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International Court of Justice

THE HAGUE

Cour internationale de Justice

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YEAR 2011

Public sitting

held on Wednesday 30 March 2011, at 3 p.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 mercredi 30 mars 2011, à 15 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 sitting is open. The Court meets today to hear the second round of oral argument of Greece. Now I understand that the first speaker to take the floor, according to the information that I have been supplied with, is Ms Maria Telalian, the Legal Adviser. Am I right? I call Ms Telalian, the Agent of Greece to take the floor.

Ms TELALIAN:

INTRODUCTION

1. Mr. President, Members of the Court, in opening Greece's reply, I will make a few preliminary remarks, then outline the order of our presentations.

2. Mr. President, during the oral pleadings, the Applicant repeatedly stated that had Greece considered the Applicant's behaviour to be a material breach of the Interim Accord, it would have declared that treaty to be void, or would have suspended it. This is exactly the kind of action that Greece has tried to avoid throughout these years, given the importance which it attaches to the Interim Accord and to its role in regional stability and, above all, to the procedure agreed therein for resolving the difference over the name. That last point is critical: as was explained, the Interim Accord aims not only at normalizing relations between the two countries, regulating a broad range of issues in a number of areas, mainly to the benefit of the Applicant, but also at establishing a firm framework for the resolution of the dispute over the name issue through political negotiations under the auspices of the United Nations. Above all, Greece has sought and seeks establishing genuine and friendly relations with the Applicant by laying, through the agreed mechanisms of the Interim Accord, the groundwork for a mutually acceptable solution of the difference over the name of the Applicant. Therefore, we maintain that this important treaty is still — and must remain — in force in so far as its reciprocal obligations are effectively and bona fide implemented by both Parties.

3. Mr. President, Members of the Court, the Applicant's breaches of the Interim Accord, as was stated last Friday, are many and varied. There was a pattern of behaviour before the NATO Bucharest Summit in 2008. The evidence adduced by Greece is not exhaustive, but enough has been presented to give some idea of the impact of that behaviour on the maintenance of good-neighbourly relations and the stability of the region as a whole.

4. Counsel for the Applicant, in trying to diminish the legal importance of this behaviour, has questioned whether 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. The answer, Mr. President, which is to be found in the Interim Accord, is yes. The obligations assumed by the Applicant in that instrument are concrete and precise and Greece has on many occasions publicly protested against the unlawful conduct which violated them, as Professor Pellet will once again show.

5. Mr. President, Members of the Court, Greece in its introductory statement expressed its deep commitment to this Court. But, regretfully, we consider that the main objective of the claim which the Applicant brought before you is to create a fait accompli against Greece, by trying to obtain through a judgment what it could not gain through the procedures prescribed by the Security Council and agreed in the Interim Accord. Evidently the Applicant entertains the hope that the Court will view this case in isolation from the name dispute and the régime which Security Council resolution 817 (1993) imposes. The Applicant also cherishes the hope that it can persuade the Court to take jurisdiction even though it is expressly excluded by Article 21, paragraph 2, of the Interim Accord. In effect, this Application is asking the Court to circumvent the procedures and substantive rights of the Interim Accord and its shared commitment to negotiate a resolution of the difference over the name. Rather than negotiate, as it committed itself in the Interim Accord, the Applicant wants to get judicial sanction to use the very name which Security Council resolution 817 precludes within all the international organizations to which Greece is a member. The Applicant also seeks to have the Court to order Greece to acquiesce to the Applicant's demands, irrespective of the specific treaty obligations assumed by the latter to such organizations. The Applicant also seeks to have the Court deprive Greece of its right to object according to Article 11 (1) of the Interim Accord. In sum, Mr. President, you are presented with a carefully crafted strategy aimed at eviscerating the Interim Accord and the Security Council resolution.

6. Mr. President, the Agent of the Applicant in its closing statement made some remarks which I feel cannot be ignored: First, it was said that "due to Greece's opposition the Applicant has suffered delays and setbacks in our quest for international recognition and legitimacy, often compromising the interest for stability in the region". This remark, Mr. President, is inaccurate.

Moreover, the Applicant here contradicts its own previous statements admitting that its Application is not simply about an alleged violation of Article 11 of the Interim Accord, but is part of a long-term effort to resolve the dispute in ways violating its commitments in the Interim Accord. Even more revealing, it acknowledges that it has already abandoned its commitment to negotiate and is proceeding to arrogate a name in violation of the Interim Accord and the resolution of the Security Council. It is exactly this unlawful conduct by the Applicant rather than Greece's alleged conduct within NATO that jeopardizes the stability in the region. NATO's decision merely reflected the Alliance's concern over the lack of good-neighbourly relations against Greece, and it has been reiterated in every meeting subsequent to Bucharest.

7. Second, in speaking of its disinterest in monopolizing the contested name, the Applicant trivializes an issue of grave and genuine concern to my country. This is an attempt to mislead the international community about the Applicant's real intentions in this regard which are far from innocent. Those real intentions can be gained from textbooks, maps, encyclopaedias, statements of its officials, all alleging historical injustice and asserting, as Greece showed in its pleadings, that the Applicant's "geographical and ethnic boundaries" extend beyond its present day borders and cover territories that are under "Greek" or "Bulgarian" "rule". This, Mr. President, is a real threat to regional peace and stability.

8. Mr. President, Members of the Court, Greece's reply presentations are structured as follows. In a moment I would ask you, Mr. President, to call on Professor Reisman who will deal with jurisdiction and admissibility. Then Professor Crawford will deal with Articles 11 and 22. Professor Pellet is in charge of violations, defences and remedies. Professor Abi-Saab will conclude the legal presentation, and he will be followed by Ambassador Savvaides who will present our conclusions and submissions.

I thank you, Mr. President and Members of the Court, for your attention.

The PRESIDENT: I thank Madame Maria Telalian for her statement. I now invite Professor Michael Reisman to take the floor.

Mr. REISMAN:

JURISDICTION AND ADMISSIBILITY

The jurisdictional clause

1. Mr. President, Members of the Court, by now, the Interim Accord's jurisdictional clause is so well known to the Court that there is no need to recite it.

[Slide 2 — displayed but not read]

> "Any difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the International Court of Justice, *except for the difference referred to in Article 5, paragraph 1*."

2. [Slide 3] What triggers its "except for" phrase and excludes the Court's jurisdiction? Last week, Greece drew the Court's attention to the fact that the Applicant, in its Request, [slide 4] had put forward, as the proper standard, that the subject of the dispute "does not concern — either directly or indirectly — the difference referred to in Article 5". [Displayed but not read]

> "Upon the filing of the present Application, any matters in dispute between the Parties concerning the interpretation or application of Article 11 of the Interim Accord of 1995 are plainly subject to the compulsory jurisdiction of the Court. [Slide 5] The subject of the dispute does not concern — *either directly or indirectly* — the difference referred to in Article 5, paragraph 1, of the Interim Accord and, accordingly, the exception to jurisdiction provided for in Article 21, paragraph 2, of the Interim Accord does not apply."

5. On Monday, when we referred to his position, Professor Klein accused us of trying to "tirer avantage du fait que la ligne d'argumentation de l'Etat requérant sur ce point aurait évolué": that the argument on this point has evolved[1]. Mr. President, French is a language whose subtlety and refinement I have long admired and I understand that it loses a certain *je ne sais quoi* when translated into a vulgar demotic such as my American English. But to a simple English speaker, "aurait évolué" in that sentence means, "Oops! We lose on that argument, so let us drop it and rig up another."

6. Now, far be it from me to say that the Applicant is not entitled to abandon one argument and devise another. As early as *Socobelge*, the Permanent Court said that parties can revise their arguments in the oral phase and, as far as I'm concerned, the Applicant can argue anything it likes.

[1] CR 2011/11, p. 37, para. 3.

But the Applicant cannot banish that argument from the case merely by dissociating itself from it, all the more so when Greece had timeously agreed that it is the proper test for the operation of the "except for" phrase. Yet Professor Klein, having stated that the core question is "which is the correct interpretation"[2], quickly moved on to the Applicant's alternative argument, which involves interpolating words into Article 21, a tactic to which I will return. Professor Klein never succeeded in explaining why the first theory of jurisdiction is wrong and why our friends had to "evolve" away from it — aside from the fact that it defeats the Applicant's case for jurisdiction. [Slide 6]

7. One would assume, Mr. President, that the proper international legal method for an enquiry of this sort would be to go to the text of Article 21 itself. Now, the debate has focused on the "except for" phrase, [slide 7] but that phrase can no more be severed from the rest of the Article in which it is found than can Article 11, paragraph 1, be severed from the rest of the Interim Accord. The submission to jurisdiction in the primary clause of Article 21 is for "differences or disputes concerning the interpretation or implementation" of the Interim Accord and the "except for" phrase is presumably also to be read in the light of those words, in the sense of "except for" *the interpretation or implementation* of the difference referred to in Article 5, paragraph 1. Given the interpretation that the text virtually forces on the reader, one is all the more puzzled by Professor Klein's assertion, that — I am quoting in my translation — "the compromissory clause excludes 'the difference referred to in Article 5, paragraph 1' and not, for example, 'the differences relative to the application of Article 5, paragraph 1' which would be an entirely different matter"[3]. Why is it "an entirely different matter"? The text of Article 21 lends itself to "the interpretation or implementation" of the difference for both the principal clause and the "except for" phrase. [Slide 8]

8. Mr. President, Members of the Court, the difference over the name was the major, unresolved issue in the Interim Accord. It was to be resolved by good faith negotiation and *not* to be submitted to this Court. Given the entire, integrated structure of the Interim Accord, would it be reasonable to assume that if the words "resolution of" had actually appeared in the "except for" phrase so as to preclude the Court's direct resolution of the difference over the name, the same

[2]CR 2011/11, p. 38, para. 4.

[3]*Ibid.*, p. 38, para. 6.

Parties would have intended the same clause to allow the Court to decide matters that *indirectly* concerned the name issue and *would influence it or, even, effectively resolve it*? And — as I will explain in a moment — the goal of the Applicant and the clear consequence of acceding to its prayers here will be effectively to resolve the name issue in its favour.

9. If the Parties had wanted to restrict the "except for" phrase to "except for the resolution of the name issue", they would have inserted the words "resolution of the name issue" and the Applicant's lawyers would have drafted the initial request in *those* terms, rather than the words "does not concern directly or indirectly". But an application must rely on the text of the jurisdictional clause so there is no opportunity to plead around it and so counsel for the Applicant chose the proper standard at that stage. The Applicant initiated this case before you, assuring you that "the subject of the dispute does not concern — *either directly or indirectly* — the difference referred to in Article 5". It then stated the legal standard correctly, indeed, it stated the only interpretation that is consistent with the *text*, the *context* and the *objects and purposes* of the Interim Accord.

10. But does the Applicant's claim concern "either directly or indirectly" the difference referred to in Article 5? Because the Applicant now rejects the jurisdictional theory it initially promoted, it does not deign to answer that question, though the question could not have figured more prominently in our first round. Mr. President, if silence is not acquiescence, it is, at least, acknowledgment of the absence of an answer. Is there any serious doubt as to the answer to that question? Having listened to arguments over two weeks, is it not clear that this case is directly — and certainly indirectly — concerned with the name issue? Indeed, with effectively resolving it?

11. Thomas Reed Powell, an old professor at the Harvard Law School, was renowned for his sarcastic wit and he was not particularly respectful of lawyers. He used to say to his students, "if you can think about something attached to something else, without thinking about what it's attached to . . . you have the mind of a lawyer". And, Mr. President, that is precisely what the Applicant is asking the Court to do in order to enable it to squeeze its claim into the jurisdictional space clearly delimited by Article 21. The Applicant asks you to think about something, attached to something else, without thinking about what it is attached to. And, at the same time, to pretend that it does not "directly" or "indirectly concern" it. Greece submits there is no rational way to say

that the issues which the Applicant raises in this case do not "directly" and certainly "indirectly" concern the difference described in resolution 817.

12. But does the "concern directly or indirectly" test overshoot and destroy all jurisdiction? The Parties agree that Article 21 accords the Court a central judicial role, but disagreed as to which specific provisions are excluded from that role by the "except for" phrase. Greece has had some difficulty understanding the "evolutions" of the Applicant's view on this point but Professor Klein has been very helpful. The Applicant initially argued that Greece's interpretation — which is to say the Applicant's initial or pre-evolutionary interpretation — excluded *any* provision of the Interim Accord[4]. That argument then "evolved" into "a considerable number of provisions"[5] in the Interim Accord, only to "devolve" back, in Professor Klein's pleading this week, to *any* provision, on the theory that Greece could always connect a dispute arising under any Article in the Interim Accord to the difference in Article 5[6]. But that is a caricature. The issue is never merely the jurisdictional argument of one of the Parties. It can certainly be forced, as we believe the Applicant's manifestly is. It is the virtue of third-party decision that the claim of any applicant to jurisdiction is never based on its own *ipse dixit*; the claim is ultimately adjudicated by the Court, which decides based upon a reasonable interpretation of the text, in its context.

13. The core issue here is, of course, not which *other* provisions of the Interim Accord might be excluded from jurisdiction by Article 21's "except for" phrase. The issue is whether a claim arising under Article 11, paragraph 1, is to be excluded from jurisdiction. Now, last week, Professor Klein and I observed on the allusive structure of the "except for" phrase. Article 21 refers to a "difference which is referred to in Article 5", which in turn refers to Security Council resolutions 817 and 845. But, if you track the sequence of allusions to their source, it is clear that the difference to which Article 21's "except for" phrase refers *and excludes* is to be found in Security Council resolution 817.

14. Now, aside from the jurisdictional clause itself, there are only two other provisions in the 23 articles of the Interim Accord which explicitly mention and incorporate resolution 817:

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[4]Reply, para. 3.15.

[5]CR 2011/5, p. 58, para. 5 (Klein).

[6]CR2011/11, p. 37, para. 3 (Klein).

Article 5 and Article 11, paragraph 1. These are the only two. So while the "except for" phrase might, depending on the particular facts of the case, relate indirectly to disputes arising under some other provisions, disputes arising under Article 5 and Article 11 are certainly going to fall under the "except for" phrase.

15. Professor Klein refers to this as a "creative reading", "lecture particulièrement créative"[7]. In New Haven, we do not view the word "creative" as pejorative but my colleagues and students there would hardly bestow the adjective "creative" on a simple and incontrovertible reading of the text of the Interim Accord.

16. Confronting even this modest "creativity" seems to have had a dizzying effect on Professor Klein, as he then overflows into a description of this "reading" as "fantaisiste". Then, truly carried away, he concludes "Nulle part ailleurs — nulle part — ne retrouve-t-on dans le texte de l'accord la moindre mention d'un differend à l'égard duquel la Cour ne pourrait exercer sa compétence."[8] "Nowhere can one find in the text of the Accord the least mention of a difference with regard to which the Court cannot exercise its competence." So, Mr. President, the Applicant's position has ultimately evolved to asserting that the "except for" phrase in Article 21 applies to *no part* of the Interim Accord. In the Applicant's normative universe, the "except for" phrase in Article 21, like the heart of resolution 817, has been totally exsanguinated. And that, Mr. President, demonstrates the ultimate absurdity of the Applicant's essential argument on jurisdiction.

