INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

APPLICATION OF THE INTERIM ACCORD OF 13 SEPTEMBER 1995

(THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA
v. GREECE)

JUDGMENT OF 5 DECEMBER 2011

2011

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

APPLICATION DE L'ACCORD INTÉRIMAIRE DU 13 SEPTEMBRE 1995

(EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE
c. GRÈCE)

ARRÊT DU 5 DÉCEMBRE 2011

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(THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA *v.* GREECE)

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*

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*

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*

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JUDGMENT

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

In the case concerning application of the Interim Accord of 13 September 1995,

between

the former Yugoslav Republic of Macedonia,

represented by

H.E. Mr. Nikola Poposki, Minister for Foreign Affairs of the former Yugoslav Republic of Macedonia,
H.E. Mr. Antonio Miloshoski, Chairman of the Foreign Policy Committee of the Assembly of the former Yugoslav Republic of Macedonia,

as Agents;

H.E. Mr. Nikola Dimitrov, Ambassador of the former Yugoslav Republic of Macedonia to the Kingdom of the Netherlands,

as Co-Agent;

Mr. Philippe Sands, Q.C., Professor of Law, University College London, Barrister, Matrix Chambers, London,
Mr. Sean D. Murphy, Patricia Roberts Harris Research Professor of Law, George Washington University,
Ms Geneviève Bastid-Burdeau, Professor of Law, University of Paris I, Panthéon-Sorbonne,
Mr. Pierre Klein, Professor of International Law, Director of the Centre of International Law, Université Libre de Bruxelles,
Ms Blinne Ní Ghrálaigh, Barrister, Matrix Chambers, London,

as Counsel;

Mr. Saso Georgievski, Professor of Law, University Saints Cyril and Methodius, Skopje,
Mr. Toni Deskoski, Professor of Law, University Saints Cyril and Methodius, Skopje,
Mr. Igor Djundev, Ambassador, State Counsellor, Ministry of Foreign Affairs of the former Yugoslav Republic of Macedonia,
Mr. Goran Stevcevski, State Counsellor, International Law Directorate, Ministry of Foreign Affairs of the former Yugoslav Republic of Macedonia,
Ms Elizabeta Gjorgjieva, Minister Plenipotentiary, Deputy-Head of Mission of the former Yugoslav Republic of Macedonia to the European Union,

Ms Aleksandra Miovska, Head of Co-ordination Sector, Cabinet Minister for Foreign Affairs of the former Yugoslav Republic of Macedonia,

as Advisers;

Mr. Mile Prangoski, Research Assistant, Cabinet of Minister for Foreign Affairs of the former Yugoslav Republic of Macedonia,
Mr. Remi Reichold, Research Assistant, Matrix Chambers, London,

as Assistants;

Ms Elena Bodeva, Third Secretary, Embassy of the former Yugoslav Republic of Macedonia in the Kingdom of the Netherlands,

as Liaison Officer with the International Court of Justice;

Mr. Ilija Kasaposki, Security Officer of the Foreign Minister of the former Yugoslav Republic of Macedonia,

and

the Hellenic Republic,

represented by

H.E. Mr. Georges Savvaides, Ambassador of Greece,
Ms Maria Telalian, Legal Adviser, Head of the Public International Law Section of the Legal Department, Ministry of Foreign Affairs of Greece,

as Agents;

Mr. Georges Abi-Saab, Honorary Professor of International Law, Graduate Institute of International Studies, Geneva, member of the Institut de droit international,
Mr. James Crawford, S.C., F.B.A., Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international,

Mr. Alain Pellet, Professor of International Law, University of Paris Ouest, Nanterre-La Défense, member and former Chairman of the International Law Commission, associate member of the Institut de droit international,
Mr. Michael Reisman, Myres S. McDougal Professor of International Law, Yale Law School, member of the Institut de droit international,

as Senior Counsel and Advocates;

Mr. Arghyrios Fatouros, Honorary Professor of International Law, University of Athens, member of the Institut de droit international,
Mr. Linos-Alexandre Sicilianos, Professor of International Law, University of Athens,
Mr. Evangelos Kofos, former Minister-Counsellor, Ministry of Foreign Affairs of Greece, specialist on Balkan affairs,

as Counsel;

