous avons invités, la semaine dernière, à suivre le cheminement qui mène de l'article 21, paragraphe 2, de l'accord intérimaire à la résolution 817 (1993) du Conseil de sécurité, en passant par l'article 5 de l'accord[75]. Un cheminement un peu long, peut-être, mais qui ne fait en rien du litige soumis à la Cour une affaire horriblement complexe, comme essayent à toute force de le faire croire nos contradicteurs[76] — conformément, d'ailleurs, au scénario que nous avions envisagé[77].

6. Je vous rappelle à cet égard que l'article 21, paragraphe 2, permet de soumettre à la Cour les différends relatifs à l'interprétation ou à l'exécution de l'accord intérimaire, «[à] l'exception de la divergence visée au paragraphe 1 de l'article 5». On peut déjà noter que la clause compromissoire exclut «la divergence visée au paragraphe 1 de l'article 5» et non, par exemple, «les différends relatifs à l'application du paragraphe 1 de l'article 5», ce qui serait une tout autre chose. Aux termes de l'article 5,

> «[l]es Parties conviennent de poursuivre les négociations sous les auspices du Secrétaire général de l'Organisation des Nations Unies, conformément à la résolution 845 (1993) du Conseil de sécurité, en vue de parvenir à régler le différend mentionné dans cette résolution et dans la résolution 817 (1993) du Conseil».

7. Le professeur Reisman vous a proposé une lecture particulièrement créative de l'accord intérimaire sur ce point. Selon lui, ce n'est pas seulement à l'article 5, paragraphe 1, qu'il serait fait référence au différend sur le nom, mais aussi «de manière centrale», pour reprendre ses termes, dans l'article 11, paragraphe 1, de l'accord[78]. Monsieur le président, j'ai relu attentivement le texte de l'article 11. Je l'ai lu en français. Je l'ai lu en anglais. Et je n'y ai trouvé aucune mention quelconque du différend sur le nom. Je ne suis d'ailleurs pas le seul. Lorsqu'il a analysé l'accord

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[75] Voir CR 2011/5, p. 57-58, par. 3 (Klein) ; CR 2011/8, p. 47-48, par. 4-6 (Reisman).

[76] Voir CR 2011/8, p. 47, par. 3 (Reisman).

[77] Voir CR 2011/5, p. 21, par. 14 (Miloshoski).

[78] Voir CR 2011/8, p. 52, par. 24 (Reisman).

intérimaire devant vous il y a quelques jours, le professeur Abi-Saab a identifié trois catégories de dispositions au sein de ce traité. La première était celle des dispositions concernant l'obligation de régler le différend relatif au nom, et les modalités de ce règlement. Le professeur Abi-Saab incluait deux dispositions — et deux dispositions seulement — dans cette première catégorie de clauses : l'article 5, paragraphe 1, de l'accord, et la partie de l'article 21, paragraphe 2, qui y renvoie[79]. Aucune mention, par contre — et pour cause — de l'article 11. C'est donc une lecture pour le moins fantaisiste du texte qui vous est suggérée par certains de nos contradicteurs, qui ne paraissent guère avoir accordé leurs violons sur cette question. Il me semble de loin préférable de s'en tenir à ce que l'accord prévoit vraiment sur ce point. Et ce qu'il prévoit, c'est de renvoyer, dans son article 5, à la résolution 817 (1993) du Conseil de sécurité. Nulle part ailleurs — nulle part — ne retrouve-t-on dans le texte de l'accord la moindre mention d'un différend à l'égard duquel la Cour ne pourrait exercer sa compétence. La résolution 817 (1993), pour sa part, mentionne la «divergence [qui] a surgi au sujet du nom de l'Etat, qu'il faudrait régler dans l'intérêt du maintien des relations pacifiques et de bon voisinage dans la région»[80].

8. Il ne fait donc aucun doute que le différend exclu de la compétence de la Cour est bien celui qui pour reprendre les termes de la résolution «a surgi au sujet du nom de l'Etat» requérant. Rien de plus, rien de moins. C'est le différend relatif au nom, et lui seul, que le jeu combiné des articles 21, paragraphe 2, et 5, paragraphe 1, de l'accord soustrait à la compétence de la Cour, parce que c'est un différend purement politique. J'ai montré, la semaine dernière, que le texte même de la résolution 817 (1993) permettait de faire clairement la distinction entre ce différend, que les Parties sont appelées par le Conseil de sécurité à régler, et l'utilisation de l'appellation provisoire d'ex-République yougoslave de Macédoine, retenue comme solution temporaire «en attendant que soit réglée la divergence qui a surgi au sujet de son nom»[81]. La résolution identifie ainsi, d'une part, un problème : la divergence ou le différend au sujet du nom. Professeur Sands vous a rappelé il y a quelques instants que les versions de la résolution 817 dans les six langues officielles des Nations Unies sont parfaitement cohérentes dans leur terminologie sur ce point. La résolution

[79] Voir CR 2011/8, p. 35, par. 14-15 (Abi-Saab).

[80] Paragraphe 3 du préambule de la résolution.

[81] Résolution 817 (1993), par. 2.

propose, d'autre part, une solution temporaire pour permettre l'admission de l'Etat requérant aux Nations Unies, en dépit de l'existence de ce problème. Cette solution est l'utilisation d'une dénomination provisoire. Et autant le présent différend concerne bien la question des obligations que fait peser — ou non — cette résolution sur l'Etat requérant en ce qui concerne l'utilisation de la dénomination provisoire (c'est-à-dire la solution retenue par la résolution), autant il ne porte pas sur la question du nom en tant que telle (c'est-à-dire sur le problème identifié dans la résolution). Les représentants et les conseils de l'Etat défendeur l'ont d'ailleurs très clairement admis à plusieurs reprises devant vous la semaine passée. Je me limiterai à cet égard au discours d'ouverture de l'agent de l'Etat défendeur, dans lequel celle-ci a expressément reconnu que «la Cour n'est pas ouvertement appelée à trancher la question du nom de l'Etat demandeur»[82].

9. La thèse de l'Etat défendeur ignore complètement cette distinction fondamentale entre les deux composantes de la résolution 817 (1993). Il est d'ailleurs particulièrement révélateur que dans sa plaidoirie de la semaine passée, le professeur Reisman n'ait pas dit un mot — pas un seul mot — de l'interprétation de la résolution 817 (1993) sous l'angle de la compétence. Il en a certes parlé très longuement sous l'angle du fond — ce que la résolution requiert, ou non, du requérant en ce qui concerne l'utilisation de la dénomination provisoire[83]. Il vous a également présenté de très nombreuses versions — plus ou moins caviardées et retouchées — des clauses de l'accord intérimaire, censées refléter les lectures qu'en faisait l'Etat requérant. Mais sur les implications de la structure et du contenu de la résolution 817 (1993) pour la détermination de la compétence de la Cour, alors qu'il s'agit là du texte fondamental auquel renvoie l'accord intérimaire, rien, un grand vide.