17. But there is another dimension to the Applicant's jurisdictional argument. A week ago, in a previous evolutionary phase, in which the Applicant still argued that the "except for" phrase meant something, it told you that its claim did not require you to resolve the dispute over the name, nor, indeed, "to express any view on the matter". On this side of the aisle we assumed this meant that if the Applicant's claim *did* require the Court to do that, the case would fail for want of jurisdiction. And that is precisely what happens here. Even if one were to accept the Applicant's invention and were to interpolate words into Article 21 so as to make the "except for" phrase read

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[7] CR 2011/11 p. 38, para. 7.

[8] *Ibid.*, p. 39, para. 7.

as if the Parties designed it only to limit jurisdiction for actions which could *resolve* the name issue, the application would still fall outside the Court's jurisdiction.

18. Why? Because if the Court took jurisdiction and acceded to the Applicant's prayer, it will have, *ipso facto*, effectively decided the name issue, putting an end to any incentive the Applicant might have had to *negotiate* resolution of the difference as required by the Interim Accord and the Security Council. Finding jurisdiction with the Applicant's theory would effectively resolve the name difference in favour of the Applicant.

19. Mr. President, for all the elephants the opposing counsel have imagined tramping through the Great Hall, why, we wonder, have they never mentioned the most imposing of the pachyderms, the one who outranks all the others, none other than their own President Crvenkovski? Last week, my colleagues and I brought him centre stage and so as not to quote him out of context, displayed a large part of his speech to Parliament. President Crvenkovski himself revealed that the Applicant's long-secret strategy on the name issue was to avoid negotiating in good faith, as required by resolution 817; to persuade as many other States as possible to support its campaign for its preferred name; and, using the provisional name required by the Security Council and the Interim Accord, only to win admission to international organizations; and then to use, for all other purposes, the name whose use the Interim Accord and resolution 817 precludes. This case is an extension of the Applicant's strategy to circumvent the provisional arrangement and, by fait accompli, to resolve the difference over the name in the way the Applicant wants.

20. Bad faith is key to what is transpiring here, but instead of acknowledging, if not explaining the barrenness of 15 years of negotiation in the light of President Crvenkovski's admission, the Applicant invokes the routine assurances of the mediator. Now, on this seasoned Bench of international lawyers, many I am sure have served as international mediators; and they know that the mediator who stated that one of the Parties was acting in bad faith would immediately cease to be the mediator. You do not need Mr. Nimetz's formulaic statements when you have the confession of the highest official of the Applicant with respect to the secret strategy.

21. The legal trick in the judicial phase of this strategy is the Applicant's radical reconstruction of operative paragraph 2 of resolution 817.

[Slide 9 display but not read]

> "*Recommends* to the General Assembly that the State whose application is contained in document S/25147 be admitted to membership in the United Nations, this State being provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name."

22. The Applicant was admitted to the United Nations on the condition that it be "provisionally referred to *for all purposes within the United Nations* as 'the former Yugoslav Republic of Macedonia'" (emphasis added). That condition was to continue "pending settlement of the difference that has arisen over the name". [Slide 10]

23. In 2005, the Applicant indicated its conviction that resolution 817 was "contrary to the Charter". Now, in furtherance of that assault it avoids focusing on the text, relying instead on counter-textual "recollections" of non-participants, still defending the unacceptable methodology on Monday, and oblivious to the fact that it exposes the lack of sincerity with which it purported to defend the stability of agreements in its criticism of Greece's *exceptio* arguments.

24. The Court is familiar with the Applicant's understanding of resolution 817, from public statements, behaviour, assertions made on Monday — its conception of resolution 817 really means that the State whose application is contained in document S/25147 "be admitted to membership in the United Nations . . . as 'the former Yugoslav Republic of Macedonia' and thereafter be referred to for all purposes as the Republic of Macedonia" [slide 13].

25. Wholly aside from good faith, what, in the light of this reading of resolution 817, is left to negotiate? The Applicant's name plaque at the United Nations? Does even that issue survive the Applicant's dual formula? Confronted with this violation of resolution 817 the one defence left to Greece is the safeguard clause in Article 11 (1). And that clause is, of course, the Applicant's target in this case: if it hits it, the Applicant will have gotten everything it wishes, totally obviating its obligation to negotiate resolution of the name issue. To accept jurisdiction and to proceed will give the Applicant everything to which it is not entitled under the Interim Accord. So, in so far as the Applicant itself concedes that Article 21 does not accord jurisdiction for resolution of the name issue, this case is without jurisdiction.

Admissibility issues: the absence of the consent of indispensable third parties

26. Mr. President, in the time remaining, I turn to some of the reasons militating against admissibility. As Professor Pellet explained last week, at the heart of the Applicant's grievance is a collective decision process, taken unanimously by NATO's members, to defer the Applicant's invitation for membership pending resolution of the difference over the name. I emphasize the words *collective* and *unanimous*. Now, Greece was certainly a participant in that consultative process. [Slide 14 displayed without reading]

> "This Interim Accord is not directed against any other State or entity and it does not infringe on the rights and duties resulting from bilateral and multilateral agreements already in force that the parties have concluded with other states or international organizations."

27. And Article 22 of the Accord anticipated that it was entitled to exercise its rights and duties under prior treaties and that if such an exercise infringed obligations arising under the Interim Accord, the rights and duties arising under the prior treaty, in this case, the North Atlantic Treaty, would prevail. [Slide 15]

28. The fact that the decision which is central to the Applicant's case was collective, undertaken by a large number of other States, none of whom consented to jurisdiction, precludes the Court from exercising a jurisdiction which it might otherwise have. This is a venerable jurisdictional rule, from *Monetary Gold* to *East Timor* and we submit it is not affected in this case by your holdings in *Nauru* or *Congo* v. *Uganda*, cases whose facts obviously differ in material ways from the case at Bar.

29. In the Memorial and Reply, the factual predicate of the Applicant's case was that "The Respondent's objection prevented the Applicant from receiving an invitation to proceed with membership of NATO."[9] To avoid the consequences of *Monetary Gold*, the Applicant, in its Reply, *also* insisted that "the Applicant does not invite the Court *to express any view on the legality or propriety of the NATO Bucharest Summit Decision*"[10]. Thereafter, the Applicant stated "the Applicant has never suggested that NATO might be in breach of any obligation"[11]. On Monday, Professor Murphy also tried his hand at insulating the Applicant's claim from NATO. He said:

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[9]Memorial, para. 1.1.

[10]Reply, para. 3.31.

[11]*Ibid.*, para. 3.32.

> "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."[12]

30. But the issue is not whether the Applicant or is not inviting the Court to express a view on NATO. The point is how can the Court assess this without making judgments about NATO, its membership procedures and actions of NATO members who participated in the consensus? In a telling sentence in its Reply, the Applicant stated [slide 16]: "the Applicant does not ask that the Court express any view on the legality of any acts of NATO or any of its [other] Members *by reference to the standards established by the Interim Accord*"[13].

The Applicant here misstates the Court's conundrum. The problem case posed by *Monetary Gold* is not that the Court, were it to take jurisdiction, would have to judge NATO and its members *under the standards of the Interim Accord*. It is, rather, that, *if the Court were to take jurisdiction, it could not avoid judging NATO and its members under the standards of NATO itself.* [Slide 17]

31. The Court cannot make a finding with respect to the lawfulness, under the Interim Accord, of the actions alleged to have been taken by Greece under the authority afforded it by Article 22, without a finding of the lawfulness or unlawfulness of the NATO decisions. This is because the determination of the lawfulness of the alleged action of Greece, under Article 22, is inseparably linked to the lawfulness of NATO's collective decision at Bucharest. Moreover, it necessarily implicates the other NATO collective decisions. Greece, as a NATO member, participated in all of those other decisions which reached the same conclusion.

32. If NATO's Bucharest Declaration deferring the Applicant's membership application was a lawful, *intra vires* decision of NATO, it follows that any action which Greece had taken in its role as a member of NATO would have been within Interim Accord Article 22's parameters of "rights and duties resulting from . . . multilateral agreements"; as such, Greece's actions would not be in contravention of the Interim Accord. Moreover, inasmuch as the substance of the Bucharest Declaration was reiterated, without allegations that Greece had motivated it — as the Applicant alleges with respect to Bucharest — a response by the Court to a claim that Greece's alleged actions at Bucharest were in violation of the Interim Accord and not insulated by Article 22 would

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[12]CR 2011/11, p. 32, para. 36.

[13]Reply, para. 3.31.

perforce involve a judgment about the lawfulness and *intra vires* character of NATO's decisions and the actions of all the other NATO members who participated in the consensus. But this would be a matter beyond the Court's jurisdiction.

33. Conversely, if Greece's alleged action at Bucharest were *not* concordant with its rights and duties under NATO, those actions would also *not* be covered by Interim Accord Article 22. One cannot escape the fact that the decision at Bucharest was collective and subsequent identical decisions were not the result of Greece's action alone[14]. Hence a hypothetical finding by the Court that Greece's action was not covered by Article 22 would necessarily include a judgment about the lawfulness of the action of other members of NATO and NATO itself. Such a judgment would necessarily be taken, not on the basis of the Interim Accord, but on the basis of the legal standards of NATO. This, too, would be a matter beyond the Court's jurisdiction.

34. I thank the Court, Mr. President and Members of the Court, for its attention and if it please the Court, I ask that my colleague, Professor Crawford, be recognized to speak.

The PRESIDENT: I thank Professor Michael Reisman for his statement and now I invite Professor James Crawford to take the floor.

Mr. CRAWFORD:

Articles 11 and 22 of the Interim Accord

The structure of Articles 11 (1)

1. Mr. President, Members of the Court, in a status quo agreement, an interim settlement, State A, promises State B not to do x, but reserves the right to do x if and to the extent that an interim situation, which I will call "y", is not maintained. Y is a situation which it is within the power of State B to maintain or not. Let us call this combination of circumstances, symbolically, *not x if and to the extent that y*. Now the promise not to do x matters a lot to State B, whereas maintaining the situation matters a great deal to State A. This presents several legal issues. In these circumstances, does State B have an obligation not to procure the collapse of the interim

[14]Reply, para. 6.10.

situation, y? That interim situation reflects and represents the object and purpose of the agreement — which is to maintain the status quo pending a resolution of the underlying problem, a resolution the two States have promised to negotiate. Does State B — I say again — have an obligation not to procure the collapse of the interim situation, y? Well, not in terms of the agreement — *not x if and to the extent that y* does not in terms oblige State B to guarantee y. It is just that State B will not be entitled to the performance of the promise, unless situation y persists. It may be that under the governing law of the agreement there is an implied obligation not to defeat its object and purpose, as you held in *Nicaragua*[15]. If so, the obligation might be regarded as existing under the law and not under the agreement. One might also recall the finding in the *Samoan Claims* arbitration, concerning the obligation to maintain a status quo in the period before a final settlement. The Arbitrator said: "Pending instruction from the three Treaty Powers . . . those Powers were bound upon principles of international good faith to maintain the situation thereby created until by common accord, [until] they had otherwise decided."[16]

2. Mr. President, Members of the Court, I would note certain features of the situation. In one respect it is automatic — that is to say, as regards the incidence of legal obligations. If y does not obtain then there is no obligation on State A not to do x. There is no requirement of notice; the agreement remains in force. There is no requirement of motive. We have simply reached the limits of State A's obligation. In another respect the situation is not automatic — that is to say, in relation to the consequence of y not obtaining. State A has the right to do x, but no obligation to do it or not to do it. Barring a clearly implied waiver, a right is not lost merely because it is not used on a given occasion or on several occasions.

3. Now we reach the interpretative problem. In this situation where the interests of the two States are entitled to equal weight, how are the predicate terms x and y, as set out in the agreement, to be interpreted? There is in international law no presumption of restrictive interpretation of treaties; it all depends on the context and on the considerations referred to in the Vienna Convention. But what is clear is that there is no basis for interpreting x broadly, so that State A is

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[15] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v *United States of America), Merits, Judgment*, *I.C.J. Reports 1986*, pp. 270-272, paras. 135-136.

[16] Decision given by His Majesty Oscar II, King of Sweden and Norway, as Arbitrator, 14 October 1902, *Samoan Claims (Germany, Great Britain, United States)*, *Reports of International Arbitral Awards, Vol. IX*, p. 25.

tightly constrained, yet interpreting y narrowly, so that State B is free to subvert the interim situation. That is what the Applicant here does. It wants you to adopt a broad, flexible interpretation of x, and a narrow formalistic interpretation of y. There is no warrant for favouring one party to the Interim Accord over the other in this way. Other things being equal, that interpretation of the Accord should be adopted that maintains the interim bargain. The Applicant's interpretation does not do so.

4. How does the Applicant seek to avoid this inconsistency in its interpretive approach? It argues that the interim situation preserved by the Interim Accord is exclusively a matter for the international organization concerned. All that is required is that the organization call the Applicant the former Yugoslav Republic of Macedonia; the Applicant can call itself what it likes and so can anyone else.

5. There are at least five difficulties with this interpretation. I mentioned these on Friday and expected them to be dealt with in the reply. For the most part Professor Murphy, on whom this burden fell, failed to discuss them. I will return to what he did say shortly. But first, let me enumerate the difficulties ever so briefly.

6. First, what I will call for convenience the institutional interpretation of the safeguard clause ignores the actual words of the clause, in particular the phrase "to the extent". This is inconsistent with the idea that the safeguard clause is satisfied once and for all at the time of admission to the organization.

7. Secondly, the use of the future tense in Article 11 (1) — "is to be referred to". This is not confined to the date of admission but extends to later dates.

8. Third, the use of the passive voice, and the phrase "for all purposes"; if the reference had been to admission alone it would have been easy to say so.

9. Fourth, the *travaux* of Article 11, which I took you through the other day.

10. Fifth, the fact that the Applicant's preferred interpretation gives no protection to the Respondent, despite the clear indication in the Interim Accord that it would be protected to a significant degree.

11. For these five reasons, the Applicant's preferred interpretation of the safeguard clause should be rejected. The logic of the conditional obligation central to Article 11 (1) — and to the Interim Accord as a whole — should prevail.

The Applicant's reply arguments

12. In their reply on Monday, counsel for the Applicant, led by Professor Murphy, while disregarding much of what I said last week, including the five points made above, did make some additional points. And I thought there were five of them.

13. First, Professor Murphy said that Greece never invoked the safeguard clause. Our real concern was the non-resolution of the dispute concerning the name. He said that — it is in paragraph 24 of the speech. I will not read the passage, the Court will remember it[17]. The first observation to be made about this first point is that it entails a confusion between the legal basis for an action and the motives a State might have to take the action or not. If the legal basis exists, then, generally speaking, motive is irrelevant: responsibility is normally objective, and so, short of abuse of right, is the absence of responsibility. In respect of Article 11 (1), the legal basis for an objection is simply that the specified condition was satisfied. The question is not what the Respondent's putative objection was "based upon", but whether the condition was satisfied at the time the Respondent allegedly objected.