Mr. Tom Grant, Research Fellow, Lauterpacht Centre for International Law, University of Cambridge,
Mr. Alexandros Kolliopoulos, Assistant Legal Adviser, Public International Law Section of the Legal Department, Ministry of Foreign Affairs of Greece,
Mr. Michael Stellakatos-Loverdos, Assistant Legal Adviser, Public International Law Section of the Legal Department, Ministry of Foreign Affairs of Greece,
Ms Alina Miron, Researcher, Centre de droit international de Nanterre (CEDIN), University of Paris Ouest, Nanterre-La Défense,

as Advisers;

H.E. Mr. Ioannis Economides, Ambassador of Greece to the Kingdom of the Netherlands,
Ms Alexandra Papadopoulou, Minister Plenipotentiary, Head of the Greek Liaison Office in Skopje,
Mr. Efstathios Paizis Paradellis, First Counsellor, Embassy of Greece in the Kingdom of the Netherlands,
Mr. Elias Kastanas, Assistant Legal Adviser, Public International Law Section of the Legal Department, Ministry of Foreign Affairs of Greece,

Mr. Konstantinos Kodellas, Embassy Secretary,

as Diplomatic Advisers;

Mr. Ioannis Korovilas, Embassy attaché,
Mr. Kosmas Triantafyllidis, Embassy attaché,

as Administrative Staff,

THE COURT,

composed as above,

after deliberation,

delivers the following Judgment:

1. On 17 November 2008, the former Yugoslav Republic of Macedonia (hereinafter the "Applicant") filed in the Registry of the Court an Application instituting proceedings against the Hellenic Republic (hereinafter the "Respondent") in respect of a dispute concerning the interpretation and implementation of the Interim Accord signed by the Parties on 13 September 1995, which entered into force on 13 October 1995 (hereinafter the "Interim Accord"). In particular, the Applicant sought

> "to establish the violation by the Respondent of its legal obligations under Article 11, paragraph 1, of the Interim Accord and to ensure that the Respondent abides by its obligations under Article 11 of the Interim Accord in relation to invitations or applications that might be made to or by the Applicant for membership of NATO or any other international, multilateral or regional organization or institution of which the Respondent is a member".

2. In its Application, the Applicant, referring to Article 36, paragraph 1, of the Statute, relied on Article 21, paragraph 2, of the Interim Accord to found the jurisdiction of the Court.

3. Pursuant to Article 40, paragraph 2, of the Statute, the Application was communicated forthwith to the Government of the Respondent by the Registrar; and, in accordance with paragraph 3 of that Article, all States entitled to appear before the Court were notified of the Application.

4. Since the Court included upon the Bench no judge of the nationality of either of the Parties, each Party proceeded to exercise its right conferred by Article 31, paragraph 3, of the Statute to choose a judge *ad hoc* to sit in the case. The Applicant chose Mr. Budislav Vukas and the Respondent Mr. Emmanuel Roucounas.

5. By an Order dated 20 January 2009, the Court fixed 20 July 2009 and 20 January 2010, respectively, as the time-limits for the filing of the Memorial of the Applicant and the Counter-Memorial of the Respondent. The Memorial of the Applicant was duly filed within the time-limit so prescribed.

6. By a letter dated 5 August 2009, the Respondent stated that, in its view, "the Court manifestly lacks jurisdiction to rule on the claims of the Applicant in this case", but informed the Court that, rather than raising preliminary objections under Article 79 of the Rules of the Court, it would be addressing "issues of jurisdiction together with those on the merits". The Registrar immediately communicated a copy of that letter to the Applicant.

The Counter-Memorial of the Respondent, which addressed issues relating to jurisdiction and admissibility as well as to the merits of the case, was duly filed within the time-limit prescribed by the Court in its Order of 20 January 2009.

7. At a meeting held by the President of the Court with the representatives of the Parties on 9 March 2010, the Co-Agent of the Applicant indicated that his Government wished to be able to respond to the Counter-Memorial of the Respondent, including the objections to jurisdiction and admissibility contained in it by means of a Reply. At the same meeting, the Agent of the Respondent stated that her Government had no objection to the granting of this request, in so far as the Respondent could in turn submit a Rejoinder.