10. Il vous a été rappelé la semaine dernière que la thèse du défendeur revenait en fait à priver la Cour de toute compétence à l'égard de portions très larges de l'accord, voire de la faire disparaître complètement. S'il fallait retenir l'interprétation de la clause compromissoire proposée par la Partie adverse, répétons-le encore une fois, les différends relatifs à pas moins de onze clauses de l'accord seraient d'office exclus de la compétence de la Cour, selon le propre comptage effectué

[82] Voir CR 2011/8, p. 17, par. 19 (Telalian).

[83] Voir *Ibid.*, p. 54-57, par. 29-44 (Reisman).

par l'Etat défendeur[84]. Près de la moitié de l'accord échapperait de ce fait automatiquement au champ d'application de la clause compromissoire. Sur ceci, une fois encore, pas un mot de la Partie adverse. Contre l'évidence la plus élémentaire, nos estimés contradicteurs préfèrent continuer à prétendre que leur thèse ne contredit en rien le fait que l'article 21, paragraphe 2, donne ce qu'ils continuent à appeler un «rôle central» à la Cour dans le contrôle de l'application de l'accord[85]. Et ils reprennent à cette fin la liste des dispositions — provisoirement, très provisoirement — sauvées des eaux, en affirmant qu'un litige les concernant ne toucherait pas nécessairement à la question du nom.

11. Mais le problème n'est pas de savoir si un litige relatif à ces dispositions toucherait nécessairement à la question du nom. Il suffirait, à suivre la thèse de l'Etat défendeur, qu'un éventuel litige présente un lien quelconque, même incident ou lointain, avec cette question pour qu'il soit automatiquement «contaminé» si l'on peut dire par l'exception prévue dans l'article 21, paragraphe 2. Rappelez-vous du critère retenu par la Partie adverse directement ou par implication. L'un des exemples retenus par nos estimés contradicteurs apparaît particulièrement malheureux à cet égard. Le professeur Reisman a fait référence à l'article 8 de l'accord, qui impose aux Parties de s'abstenir de poser des obstacles aux mouvements de personnes et de biens entre leurs territoires[86]. Il a affirmé qu'un litige relatif à cette disposition ne serait pas nécessairement relié à la question du nom[87]. Peut-être pas nécessairement, mais potentiellement en tout cas, par implication, dès l'instant où serait établie une connexion avec le différend sur le nom. M. Reisman semble avoir oublié — sans doute parce qu'il s'agit d'un épisode que l'Etat défendeur est peu enclin à voir évoqué devant cette Cour — que c'est précisément *en vue de faire pression sur l'Etat requérant dans le contexte du différend relatif au nom* que l'Etat défendeur lui a imposé un embargo économique aux conséquences désastreuses en 1994[88] ? Pourtant, s'il fallait suivre le défendeur, le litige qui résulterait de l'adoption de telles mesures serait bel et bien exclu de la compétence de la Cour dès lors qu'il présente un lien de connexité, par implication, avec le

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[84] RR, par. 3.21 et CR 2011/5, p. 60, par. 9 (Klein).

[85] Voir CR 2011/8, p. 50, par. 15 (Reisman).

[86] Voir *Ibid.*, p. 52, par. 23 (Reisman).

[87] Voir *Ibid.*

[88] AM, par. 2.27.

différend relatif au nom. Et il pourrait évidemment en aller de même pour toutes les autres dispositions de l'accord qui pourraient être reliées d'une manière ou d'une autre, par implication, à ce différend. L'interprétation du premier membre de phrase de l'article 21, paragraphe 2, soutenue par l'Etat défendeur se révèle dès lors plus intenable que jamais. Et ce n'est certainement pas un hasard si un auteur grec particulièrement proéminent qui a commenté l'accord intérimaire — avec une autorité sur laquelle mon collègue le professeur Philippe Sands reviendra dans quelques instants — n'a nullement retenu cette approche de la clause compromissoire, et lui a au contraire reconnu une portée très large[89].

12. Je ne m'attarderai guère, Monsieur le président, Mesdames et Messieurs les Membres de la Cour, sur l'autre argument d'incompétence soulevé par l'Etat défendeur, selon lequel la Cour ne pourrait trancher le présent différend car cela lui imposerait de se prononcer sur les droits et obligations d'Etats et d'entités tiers à l'instance, en l'absence de leur consentement. L'argument bâti par nos estimés contradicteurs sur ce point est tout entier fondé sur une vision des faits de la cause dont on ne sait pas trop si elle relève du surréalisme — ce qui aurait au moins le mérite de lui conférer une prétention artistique — ou du déni pur et simple de réalité. La prémisse du raisonnement est en effet que l'Etat défendeur n'a rien fait d'autre que de «se joindr[e] au consensus déférant [l']admission [du requérant] à l'OTAN»[90]. Aucun comportement propre de l'Etat défendeur, préalablement au sommet de Bucarest, ne peut être identifié. Un tel acte distinct de la décision de l'OTAN, nous ont martelé les professeurs Pellet et Crawford, n'existe pas[91]. Et la Cour serait de ce fait irrémédiablement amenée à se prononcer sur un acte de l'OTAN, ce qu'elle ne peut faire[92].

13. Mon collègue le professeur Sean Murphy vous a exposé il y a quelques instants ce qu'il convenait de penser d'un tel scénario et de sa complète invraisemblance. Le professeur Sands, quant à lui, vous a détaillé ce conte de fées que se raconte la Partie adverse, comme pour se rassurer, mais l'heure des contes est terminée, il est temps de revenir aux réalités, aux dures

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[89] Christos Rozakis, *Political and Legal Dimensions of the Transitional Agreement signed in New York between Greece and FYROM*, Athènes, Sideris, 1996 (en grec), par. 3.5.

[90] Voir CR 2011/10, p. 30, par. 36 (Pellet).

[91] Voir CR 2011/9, p. 15, par. 18 (Pellet) ; *ibid.*, p. 53, par. 19 (Crawford).