14. Another observation is that this is subsidiary to the Applicant's constricted interpretation of the scope of the safeguard clause. If the institutional interpretation is correct, then it would follow that there is only one factual consideration relevant to whether the safeguard clause can be invoked — namely, the practice of the organization — and any other consideration — for example, the Applicant's attitude toward the negotiations, would be irrelevant. Professor Murphy's first point is also subsidiary to the contention that the Respondent could invoke the safeguard clause, if, and only if, it adopted a contemporaneous declaration, including a statement of the reasons for the

[17]CR 2011/11, p. 27, para. 24 (Murphy); internal citations omitted.

invocation: it assumes that invocation of the safeguard clause was conditional upon declaring that it was to be invoked, but this is not what Article 11 (1) says. We are not dealing with the termination of a treaty, we are not dealing with the suspension of a treaty, we are dealing with action in accordance of the terms of a treaty.

15. Secondly, Professor Murphy relied heavily on what he took to be the meaning of resolution 817. Under resolution 817 he stressed that the Applicant is free to use the name of its choice. If the Applicant is entitled to refer to itself by the name of its choice, the same must be true under Article 11 (1) of the Interim Agreement which uses essentially the same language. And he said this at paragraph 25 of his speech[18]. The Applicant is insistent in its denial that resolution 817 stipulates a designation by which it is to be called for all purposes. It returns to a number of its old arguments but adds one or two new ones. I have dealt with the old ones and I will not repeat myself[19]. As for new arguments, we are told that, for the Security Council to address an obligation to a State, it must say expressly that the State is the obligee. That this at least seems to be what the Applicant meant, when it referred to the *Kosovo* Advisory Opinion[20]. There however you were considering, not whether resolution 1244 (1999)[21] was addressed to a State or States — it obviously was — but whether it was addressed to the authors of a declaration of independence, in circumstances where, by definition, those authors were not — or not yet — constituting a State. The analysis of resolution 1244 is completely inapposite to the obligations of the Applicant under resolution 817 (1993), a resolution of which the Applicant is not just one, but the principal addressee. The Applicant's reliance on such analogies — forced as they are — suggests a certain degree of desperation in its defence of the narrow interpretation of resolution 817 — a defence which relies on sundry materials but never addresses the plain text of the resolution applying the provisional reference "for all purposes".

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[18]CR 2011/11, pp. 27-28, para. 25 (Murphy).

[19]*Ibid.*, pp. 14-15, para. 4 (Sands); p. 30, para. 33 (Murphy).

[20]*Ibid.*, p. 28, para. 26 (Murphy), citing *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo,* Advisory Opinion of 22 July 2010, paras. 114-118.

[21]Security Council resolution 1244 (1999), 10 June 1999.

16. But Mr. President, Members of the Court, even if the Applicant's interpretation of resolution 817 were correct, this would not necessarily be determinative of the interpretation of Article 11 (1), which is the provision of the Interim Accord that is in question. It is worth noting that the use to which Security Council resolution 817 is put, under Article 11 (1), what it provides is the provisional reference — an incorporation by reference of the reference, you might say. Article 11 (1) imposes its own obligation, which is not part of resolution 817 — it exists independently, has a different scope, applies to a different range of organizations. It has different *travaux*, it was adopted at a different time, by different parties and addressed to a different audience. It cannot simply be equated in scope to resolution 817.

17. The Applicant relied on a statement of Morocco, as evidence of the interpretation of Security Council resolution 817 (1993). The statement said, *inter alia*, that the then-draft resolution "is not a matter of imposing a name on the new state . . . but it merely concerns the manner in which it will be provisionally referred to . . ."[22]. To this extent, the statement of Morocco is correct. It is correct that the Security Council did not impose a name on the Applicant. Instead, it established a provisional name or, if you like, designation. The word "provisional" means something. It means the reference is not permanent. It is to be replaced, eventually — it was hoped soon. Article 5 (1) of the Interim Accord says how it is to be replaced. The provisional reference is to be replaced by the Parties through negotiations conducted in good faith. It is vital to be clear about this. This obligation was freely chosen by the Applicant. It was the central concession on the Applicant's side of a hugely beneficial bargain.

18. *Third*, having reached his interpretation of the scope of the safeguard clause by transposing onto Article 11 (1) his interpretation of the scope of resolution 817, Professor Murphy stood steadfastly by his earlier contention that the Applicant was under no obligation not to use its preferred name under the safeguard clause — and this is paragraph 45 of his speech[23]. But to identify the question as being whether or not the Applicant has an obligation under the safeguard clause misses the point. The safeguard clause defines a condition limiting the scope of Greece's obligation "not to object". It is not necessary that any breach have occurred for the condition to be

[22]CR 2011/11, p. 29, para. 30 (Murphy); quoting Applicant's Reply, para. 4.42 and Ann. 12.

[23]CR 2011/6, p. 34, para. 45 (Murphy).

satisfied. A breach of one of its obligations under the Interim Accord could be relevant to the question whether the condition has been satisfied, but the condition is satisfied, or not, independently. Professor Murphy examined at length the practice under Security Council resolution 817, seeking to prove that it did not oblige the Applicant to refer to itself by the provisional reference. That practice is irrelevant to the safeguard clause condition. Even if the Applicant were correct that it has no obligation to use the Security Council designation, the safeguard clause operates on its own terms: "if and to the extent that". I made this point on Friday, commenting that "counsel opposite had considerable difficulty in grasping the character of a condition"[24]. I am afraid their grasp did not improve over the weekend, a weekend that seems to have been divided between the works of Shakespeare and Broadway musicals.

19. From this they emerged no doubt more cultured but no less confused. For on Monday they went on repeating, erroneously, that Greece's interpretation and application of the safeguard clause depends upon an assertion that the clause generates new legal obligations for the Applicant and/or third States. Professor Murphy said on Tuesday that Greece "is reading a lot into a relatively simple phrase, especially given the basic legal principle that international agreements do not create obligations . . . for third States without their consent"[25]. On Monday this week, he repeated the same error. He argued, at length, that resolution 817 establishes no obligation on the Applicant to use the provisional reference[26]. The Respondent stands by its position on this point — but repeats that it is not necessary for the proper application of the safeguard clause that there be any obligation upon the Applicant at all. So when Professor Murphy said that "The Security Council did not send the [Applicant's] letters to the Secretary-General, chastising him for passing them along" he missed the point entirely. The Applicant referred to "unlawful and deviant practice" for the purpose of responding to our position as to the safeguard clause. But nothing "unlawful" or "deviant" is needed to establish the safeguard clause condition, under which Greece is no longer constrained by the obligation "not to object." The existence of unlawful conduct may be probative, but is not necessary.

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[24]CR 2011/9, pp. 21-22, para. 4 (Crawford), citing CR 2011/6, p. 35, para. 46 (Murphy).

[25]CR 2011/6, p. 35, para. 46 (Murphy) (internal citation omitted).

[26]CR 2011/11, pp. 27-32, paras. 25-34 (Murphy).

20. *Fourth*, Professor Murphy relied on practice in the United Nations and other international organizations as determining the "institutional interpretation" of the safeguard clause — he did this at paragraph 34 of his presentation[27]. That further illustrates the point that the safeguard clause expresses a condition was lost. It also misses the point that the campaign by the Applicant to entrench its preferred name has had effects directly relevant to the application of the safeguard clause. As the preferred name spreads in use, the situation arises in which, inevitably, that will be the name used, for all purposes, in organizations. The purpose of the safeguard clause is to allow Greece to act in that situation.

21. *Fifth*, and now as Professor Sands said that the Applicant continues to act in good faith: "the Applicant plainly is not in breach of Article 5 and has consistently negotiated in good faith with the Respondent"[28]. The reliance on Ambassador Nimetz for this purpose has already been referred to by Professor Riesman. Professor Pellet, who follows me, will deal with this issue in more detail.

22. While the Applicant grasps for third-party evidence that it has acted in good faith in the negotiations over the name, it says next to nothing about its avowed strategy to accord the negotiations no more than lip service. Last week, I recalled the policy declaration by the Applicant's President of 2008. The President explained that, from around 2004 onwards, the Applicant had resolved to reject any formula for the name besides its own chosen one; this was part and parcel of its plan to continue to attend negotiations while simultaneously undermining them. The Applicant ignored its President's statement almost completely. Professor Sands blandly refers to "a public statement by the Applicant's President"[29] and says it came too late to be relevant[30]. But the President admitted that the Applicant's plan had been put into effect some years before, and that it was yielding results — results which Greece could act upon at the Bucharest Summit, for the creeping entrenchment of the Applicant's preferred name and its intransigence at the negotiating table were already clear well before April 2008.

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[27]CR 2011/11, pp. 31-32, para. 34 (Murphy).

[28]*Ibid.*, pp. 17-18, para. 9 (Sands).

[29]*Ibid.*, p. 50, para. 10 (Sands).

[30]*Ibid.*, pp. 50-51, para. 10 (Sands).

23. Professor Murphy says that the declaration and the argument we based upon it is a figment of our imagination. He said that the Respondent "conjures up in some dramatic way a change that occurred in the mid-2000s — a devious plot that was hatched . . ."[31] But the charge was not "conjured up" by Greece. Professor Murphy, last Monday, had specifically observed that a change had taken place in the mid-2000s[32]! He left it to Greece to note that this corresponded precisely with the President's "*strategy which, due to understandable reasons, was never publicly announced*"[33] but which for several years had been producing "exceptionally successful"[34] results bilaterally and multilaterally. That is a bold rejection of the Applicant's freely-chosen obligation to negotiate a solution to the name difference. Greece put it in evidence in Annex 104 of the Counter-Memorial, quoted extensively in the Rejoinder[35], and explained its significance in the first round of oral pleadings[36]. Now after a Memorial, a Reply, and its own oral pleadings over the course of the last two weeks, the Applicant still has declined to address it. It stands unanswered.

24. The key point about Article 5 is that it entails an agreement by the Applicant not to exercise its prerogative of determining its name for itself. I note in passing that even if the Court had been given jurisdiction to determine the name, it is very hard to see how it could have done so. The only rule of general international law is that it is for each State to determine its own name, just as it is to determine its own flag, or its national anthem. The national song of Poland, I might say, begins with the words "O, Lithuania", but no one has ever complained! The Court is no more capable of determining the name of a State, than of determining its flag, or its national anthem. To both name and flag, the relevant jurisdiction could only be jurisdiction *ex aequo et bono*, and the relevant maxim, I think, would be *de gustibus non est disputandum.* This is another reason why the exclusion of jurisdiction in Article 21 (2) cannot be limited to the question what is the name, since that is not a question that the Court could decide substantively in any event. On the other hand, even if the question of the name or flag or anthem of a State is in principle within the reserved

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[31]CR 2011/11., p. 20, para. 2 (Murphy)

[32]CR 2011/5, p. 43, para. 20.

[33]*Stenography notes from the 7th sequel of the 27th session of the Parliament of the Republic of Macedonia*, held on 3 Nov. 2008 (emphasis added), pp 27-7/10 and 27-7/11: Counter-Memorial, Ann. 104.

[34]*Ibid*.

[35]Rejoinder, para. 7.62.

[36]E.g., CR 2011/9, pp. 54-57, paras. 22-29 (Crawford).

domain — like nationality in the *Nationality Decrees* Opinion[37] — as soon as it becomes the subject of a treaty commitment, that situation changes. The rule applicable to the Applicant's name now is the rule contained in Article 5 of the Interim Accord, which was freely agreed. It is that rule the Applicant is seeking to subvert.

25. The Applicant says that Greece is making a "claim that the only acceptable name for the Applicant or anybody else to use is 'the former Yugoslav Republic of Macedonia'"[38], but again this misconstrues Greece's position; just as it misconstrues the position under the Interim Accord. The provisional reference is the only acceptable reference, until a negotiated solution to the name difference is achieved — and negotiation is the stipulated way of achieving that solution. The manner in which the Applicant describes the provisional reference — as an involuntary burden imposed by Greece — is telling. It further illustrates that it does not accept the negotiation process to which it agreed in the Interim Accord. Greece, under Article 11 (1), agreed to a commitment, but that commitment was not to exist in perpetuity irrespective of how the Applicant sought to establish its final name.

The Applicant's failed search for NATO evidence of "objection"

26. Mr. President, Members of the Court, I move from the second limb of Article 11, the safeguard clause, to the first limb, the obligation not to object. It is incontestable that Greece, applying NATO criteria and requirements, was not in a position to support the Applicant's candidacy for membership of NATO in 2008. Greece made its views known. But the Applicant notably is still at a loss to furnish a NATO record of the act which it says establishes Greece's international responsibility under Article 11, first limb. To be clear, this is the putative act of objection which allegedly resulted in the Applicant being declined an invitation at Bucharest. Expression of views, even strong views, in the corridors is not the operative act which had that result. Professor Murphy referred to your merits decision in *Nicaragua* where various statements by senior members of the executive branch of the United States Government were taken to have

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[37] *Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion, 1923, P.C.I.J., Series B, No. 4,* p. 24.

[38] CR 2011/11, p. 19, para. 10 (Sands).

proved Nicaragua's claim[39]. He says that it was enough that these statements were made in a "national political forum", and that Greece is wrong when we say that a statement in a national political forum is not enough to prove a breach[40]. But Nicaragua's claim was that the United States had intended to coerce Nicaragua. It was a case about the use of force. Professor Murphy says, "you have never required evidence of a State's malfeasance to be recorded in some particular documentary form when finding an international violation"[41]. That is true. But nor have you ever been asked to say that the formal act of participating in a decision-making process of an international organization constituted a violation of a bilateral treaty. The fact that States have used or threatened force outside the formal authorizations of an international organization is why claims like Nicaragua's can arise. The Applicant's claim, by contrast, is that Greece objected to the Applicant's application to NATO, an act it specifically identifies as having resulted in the deferral of its candidacy[42]. Its future concern, too, is that the Respondent's position will "cast[ing] implications not just for the Applicant's entry into NATO, but the European Union as well"[43]. The Applicant's claim is a claim about an act in an organizational framework; it is unintelligible if the terms, rules and procedures of the framework are ignored.

27. The Applicant then says that its failure to provide NATO documentation of the breach is irrelevant, because "Article 11 (1) is concerned with the *Respondent's* 'objection' not that of NATO"[44]. But this is to confuse the question of attribution with the content of the underlying obligation which the Applicant says was breached. The deficiency in the Applicant's documentary evidence says nothing about attribution: whether, as Greece maintains, NATO alone is responsible for the decision to defer the invitation, or whether Greece somehow holds that responsibility jointly with the organization. In respect of either situation, obviously the Applicant claims the breach of a specific obligation. It must advance evidence to prove it, whether the responsibility is joint or

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[39]CR 2011/11, p. 25, para. 16, note 35, quoting, *inter alia, Military and Paramilitary Activities in and Against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, pp. 21, 92, paras. 20, 170.

[40]*Ibid.*, quoting CR 2011/9, pp. 49-50, para. 10 (Crawford).

[41]*Ibid.*, para. 17 (Murphy).

[42]Application of 13 Nov. 2008, p. 9, para. 20: "This dispute concerns the Respondent's actions to prevent the Applicant from proceeding to be invited to join NATO, in clear violation of its obligations under the Interim Accord."

[43]CR 2011/11, p. 34, para. 41 (Murphy).

[44]*Ibid.*, p. 25, para. 17 (Murphy); emphasis in original.

several. It is Greece's position that the only evidence that would establish that there has been an objection in the sense of Article 11 (1) has not been adduced in these proceedings.