8. By an Order of 12 March 2010, the Court authorized the submission of a Reply by the Applicant and a Rejoinder by the Respondent, and fixed 9 June 2010 and 27 October 2010 as the respective time-limits for the filing of those pleadings. The Reply and the Rejoinder were duly filed within the time-limits so prescribed.

9. In accordance with Article 53, paragraph 2, of the Rules of Court, the Court, after ascertaining the views of the Parties, decided that copies of the pleadings and documents annexed would be made accessible to the public on the opening of the oral proceedings.

10. Public hearings were held between 21 and 30 March 2011, at which the Court heard the oral arguments and replies of:

For the Applicant: Mr. Antonio Miloshoski,
Mr. Philippe Sands,
Mr. Sean Murphy,
Mr. Pierre Klein,
Ms Geneviève Bastid-Burdeau,
Mr. Nikola Dimitrov.

For the Respondent: Ms Maria Telalian,
Mr. Georges Savvaides,
Mr. Georges Abi-Saab,
Mr. Michael Reisman,
Mr. Alain Pellet,
Mr. James Crawford.

11. At the hearings, a Member of the Court put a question to the Respondent, to which a reply was given in writing, within the time-limit fixed by the President in accordance with Article 61, paragraph 4, of the Rules of Court. Pursuant to Article 72 of the Rules of Court, the Applicant submitted comments on the written reply provided by the Respondent.

*

12. In the Application, the following requests were made by the Applicant:

"The Applicant requests the Court:

(i) to adjudge and declare that the Respondent, through its State organs and agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord;

(ii) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim

Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organizations or institutions by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)."

13. In the written proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the Applicant,

in the Memorial:

"On the basis of the evidence and legal arguments presented in this Memorial, the Applicant

Requests the Court:

(i) to adjudge and declare that the Respondent, through its State organs and agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord; and

(ii) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organization or institution by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)."

in the Reply:

"On the basis of the evidence and legal arguments presented in this Reply, the Applicant

Requests the Court:

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

(ii) to adjudge and declare that the Respondent, through its State organs and agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord; and

(iii) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organization or institution by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)."

On behalf of the Government of the Respondent,

in the Counter-Memorial and in the Rejoinder:

"On the basis of the preceding evidence and legal arguments, the Respondent, the Hellenic Republic, requests the Court to adjudge and declare:

(i) that the case brought by the FYROM[1] before the Court does not fall within the jurisdiction of the Court and that the FYROM's claims are inadmissible;

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

14. At the oral proceedings, the following submissions were presented by the Parties:

On behalf of the Government of the Applicant,

at the hearing of 28 March 2011:

"On the basis of the evidence and legal arguments presented in its written and oral pleadings, the Applicant requests the Court:

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

(ii) to adjudge and declare that the Respondent, through its State organs and agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord; and

(iii) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organization or institution by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)."

On behalf of the Government of the Respondent,

at the hearing of 30 March 2011:

"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."

* * *

[1] The acronym "FYROM" is used by the Respondent to refer to the Applicant.

I. Introduction

15. Before 1991, the Socialist Federal Republic of Yugoslavia comprised six constituent republics, including the "Socialist Republic of Macedonia". In the course of the break-up of Yugoslavia, the Assembly of the Socialist Republic of Macedonia adopted (on 25 January 1991) the "Declaration on the Sovereignty of the Socialist Republic of Macedonia", which asserted sovereignty and the right of self-determination. On 7 June 1991, the Assembly of the Socialist Republic of Macedonia enacted a constitutional amendment, changing the name "Socialist Republic of Macedonia" to the "Republic of Macedonia". The Assembly then adopted a declaration asserting the sovereignty and independence of the new State and sought international recognition.