[92] Voir *ibid.*, p. 15, par. 19 (Pellet).

réalités. Cet acte d'objection existe indéniablement, et il est clairement attribuable à l'Etat défendeur, qui l'a revendiqué tant et plus par la voix de ses plus hautes autorités. Le fait qu'il s'agit d'un comportement clairement individualisable et clairement attribuable à l'Etat défendeur nous a d'ailleurs été confirmé au-delà de tout doute par le professeur Crawford, qui a insisté sur ce point à propos des différentes prises de position des autorités du défendeur : «governmental institutions of Greece are not the same as NATO», nous a-t-il dit[93]. Nous ne saurions mieux exprimer les choses. Et c'est précisément pour cette raison que la Cour est pleinement habilitée à se prononcer sur la compatibilité de ce comportement à l'article 11, paragraphe 1, de l'accord intérimaire de 1995, sans que cela la conduise pour autant à prendre position de manière quelconque sur les décisions intervenues ultérieurement au sein de l'OTAN. L'on se trouve donc bien confronté ici à une situation similaire à celles dont la Cour a eu à connaître dans l'affaire *Nauru* et dans l'affaire des *Activités armées sur le territoire du Congo*. La Cour n'est en rien contrainte de se prononcer sur les comportements de tiers à l'instance comme préalables à la détermination de la responsabilité d'une des parties à l'instance. La jurisprudence de l'*Or monétaire* n'est dès lors d'aucun secours à l'Etat défendeur. Et c'est bien pour cette raison, alors même qu'ils nous reprochaient notre silence au sujet de cette jurisprudence, que nos estimés contradicteurs ne se sont guère étendus sur ce point[94].

14. L'exception d'irrecevabilité avancée par l'Etat défendeur, aux termes de laquelle la Cour devrait s'abstenir de rendre un arrêt car celui-ci serait dépourvu de tout effet pratique, est fondée sur le même scénario. Là aussi, nos estimés contradicteurs ont refusé de s'engager dans un débat juridique digne de ce nom quant à la pertinence de l'affaire du *Cameroun septentrional* pour le litige présentement soumis à la Cour. Et cela n'a rien d'étonnant, puisqu'un tel débat, s'il devait avoir le moindre intérêt, peut difficilement s'engager sur des prémisses factuelles aussi incorrectes. Je ne peux donc que réitérer le constat opéré par l'Etat requérant sur ce point : une fois la demande rapportée à son objet exact, la construction élaborée par le défendeur pour en contester la recevabilité tombe en poussière[95]. Les enjeux concrets et pratiques de la présente affaire, on l'a

[93] Voir CR 2011/9., p. 48, par. 6 (Crawford).

[94] Voir *ibid.*, p. 15, par. 19 (Pellet).

[95] CR 2011/5, p. 64, par. 14 (Klein).

amplement montré à ce stade, sont bien réels. C'est le cas tant par rapport à l'OTAN qu'à l'égard d'autres organisations dans lesquelles l'Etat requérant pourrait solliciter son admission à l'avenir, comme l'Union européenne, par exemple.

15. Reste enfin l'allégation d'interférence dans un processus politique — celui des négociations sur le nom de l'Etat requérant —, qui devrait elle aussi conduire la Cour à abdiquer ses pouvoirs en l'espèce. Il convient tout d'abord de rappeler que l'Etat requérant a exprimé de nettes réserves quant à l'introduction particulièrement tardive de cette dernière exception, en contrariété avec les règles régissant la présentation des exceptions préliminaires. La Partie adverse a visiblement choisi d'ignorer complètement ce léger inconvénient, puisque ses conseils n'en ont pas dit un mot la semaine passée. L'Etat requérant ne peut donc que réitérer ses réserves sur ce point, en invitant la Cour à écarter cette dernière exception en raison de sa présentation tardive.

16. A supposer que la Cour accepte néanmoins de l'examiner, et à titre subsidiaire, qu'il me soit permis de rappeler brièvement pourquoi un arrêt rendu par la Cour dans la présente espèce n'aurait en rien pour effet d'interférer dans le processus de négociation sur le nom. L'analyse de la résolution 817 (1993) du Conseil de sécurité à laquelle nous venons de nous livrer a très clairement montré que le processus de négociation sur le nom, d'une part, et la question des obligations que faisait éventuellement peser la résolution 817 (1993) sur l'Etat requérant en ce qui concerne l'utilisation de la dénomination provisoire, d'autre part, sont deux questions bien distinctes[96]. Une fois encore, la Partie adverse entretient délibérément la confusion à cet égard. La détermination de la portée de la résolution 817 (1993) et de l'accord intérimaire en ce qui concerne la question de l'utilisation de la dénomination provisoire n'aura en rien pour effet de trancher le différend relatif au nom, ni d'imposer une conclusion au processus de négociations toujours en cours entre les Parties à ce sujet. Nos estimés contradicteurs ont fait valoir à ce propos qu'«il n'appartient pas à l'«organe judiciaire principal» des Nations Unies de délier» l'Etat requérant de son obligation de négocier en vue d'arriver à une solution du différend sur le nom[97]. L'Etat requérant ne l'a jamais prétendu, et ce n'est nullement ce qu'il attend de la Cour, directement ou indirectement. Cette obligation de négocier existait avant que le présent litige survienne, et elle continuera à exister

[96] Voir aussi CR 2011/6, p. 18-19, par. 14 (Klein).

[97] Voir CR 2011/9, p. 19, par. 28 (Pellet).

après qu'il ait été réglé. Rien ne conduira donc la Cour à «interférer» dans un processus politique et à porter de ce fait atteinte à l'«intégrité de la fonction judiciaire» si elle accepte de traiter au fond de l'affaire qui lui est aujourd'hui soumise.

17. En conclusion, c'est pour l'ensemble des raisons qui vous ont été rappelées ce matin que l'Etat requérant prie respectueusement la Cour de rejeter les exceptions d'incompétence et d'irrecevabilité formulées par l'Etat défendeur.

Monsieur le président, Mesdames et Messieurs les Membres de la Cour, je vous remercie pour votre aimable attention. Je vous prie, Monsieur le président, de bien vouloir maintenant passer la parole à mon collègue, le professeur Philippe Sands.

Mr. PRESIDENT: I thank Professor Pierre Klein for his statement. Now I invite Professor Philippe Sands to take the floor.

Mr. SANDS:

THE RESPONDENT'S BREACH OF ARTICLE 11 (1) CANNOT BE EXCUSED

Introduction

1. Mr. President, Members of the Court, it remains for me to address the excuses put forward by the Respondent to justify its violation. You will recall there were three: the Article 22 excuse, the *exceptio* excuse, and the countermeasures excuse. Now these have been very fully pleaded by now, and nothing we heard last week has caused us to depart from the very clear views that we have already expressed, namely, that these creative legal arguments cannot get them off the hook, and I will deal with them reasonably shortly.