28. Professor Murphy says that the Applicant "took you through several examples of the extensive evidence of the Respondent's opposition"[45]. Note the choice of term: *opposition*. Professor Murphy's spoken remarks cover ten paragraphs on the subject of "opposition" to admission[46]. This is a further example of the Applicant's tendency to reformulate the Interim Accord to suit its argument. But when it comes to draw a link between the evidence of Greece's alleged opposition and the obligation "not to object", the Applicant simply asserts, without any analysis whatever, that it "deliberately and unequivocally violated" Article 11[47].

29. Mr. President, Members of the Court, the Respondent was not supposed to support the Applicant's candidacy, and this in conformity with NATO's criteria and requirements. The question however is not one of degrees of enthusiasm, or lack of enthusiasm, but whether the Respondent objected in the sense of Article 11 (1) and in the sense specified by the Applicant when it instituted these proceedings. The main example which Professor Murphy referred to on Monday was a press briefing by a NATO spokesman on 3 April 2008. He picked two lines from the press briefing, and said that they are decisive evidence of objection[48]. This is what the press spokesman said: "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"[49] and "[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"[50]. But Professor Murphy did not quote what came before or what came immediately after. This was not a NATO decision. The press spokesman, when prefacing his remarks, made this clear. He had just been coming from dinner with the NATO Summit

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[45]CR 2011/11, p. 23, para. 11 (Murphy).

[46]*Ibid.*, pp. 23-26, paras. 11-20 (Murphy).

[47]*Ibid.*, p. 26, para. 21 (Murphy).

[48]*Ibid.*, para. 19.

[49]*Ibid.*, p. 25, para. 18 (Murphy), quoting Counter-Memorial, Ann. 30, pp. 1-2.

[50]*Ibid.*, quoting Counter-Memorial, Ann. 30, p. 3.

participants. He told the reporters that: "Final decisions . . . will take place tomorrow."[51] This was the day before the final decision. At the opening of the remarks, he said "[l]et me stress that this was an informal meeting . . ."[52]. And after the remarks which Professor Murphy said decisively established that NATO was "singling out . . . the Respondent"[53], the spokesman concluded, "So that is where *we* stand on the name issue"[54]. Not "where Greece stands". Not "Greece vetoed". Not "Greece objected". But "that is where we" — meaning the Alliance — "stand".

30. In this context I cannot resist remarking the tendency of counsel opposite to accuse Greece of dishonesty, cowardice, and similar failings. My friends on Monday were "full of sound and fury", but let us make an end of Shakespearean analogies. The fact is that Greece was open in the view it took about the position of the applicant State prior to Bucharest, just as it was open afterwards. The question whether its position amounted to an objection within the meaning of Article 11 (1) is of course a matter for you and it is a matter of law.

Article 22

31. My third subject is Article 22. On Monday, counsel for the Applicant turned again to Article 22[55]. They challenge our interpretation of Article 22[56], and they say, in any event, that the Applicant met the requirements for accession to NATO[57], and so Article 22 on any interpretation is inapplicable: "Article 22 does not assist the Respondent", as Professor Sands put it[58].

32. To take their argument about interpretation first, if Article 22 means what we say, the first clause of Article 11 (1) would have no effect[59]; and, for example, the European Union clauses in the Interim Accord would be surplus to requirements[60]. The Respondent already has set out the

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[51]Counter-Memorial, Ann. 30, p. 1.

[52]*Ibid*.

[53]CR 2011/11, p. 26, para. 20 (Murphy).

[54]Counter-Memorial, Ann. 30, p. 2; emphasis added.

[55]CR 2011/11, pp. 45-51, paras. 2-11 (Sands).

[56]*Ibid*.

[57]CR 2011/11, pp. 20, 32-33, paras. 4, 37 (Murphy); p. 58, para. 7 (Dimitrov).

[58]*Ibid.*, p. 51, para. 11 (Sands).

[59]*Ibid.*, pp. 49-51, paras. 8-11 (Sands).

[60]*Ibid.*, pp. 48-49, para. 7 (Sands).

bases for its interpretation of Article 22, and I will not repeat them here[61]. I will simply focus on what was said on Monday.

33. The first point to make is that Article 22 is part of the Final Clauses and applies to the whole of the Interim Accord. The conjunction between Article 11 and Article 22, on which Professor Reisman insisted, derives from the general applicability of Article 22 to the Accord as a whole. It exists by force of the logic of Article 22 as a Final Clause[62]. In other words, Article 22 is already conjoined to Article 11 (1) as it is to each other article which may be relevant. Although the Applicant said that "[t]here are similar provisions to Article 22 in many other international agreements"[63], it offered no analysis of any of them; and said nothing about Article 8 of the North Atlantic Treaty, notwithstanding the clear relevance of that provision to Article 22[64].

34. As for the European Union clauses, counsel for the Applicant says that Articles 15, 16 and 17 also deal with European Union subjects, and then notes that the drafters neglected to incorporate European Union clauses into these articles[65]. Taking Article 15, for example, Professor Sands says, "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"[66]. But that ignores the direct consequence that would follow under his argument, because Article 15 contains no proviso specific to European Union obligations, then it is capable of "'infring[ing] upon the exclusive competences assigned to the European Commission in [that] field . . .'"[67]. Of course, this is not what Greece agreed. This is the reason why the Interim Accord includes Article 22 under Final Clauses, with general application to each provision which precedes it. The pitfalls of denying its general application are clear on the Applicant's own examples.

35. The Applicant's next tack is to raise alarm over the effectiveness of Article 11. Professor Sands referred to the absurdity of the situation where:

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[61]CR 2011/9, pp. 39-46, paras. 1-21 (Reisman); Rejoinder, pp. 78-88, paras. 5.4-5.18; Counter-Memorial, pp. 134-145, paras. 7.26-7.56.

[62]CR 2011/11, p. 49, para. 8 (Sands).

[63]*Ibid.*, p. 47, para. 3 (Sands).

[64]CR 2011/9, pp. 41-42, para. 11 (Reisman).

[65]CR 2011/11, p. 49, para. 7 (Sands).

[66]*Ibid*.

[67]*Ibid.*, quoting CR 2011/9, p. 41, para. 10 (Reisman).

> "the Respondent has a right to object in all international organizations at which its objection may have an effect . . .
>
> the effect of his argument is devastating for the Interim Accord and the stability that it was intended to create"[68].

But there is no problem of stability here at all. Article 11 (1) still performs the function it was intended to perform, and it does so by imposing a particular obligation on Greece. Greece is obliged "not to object", subject to the membership criteria of each organization.

36. The Applicant consistently ignores those criteria or denies them when the consequences are not to its liking. That is what leads it to misunderstand the relation between Article 22 and Article 11 (1). The Respondent indeed "has a right to object in all international organizations at which its objection may have an effect — closed organizations" — but if, and only if, the rules and criteria of those organizations require objection in the light of the circumstances of the application for admission. Your Advisory Opinion on *Conditions of Admission* was clear that a State is not permitted to add criteria which are not stipulated as part of the rules or practice of the organization[69]. If Greece were to object, because it reached the judgment under the rules that an objection was required, then the objection is valid — both under the rules of the organization and under Article 11 (1), as informed by Article 22. But if Greece were to object in breach of the rules of the organization, then it would have breached an obligation to the fellow members or to the organization itself and, by way of Article 11, to the Applicant too. Article 11 (1) in conjunction with Article 22 protects the Applicant by making Greece's obligations to apply the membership rules of the organization obligations not just to the organization but to the Applicant as well.

37. The Applicant says: "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."[70] We agree with that: the situation after the adoption of Article 11 (1) is indeed different from the situation before. The Applicant, a third party, has acquired a legal interest in our proper application of the membership rules of closed multilateral organizations. By operation of Article 22, those rules do not change; but by operation of

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[68]CR 2011/11, p. 50, paras. 9-10 (Sands).

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

[70]CR 2011/11, p. 51, para. 11 (Sands).

Article 11 (1), Greece's potential responsibility for their breach has expanded. Thus Greece's freedom of action toward the Applicant as membership candidate is constricted but it is not eliminated.

38. I said a moment ago that the Applicant ignores or denies the membership criteria of international organizations as an element in the proper interpretation of Articles 11 (1) and 22. It is important to be clear what criteria NATO has articulated in relation to the Applicant's candidacy. We have recited these again and again, with references to the authoritative NATO documents; but because the Applicant denies they exist, I am afraid, Mr. President, Members of the Court, I have to refer to them once again.

39. The Applicant is categorical that there was no NATO criterion which would have required a deferral of its candidacy in April 2008. Professor Murphy said:

> "[T]here 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."[71]

40. From the early stages of the Applicant's relationship with NATO however, NATO said that the settlement of differences was a requirement. Not just a requirement for the Applicant, it is a requirement for other States. For example, the NATO Secretary General in 1997 said "[t]he possibility of NATO membership has already given many nations of Central and Eastern Europe an incentive to put to an end old quarrels, border disputes or other unresolved security-related issues"[72]. In January 2008, the NATO Secretary General directly connected the name issue with good neighbourly relations. He said, "Euro-Atlantic integration of course also demands and requires good neighbourly relations and it is crystal clear that there were a lot of pleas from around the table to find a solution for the name issue, which is not a NATO affair"[73]. Unless the Secretary General had been speaking in *non sequiturs*, the connection between good neighbourly relations and the "pleas . . . to find a solution for the name issue" was "crystal clear". The Riga Summit Declaration of 29 November 2006 required, *inter alia*, "good-neighbourly relations, and working

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[71]CR 2011/11, p. 32, para. 37.

[72]Rejoinder, Ann. 52, quoted at Rejoinder, pp. 108-109, para. 6.4.

[73]Counter-Memorial, Ann. 26, quoted at Rejoinder, p 110, para. 6.8.

towards mutually acceptable solutions to outstanding issues"[74]; and the Brussels Declaration of 2 December 2007 referred to "mutually acceptable, timely solutions to outstanding issues"[75]. There is no purpose here in reciting the later statements of NATO confirming that "a mutually acceptable solution to the name issue" is a requirement for the Applicant's admission[76].

41. Mr. President, Members of the Court, the Applicant has accused the Respondent of having a "semi-detached relationship to the evidence"[77]. In many cases there is so much evidence before the Court that you might be forgiven for appreciating a "semi-detached" attitude to the evidence. But the evidence here is not large and we are not "semi-detached" about it. The Respondent has acknowledged the facts — and the facts which I assume concern the Applicant the most — those concerning Greece's position concerning the Applicant's application to NATO — Greece has acknowledged them openly. Greece has said already that the facts that matter are those of the NATO enlargement process. The Applicant, after multiple rounds of written and oral proceedings, still denies that.

42. Instead of crediting the statements of the Alliance as to its own membership criteria, counsel for the Applicant says that what really happened was that "NATO members were pleading with the Respondent in this time period to stick to its obligations under the Interim Accord"[78]. But the one "plea" mentioned in NATO statements was that the name issue be settled before the Applicant could be invited[79]! The Applicant's assertion is not only without evidentiary foundation; it contradicts the evidence actually on the record. It is NATO's own statements that matter when you are asking what were NATO's requirements for enlargement.

43. Counsel for the Applicant would have the Court believe that it takes an "extraordinary connect-the-dots attitude" — that is to say that the Respondent takes an extraordinary connect-the-dots attitude — "divining all sorts of hidden meanings and sudden innuendo"[80] to

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[74]Counter-Memorial, Ann. 23, quoted at Rejoinder, p. 112, para. 6.9.

[75]*Ibid.*, Ann. 25, quoted at Rejoinder, p. 112, para. 6.9.

[76]Final Communiqué, Brussels, 3 Dec. 2008, para. 17: Counter-Memorial, Ann. 32, quoted at Rejoinder, p. 113, para. 6.10. See also, Strasbourg-Kehl, Declaration, 4 Apr. 2009; Counter-Memorial, Ann. 35, quoted at Rejoinder, p. 113, para. 6.10.

[77]CR 2011/11, p. 14, para. 4 (Sands).

[78]*Ibid.*, p. 33, para. 37 (Murphy).

[79]Counter-Memorial, Ann. 26, quoted at Rejoinder, p. 110, para. 6.8.

[80]CR 2011/11, p. 33, para. 37 (Murphy).

understand that NATO considered settlement of the name issue as a decisive factor. This is a striking assertion in face of the evidence of multiple NATO statements; all the more so, when the Applicant implies, without any meaningful evidence, that NATO before the Bucharest Summit was admonishing Greece about the interpretation of the Interim Accord. There was an outstanding regional difference; it was not settled in April 2008. It was the name issue, and NATO was clear as to the difficulty it posed for the Applicant's candidacy.

44. The Applicant invites the Court to conclude that resolution of the name difference was *not* a NATO requirement but a unilateral imposition of Greece. It refers to an *aide mémoire* of the Respondent, to suggest that "satisfactory conclusion of the negotiations" was not a NATO criterion or, for that matter, a valid consideration[81]. Regrettably, its treatment of the text requires some caution. Counsel for the Applicant read from the *aide mémoire*. He reported that the *aide mémoire* said as follows: [slide]

> "*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"[82].

But the phrase "in addition to any accession criteria" was not even in the same paragraph as the phrase following the ellipses. What did "in addition to any accession criteria" actually refer to in the original text? It referred to the "cardinal importance that the overall levels of security, military or political, be properly served by any enlargement process". But serving the overall security purposes of the Alliance has always been a requirement in the enlargement process. The *aide mémoire* was not adducing any additional accession criteria at all. As for the "satisfactory conclusion of the [name] negotiations", this was already a NATO requirement. That Greece agreed it was important did not change the requirement. Nowhere does Greece say that "satisfactory conclusion of the [name] negotiations" was its own invention or otherwise superadditive to NATO's membership criteria.

45. The Applicant's counsel asserts that the Applicant in early 2008 was approaching the final stage of the NATO admission process[83]. Indeed, it affirms that it was fully qualified for

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[81]CR 2011/11, p. 24, para. 14 (Murphy).

[82]*Ibid.*, quoting Memorial, Ann. 129, p. 3.

[83]CR 2011/5, p. 18, para. 7 (Miloshoski).

accession to NATO[84]. Now, whether it was or not is a question for the NATO members. It is well beyond the interpretative jurisdiction of the Court. But in any event, I would refer to the words of the Applicant's Prime Minister, Mr. Gruevski: "the issue that has to be solved [he was referring to NATO] is the name issue with Greece"[85].

Mr. President, Members of the Court, thank you for your careful attention to this rather dense presentation. Mr. President, I would ask you to call on Professor Alain Pellet but probably best to separate it by caffeine.

The PRESIDENT: Thank you, Professor James Crawford, for your statement. I am going to call Professor Alain Pellet but perhaps it is appropriate to have a short coffee break before I ask Professor Alain Pellet to take the floor. So, I declare that the Court will have a short break of ten minutes until 4.40 p.m.

The Court adjourned from 4.30 p.m. to 4.45 p.m.