16. On 30 July 1992, the Applicant submitted an application for membership in the United Nations. The Respondent stated on 25 January 1993 that it objected to the Applicant's admission on the basis of the Applicant's adoption of the name "Republic of Macedonia", among other factors. The Respondent explained that its opposition was based *inter alia* on its view that the term "Macedonia" referred to a geographical region in south-east Europe that included an important part of the territory and population of the Respondent and of certain third States. The Respondent further indicated that once a settlement had been reached on these issues, it would no longer oppose the Applicant's admission to the United Nations. The Respondent had also expressed opposition on similar grounds to the Applicant's recognition by the member States of the European Community.

17. On 7 April 1993, in accordance with Article 4, paragraph 2, of the Charter, the Security Council adopted resolution 817 (1993), concerning the "application for admission to the United Nations" of the Applicant. In that resolution, noting that "a difference has arisen over the name of the [Applicant], which needs to be resolved in the interest of the maintenance of peaceful and good-neighbourly relations in the region", the Security Council:

> "1. *Urge[d]* the parties to continue to co-operate with the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia in order to arrive at a speedy settlement of their difference;
>
> 2. *Recommend[ed]* 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 of the State;
>
> 3. *Request[ed]* the Secretary-General to report to the Council on the outcome of the initiative taken by the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia."

18. On 8 April 1993, the Applicant was admitted to the United Nations, following the adoption by the General Assembly, on the recommendation of the Security Council, of resolution A/RES/47/225. On 18 June 1993, in light of the continuing absence of a settlement of the difference over the name, the Security Council adopted resolution 845 (1993) urging the Parties "to continue their efforts under the auspices of the Secretary-General to arrive at a speedy settlement of the remaining issues between them". While the Parties have engaged in negotiations to that end, these negotiations have not yet led to a mutually acceptable solution to the name issue.

19. Following its admission to the United Nations, the Applicant became a member of various specialized agencies of the United Nations system. However, its efforts to join several other non-United Nations affiliated international institutions and organizations, of which the Respondent was already a member, were not successful. On 16 February 1994, the Respondent instituted trade-related restrictions against the Applicant.

20. Against this backdrop, on 13 September 1995, the Parties signed the Interim Accord, providing for the establishment of diplomatic relations between them and addressing other related issues. The Interim Accord refers to the Applicant as "Party of the Second Part" and to the Respondent as "Party of the First Part", so as to avoid using any contentious name. Under its Article 5, the Parties

> "agree[d] to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993)".

21. In the Interim Accord, the Parties also addressed the admission of, and membership by, the Applicant in international organizations and institutions of which the Respondent was a member. In this regard, Article 11, paragraph 1, of the Interim Accord provides:

> "Upon entry into force of this Interim Accord, the Party of the First Part agrees not to object to the application by or the membership of the Party of the Second Part in international, multilateral and regional organizations and institutions of which the Party of the First Part is a member; however, the Party of the First Part reserves the right to object to any membership referred to above if and to the extent[2] the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations

[2] In the French version of the Interim Accord published in the *United Nations Treaty Series* the expression "if and to the extent" has been rendered by the sole conjunction "si". For the purposes of this Judgment, the Court will however use, in the French text, the expression "si [et dans la mesure où]", which is a more literal translation of the original English version.

> Security Council resolution 817 (1993)." (*United Nations Treaty Series (UNTS)*, Vol. 1891, p. 7; original English.)

22. In the period following the adoption of the Interim Accord, the Applicant was granted membership in a number of international organizations of which the Respondent was already a member. On the invitation of the North Atlantic Treaty Organization, the Applicant in 1995 joined the Organization's Partnership for Peace (a programme that promotes cooperation between NATO and partner countries) and, in 1999, the Organization's Membership Action Plan (which assists prospective NATO members). The Applicant's NATO candidacy was considered in a meeting of NATO member States in Bucharest (hereinafter the "Bucharest Summit") on 2 and 3 April 2008 but the Applicant was not invited to begin talks on accession to the Organization. The communiqué issued at the end of the Summit stated that an invitation would be extended to the Applicant "as soon as a mutually acceptable solution to the name issue has been reached".