2. As regards the Article 22 argument, this was dealt with exclusively by Professor Reisman[98]. One might have expected somebody on that side of the room to deal with the practical application of Article 22, its melding to the facts of the case, perhaps Professor Crawford, but this just never happened. So Professor Reisman's presentation was just left hanging, aptly described as an *"entr'acte"*[99], a bit like the *entr'acte* in that wonderful Rodgers and Hammerstein

[98] CR 2011/9, pp. 39-46 (Reisman).

[99] *Ibid.*, p. 8, para. 52 (Crawford).

show *Cinderella*; the one that always gets played at every live performance as a sort of *divertimento* but never features in the final recorded version — in this case, that is your Judgment.

3. Counsel for the Respondent lamented that Article 22 was, to use his words, "something of a latecomer to this case"[100]. Well, if I were the host I would be surprised that this guest turned up at all. There is a very simple reason we made no mention at all of Article 22 in our Memorial, beyond a reference to the fact of its existence, and that is because it is totally irrelevant. In preparing for this case we fully researched the academic literature on the Interim Accord. Counsel's words last week caused us to go back to these articles and check again — had we missed something? But once again, we were unable to find any commentator who considers Article 22 to be remotely relevant to the core functions of the Accord. Now, if any such article might have been expected to assist, it would have been that published by Professor — now Judge — Christos Rozakis, in 1996, entitled, in English, "Political and Legal Dimensions of the Transitional Agreement" signed in New York between Greece and FYROM. It appears to be only available in Greek — we do have an informal translation into English and we would have no objection to sharing it with the other side or the Court if that would be helpful. The article was published around the time Professor Rozakis served as the Respondent's Deputy Foreign Minister[101]. Given his then position, we assume he was well placed to provide an authoritative commentary on the Interim Accord. So if anyone might address Article 22, one would have expected it to have been him. It is therefore noteworthy that he makes no mention of Article 22 at any place in his 77 page book, and no mention either of any related right on the part of either Party to suspend or modify any obligation in the manner sought by the Respondent. No other legal article that we have been able to identify makes a material reference to Article 22, in any way that assists the Respondent[102].

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[100]CR 2011/9, p. 39, para. 2 (Reisman).

[101]Christos Rozakis, *Political and Legal Dimensions of the Transitional Agreement signed in New York between Greece and FYROM*, Athens, Sideris, 1996 [in Greek].

[102]See, e.g., Michael Wood, "Participation of Former Yugoslav States in the United Nations and in Multilateral Treaties", *Max Planck Yearbook of United Nations Law*, (1:1997), p. 231, available at: http://www.mpil.de/shared/data/pdf/pdfmpunyb/wood_1.pdf; Nikos Zaikos, *The Interim Accord: Prospects and Developments in Accordance with International Law*, available at: http://www.macedonian-heritage.gr/InterimAgreement/Downloads/Interim_Zaikos.pdf; Aristotle Tzia-mpiris, *The Name Dispute in the former Yugoslav Republic of Macedonia after the Signing of the Interim Accord*, available at: http://www.macedonian-heritage.gr/InterimAgreement/Downloads /Interim_Tziampiris.pdf.

There are similar provisions to Article 22 in many other international agreements and nowhere have we found support for their view and they have cited none.

4. Professor Pellet complained that "nos amis de l'autre côté de la barre font une lecture partielle et partiale, en voulant dissocier l'article 11 de cet instrument de son article 22"[103]. Well, in truth, he should be directing his critique to Ms Telalian's former colleague at the Ministry of Foreign Affairs. Indeed, last week, when he was in the room, he would not even have had to go that far, he could have raised his concerns with Mr. Evangelos Kofos, counsel to the Respondent, who was then sitting even closer to him, who happened to work in the same Ministry as Professor Rozakis, and who has cited his book with approval, referring to Professor Rozakis as "a distinguished jurisprude"[104]. [Plate 1 on] Now, of particular interest, for present purposes, is the fact that Mr. Kofos notes Professor Rozakis' statement that "any disappointments and impasses which might arise on the way to an agreement over the name should not prevent the concurrent implementation of the Transitional Accord," and then — even more significantly — he quotes, with approval, Professor Rozakis' statement "[w]hat has already been agreed must not be used in negotiations as a lever to gain advantages in the matter of the name"[105]. So let us be clear: Professor Rozakis foresaw exactly what has happened in this case, that a party — the Respondent — might take what has already been agreed — the obligation not to object in Article 11 (1) — and use it "in negotiations as a lever to gain advantages in the matter of the name." Did Professor Rozakis express the view that Article 22 might be used to circumvent, modify or condition "what has already been agreed"? He did not. Did Mr. Kofos criticize him for that failure? He did not. Did Ms Telalian, or any of her predecessors, take any steps to alert Professor Rozakis or Mr. Kofos that they had fallen into error? There is no evidence before this Court that they did. In short, we have been able to find no support for the view adopted by Professor Reisman that Article 22 is a central component of the Interim Accord. And that is why we said nothing about it in our Memorial. [Plate 1 off]

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[103]CR 2011/8, p. 63, para. 12 (Pellet).

[104]Evangelos Kofos, "The Unresolved 'Difference over the Name': A Greek Perspective", in *Athens-Skopje: An Uneasy Symbiosis, 1995-2002*, published in Greek by Papazisis Publishers, Athens, Dec. 2003, Hellenic Foundation for European and Foreign Policy (ELIAMEP), ISBN 960-8356-05-9, pp. 127-144; available in English at: http://www.macedonian-heritage.gr/InterimAgreement/Downloads/Interim_Kofos.pdf; judges' folder, tab 14.

[105]*Ibid*., at p. 146, quoting from Professor Rozakis' book, *op. cit.*, fn. 101, at pp. 37-38.

5. There is therefore good reason why Article 22 was a latecomer. No one negotiating the Interim Accord seems to have thought it was significant. I can therefore be very clear in responding to the points raised by counsel in a presentation that was, all will have noticed, both brief and incomplete in its effort to respond to the arguments we made last week or in our written pleadings. He did not address, as you will have noticed, the short-cut we identified that permits the Court to deal with Article 22 in a straightforward way: unless the Respondent can show that as at April 2008 there was a right or duty obliging it under NATO to object because the name difference had not been resolved, then on its own case Article 22 is of no use to it. But, even on its own case, the Respondent has not been able to show that its objection to our NATO membership was based on any criterion for NATO membership. You will recall that I drew your attention to the evidence, that shows the Respondent's objection was based on criterion that were "in addition to" those set forth in any NATO documents[106]. On that point too the Respondent was silent and we noted that silence.