The PRESIDENT : Please be seated. The Court resumes its session and now I invite Professor Pellet to take the floor

M. PELLET : Thank you Mr. President, although I'm quite sure I didn't need café.

LES VIOLATIONS DE L'ACCORD PAR LE DEMANDEUR
LES MOYENS DE DÉFENSE DE LA GRÈCE
LES REMÈDES

1. Monsieur le président, Mesdames et Messieurs les juges, la Cour n'a pas compétence pour se prononcer sur la requête dont l'a saisie l'ex-République yougoslave de Macédoine. Et si, par impossible, vous étiez d'un avis contraire, force vous serait de constater que la Grèce ne peut être tenue pour responsable d'un manquement à l'article 11 de l'accord intérimaire. «Game over» comme le dit peut-être un peu trop triomphalement le professeur Murphy[86] (contrairement aux siens, mes fils me disent d'ailleurs que l'expression «game over» s'affiche plutôt quand on a

[84]CR 2011/5 p. 54, para. 56 (Murphy).

[85]Joint Press Point with NATO Secretary General, Jaap de Hoop Scheffer, and the Prime Minister of the FYROM, Nikola Gruevski, 23 Jan. 2008: Counter-Memorial, Ann. 26.

[86] CR 2011/11, p. 26, par. 19 (Murphy).

perdu…) — mais, de toute façon, une affaire devant la Cour n'est pas un jeu électronique, fût-ce sur une console Nintendo… (je le dis, Monsieur le président, sans que cette remarque implique la moindre critique de cette réussite incontestable de la technologie nippone !). En tout état de cause, c'est sur «continue» qu'il faut appuyer car — le fils de M. Murphy lui expliquera — une partie n'est terminée que lorsque tous les niveaux ont été «complétés». C'est du franglais. Le niveau suivant (si l'ARYM l'atteignait sans que la Cour déclare la fin de la partie) serait celui de savoir si en dehors du système clos dans le cadre duquel raisonne le demandeur, il n'y a pas d'autres motifs de suspension des obligations pesant sur la Grèce en vertu de l'accord intérimaire.

2. Ma tâche cet après-midi est de redire quelques mots sur les obligations découlant de cet accord, que l'ARYM a violées (I) et les conséquences qui découlent de ces manquements (II), avant de faire de très brèves remarques sur les «remèdes» requis par l'Etat demandeur (III).

I. LES VIOLATIONS DE L'ACCORD INTÉRIMAIRE ATTRIBUABLES AU DEMANDEUR

3. Monsieur le président, l'Etat requérant veut apparaître comme la victime d'un voisin vindicatif qui accumulerait des accusations vétilleuses et «triviales» — il persiste et signe dans l'adjectif[87] — pour l'empêcher indûment d'entrer à l'OTAN. L'accusation est curieuse, venant d'une Partie qui présente avec application l'affaire qu'elle a soumise à la Cour comme «un petit cas tout simple d'application de *pacta sunt servanda*» («a simple and narrow case of *pacta sunt servanda*»[88]). S'il ne fait aucun doute que l'accord intérimaire est un traité qui est en vigueur et qui lie les Parties, il les lie *toutes les deux* et sa violation par le demandeur doit avoir les conséquences qui en découlent tant sur le terrain du droit des traités que sur celui de la responsabilité. Mais les faits internationalement illicites d'abord.

4. Donc, Monsieur le président, les violations que nous reprochons à l'ARYM seraient «triviales». Triviales,

— le jet de «cailloux» sur lequel a ironisé le professeur Sands. L'incident a pour origine une marche anti-hellénique de 10 000 personnes contre le bureau de liaison grec à Skopje et s'est tout de même soldé par neuf blessés parmi les policiers (envoyés en nombre insuffisant), dont

[87] Voir CR 2011/7, p. 23-24, par. 58 (Sands) ; voir aussi : CR 2011/11, p. 54, par. 18 (Sands).

[88] CR 2011/5, p. 21, par. 14 (Miloshoski) ; voir aussi, *ibid.*, p. 28, par. 12 (Sands) et CR 2011/11, p. 55, par. 20 (Sands).

un gravement selon l'agence d'information macédonienne[89] ; et, quand bien même on minimiserait ces incidents, leur répétition n'en est pas moins fort inquiétante : notre contre-mémoire contient une vingtaine d'exemples de notes verbales par lesquelles le bureau de liaison de la Grèce à Skopje se plaint des attaques répétées contre ses prémisses et de la faiblesse de la protection dont elle bénéficie[90] ;

— est-il vraiment si trivial que cela que l'Etat demandeur finance des partis et associations qui promeuvent ouvertement des politiques irrédentistes[91] et que son premier ministre cautionne par sa présence et son silence des propos tendant clairement à porter atteinte à l'intégrité territoriale de la Grèce[92] ?

5. Suffit-il de qualifier des obligations du demandeur de négocier que nous invoquons de «triviales» pour les … disqualifier ? Oh je sais bien : comme durant le premier tour de ses plaidoiries[93], le demandeur s'est, lundi dernier, prévalu du brevet de bonne conduite que lui aurait décerné l'ambassadeur Nimetz[94]. Mais c'est son seul argument et avec tout le respect que j'ai pour mes honorables contradicteurs, il n'est pas très sérieux comme l'a relevé le professeur Reisman : à moins de vouloir torpiller la médiation dont il est chargé, on voit mal le représentant spécial du Secrétaire général critiquer véhémentement les Parties. Je relève en outre que si cette déclaration a bien été faite le 9 février 2011 comme les avocats du demandeur y ont lourdement insisté, cette évaluation — pour laquelle le demandeur nous a donné une référence qui n'existe qu'en slavo-macédonien (j'indique au passage que les habitants ne l'ARYM ne parlent pas une langue héritée de celle de Philippe et d'Alexandre de Macédoine, mais une langue slave) — cette évaluation disais-je, portait sur la rencontre des deux premiers ministres qui remonte à plus d'un an : «There is a positive attitude for solving the problem, said Nimetz, assessing *last year's meetings* of Greek and Macedonian Prime Ministers Gruevski and Papandreou as progress in the

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[89] MIA, Skopje, February 28, 2001, «Nine policemen injured in incidents after peaceful protest at «Pela» square», disponible sur: www.mia.com.mk/default.aspx?vId=37185105&lId=2 ; voir contre-mémoire, annexe 47.

[90] Contre-mémoire, annexes 41 à 53, 55 à 61 et 65.

[91] Voir *ibid.*, p. 41-42, par. 4.23-4.24, ou CR 2011/10, p. 14, par. 7 (Telalian).

[92] Voir contre-mémoire, annexe 124.

[93] CR 2011/5, p. 20, par. 11 (Miloshoski), CR 2011/7, p. 19, par. 48 (Sands)

[94] CR 2011/11, p. 18, par. 9 (Sands) et *ibid*., p. 57, par. 5 (Dimitrov).

effort to reach a solution.»[95] Et, quand bien même M. Nimetz aurait chaussé des lunettes roses, ou eût été abusé par les protestations de bonne foi de l'ARYM, son *satisfecit* tardif (qui s'adresse d'ailleurs aux *deux* Parties) ne saurait faire oublier que, depuis seize ans, l'ARYM s'emploie à saborder les négociations comme je l'ai montré vendredi dernier[96] sans être démenti :

— sauf par le faux-semblant de mars 2008[97], le demandeur n'a jamais fait le moindre pas en direction d'un compromis quelconque ;

— en cherchant à imposer un fait accompli à travers sa reconnaissance sous le nom qui est l'objet de la négociation à laquelle il s'est engagé, il s'emploie très sciemment et délibérément à faire en sorte d'exclure que cette négociation puisse «parvenir à *régler* le différend» sur son nom au mépris des dispositions de l'article 5 de l'accord intérimaire ; et

— en s'accrochant à la «double formule» (la *dual formula*), il exclut du champ de la négociation ce qui constitue son objet même : la recherche d'une solution globale sur «la divergence qui a surgi au sujet *de son nom*».

[Projection n° 1 — Ajouter successivement chacune des citations correspondant à un tiret.]

6. Il faut croire que l'accusation de la Grèce sur ce point n'est pas si triviale : *pas une fois* — pas une seule fois, Monsieur le président — le demandeur n'a abordé la question — qu'il avait déjà complètement esquivée dans ses écritures et sur laquelle il n'a pas dit le moindre mot durant les quelque dix heures de ses plaidoiries orales. C'est un silence plus qu'éloquent — criant, on pourrait dire «barrissant» puisque nos contradicteurs et amis aiment les éléphants ! Je ne peux donc que le répéter[98], la décision arrêtée *sine qua non* de s'en tenir à la double formule entraîne inévitablement le blocage des négociations — au mépris de l'engagement de négocier de bonne foi sur son nom qui pèse sur l'ARYM en vertu de l'article 5. Quelques citations à l'appui :

— «we consider that the appellation Republika Makedonija-Skopje may serve *only* as a basis for constructive talks aimed at finding a formula for *bilateral communication between the Republic*

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[95] Balkan Insight, *No Breakthrough After Greece, Macedonia Name Talks*, 10 February 2011 ; les italiques sont de nous (onglet n° 3 du dossier de plaidoiries).

[96] CR 2011/9, p. 64-68, par. 19-26 (Pellet).

[97] *Ibid.*, p. 65-66, par. 22 (Pellet).

[98] Voir contre-mémoire, p. 30-31, par. 3.47 ; p. 34-35, par.4.8-4.9 ; ou., p. 183-104, par. 8.39 ; duplique, p. 15-16, par. 1.10, p. 27-38, par. 3.5, p. 74-75, par. 4.25-4.26, p. 167-173, par. 7.54-7.63 ; CR 2011/8, p. 15-16, par. 15-16 (Pellet), p. 54, par. 28 (Reisman) ; CR 2011/9, p. 64-65, par. 20-23 (Pellet).

of Macedonia and the Hellenic Republic» (FYROM's Minister of Foreign Affairs, April 2005)[99];

— «*we cannot discuss*» the point in the document of the mediator «that says that the Republic of Macedonia should accept a name different from its constitutional one for international use» (FYROM's Prime Minister in November 2007)[100];

— «There is a red line we cannot cross» said Ambassador Dimitrov, present in this Hall of Justice, in March 2008 by stressing that Skopje would use «its constitutional name «Republic of Macedonia» on the *international stage* and agreed to adopt a mutually acceptable name *strictly for relations* with Greece»[101];

— since the signature of the Interim accord of 1995 the FYROM politicians «continually repeated that the *maximum* Macedonia must concede is that it will use the dual formula, which means the use of one name in its relations with Greece and the use of its constitutional name *internationally*, and that in no circumstances we cross that red line» (FYROM's Prime Minister, November 2008)[102].

Alors que négocier si l'on ne peut discuter du nom du demandeur (de «*son* nom»), seul objet des négociations prévues à l'article 5 de l'accord intérimaire ? Refuser de négocier sur l'objet agréé, c'est une violation patente — et certainement pas triviale — de l'accord intérimaire.

[Fin de la projection 1.]

7. A vrai dire, Monsieur le président, aucun de ces manquements n'est trivial, qu'il s'agisse de la persistance des menaces irrédentistes — et, en tout cas, de l'inertie complaisante des autorités de l'ARYM à l'égard de ces revendications — du refus de négocier de bonne foi, que traduisent la volonté systématique du demandeur de faire traîner indéfiniment les négociations ou son parti pris

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[99] Déclaration du ministre des affaires étrangères, note verbale n° 63/2005 en date du 15 avril 2005 adressée à toutes les missions permanentes par la mission permanente de l'ERYM auprès de l'Organisation des Nations Unies, duplique, annexe 21 ; les italiques sont de nous ; voir aussi duplique, p. 170-172, par. 7.60-7.62.

[100] Prime Minister Gruevski's statement on Nimetz's draft-frame work of understanding, *Macedonian Information Agency* (2 novembre 2007) available at: http://www.mia.com.mk/default.aspx?vId+29113595&lId=2, contre-mémoire, annexe 128 (non traduite).

[101] NATO Urges Macedonia solution [L'OTAN insiste pour une solution concernant la Macédoine], BalkanInsight.com (3 mars 2008), réplique, annexe 98 (non traduite) ; les italiques sont de nous.

[102] Déclaration du premier ministre, M. Gruevski, Stenography notes from the 7th sequel of the 27th session of the Parliament of the Republic of Macedonia, held on 3 November 2008 27-7/17, contre-mémoire, annexe 104 ; les italiques sont de nous ; voir aussi contre-mémoire, p. 34-35, par. 4.8-4.9.

de les vider de toute substance. Ce sont d'ailleurs ces atermoiements, à la longue insupportables, qui ont conduit l'OTAN à différer l'invitation au demandeur de la joindre — car c'est bien l'absence de résultat des négociations sur la question du nom qui est à l'origine de la décision prise par le sommet de Bucarest.

[Projection n° 2 — Paragraphe 1 de l'article 11 et paragraphe 2 de la résolution 817 (1993).]

8. Quant aux violations découlant de l'engagement résultant du premier paragraphe de l'article 11 et du paragraphe 2 de la résolution 817 (1993) du Conseil de sécurité, elles ne sont pas davantage triviales — et elles perdurent : depuis 1993, malgré le renvoi fait par les articles 5 et 11 de l'accord intérimaire à cet instrument, le demandeur s'obstine à se nommer lui-même par le nom même par lequel il s'est engagé à ne pas être désigné dans les organisations au sein desquelles il aura été admis grâce à la non-objection de la Grèce («dans ces organisations» et «à toutes fins utiles» — «in such organization» and «for all purposes»). Monsieur le président, comme je prends la suite du professeur Crawford qui a expliqué à juste titre, je crois, que la première phrase de l'article 11 n'imposerait pas d'obligation au demandeur mais posait une condition à son admission dans certaines organisations internationales, vous pourriez penser que je le contredis lorsque j'affirme que l'ARYM a violé cette disposition et celle de la résolution 817. Honni soit qui mal y pense, il n'en est rien. M. Crawford raisonnait en amont avant l'admission ; je me situe en aval une fois que l'admission est acquise. Il ne s'agit plus de condition, le non-respect de la condition à laquelle cette admission est subordonnée est une violation. Certes, Monsieur le président, le demandeur a déniché quelques témoignages qui l'absolvent du respect de cette obligation et quelques documents préparatoires dont le texte peut, non sans quelque artifice, être interprété comme neutralisant cette objection — mais, que je sache, «la» règle générale d'interprétation des traités c'est qu'ils doivent être interprétés de bonne foi suivant le sens ordinaire à attribuer à leurs termes dans leur contexte et à la lumière de leur objet et de leur but. Or le texte de cette disposition est parfaitement clair — vous le connaissez sans doute par cœur, Mesdames et Messieurs de la Cour, je ne le relis pas. J'ajoute seulement que cette disposition serait vidée de toute substance — on pourrait dire *ces* dispositions — si l'on devait adopter l'interprétation du demandeur : l'accord intérimaire ne peut imposer aucune obligation à quiconque sinon aux Parties ; comme il est peu vraisemblable que la Grèce elle-même ait voulu s'obliger à ne désigner le demandeur que

sous son appellation provisoire et que ceci ait été la volonté de l'ARYM, il faut croire que l'obligation s'applique à celle-ci et que c'est elle qui est, juridiquement et conventionnellement, tenue de ne pas *se* doter d'une appellation différente ; sinon, la seconde phrase du premier paragraphe de l'article 11 serait une coquille vide et ne lierait personne.