II. Jurisdiction of the Court and Admissibility of the Application

23. In the present case, the Applicant maintains that the Respondent failed to comply with Article 11, paragraph 1, of the Interim Accord. The Respondent disagrees with this contention both in terms of the facts and of the law, that is, in regard to the meaning, scope and effect of certain provisions of the Interim Accord. In the view of the Court, this is the dispute the Applicant brought before the Court, and thus the dispute in respect of which the Court's jurisdiction falls to be determined.

24. The Applicant invokes as a basis for the Court's jurisdiction Article 21, paragraph 2, of the Interim Accord, which reads as follows:

> "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."

25. As already noted (see paragraph 6 above), the Respondent advised the Court that, rather than raising objections under Article 79 of the Rules of Court, it would be addressing issues of jurisdiction and admissibility along with the merits of the present case. The Court addresses these issues at the outset of this Judgment.

26. The Respondent claims that the Court has no jurisdiction to entertain the present case and that the Application is inadmissible based on the

following reasons. First, the Respondent submits that the dispute concerns the difference over the name of the Applicant referred to in Article 5, paragraph 1, of the Interim Accord and that, consequently, it is excluded from the Court's jurisdiction by virtue of the exception provided in Article 21, paragraph 2. Secondly, the Respondent alleges that the dispute concerns conduct attributable to NATO and its member States, which is not subject to the Court's jurisdiction in the present case. Thirdly, the Respondent claims that the Court's Judgment in the present case would be incapable of effective application because it could not effect the Applicant's admission to NATO or other international, multilateral and regional organizations or institutions. Fourthly, the Respondent submits that the exercise of jurisdiction by the Court would interfere with ongoing diplomatic negotiations mandated by the Security Council concerning the difference over the name and thus would be incompatible with the Court's judicial function.

27. Moreover, the Respondent initially claimed that its action cannot fall within the jurisdiction of the Court since it did not violate any provision of the Interim Accord by operation of Article 22 thereof, which, according to the Respondent, super-ordinates the obligations which either party to the Interim Accord may have under bilateral or multilateral agreements with other States or international organizations. Therefore, in the Respondent's view, its alleged conduct could not be a source of any dispute between the Parties. The Court notes, however, that as the proceedings progressed, the Respondent focused its arguments on Article 22 in its defence on the merits. Accordingly, the Court will address Article 22 if and when it turns to the merits of the case.

1. Whether the Dispute Is Excluded from the Court's Jurisdiction under the Terms of Article 21, Paragraph 2, of the Interim Accord, Read in Conjunction with Article 5, Paragraph 1

28. Article 21, paragraph 2, of the Interim Accord (see paragraph 24 above) sets out that any "difference or dispute" as to the "interpretation or implementation" of the Interim Accord falls within the jurisdiction of the Court, with the exception of the "difference" referred to in Article 5, paragraph 1, of the Interim Accord, which reads as follows:

> "The Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993)."

29. With regard to this difference, as stated above, Security Council resolution 817, in its preambular paragraph 3, refers to "a difference [that] has arisen over the name of the State, which needs to be resolved

in the interest of the maintenance of peaceful and good-neighbourly relations in the region". This resolution "[u]rges the parties to continue to co-operate with the Co-Chairman of the Steering Committee of the International Conference on the Former Yugoslavia in order to arrive at a speedy settlement of their difference" (operative paragraph 1).

30. Following this resolution, the Security Council adopted resolution 845 of 18 June 1993 which, recalling resolution 817 (1993), also "[u]rges the parties to continue their efforts under the auspices of the Secretary-General to arrive at a speedy settlement of the remaining issues between them".

*

31. According to the Respondent's first objection to the Court's jurisdiction, the dispute between the Parties concerns the difference over the Applicant's name which is excluded from the Court's jurisdiction by virtue of Article 21, paragraph 2, read in conjunction with Article 5, paragraph 1. The Respondent contends that this exception is broad in scope and excludes from the Court's jurisdiction not only any dispute regarding the final resolution of the name difference, but also "any dispute the settlement of which would prejudge, directly or by implication, the difference over the name".