6. So, what did Professor Reisman have to say? He made four central points. First, that we had not explained the effect of Article 22[107]. That is simply wrong. If he cares to have a look at paragraph 5.13 of our Reply, we set out an explanation that clauses of this type were not unusual in international agreements. Then we gave a practical example in the field of defence procurement as to how a provision that is aimed at providing that an agreement will not alter the rights and duties of a third party can operate in practice. But you do not explain, he claims, how "the duties" of third parties might be affected[108]. In fact we thought it was rather clear from that paragraph of our Reply: if State A supplies items to State B with restrictions on retransfer to other States, and then State B supplies to the Respondent, State B has a duty — an obligation — to State A that is covered by Article 22. And that goes in the same way for international obligations of the European Union to a third party, given that the Respondent is a member of the EU.

7. Second, Professor Reisman sought to address our point that the Respondent's interpretation of Article 22 made no sense when considered next to the provisos in Articles 14

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[106]RCM, para. 7.35; AR, para. 2.11; CR 2011/6, p. 61, para. 28 (Sands).

[107]CR 2011/9, p. 40, para. 9 (Reisman).

[108]*Ibid.*

and 19 of the Interim Accord, that speak expressly to the rights of the Respondent. He explained that these provisions deal with issues that are "areas", to use his word, "in which European Union member States have delegated their competences to the European Commission", so it was, to take his words again "natural, at least for the Greek drafters of the Interim Accord, to provide explicitly for such provisions, so as not to infringe upon the exclusive competences assigned to the European Commission in these fields"[109]. And he generously offered to us that, since the Applicant is not a party to the European Union, we may not have been aware of these matters. With respect, the lack of understanding is his. Putting aside the minor point that exclusive competences are vested with the Community, not the Commission, the argument collapses simply by looking at other provisions of the Interim Accord. Article 15, for example, deals with "economic relations"; it is hard to think of an area in respect of which the European *Economic* Community had more exclusive competence than this one, but it includes no proviso. The same may be said of Article 16, that deals with technical co-operation and, another example, Article 17, that deals with the environment, an area in which the Community also has a high degree of exclusive competence. So this explanation has to be wrong, neat as it is, as anyone familiar with European Union law will instantly recognize.

8. Then Professor Reisman decided to meld Articles 11 and 22, yet *again*. Having just criticized us for inserting words into the Interim Accord[110], he then did exactly the same thing. He used various slides to show us how the Respondent had inserted the word "but" to link Articles 11 and 22 into a seamless, beautiful and helpful whole. Now, this exercise did have the great merit of transparency, as was claimed, but counsel never adequately explained why he was entitled to insert a word into a treaty that altered the meaning by having the clear effect of subordinating Article 11 to Article 22 in a way that the drafters themselves did not do, as they had done in Articles 14 and 19. And he did not explain either why he felt able to remove nine crucial words from the text of Article 22, the words that state that the Accord "is not directed against any other State or entity". In any event, the insertion and removals do not assist if we — Judge Rozakis and Mr. Kofos, every other commentator and observer — are correct in considering that Article 22 has no relevance to Article 11 and to this case.

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[109]CR 2011/9, p. 41, para. 10 (Reisman).

[110]*Ibid*., para. 9.

9. Then Professor Reisman returned to the distinctions between different categories of so-called "open" and "closed" international organizations. We have already explained the basis for our view that this distinction is without merit[111]. The sheer complexity of the argument does not add to its attractiveness; I must confess that on the oral presentation I rather lost the thread when he came on to fax machines, telephones and the relevance of the concept of scarcity. And, of course, I found myself wondering into which category different bodies might fall. What about the World Trade Organization, which seems to be both an "organisation à vocation universelle" and an "organisation fermée". Reading, rereading, and re-rereading did not add to the force of an argument that is noteworthy for the fact that it makes reference to not a single authority in support of the claim. And we still await an explanation as to the absurdity of the outcome: the Respondent has a right to object in all international organizations at which its objection may have an effect — closed organizations — but no right where the objection has no effect — open organizations.

10. Of course, the effect of his argument is devastating for the Interim Accord and the stability that it was intended to create. This is confirmed by him and we are happy to take the confirmation that "every obligation in the treaty is potentially contingent on Article 22", so that the obligation in Article 11 yields[112]. On that approach, Article 11 and every other provision just becomes meaningless: either party is simply entitled to assert that it has as a right or duty under an international obligation in force for it, and then it can override an obligation in the Interim Accord. That is not a conclusion that was identified by Professor Rozakis or Mr. Kofos, or apparently anyone else on this planet. The idea that Article 22 is a sleeping provision that can somehow be invoked in January 2010, in the Counter-Memorial — fifteen years after the Interim Accord was adopted and two years after the dispute arose — is not immediately attractive, given the destructive effect that it has on the Accord. Professor Reisman simply chose to ignore thirteen years of inconvenient practice; on the one hand, the Respondent argues that we have been systematically violating our obligations under the Accord, since 1995 and, on the other hand, he says that it was only in 2008 that it finally found reason to act, with a public statement by the Applicant's President that was delivered . . . a year after the Respondent began to object and six months after

[111]AR, paras. 5.25-5.28; CR 2011/6, pp. 57-58, paras. 20-21 (Sands).

[112]CR 2011/9, p. 43, para. 13 (Reisman).

Bucharest[113]! Ever inventive, counsel has come up with the right of pre-emptive pre-emption, the right to act months before the information that generates the right has become known to you. One can quickly imagine to what mischief such a theory could soon be applied.

11. In conclusion, Article 22 cannot be the "get out of jail card" that is claimed. In paragraph 7.7 of its Counter-Memorial, the Respondent conceded that Article 11 (1) "limits a right that Greece could otherwise freely exercise". Professor Crawford recognized that Article 11 was, to take his words, a "major concession by Greece"[114]. Article 22 was not intended to restore the situation which pertained before that concession was granted. Article 11 either does or does not limit the right, it either was or was not a major concession. And it certainly cannot be a concession or a limitation that the Respondent is free to abrogate unilaterally on the basis of conditions that are nowhere set out, by reference to a provision that its own senior Foreign Ministry advisers considered to be of no relevance whatsoever. Article 22 does not assist the Respondent.

12. So I turn to the *exceptio*. As always, it was a real pleasure to listen to Professor Pellet, who did not seem to appear too exhausted by his tussle with Professor Crawford over the privilege of arguing this point. With vim and vigour, he battled, a Greek hero, a testament to formidable talents, but perhaps also to the power of self-delusion.