9. Et le fait que l'ARYM n'ait pas respecté cet engagement pendant treize ans, comme elle s'en vante, ne l'exonère nullement de sa violation mais constitue au contraire une circonstance aggravante : elle reconnaît que, pendant toutes ces années, elle n'a pas respecté l'obligation qu'elle avait acceptée en concluant l'accord intérimaire et que lui impose (et à elle seule) le premier paragraphe de l'article 11 de cet instrument. Et cela me conduit à deux autres remarques qui concernent d'ailleurs l'ensemble des violations.

[Fin de la projection n° 2.]

10. La première concerne le facteur temps. Autant il n'est pas anormal que, dans les années qui ont précédé et immédiatement suivi l'adoption de l'accord intérimaire, il y ait eu un peu de battement, autant plus de quinze ans plus tard, ces palinodies apparaissent pour ce qu'elles sont : des violations substantielles et continues dont on ne voit pas comment le temps aurait pu les effacer : d'abord, il n'est pas certain que le droit international connaisse la notion de prescription extinctive[103] ; ensuite s'il la connaît, le délai qui s'est écoulé depuis la signature de l'accord intérimaire ne serait sûrement pas suffisant pour qu'elle puisse jouer ; enfin et surtout, les protestations nombreuses et fermes du défendeur eussent, de toute manière, empêché le temps de faire son œuvre.

11. Dès lors, je pense, par exemple, qu'il vaut mieux laisser tranquilles l'avis de la commission Badinter de 1992 ou les comportements initiaux des Parties lors de l'entrée de l'ARYM aux Nations Unies ou dans d'autres organisations internationales : ils remontent à une époque antérieure aux engagements conventionnels pris par le demandeur dans l'accord intérimaire qu'ils ne sauraient par conséquent ni violer ni aider à interpréter. Et la Grèce, qui s'est, pour sa part, acquittée de ses propres obligations en vertu de l'accord, n'avait pas de raison de douter à ce moment-là que l'ARYM tiendrait les siens : l'instrument, négocié pied à pied, mot à mot,

[103] Voir *Ile de Kasikili/Sedudu (Botswana/Namibie), arrêt, C.I.J. Recueil 1999 (II)*, p. 1101-1103, par. 90-94.

établissait un équilibre satisfaisant des sacrifices consentis de part et d'autre et des avantages obtenus réciproquement par chaque Partie.

12. Au surplus, Monsieur le président — et c'est ma seconde remarque générale —, malgré l'assurance épatante avec laquelle nos contradicteurs affirment le contraire, la Grèce a protesté avec constance et vigueur contre ces violations répétées.

13. Mon admiration — ah, ce n'est pas tout à fait le mot… mon ébahissement — face à l'aplomb de nos contradicteurs a atteint son apogée lorsque j'ai consulté le tableau, assez vide de sens, que le professeur Sands a inséré sous l'onglet n° 13 (il pensait sans doute que le chiffre porte bonheur) du dossier des juges du demandeur : il y a là une collection de neuf notes verbales — extraites d'une série de vingt — qui montrent le climat d'hostilité antigrecque continuant de régner à Skopje après la conclusion de l'accord intérimaire et après comme avant le sommet de Bucarest ; la fonction de ces annexes au contre-mémoire était de décrire une situation de tension et ces documents n'avaient aucune raison particulière de mentionner tel ou tel article de l'accord et sûrement pas ceux relatifs au nom de la «seconde Partie», à son obligation de négocier ou à son appellation au sein des organisations internationales. En revanche, le demandeur ne fait aucune allusion aux très nombreuses protestations de la Grèce au sujet de la violation de ces obligations.

14. Nous en avons établi une liste — très probablement non exhaustive — qui recense pas moins de vingt-trois protestations faites par la Grèce à l'encontre de l'utilisation par le demandeur du nom qu'il persiste à se donner, malgré les dispositions de l'accord intérimaire et malgré les décisions l'admettant dans les diverses organisations internationales concernées. Tous ces documents émanent d'autorités officielles habilitées à parler au nom de la Grèce et témoignent de leur vigilance, de plus en plus sourcilleuse à mesure que le temps passait et que la violation devenait de plus en plus flagrante. Les documents que je vais citer sont reproduits à l'onglet n° 2 de votre dossier, avec d'autres d'ailleurs.

15. Je note par exemple que, dès décembre 1993, après donc l'admission de l'ARYM aux Nations Unies, mais avant la signature de l'accord intérimaire, le conseiller juridique du ministère grec des affaires étrangères, a protesté au sein de la Sixième Commission de l'Assemblée générale,

> «contre l'utilisation du nom de République de Macédoine par le représentant de l'ex-République yougoslave de Macédoine, qui viole outrageusement les résolutions du Conseil de sécurité et de l'Assemblée générale relatives à la question, en vertu desquelles la République de Skopje a été admise provisoirement à l'ONU sous le nom d'ex-République yougoslave de Macédoine qui doit être utilisé à l'ONU sans aucune exception, limitation, réserve ni nuance, et ce jusqu'au règlement du différend qui oppose la Grèce à la République de Skopje et qui porte précisément sur le nom de cette république»[104].

Un peu plus tard — et cette fois après la conclusion de l'accord intérimaire, le représentant permanent de la Grèce aux Nations Unies a également protesté, par deux lettres des 24 novembre et 1er décembre 1995 (qui se trouvent dans vos dossiers), contre des violations similaires de la résolution 817 (1993) et il a ajouté :

> «En outre, l'article 5 de l'accord intérimaire … stipule que les deux parties reconnaissent leur désaccord au sujet du nom de [l'ex-République yougoslave de Macédoine] et conviennent de poursuivre les négociations sous les auspices du Secrétaire général de l'Organisation des Nations Unies, comme suite à la résolution 845 (1993) du Conseil de sécurité, en vue de parvenir à un accord sur le sujet de discorde dont il est fait état dans ladite résolution et dans la résolution 817 (1993) du Conseil.»[105]

Je saute une dizaine d'années (mais elles sont bien représentées dans notre tableau) pour citer une troisième caractéristique — au Conseil de l'Europe cette fois, au sein duquel le représentant permanent de la Grèce a vigoureusement protesté, par une lettre adressée le 23 décembre 2004 au Secrétaire général de cette organisation, contre une note émanant de l'ARYM, au sujet d'une tentative «to forcefully prejudice the final outcome of negotiations on the matter and thus render the Interim Accord of the 13th September, 1995 (Article 5), which our two countries signed, null and void in practice»[106].

16. La liste — illustrée par les tableaux insérés sous l'onglet nº 1 du dossier des juges — (je pense que je me suis trompé en vous disant que les documents figuraient dans le dossier des juges, ils sont annexés à la duplique), la liste donc qui est illustrée par les tableaux qui, eux, sont bien insérés sous l'onglet nº 1 du dossier des juges est longue, mais ces exemples sont parlants et suffisent : sauf pour l'esbroufe, il est tout simplement impossible de prétendre que la Grèce n'a pas

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[104] Nations Unies, *Documents officiels de l'Assemblée générale, quarante-huitième session, Sixième Commission*, compte rendu analytique de la 22e séance, doc. A/C.6/48/SR.22, 7 décembre, p. 12, duplique, annexe 2.

[105] Lettre en date du 1er décembre 1995 adressée au Secrétaire général par le représentant permanent de la Grèce auprès de l'Organisation des Nations Unies, doc. S/1995/1005, 1er décembre 1995, p. 3, duplique, annexe 10.

[106] Letter of the Permanent Representative of Greece to the Council of Europe, addressed to the Secretary General, Ref. : F.6705B/169/AS1148, dated 23 December 2004, duplique, annexe 46.

protesté contre les manquements répétés du demandeur à ses engagements conventionnels, qu'ils concernent l'utilisation de son nom au sein des organisations internationales et l'obligation de négocier (ceci est établi par le second tableau inclus dans l'onglet n° 1) ou les violations des articles 6 et 7 (ce que montre notamment le premier tableau). Monsieur le président, on dit parfois qu'«impossible n'est pas français» ; en tout cas, «impossible n'est pas «philippe sandsien»» : mon fougueux contradicteur n'hésite pas en effet à prétendre qu'il n'y a pas eu de protestation — sans doute a-t-il oublié les sages conseils qu'il nous a prodigués et que je rappelle :

> «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»[107] ; Professor Sands's remarks cause me «to enquire how familiar counsel might actually be with the evidence before the Court . . .»[108].

17. Conclusion, Monsieur le président : le demandeur a manqué, gravement, massivement, systématiquement, aux obligations conventionnelles qui lui incombent en vertu de l'accord intérimaire — obligations qui, je le rappelle, sont la contrepartie de celles assumées par le défendeur en vertu du même accord ; et le défendeur, pour sa part, a protesté très constamment et très vigoureusement contre ces violations.

II. LES DÉFENSES DE LA GRÈCE

18. Monsieur le président, Mesdames et Messieurs les juges, de tels manquements ont des conséquences sur le terrain du droit de la responsabilité aussi bien que sur celui du droit des traités : la responsabilité de l'ARYM s'en trouve engagée et la Grèce eût été en droit de prendre l'initiative de dénoncer ou de suspendre l'accord de 1995. Elle ne l'a pas fait — pour des raisons qui n'ont rien de mystérieux, que nous avons déjà indiquées[109] et que Mme Telalian a, une fois de plus, rappelé tout à l'heure : le défendeur souhaite qu'une solution définitive soit apportée à l'entêtant différend sur le nom et que les deux Parties soient enfin à même «de développer leurs relations mutuelles et de jeter des bases solides en vue de l'instauration de relations pacifiques et d'un climat de compréhension» conformément à l'objectif fixé par le préambule de l'accord intérimaire. Mais la Grèce eût lâché la proie pour l'ombre et laissé le champ libre aux passions irrédentistes et à la

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[107] CR 2011/11, p. 54, par. 18 (Sands).

[108] *Ibid.*

[109] Contre-mémoire, p. 163, par. 8.2 ; duplique, p. 187, par. 8.3 ; CR 2011/10, p. 33, par. 26 (Pellet).

consolidation du fait accompli recherché par le demandeur en se déliant et, du même coup, en *le* déliant, du régime équilibré de droits et d'obligations mutuels réalisé par l'accord.

19. Et c'est là, Monsieur le président, qu'intervient cette *exceptio* sur laquelle le professeur Sands exerce (bien à tort) la verve talentueuse qu'on lui connaît. Contrairement à ce qu'il semble croire, nous n'invoquons pas l'*exceptio non adimpleti contractus* comme une sorte de «super circonstance excluant l'illicéité» ou comme un motif alternatif pour suspendre telle ou telle obligation du traité. Nous disons seulement que, en vertu de ce principe général, lorsque certaines circonstances sont réunies, l'Etat victime de manquements à des engagements conventionnels d'un autre Etat peut y répondre en suspendant (ou en mettant fin) unilatéralement à ses propres obligations corrélatives, sans pour autant se retirer du traité. Les conditions nécessaires à sa mise en œuvre sont remplies en l'espèce. Pour mener à bien cette démonstration, je postulerai — sans le concéder — que la Grèce aurait, effectivement, violé ses obligations en vertu de l'accord intérimaire — *quod non* ; mon compère James Crawford l'a établi.

20. Monsieur le président, j'ai juste l'âge que les Beatles célébraient ou redoutaient dans leur magnifique chanson *When I'm 64*. Mais c'est *When I'm minus 9* que le professeur Sands voudrait que je lui chante[110] — l'âge que j'avais l'année de l'arrêt des *Prises d'eau à la Meuse* et des opinions personnelles de Dionisio Anzilotti et de Manley Hudson. Rassurez-vous, Monsieur le président, je ne vais pas pousser la chansonnette. Il reste qu'il y a des chansons indémodables, comme il y a des principes inusables, et que c'est le cas en effet de ce principe «si juste, si équitable, si universellement reconnu» (*Prises d'eau à la Meuse, arrêt, 1937*, opinion dissidente de M. Anzilotti, *C.P.J.I. série A/B n° 70*, p. 50) selon lequel «quand deux parties ont assumé une obligation identique ou réciproque, une partie qui, de manière continue, n'exécute pas cette obligation, ne devrait pas être autorisée à tirer avantage d'une non-observation analogue de cette obligation par l'autre partie» (*Prises d'eau à la Meuse, arrêt, 1937*, opinion individuelle de M. Hudson, *C.P.J.I. série A/B n° 70*, p. 77).

[110] Voir CR 2011/11, p. 51, par. 13.

21. Ce principe doit trouver application ici : l'obligation assumée par la Grèce de ne pas objecter à l'admission de l'ARYM dans les organisations internationales dont elle est membre a pour contrepartie celle du demandeur de se faire appeler par sa dénomination provisoire en attendant que la question de son nom soit réglée par des négociations auxquelles il s'est engagé à participer de bonne foi. Il n'a respecté ni l'une ni l'autre de ces obligations — ni d'autres encore. Mais cela ne l'a pas empêché de saisir la Cour de céans d'une violation — unique — qu'il impute à la Grèce. C'est ici qu'intervient l'*exceptio :* bien que le défendeur eût, à maintes reprises, protesté contre les multiples violations de l'accord par l'ARYM[111], bien qu'il l'eût avertie des conséquences que pourrait avoir sa persistance dans l'illicéité[112], celle-ci a voulu «passer en force» et tenter d'obtenir de la Cour ce que l'OTAN lui a refusé. Devant la Cour, la Grèce est d'autant plus en droit de se prévaloir de l'*exceptio* que, comme je l'ai montré vendredi[113], il n'est même pas besoin de se prononcer sur la question de savoir si l'*exceptio* pourrait permettre d'assouplir les conditions auxquelles l'invocation de l'article 60 de la convention de Vienne sur le droit des traités ou des règles applicables aux contre-mesures sont subordonnées : elles sont, de toute façon, remplies en l'espèce et, au fond, l'avocat du demandeur ne l'a pas sérieusement contesté[114]. Juste pour rappel :

22. Si l'on se place sur le terrain des contre-mesures, force est de constater que :

— les violations de l'accord intérimaire commises par l'ARYM sont graves ;

— l'attitude que le demandeur prête à la Grèce constitue une riposte plus que proportionnée ;

— la mesure alléguée est limitée à l'inexécution temporaire de l'obligation pesant sur la Grèce de ne pas objecter à l'admission de l'ARYM à l'OTAN et permet évidemment la reprise de l'exécution de l'obligation en question ;

— elle ne porte aucune atteinte à une norme impérative du droit international général ;

— le demandeur a été informé à maintes reprises des positions de la Grèce ; et,

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[111] Voir *supra*, par. 14-16.

[112] Statement of Foreign Minister of Greece, Ms Dora Bakoyannis, regarding statements made by FYROM President Mr. Crvenkovski, 13 Sep. 2007 ; contre-mémoire, annexe 127 (dossier de plaidoiries, onglet n° 2).

[113] CR 2011/10, p. 25-29, par. 7-16 (Pellet).

[114] CR 2011/11, p. 53-55, par. 18-19.

— de toute manière, si l'OTAN n'avait pas adopté la décision contestée, le défendeur aurait pu objecter à l'invitation faite à l'ARYM de rejoindre l'Alliance : ceci était la seule possibilité pour lui de préserver ses droits puisque, une fois l'admission acquise, il n'aurait plus eu aucun moyen de les faire respecter[115].