32. The Respondent maintains that the Court cannot address the Applicant's claims without pronouncing on the question of the non-resolution of the name difference since this would be the only reason upon which the Respondent would have objected to the Applicant's admission to NATO. The Respondent also claims that the Court cannot rule upon the question of the Respondent's alleged violation of Article 11, paragraph 1, without effectively deciding on the name difference as it would be "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". Finally, the Respondent maintains that the actual terms of the Bucharest Summit Declaration and subsequent NATO statements demonstrate that the main reason for NATO's decision to defer the Applicant's accession procedure was the name difference. Therefore, in the Respondent's submission, the exception provided for in Article 21, paragraph 2, of the Interim Accord applies.

33. The Applicant, for its part, argues that the subject of the present dispute does not concern — either directly or indirectly — the difference referred to in Article 5, paragraph 1, of the Interim Accord. The Applicant disagrees with the broad interpretation of the exception contained in Article 21, paragraph 2, proposed by the Respondent, submitting that it would run contrary to the very purpose of the Interim Accord, and that Article 11, paragraph 1, would be undermined if the Respondent's argument were upheld. The Applicant maintains that the present dispute does not require the Court to resolve or to express any view on the difference

over the name referred to in Article 5, paragraph 1, and is consequently not excluded by Article 21, paragraph 2. The Applicant also claims that the statement by NATO after the Bucharest Summit indicating that membership would be extended to the Applicant when a solution to the name issue has been reached does not transform the dispute before the Court into one about the name.

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34. The Court considers that the Respondent's broad interpretation of the exception contained in Article 21, paragraph 2, cannot be upheld. That provision excludes from the jurisdiction of the Court only one kind of dispute, namely one regarding the difference referred to in Article 5, paragraph 1. Since Article 5, paragraph 1, identifies the nature of that difference by referring back to Security Council resolutions 817 and 845 (1993), it is to those resolutions that one must turn in order to ascertain what the Parties intended to exclude from the jurisdiction of the Court.

35. Resolutions 817 and 845 (1993) distinguished between the name of the Applicant, in respect of which they recognized the existence of a difference between the Parties who were urged to resolve that difference by negotiation (hereinafter the "definitive name"), and the provisional designation by which the Applicant was to be referred to for all purposes within the United Nations pending settlement of that difference. The Interim Accord adopts the same approach and extends it to the Applicant's application to, and membership in, other international organizations. Thus Article 5, paragraph 1, of the Interim Accord requires the Parties to negotiate regarding the difference over the Applicant's definitive name, while Article 11, paragraph 1, imposes upon the Respondent the obligation not to object to the Applicant's application to, and membership in, international organizations, unless the Applicant is to be referred to in the organization in question differently than in resolution 817 (1993). The Court considers it to be clear from the text of Article 21, paragraph 2, and of Article 5, paragraph 1, of the Interim Accord, that the "difference" referred to therein and which the Parties intended to exclude from the jurisdiction of the Court is the difference over the definitive name of the Applicant and not disputes regarding the Respondent's obligation under Article 11, paragraph 1. If the Parties had intended to entrust to the Court only the limited jurisdiction suggested by the Respondent, they could have expressly excluded the subject-matter of Article 11, paragraph 1, from the grant of jurisdiction in Article 21, paragraph 2.

36. Not only does the plain meaning of the text of Article 21, paragraph 2, of the Interim Accord afford no support to the broad interpretation advanced by the Respondent, the purpose of the Interim Accord as a whole also points away from such an interpretation. In the Court's

view, one of the main objectives underpinning the Interim Accord was to stabilize the relations between the Parties pending the resolution of the name difference. The broad interpretation of the exception under Article 21, paragraph 2, of the Interim Accord suggested by the Respondent would result in the Court being unable to entertain many disputes relating to the interpretation or implementation of the Interim Accord itself. As such, the name difference may be related, to some extent, to disputes the Parties may eventually have as to the interpretation or implementation of the Interim Accord.

37. The fact that there is a relationship between the dispute submitted to the Court and the name difference does not suffice to remove that dispute from the Court's jurisdiction. The question of the alleged violation of the obligation set out in Article 11, paragraph 1, is distinct from the issue of which name should be agreed upon at the end of the negotiations between the Parties under the auspices of the United Nations. Only if the Court were called upon to resolve specifically the name difference, or to express any views on this particular matter, would the exception under Article 21, paragraph 2, come into play. This is not the situation facing the Court in the present case. The exception contained in Article 21, paragraph 2, consequently does not apply to the present dispute between the Parties which concerns the Applicant's allegation that the Respondent breached its obligation under Article 11, paragraph 1, of the Interim Accord, as well as the Respondent's justifications.