13. Was I the only person in the Great Hall, late on Friday afternoon, as the *cocktails des juges* approached, to be transported back in time, maybe to 1938 — and elsewhere in place, somewhere to where the Academy Building was, perhaps — to imagine Judge Anzilotti sitting at the back of the lecture theatre, nodding sagely, as a brilliant and, it must be said, very youthful Professor Pellet expounded on the great future that lay ahead for the *exceptio*[115]? But then, as if awoken from a dream, I was back in 2011 and the real world of the law court and law libraries and matters at hand — confronted with the real world, not the world of myth and Gods and heroes. Preparing for this hearing, we went through each edition of Professor Pellet's very fine treatise on international law, to see what he really thought about the *exceptio*, from the 1st edition — published in 1977 — to the 8th edition — published recently in 2009. In each case, the treatment

[113]CR 2011/9, p. 46, para. 18 (Reisman).

[114]*Ibid.*, p.23, para. 8 (Crawford).

[115]CR 2011/10, pp. 24-34 (Pellet).

was short and, as I mentioned last week, entirely devoted to the manner in which the *exceptio* has been picked up in Article 60 of the 1969 Vienna Convention. So I, to be frank, did not recognize Friday's speech as bearing any relation whatsoever to what he wrote in any of those eight editions. So perhaps we were getting a privileged preview of what might appear in the next edition — Pellet's 9th we might call it — an indication also of the hazards of simultaneously navigating the worlds of academe and professional practice.

14. We expected half an hour on the *exceptio* and countermeasures, but we got a full hour. Sometimes, Mr. President, less is more. We thought we would have nothing to add to what we said in our written and oral pleadings. But something rather interesting happened. The Court will recall that at paragraph 8.2 of its Counter-Memorial the Respondent asserted, in respect of the *exceptio*, and its entire case, that it had "never claimed any intent to suspend . . . in whole or in part". The point was repeated at paragraph 8.40 of the Rejoinder[116]. [Plate 2 on] So, the Court can well imagine our surprise when Professor Pellet announced to the Court on Friday afternoon — late in the day — that in fact the Respondent *had* effected a "suspension partielle"[117] as you can see on the screen now. But then, a few minutes later, having upped the gear from third to fourth, he went straight into reverse, which is always a dangerous thing to do. Perhaps he recognized he had fallen into error — this is what he then says: [Plate 2.2 on] "il n'entrait nullement dans ses intentions de mettre fin à l'accord intérimaire ou d'en suspendre l'exécution" — that is what he said, returning to the line taken in paragraph 8.2 of the Counter-Memorial and 8.40 of the Rejoinder[118]. Mr. President, you will understand that we are now somewhat confused as to what their case is. Have they suspended, or have they not suspended? One reading of Professor Pellet's presentation is that they have now dropped the *exceptio* argument, and that they are just arguing material breach of treaty under Article 60, but of course he never actually said that and it would be truly extraordinary for the Respondent to raise such a significant new legal argument so late in the day, having rejected it right up until Friday afternoon. But perhaps that is why he raised Article 65, paragraph 5, claiming it to be available as a shield, to allow suspension in the absence of prior

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[116]RCM, para. 8.2; RR, para. 8.40.

[117]CR 2011/10, p. 28, para. 12 (Pellet).

[118]*Ibid.*, p. 33, para. 26 (Pellet).

notification[119]. But his difficulty on that score is that Article 65, paragraph 5, begins with the following words — it says "without prejudice to Article 45"; so you go and take a look at what Article 45 says and it prevents a State from invoking a ground for suspending the operation of a treaty under Article 60 if, after becoming aware of the facts, it has "expressly agreed that the treaty is valid or remains in force or continues in operation". So we were even further struck by the new and additional inconsistency when — ten minutes later, after having raised Article 65, paragraph 5 — Professor Pellet did exactly that, he expressly agreed that the treaty is valid, remains in force and continues in operation: "il n'entrait nullement dans ses intentions de mettre fin à l'accord intérimaire ou d'en suspendre l'exécution", he said. So, having raised Article 65, paragraph 5, he then cut off its head.

15. Another reading of Professor Pellet's unusual presentation is that the Respondent is somehow inviting the Court to meld the *exceptio* and Article 60 into something new, that would be a wholly novel argument.

16. But there is a third possible reading, and this one strikes us as the most likely, and that is that the Respondent is in total disarray; that it has lost the ability to maintain oversight of the totality of its arguments — not surprising — given their improbability and their complication. That is why the contradictions abound. In any event, we will listen with great care to what they have to say on Wednesday, recognizing, Mr. President, that if they are to make yet another new argument or new arguments we would fully expect to have a right to be heard on them. [Plate 2 off]

17. Whatever happens on Wednesday, the *exceptio* has had a jolly good outing, way beyond what it merits. Now that it has been aired, we hope that the Court will put it back in the cupboard and gently close the door, if that is not what Professor Pellet already did last Friday: and there we hope it will remain, quietly resting, until its next outing, which by our calculation is a 73-year event.

18. Finally, I come to countermeasures, treated as a sort of epilogue[120], and on which we can be even briefer. For the reasons mentioned in the first round, the argument does not get off the ground, and counsel did not give it wings last week. It just does not meet the conditions: there is

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[119]CR 2011/10, p. 29, par. 14 (Pellet).

[120]*Ibid.*, pp. 34-39 (Pellet).

no evidence before the Court to justify the conclusion that the Respondent is an injured State — it would indeed be a truly remarkable thing if this Court could hold that a mere construction of a statue, or the naming of an airport, or the naming of a stretch of a highway, could establish an international injury in these circumstances. Counsel reminded us of his Agent's submissions "que la proportionnalité . . . doit également être mesurée à l'aune des manquements du demandeur à ses obligations relatives au nom et aux négociations sur ce nom"[121]. The remark caused us to enquire how familiar counsel might actually be with the evidence before the Court. It is apparent that in these cases we have to know the whole dossier, we have to read everything — every document — precisely to avoid making statements that get us into difficulty. But the annexes admit of no doubt: in its Counter-Memorial, the Respondent annexed just nine Notes Verbales that were addressed to the Applicant before 4 April 2008; that is the totality of the evidence on which they relay. Not one of these alleges a material breach of the Interim Accord; not one of these alleges that the use of the constitutional name before the United Nations violated the Interim Accord; not one of these alleges irredentism; not one of these alleges a violation of Article 5, paragraph 1, of the Interim Accord. A table setting this out is available in your judges' folder at tab 13. The Respondent annexed no new Notes Verbales, dating from that period, from the Respondent to the Applicant in its Rejoinder. So that is it, that is the evidence on which they rely: nine Notes Verbales, that is the sum total of their case. And what do they raise in those Notes Verbales? Well — and I say this with respect, particularly to the lady who owns the car — they can only be characterized as totally trivial: for example, four of the Notes relate to the vandalism or theft of car licence plates on a car that belonged to the Attaché at the Respondent's Liaison Office in Skopje, and a fifth concerned the rear licence plate of her spouse's car[122]. Mr. President, you cannot stand before the Bar of the International Court of Justice in The Hague and allege, with a straight face, that damage to a car licence plate, however regrettable, is something this Court should be dealing with. You cannot stand before the Bar of this Court and allege that the use by the Applicant of its constitutional name in communications with every international organization of which it has been a member since 1993 amounts to a material breach or violation of the Interim Accord, in circumstances in which the

[121]CR 2011/10, p. 35, para. 31 (Pellet).