23. Et si l'on se place sur le terrain du droit des traités, le constat est le même. Le principe posé à l'article 60 de la convention de Vienne trouve pleinement à s'appliquer — et j'indique en passant que le manuel qu'a cité avec insistance le professeur Sands[116] (qui a décidément d'excellentes lectures) rattache expressément cette disposition à l'*exceptio* et renvoie à l'opinion d'Anzilotti écrite *when I was minus 9*[117] :

— les violations de l'accord commises par l'ARYM sont substantielles prises isolément ; elles le sont de manière plus manifeste encore considérées ensemble ;

— elles justifient la suspension partielle de l'accord par la Grèce (comme elles eussent justifié sa terminaison) ;

— la notification prévue au paragraphe premier de l'article 65 n'avait pas lieu d'être faite *ex ante* dès lors que, dans la droite ligne de l'*exceptio*, conformément au principe posé au paragraphe 5 de cette même disposition, un Etat n'est pas empêché «de faire cette modification en réponse à une autre partie qui demande l'exécution du traité ou qui allègue sa violation».

[Projection n° 3 — Convention de Vienne de 1969, art. 65, par. 5, et 45 (F et E).]

24. Ce dernier point est le seul que le professeur Sands ait honoré d'un début de discussion juridique. En effet, a-t-il dit, il résulte du renvoi que fait l'article 65, paragraphe 5, à l'article 45 (convention de Vienne) que cette dernière disposition «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»»[118]. J'ai un

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[115] Voir les articles 49 à 53 des Articles de la CDI sur la responsabilité de l'Etat pour fait internationalement illicite.

[116] CR 2011/11, p. 51-52, par. 13 (Sands).

[117] Patrick Daillier, Mathias Forteau et Alain Pellet, *Droit international public (Nguyen Quoc Dinh)*, 8e édition, Paris, 2009, p. 339-340, par. 199.1.

[118] CR 2011/11, p. 53, par. 14 (Sands).

peu de mal à suivre mon contradicteur, Monsieur le président. L'article 45 dit que «après avoir eu connaissance des faits», un Etat ne peut suspendre l'application d'un traité si, «*b)* [il] doit, à raison de sa conduite, être considéré comme ayant acquiescé … à son maintien en vigueur ou en application». En l'espèce, la Grèce n'y a pas acquiescé.

[Fin de la projection n° 3.]

25. Je ne sais pas, Monsieur le président, si j'ajouterai à la prochaine édition de notre manuel, de longs développements sur l'*exceptio inadimpleti contractus* ; cela dépendra d'abord de votre arrêt, car c'est vous qui donnez le la au dialogue fécond de la jurisprudence et de la doctrine. Mais, ce que je sais, c'est qu'en réfléchissant sur cette affaire, j'ai compris au moins les mérites «explicatifs» de ce principe général à la postérité féconde : il évite la perpétuation de situations injustes et répond à d'évidentes nécessités pratiques — de la vertu de naviguer à la fois dans le monde universitaire et dans celui de la pratique («of navigating the worlds of academia and professional practice»[119]) : ils sont sources d'enrichissement mutuel et la compréhension des mécanismes juridiques s'en trouve approfondie. Ceci étant, point n'est besoin de trop disserter : en la présente espèce, l'*exceptio* permet de justifier les institutions juridiques plus précises que sont les règles relatives aux contre-mesures d'une part et celles applicables à la suspension des traités d'autre part ; mais il n'est guère utile de se demander, en l'espèce, si elle peut en outre produire des effets spécifiques : les conditions de l'application de l'un comme de l'autre de ces deux corps de règles sont remplies et il n'est pas indispensable de se demander si le principe posé par la Cour dans *Gabčíkovo-Nagymaros*[120] est susceptible d'aménagement dans certains cas spéciaux.

III. BRÈVES REMARQUES SUR LES «REMÈDES»

26. Mesdames et Messieurs les juges, dès lors que la Cour n'est pas compétente, qu'aucun manquement à l'article 11 ne peut être attribué à la Grèce et que, si manquement il y avait, celui-ci serait «excusé» en vertu du principe *non inadimpleti contractus* conçu de la manière la plus stricte,

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[119] CR 2011/11, p. 52, par. 13.

[120] Voir *ibid.*, p. 16, par. 7 (Sands), citant *Projet Gabčíkovo-Nagymaros (Hongrie/Slovaquie), arrêt, C.I.J. Recueil 1997*, p. 62-63, par. 100.

il n'y a pas lieu de s'arrêter à la question des remèdes. Et, dans toute la mesure où le demandeur s'en est tenu aux conclusions de ses écritures, nous vous prions de bien vouloir vous reporter à ce que nous en avons dit dans notre contre-mémoire[121] et dans notre duplique[122].

27. Je souhaite cependant ajouter quelques mots très brefs sur une remarque de dernière minute faite par un avocat du demandeur et relayée par son agent juste avant la lecture des conclusions de l'ARYM : «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.»[123] Même si ceci n'a pas conduit le demandeur à procéder formellement à une modification de ses conclusions, voici qui revient à ressusciter la «réserve de droits» dont on nous avait expliqué lors du premier tour qu'elle n'était plus de saison[124].

28. Tout en ayant l'intention d'être très bref sur ce point, je voudrais l'aborder par une remarque personnelle et je vous prie de bien vouloir m'en excuser. Au paragraphe 6.26 de sa réplique, l'ARYM affirme que «*Reservations of rights form an ordinary and usual part of submissions to the International Court of Justice, and their inclusion in memorials and applications to the Court is now routine*». C'est malheureusement exact, mais je considère ceci comme tout à fait regrettable et, pour tout dire, assez exaspérant : de plus en plus souvent les Etats proclament qu'ils ont des «droits», dont ils esquissent vaguement les contours et dont ils menacent d'exciper à un moment indéterminé des plaidoiries — écrites ou orales — avec l'espoir sans doute que la Cour acceptera l'amalgame avec l'affaire faisant l'objet de la requête.

29. En l'espèce, je constate que les «droits» que le demandeur prétendait «réserver», et qu'il réaffirme au fond dans ses plaidoiries orales, sont sans rapport avec l'objet de la requête (qui porte sur la prétendue opposition de la Grèce à l'admission de l'ARYM au sein de l'OTAN) ; et qu'il en résulte que si la Cour devait se prononcer sur le fond de l'affaire que l'Etat requérant lui a soumise — je veux dire la «vraie» affaire dans toute son ampleur, y compris les pans que le demandeur

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[121] Chap. 9 : Remedies, p. 196-201.

[122] *Ibid.*, p. 205-215.

[123] CR 2011/11, p. 33, par. 38 (Murphy) ; voir aussi p. 69, para. 11 (Dimitrov).

[124] Cf. CR 2011/6, p. 12, par. 1 (Klein) et CR 2011/7, p. 26, par. 4 (Bastid-Burdeau).

tentent d'occulter — mais pas une affaire future et hypothétique qui pourrait résulter de la non-admission de l'ARYM au sein de l'Union européenne qui, de toute façon, pose d'autres questions et appellerait un examen attentif des conditions dans lesquelles cette situation aurait pu survenir.

30. Pour le reste, je pense qu'il suffit de rappeler que, dès lors qu'aucun fait internationalement illicite ne peut être attribué à l'Etat défendeur, la question ne se pose pas. Par conséquent, la Cour n'a pas à accéder à la demande d'un jugement déclaratoire, qui constituerait une satisfaction appropriée, formulée dans la conclusion ii) du demandeur. Il en va *a fortiori* de même des demandes de cessation et de garantie de non-répétition reflétées par la conclusion iii). Pas de responsabilité, pas de réparation. Par ailleurs, pour autant que ces demandes concernent l'admission de l'ARYM à l'OTAN, cette organisation est régie par ses règles propres — qui s'imposent à la Grèce et que l'article 22 de l'accord intérimaire préserve — et l'invitation de la joindre adressée au demandeur a été expressément subordonnée par le sommet de Bucarest au règlement de la divergence sur le nom. Outre qu'il est douteux que la haute juridiction bénéficie d'un pouvoir d'injonction comme l'autre Partie semble le penser, tout «ordre», «order», que la Cour pourrait adresser à la Grèce à ce sujet serait dépourvu d'effet utile.

31. Ceci étant, Mesdames et Messieurs de la Cour, nous ne pensons pas que vous aurez à vous pencher sur ces questions : vous n'avez pas compétence pour vous prononcer sur ces demandes et, entreprendriez-vous d'exercer votre … (in)compétence, vous ne pourriez que rejeter la requête au fond.

Je vous remercie très vivement de votre écoute attentive. Et je vous prie, Monsieur le président, de bien vouloir donner la parole au professeur Abi-Saab qui va, très brièvement, récapituler les idées-force de notre argumentation, avant les conclusions de l'agent.

The PRESIDENT: I thank Professor Alain Pellet for his statement. I now invite Professor Georges Abi-Saab to take the floor.

M. ABI-SAAB: Thank you Mr. Président.

Points marquants de l'affaire

1. Monsieur le président, Mesdames et Messieurs de la Cour, après les exposés de mes collègues qui ont couvert les différents aspects du litige, il m'incombe de récapituler quelques thèmes idées-force qui sous-tendent l'ensemble de nos positions, ou des points qui ont été soulevés de manière récurrente par nos contradicteurs.

2. Je commencerai par un de ces derniers points qui tourne autour de la question de preuve, de la pratique, de leurs usages et de leur interprétation.

A travers son univers enchanteur, habité de mythes, de contes de fées, de files indiennes de pachydermes, le professeur Sands nous accuse, à répétition, de ne pas fournir de preuves pour étayer nos positions. Le professeur Pellet vient de démontrer, par exemple, que ce qu'il disait à propos des protestations en fournissant dans l'onglet n° 13 du dossier des juges une liste de sept ou neuf notes verbales de protestation tout en les écartant «No allegation» voulait dire que ces notes ne spécifient pas l'article de l'accord intérimaire dont la note allègue la violation.

3. Monsieur le président, dans une de mes vies antérieures d'économiste, on nous mettait en garde contre ce qu'on appelait en statistique «data fishing», concocter l'échantillon qui vous convient, au mépris de la totalité de l'ensemble de la population recensée.

Comme l'a très bien démontré le professeur Pellet, ces notes verbales sont prises des annexes du contre-mémoire grec et peut-être avaient-elles d'autres raisons plus urgentes que de souligner la violation de l'accord intérimaire. Mais aurait-il jeté un coup d'œil aux annexes de la réplique, il aurait trouvé abondamment ce qu'il cherchait ailleurs en vain.

Est-ce par inattention ou par mépris de ce qui pouvait être gênant ?

4. De même, on nous dit que beaucoup de nos notes de protestation grecques n'étaient pas adressées au demandeur, mais à l'ONU ou à d'autres organisations et instances internationales. Mais là aussi, on oublie qu'il s'agit essentiellement de protestations contre des violations ou bien de la résolution 817 du Conseil de sécurité ou bien de l'article 11, paragraphe 1, concernant la non-utilisation du nom ou de la désignation provisoire au sein de ces mêmes organisations

internationales. Il était donc normal d'attirer l'attention de l'Organisation, et par ce truchement, tous les membres, y compris le défendeur, sur ce type de violation.

5. Plus sérieux encore, le professeur Sands accuse la Grèce d'entretenir ce qu'il a qualifié de «semi-detached relation to evidence», en citant ce qu'a déclaré l'ambassadeur Nimetz en 1995 : «there is no requirement for [the Applicant] to use a name they don't accept» (CR 2011/11, p. 15, par. 5). Mais si nous remontons à la déclaration originale de Nimetz, nous trouvons un texte un peu différent : «the people from that country, when they talk about themselves, use their constitutional name ... there is no requirement for them to use a name they don't accept» (réplique, annexe 87). A la place de «people from that country», le professeur Sands a substitué «the Applicant». Cela a un nom en anglais, c'est «doctoring documents». Car il y a une immense différence entre «le peuple de ce pays», les gens marchant dans les rues de Skopje ou ailleurs, auxquels on ne peut évidemment pas imposer l'usage d'un nom quelconque, et «le demandeur», *the Applicant*, c'est-à-dire le gouvernement du pays qui a été admis à l'ONU à condition d'être désigné («referred to», la voie passive signifie par tout le monde) exclusivement «for all purposes» par le nom provisoire au sein de l'Organisation. N'est-ce pas un bon exemple d'entretenir un «semi-detached relation to evidence» ?

6. Finalement l'autre exemple qui a été donné par mon collègue, le professeur Pellet, concernant la pratique du demandeur d'utiliser son nom préféré dans les organisations internationales, le professeur Sands déclare :

> «let me simply note that in the period between 1995 and April 2008 the Respondent never — not once — asserted that such practice by the Applicant was wrongful so as to justify an objection by the Respondent under the Interim Agreement as a violation of the Treaty» (CR/2011/5, p. 35, par. 25).

Grosse erreur, ou plutôt, pour utiliser un terme qu'affectionne le professeur Sands, «gross misrepresentation». Car les notes verbales de protestation contre cet usage abondent et le professeur Pellet a indiqué l'endroit où on peut les trouver. Tout au long de cette période, il y a des notes qui protestent exactement cette pratique.

8. Pour finir avec cette première série de thèmes soulevés par nos contradicteurs, j'aimerais commenter brièvement une remarque faite lundi par mon ami le professeur Klein. Dans ses efforts pour détacher le différend devant vous du différend sur le nom, il cite ma plaidoirie du jeudi 24, où

j'ai distingué trois catégories de dispositions de l'accord intérimaire, dont la première recouvre les dispositions concernant l'obligation de régler le différend relatif au nom, et les modalités de ce règlement, et qui se réduisent à deux : l'article 5, paragraphe 1, et la partie de l'article 21, paragraphe 2, qui y renvoie. Il conclut qu'il n'y a «aucune mention — et pour cause — de l'article 11» (CR 2011/8, p. 39, par. 7).

J'aurais attendu que le professeur Klein lise le paragraphe qu'il cite jusqu'à la fin. Il aurait mieux saisi la logique de cette classification, qui est de souligner le caractère exclusif du mode ou processus du règlement du différend sur le nom, prescrit à l'article 5, paragraphe 1, «excluding even its judicial settlement by this August Court — whether directly or indirectly —; and *a fortiori* by unilateral act or conduct, in order to create a fait accompli, pre-empting the outcome of any meaningful negotiations» (CR 2011/8, p. 35, para. 15).

Et c'est précisément la position de la Grèce, comme l'ont présentée les professeurs Reisman et Pellet, à savoir qu'une décision de la Cour en faveur de la demande ne pourrait que préjuger de manière significative la solution du différend sur le nom.

Par ailleurs, comme l'ont démontré mes collègues, la Grèce maintient que le demandeur poursuit, derrière l'écran de l'article 11, paragraphe 1, une politique unilatérale de fait accompli, en violation des obligations et de l'objet et du but de l'accord intérimaire, en vue de vider de sa substance son obligation sous l'article 5, paragraphe 1.

9. Monsieur le président, Mesdames et Messieurs de la Cour, les efforts frénétiques du professeur Klein et de ses collègues pour «détacher» la présente affaire du différend sur le nom, m'amènent à ma seconde partie de ces brèves remarques, soulignant quelques thèmes essentiels de la position juridique de la Grèce.