[122]See RCM, Anns. 41, 43, 44, 45 and 50.

Respondent's pleading does not contain a single Note Verbale addressed to the Applicant predating April 2008 that makes the claim or that indicates that it is entitled to take countermeasures. The allegation is all the more implausible in the face of the absence of objection by any of the organizations or any of its members. Taken alongside the account written by Mr. Evangelos Kofos that deals with the application of the Interim Accord in this relevant period and which fails to make any mention of this offending act[123], the argument simply collapses.

19. Mr. President, the substantive conditions for countermeasures are obviously not met, and the formal conditions for their invocation are obviously not met. Counsel made no real effort to argue otherwise, and the argument provides no assistance to the Court or to the Respondent.

20. Mr. President, this is a simple case, one in which the facts inevitably lead to a simple outcome. The Respondent did object, and for a reason that was not permitted by Article 11. That objection is factually and legally distinct from any action of NATO. The Respondent's objection cannot be excused by any of the three grounds put forward by the Respondent: not by Article 22, not by the *exceptio*, not by countermeasures. If either Party had any concerns with the application of the Interim Accord, the 1969 Vienna Convention provided the rules and mechanisms for dealing with them, whether in terms of suspension, withdrawal or termination. What neither Party is entitled to do is to take the law into its own hands, or circumvent the Vienna Convention; and this is something that some of the delegation to my left's own counsel recognize. [Plate 3 on] Mr. President, writing in 2003 the situation was described in the following way by Mr. Kofos in the foreword to the edited collection to which I have already referred:

> "The 13th of October 2002 marked the expiry of the Interim Accord between Greece and the Former Yugoslav Republic of Macedonia (FYROM). This Accord had regularised relations between the two neighbour states for seven years of its planned duration. Given that both countries were apparently satisfied with the Accord's framework and the progress of its implementation, neither party declared any intention of allowing it to lapse. *It will, therefore, remain in force until it is replaced by a new, 'final' agreement, or until one of the two sides declares it void*."[124] (Emphasis added.)

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[123]Evangelos Kofos, "The Unresolved 'Difference over the Name': A Greek Perspective", in *Athens-Skopje: An Uneasy Symbiosis, 1995-2002*, published in Greek by Papazisis Publishers, Athens, Dec. 2003, p. 142; available in English at: http://www.macedonian-heritage.gr/InterimAgreement/Downloads/Interim_Kofos.pdf.

[124]Evangelos Kofos and Vlasis Vlasidis, "Foreword" in *Athens-Skopje: An Uneasy Symbiosis, 1995-2002*, published in Greek by Papazisis Publishers, Athens, Dec. 2003, p. 11; available in English at: http://www.macedonian-heritage.gr/InterimAgreement/Downloads/Interim_Foreword.pdf; judges' folder, tab 15.

The Respondent has not declared the Interim Accord to be void, and according to its written pleadings it has not purported to suspend it, after the little 180˚ about-turn and then re-about-turn, it seems that it has not been suspended and remains fully in force today: and we invite you to so judge, and to hold the Respondent to the obligations it undertook, both now and for the future.

I thank you once again, Mr. President and Members of the Court, for your patience and for your kind attention, and invite you to call to the Bar our distinguished Co-Agent, Ambassador Nikola Dimitrov, who will bring to a close our second round of oral arguments. [Plate 3 off]

The PRESIDENT: I thank Professor Philippe Sands for his statement. I now invite His Excellency Ambassador Nikola Dimitrov to make closing remarks and make final submission on behalf of the former Yugoslav Republic of Macedonia. Ambassador, you have the floor.

Mr. DIMITROV:

Closing remarks

1. Mr. President, Members of the Court, I am honoured to appear for the first time before the Court on behalf of my country, the Republic of Macedonia.

2. Minister Milošoski elaborated upon the path my country has chosen since our independence in 1991. It is the path of a small country in the heart of the Balkans, trying to do the right thing in rather difficult circumstances and surroundings, in its efforts to find its place in the community of nations. This path was not free of major challenges, including the imperative to build a functional democracy in our multiethnic society based on rule of law, human rights and market economy.

3. One of the main challenges since our birth as an independent State was our relationship with the Hellenic Republic, our neighbour and the Respondent in this case. Although it is not a matter before this Court for resolution, the principal difference that divides us concerns the name of my country, with all that implies to our nationality, our language and our identity. Due to the Respondent's opposition, we have suffered delays and setbacks in our quest for international recognition and legitimacy, often compromising the interests for stability in the region. Several

learned counsel on behalf of the Respondent referred to the purported "choice" of our name as our crime[125]. Yet for us, it was not a choice. Our name was the result of a long historic process; indeed, born as Macedonians, speaking the Macedonian language, it is not as if we had alternative identities to choose from. And we have never tried to monopolize the term, fully aware that for different nations it can have different meanings, and not having any issue with the use of this term by the Respondent to describe one of its own provinces.

4. No other country in the world is concerned with our name. Consequently — and I may add, not surprisingly — a majority of the Members of the United Nations have established their diplomatic relations with us under the name the "Republic of Macedonia". They do so in part because they believe such a step promotes our stability and the stability of the region. For the Respondent, this fact is a grand strategy that we have been hiding[126]. But we have hidden nothing; we have consistently used our constitutional name, and that name alone, in our bilateral and multilateral relations since our country gained independence in 1991.

5. In 1995, we and the Respondent agreed in the Interim Accord to continue good faith negotiations regarding the difference over the name and agreed to a series of obligations while those negotiations were ongoing. It has not been a perfect relationship; the Parties have thus far proven unable to settle the difference, as called for in Article 5 of that Agreement. Nevertheless, both Parties have acted in good faith in trying to do so, as the mediator — the supreme authority to assess — Mr. Nimetz, has recently confirmed. I hope you will have noted, Mr. President, that we have refrained from criticizing the Respondent's conduct in those negotiations. I also hope that you will understand that this is not because we deem the Respondent's conduct to be above criticism. However, we do not believe that this is the forum for name-calling, especially with respect to a matter that is not before you.