10. Le premier de ces thèmes est précisément que, quoi que disent nos contradicteurs et quel que soit l'angle sous lequel on l'envisage, la présente affaire tourne autour du problème du nom. Il suffit de compter combien de fois ce problème est mentionné dans les écritures et les plaidoiries orales de chacune des Parties.

Et peut-on évoquer l'article 11, paragraphe 1, et le nom provisoire qu'il prescrit, sans se rappeler qu'il s'agit toujours du nom ; mais d'un palliatif, un succédané, provisoire, en attendant la solution définitive de ce différend, à travers des négociations sérieuses et de bonne foi ; et se

rappeler que la manière dont ce succédané est utilisé ou abusé, ne peut qu'affecter le processus et le produit final éventuel de cette négociation ? Peut-on examiner n'importe quel aspect de la présente affaire sans arriver très rapidement au problème du nom, ou trancher cet aspect en faisant totalement abstraction du différend sur le nom ?

Ce serait, en empruntant à la langue de Shakespeare qu'affectionne mon ami Philippe Sands, «playing Hamlet without the Prince». Or, le différend sur le nom est exclu de la compétence de la Cour.

11. Le deuxième point que j'aimerais souligner est que nous sommes tout à fait d'accord avec nos amis de l'autre côté de la barre sur ce point, c'est que la présente affaire tourne autour du principe *pacta sunt servanda* (a *pacta sunt servanda* case), comme ils l'ont dit. Après tout, ce principe est l'épitome de tout le droit des traités. Oui, les engagements doivent être tenus, et les accords respectés, y compris l'accord intérimaire. Mais ce principe doit embrasser et servir de socle à l'ensemble du traité ou de l'édifice conventionnel, et non pas de manière sélective, comme si on le regardait à travers le trou d'une serrure, pour ne voir qu'un petit coin de cet édifice.

Et cela d'autant plus qu'il s'agit de mettre en œuvre un accord synallagmatique, imposant aux Parties des obligations réciproques et indissociables.

12. Je ne voudrais pas revenir à ce que j'ai eu le plaisir et l'honneur de vous présenter la semaine dernière, sauf pour rappeler brièvement les trois fonctions que l'accord intérimaire est censé remplir simultanément, et qui constituent en même temps l'objet et le but du traité : ce sont, en premier lieu, la fonction de *modus vivendi*, par le truchement de l'artifice du nom provisoire, qui permet la normalisation des relations entre les Parties dans la mesure du possible, étant donné la persistance du différend sur le nom. Et cela en attendant, et pour fournir le temps nécessaire au déploiement et à l'aboutissement de la *deuxième fonction* qui est celle du règlement de ce différend, par le moyen exclusif de négociations sérieuses et de bonne foi.

Ces deux fonctions ne peuvent être remplies simultanément, et de manière coordonnée, sans la *troisième*, celle *d'arrangement ou de mesure conservatoire* des positions juridiques des Parties, conservant l'objet du litige, les conserver en «l'état», c'est-à-dire comme elles étaient tout au long de la période intérimaire, à savoir du moment de l'entrée en vigueur de l'accord et jusqu'au règlement définitif du litige. De telle sorte que l'application de l'accord lui-même ne porte pas

préjudice à la position d'une Partie en favorisant celle de l'autre, ni n'admette une telle évolution par le fait d'une Partie au détriment de l'autre.

13. Ces trois fonctions sont foncièrement interdépendantes, indissociables, notamment la dernière, la fonction de mesure conservatoire de protection, qui est une condition *sine qua non* et la garantie du maintien de l'équilibre délicat entre les deux autres fonctions tout au long de la période intérimaire.

La *fonction* de *modus vivendi*, permettant la normalisation des relations, est ce que le demandeur voulait. Elle représente le prix que la Grèce a consenti en contrepartie de la deuxième *fonction du règlement du différend* sur le nom, exclusivement par des négociations sérieuses et de bonne foi ; avec la garantie de la troisième *fonction conservatoire* des droits et des positions des Parties, jusqu'à l'aboutissement des négociations.

C'est là l'échange de prestations juridiques (exchange of considerations), le *quid pro quo*, constituant la transaction juridique qu'est l'accord intérimaire.

14. Monsieur le président, Mesdames et Messieurs de la Cour, dans une telle transaction juridique, les engagements et les obligations constituant chaque ensemble de prestations échangées sont liés, par une communauté de destin juridique, aux engagements et obligations qui relèvent de l'autre ensemble échangé.

On ne saurait extirper (carve out) et sanctuariser un engagement ou une obligation individuelle quelconque, pour l'immuniser totalement contre les aléas de la vie du reste du traité et les conséquences de la violation des obligations relevant de l'ensemble consenti en échange par l'autre Partie.

15. Il ne s'agit pas, en envisageant ainsi l'accord intérimaire et la place de l'article 11, paragraphe 1, dans son sein, de «complexifier» abusivement l'affaire, comme le prétendent nos contradicteurs, mais simplement de lui donner sa vraie dimension et permettre à la Cour de l'apprécier dans toute son ampleur.

Car, qu'est-ce qu'on observe depuis 1995 de la part du demandeur ? Une politique délibérée de violations directes, en insistant à utiliser son nom préféré au sein des organisations internationales, au mépris de la condition mise à son admission dans ces organisations ; et une

stratégie indirecte de violation qui a été décrite en des termes on ne peut plus clairs par le président même de la République au Parlement.

Cette déclaration du président révèle encore une absence totale de volonté de négocier sérieusement, tout en faisant semblant, et en attendant que la stratégie indirecte d'érosion de la position du défendeur finisse, avec le temps, par leur donner raison.

16. Le temps, précisément, Monsieur le président, le temps est un facteur essentiel à prendre en considération.

Nous ne sommes plus en 1993 ou 1995. Dans un premier temps, comme l'a souligné le professeur Pellet, la Grèce a eu confiance dans la loyauté de l'autre Partie. Mais avec le passage du temps, l'accumulation des violations, et l'attitude récalcitrante de l'autre Partie quant aux négociations, elle a dû se rendre à l'évidence et agir plus fermement pour protéger ses droits. Mais elle a toujours gardé l'espoir de ramener l'autre Partie au respect de ses engagements et vers la table des négociations, préférant cela à venir devant vous et polariser davantage les positions.

Peut-on lui reprocher ce choix ? Et peut-on lui reprocher, en même temps, l'usage de tous ses moyens juridiques de défense, une fois citée devant votre prétoire ?

Je vous remercie, Monsieur le président, Mesdames et Messieurs de la Cour, et je vous prie de donner la parole à l'ambassadeur Savvaides, l'agent de la République hellénique.

The PRESIDENT: I thank Professor Georges Abi-Saab for his statement. I now invite Ambassador Georges Savvaides, the Agent of Greece, to make his statement, final conclusion and submission on behalf of Greece.

Mr. SAVVAIDES:

Conclusion and submissions

1. Mr. President, Members of the Court, it falls to me to conclude Greece's reply. Allow me to summarize:

2. Greece in its oral pleadings has demonstrated, first, that the Applicant's claim is beyond the Court's jurisdiction as established by Article 21, paragraph 2, of the Interim Accord, whether it is interpreted, as the Applicant originally proposed, as precluding any case which concerns

"directly or indirectly" the name issue, or whether, as the Applicant alternatively proposes, it is read as precluding any case which would resolve the difference over the name. Greece has demonstrated that the Applicant's claim, in requiring judgment of the lawfulness of actions by NATO and by its individual members collectively, is inadmissible. Greece has also demonstrated that the Applicant's claim, in seeking a remedy which a judgment cannot provide, is beyond the inherent competence of the Court.

3. Secondly, Greece has demonstrated that, properly read, the actions attributed to Greece by the Applicant did not constitute an objection. This is not because Greece was supposed to support the Applicant's membership in NATO in 2008; for reasons stated at the time and in applying the well known NATO criteria and requirements for membership it was not. It is also because the admission process to NATO is a consensus one based on consultation, with neither vote nor veto. I note that the word "consultation" did not pass counsels' lips last week or on Monday, not once. The Bucharest decision was a collective one. Greece participated in the consultation process, and it expressed its views. But this is something different from objecting. In any case Greece was not obliged by the Interim Accord to support the application of the country in question to join NATO, but this appears not to be the point of dispute before the Court. Moreover, the onus is on the Applicant to establish a breach of treaty; the Applicant has not proved that Greece objected.

4. I would stress in this regard the only official statement by NATO at Bucharest on 3 April 2008. That unchallenged statement, committing both the Alliance and its members collectively, is the text of its Summit Declaration which, in paragraph 20, provides clearly and unequivocally the terms and conditions for the Applicant's future membership of the Alliance. This Declaration was repeated in all successive NATO Summit declarations and communiqués, word by word. That was the Bucharest decision and it was not, of course, dictated by Greece. Clearly we could not have been in a situation to impose such a diktat.

5. Thirdly, even if Greece had objected, the Applicant's constant strategy — acknowledged by President Crvenkovski in 2008 — of seeking to undermine the interim situation created by the Interim Accord, of failing to negotiate in the resolution of the name difference in good faith, as well as other breaches of the Interim Accord, would have entitled Greece to "object", whether on the ground of:

(a) the safeguard clause of Article 11, paragraph 1; and

(b) the *law of treaties*; or

(c) the law of countermeasures;

which both reflect the *exceptio* principle.

Furthermore, even if Greece were found to have objected in contravention of Article 11 of the Interim Accord, it would have been entitled to do so under Article 22, in exercise of its rights and duties arising under the North Atlantic Treaty.

6. The Applicant's claim has put the Court in an awkward position. Both the Interim Accord and the Security Council has resolved that the difference over the name disturbs regional peace and should be resolved by negotiation under the auspices of the Secretary-General. The Applicant, in bringing this case to the Court, is continuing its policy of seeking to subvert the procedure required by the Interim Accord and to secure a *de fac*to resolution of the difference over the name. The Court should, accordingly, reject the Applicant's claim both as to jurisdiction and the merits.

7. Mr. President, Members of the Court, if you do either of these things, the issue of remedies does not arise. But I would stress, out of a superabundance of caution, that the remedies now sought by the Applicant go well beyond anything that the Court could award and amount to an attempt of pre-emption by the Applicant. In effect the Applicant now seeks declarations of its eligibility to join not only NATO but also the European Union. This is obviously not a matter for the Court, which cannot — with the greatest of respect — decide on such matters. They involve pre-eminently political decisions, which can only be made within the framework of each organization and at the relevant time. The incidence of the safeguard clause of Article 11 also depends on the situation prevailing at the time an application falls to be decided.

8. Mr. President, Members of the Court, please allow me now to make some brief remarks of a more general character.

9. It is regrettable, but the fact is that the Interim Accord, despite its provisional character and the intention that it was to be strictly temporary, continues to constitute even today, 16 years after its conclusion, the only substantial regulatory framework of our bilateral relations. The main problem is still unresolved, as you know.

10. In other words, the process that started in 1995 on the basis of Security Council resolutions 817 and 845 is still unfinished. But now the Applicant opts for the Court process aiming for a short-cut solution, in the naïve belief that all the rest will fall into place in an almost automatic way.

11. Such an approach towards a vitally important issue for my country is short sighted. It risks serious consequences for the future. It is with great respect that I ask the Court to eschew partial approaches for they would only minimize the prospects for the solution of the general political issue with which the case before you is inextricably linked.

12. In 1995 Greece had a strategic choice to make; it made it and has honoured it since. Greece committed itself to the negotiated resolution of the name issue pursuant to Security Council resolutions 817 and 845 (1993). Since then, Greece has made many efforts and concessions, even to accepting in 2007 a composite name, as a basis for a compromise solution, that would include the term "Macedonia" with a geographical qualifier. That solution was rejected by the Applicant. In these last years, the Applicant has brought these negotiations to a dead end, by insisting, as the Court itself witnessed in the Agent's statement, on the use of its contested name. He said, summarily, that "it was not a choice". But it is a choice, a choice to violate its international legal commitments and to try to use the Court as a means for violating the Interim Accord. This is not only inconsistent with Article 5 of the Interim Accord, it also endangers regional security and the maintenance of good neighbourly relations between the two countries and the region as a whole. For these reasons we hope that your wisdom will conduce to and not stand in the way of such a resolution, and will assist the Parties to help themselves in ways quite other than those proposed by the Applicant's legal team last Monday.

13. Mr. President, Members of the Court, before I read the submissions, let me express my thanks and that of my Government to the Registrar and his staff, as well as the interpreters; our thanks to all counsel and our colleagues, and indeed our sincere appreciation to you, Mr. President, Members of the Court, for the attention and care you have devoted to this case.

14. I will now read the submissions of Greece:

On the basis of the preceding evidence and legal arguments presented in its written and oral pleadings, the Respondent, the Hellenic Republic, requests the Court to adjudge and declare:

(i) that the case brought by the Applicant before the Court does not fall within the jurisdiction of the Court and that the Applicant's claims are inadmissible;

(ii) in the event that the Court finds that it has jurisdiction and that the claims are admissible, that the Applicant's claims are unfounded.

Thank you, Mr. President, Members of the Court.

The PRESIDENT: I thank His Excellency, Ambassador Georges Savvaides, the Agent of Greece, for his presentation of the conclusion and submissions on behalf of Greece. The Court takes note of the final submissions which the Ambassador has just read out on behalf of Greece, as it took note on Monday 28 March of the final submissions of the former Yugoslav Republic of Macedonia. I shall now give the floor to Judge Bennouna who has a question addressed to Greece. Judge Bennouna, you have the floor.

M. le juge BENNOUNA : Je vous remercie, Monsieur le président. Ma question, comme vous venez de le rappeler, s'adresse à la Grèce et elle se lit comme suit :

Dans la période qui a précédé le sommet de l'OTAN tenu à Bucarest du 2 au 4 avril 2008 et au cours de celui-ci, quelle a été la position exprimée par la Grèce lors de ses contacts avec les autres membres de cette organisation en ce qui concerne l'admission à celle-ci de l'ex-République yougoslave de Macédoine ?

Monsieur le président, permettez-moi de présenter aussi cette question en anglais.

In English my question addressed to Greece reads as follows:

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

Thank you, Mr. President.

The PRESIDENT: Thank you, Judge Bennouna. The text of this question will be sent to Greece as soon as possible. Greece is invited to provide its written reply to the question no later than Thursday 7 April 2011. I would add that, of course, a copy of this question will be sent to the other Party, namely, the former Yugoslav Republic of Macedonia for information. And any

comment the former Yugoslav Republic of Macedonia may wish to make, in accordance with Article 72 of the Rules of Court, on the Reply by Greece, must be submitted by Thursday 14 April 2011. This brings us to the end of the hearings in this case. I should like to thank the Agents, counsel and advocates for their statements.

In accordance with the usual practice, I shall request both Agents to remain at the Court's disposal to provide any additional information it may require. With this proviso, I now declare closed the oral proceedings in the case concerning *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia* v. *Greece)*. The Court now will retire for deliberation. The Agents of the Parties will be advised in due course as to the date on which the Court will deliver its Judgment. As the Court has no other business before it today, the sitting is now closed.

The Court rose at 6.05 p.m.

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