6. What is before you is another article of the Interim Accord, which the Respondent, regrettably, has violated. Our counsel have laid out for you the facts relating to the Respondent's unlawful objection under Article 11 and why its defences are without merit. I will not repeat those arguments.

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[125]CR 2011/8, p. 33, para. 5 (Abi-Saab); CR 2011/9, p. 29, para. 26 (Crawford).

[126]CR 2011/9, p. 45, para. 18 (Reisman); *ibid.*, pp. 54-58, paras. 24-30 (Crawford).

7. I do wish, however, to emphasize two things. First, when the Respondent, in the months leading up to and at the Bucharest Summit objected to our membership in NATO, it frustrated a goal we have pursued since 1993 — 15 years of difficult and challenging reforms — a goal of immense importance for our own stability and for the stability of the Balkan region. As a confirmation of the extent of our commitment to this organization, the men and women of our military risk their lives on a daily basis in Afghanistan. There they operate without any problem under a NATO flag — and without disturbing whatsoever the stability and the functionality of the Alliance. To my country, as with many countries in the region, membership in the Alliance marks the line of certainty and stability, a point of no return back to the years of fear and insecurity.

8. Second, I also wish to emphasize the Court's central role in the implementation of the Interim Accord. The two States before you recognized that not all the issues dividing them could be resolved immediately, but they did decide to settle what could be settled. In this sense, as a legal framework, the Interim Accord has to a large extent normalized our relationship. In coming to such an agreement, both States saw it as extremely important that this Court serve as the guardian of the Interim Accord, as the place to turn if one Party or the other failed to comply with its provisions. For without this Court as a guide to the Parties as to the agreement struck in 1995, there is nowhere else to turn, and the agreement, while a hallmark of progress and stability in the Balkans, becomes empty rhetoric. Upon its conclusion, the United Nations Security Council said "the Accord will promote the strengthening of stability in the region"[127]. The Council was right. The Accord has done so. Our hope is that with the assistance of the Court, it will continue to do so.

9. Mr. President, Members of the Court, the Respondent repeatedly asserts that our view of the Interim Accord is one-sided. This is not correct. We fully recognize that the provisions of the Accord were carefully negotiated between the Parties, creating a well-balanced régime for our bilateral relationship. In agreed to its terms, my country undertook to make numerous concessions as part of the bargain. This is evidenced by many of the agreement's provisions. In agreeing to Article 11, we acquiesced in a situation where we would be referred to in international organizations — in addition to the United Nations — by the provisional reference, an awkward and

[127]Statement by the President of the Security Council, 15 Sep. 1995, UN doc. S/PRST/1995/46: judges' folder, tab 9.

unprecedented situation. Believe me when I say that it is far from normal or comfortable to be referred to in such settings by a placeholder reference, to be essentially designated as a ghost State. Indeed, it is humiliating to be referred to on the basis of a former status, be it federal, be it colonial or otherwise. Yet, this is what was agreed in 1995, to pertain as long as the difference over the name is not settled. So there is nothing one-sided about the Interim Accord, much less about Article 11 itself.

10. Given that neither side was advantaged over the other by the Interim Accord, our request that the Court keep both Parties on the path they set for themselves can have no effect on the continued negotiations over the name difference. They will continue, and we will continue to negotiate in good faith. We ask nothing more than a return to the situation that existed prior to the Respondent's breach of the Interim Accord in 2008. What we seek is a clear judgment that restores legal stability, and confirms, as a distinguished legal commentator put it, that "[w]hat has already been agreed must not be used in negotiations as a lever to gain advantages in the matter of the name"[128]. If the Court issues a judgment in our favour, both sides will have the same burden, the same context, the same incentives to continue to negotiate to settle the difference over the name of my country. The effect of your judgment would simply be to re-establish the régime agreed to in 1995 and followed by both Parties for 13 years.

11. Mr. President, Members of the Court. Both Parties signed the Interim Accord in 1995 to put aside years of distrust and bilateral tension. The legal issues before you in this case may be discrete, but the stakes for my country are very high. This case is not theoretical. Right now it has affected us in relation to NATO, but the issue of European Union accession is already underway: what this Court decides will have significant consequences for the stability and economic well-being of my country.

12. By way of Article 21, the International Court of Justice was established as the guardian of the rights and obligations of the Parties under the Accord. Pursuant to Article 11, Greece

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[128]Evangelos Kofos, "The Unresolved 'Difference over the Name': A Greek Perspective", in *Athens-Skopje: An Uneasy Symbiosis, 1995-2002*, published in Greek by Papazisis Publishers, Athens (Dec. 2003), Hellenic Foundation for European and Foreign Policy (ELIAMEP), ISBN 960-8356-05-9, p. 127 at 146, [quoting from Christos Rozakis, *Political and Legal Dimensions of the Transitional Agreement signed in New York between Greece and FYROM*, Athens, Sideris, 1996 at pp. 37-38], available in English at: http://www.macedonian-heritage.gr/InterimAgreement/Downloads/Interim_Kofos.pdf: judges' folder, tab 14.

undertook not to object to our membership in international organizations. It has broken its promise. We therefore ask the Court to hold it to its obligations and uphold our rights. On behalf of the Applicant, I would like to make it clear, in this courtroom, for the avoidance of all doubt that we shall fully respect and abide by your judgment, regardless of its direction. I hope that we will hear the same declaration on behalf of the Respondent on Wednesday afternoon.

13. Mr. President, on the basis of the evidence and legal arguments presented in its written and oral pleadings, the Applicant requests the Court:

(i) to reject the Respondent's objections as to the jurisdiction of the Court and the admissibility of the Applicant's claims;

(ii) 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

(iii) 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).

14. It remains for me to thank the Registry for ensuring the smooth running of these oral hearings; the interpreters for their hard work and assistance, the distinguished members of our delegation for their courtesy throughout the proceedings; and finally, Mr. President, Members of the Court, to thank you for your kind attention.

The PRESIDENT: I thank His Excellency, Ambassador Nikola Dimitrov, for his closing remarks. The Court takes note of the final submissions which His Excellency has now read out on behalf of the former Yugoslav Republic of Macedonia. On Wednesday, 30 March, from 3.00 p.m. to 6.00 p.m. — and, I repeat, from 3.00 p.m. to 6.00 p.m. — Greece will make its presentation of the second round of oral argument and, in the meantime, the Court adjourns now until Wednesday afternoon.

The Court rose at 1.05 p.m.

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