38. Accordingly, the Respondent's objection to the Court's jurisdiction based on the exception contained in Article 21, paragraph 2, of the Interim Accord cannot be upheld.

2. Whether the Dispute Relates to the Conduct of NATO or Its Member States and whether the Court's Decision Could Affect Their Rights and Obligations

39. By way of objection to the Court's jurisdiction in the present case and the admissibility of the Application, the Respondent claims that the object of the Application relates to the conduct of NATO and its other member States, because the decision to defer the invitation to the Applicant to join the Organization was a collective decision taken by NATO "unanimously" at the Bucharest Summit, and not an individual or autonomous decision by the Respondent. Thus, it is argued that the act complained of is attributable to NATO as a whole and not to the Respondent alone. Moreover, in the view of the Respondent, even if the decision to defer the Applicant's admission to NATO could be attributed to the Respondent, the Court could not decide on this point without also deciding on the responsibility of NATO or its other members, over whom it has no jurisdiction. Accordingly, the Respondent argues that the interests of a third party would form the subject-matter of any decision the Court may take. The Respondent further contends that, in accordance with the *Monetary Gold*

case law, the Court "will not exercise jurisdiction where the legal interests of an absent third party form 'the very subject matter' of the jurisdiction".

40. The Applicant, for its part, argues that its Application is directed solely at the Respondent's conduct and not at a decision by NATO or actions of other NATO member States. The Applicant claims that the Respondent's conduct is distinct from any decision of NATO. It contends that the Court does not need to express any view on the legality of NATO's decision to defer an invitation to the Applicant to join the Alliance.

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41. In order to examine the Respondent's objection, the Court has to consider the specific object of the Application. The Applicant claims that "the Respondent, through its State organs and agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord" and requests the Court to make a declaration to this effect and to order the Respondent to "take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord".

42. By the terms of the Application, the Applicant's claim is solely based on the allegation that the Respondent has violated its obligation under Article 11, paragraph 1, of the Interim Accord, which refers specifically to the Respondent's conduct, irrespective of the consequences it may have on the actual final decision of a given organization as to the Applicant's membership. The Court notes that the Applicant is challenging the Respondent's conduct in the period prior to the taking of the decision at the end of the Bucharest Summit and not the decision itself. The issue before the Court is thus not whether NATO's decision may be attributed to the Respondent, but rather whether the Respondent violated the Interim Accord as a result of its own conduct. Nothing in the Application before the Court can be interpreted as requesting the Court to pronounce on whether NATO acted legally in deferring the Applicant's invitation for membership in NATO. Therefore, the dispute does not concern, as contended by the Respondent, the conduct of NATO or the member States of NATO, but rather solely the conduct of the Respondent.

43. Similarly, the Court does not need to determine the responsibility of NATO or of its member States in order to assess the conduct of the Respondent. In this respect, the Respondent's argument that the rights and interests of a third party (which it identifies as NATO and/or the member States of NATO) would form the subject-matter of any decision which the Court might take, with the result that the Court should decline to hear the case under the principle developed in the case of the *Monetary Gold Removed from Rome in 1943*, is misplaced. The present case can be distinguished from the *Monetary Gold* case since the Respondent's conduct can be assessed independently of NATO's decision, and the rights

and obligations of NATO and its member States other than Greece do not form the subject-matter of the decision of the Court on the merits of the case (*Monetary Gold Removed from Rome in 1943 (Italy* v. *France; United Kingdom and United States of America), Preliminary Question, Judgment, I.C.J. Reports 1954*, p. 19; *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 105, para. 34); nor would the assessment of their responsibility be a "prerequisite for the determination of the responsibility" of the Respondent (*Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 261, para. 55). Therefore, the Court considers that the conduct forming the object of the Application is the Respondent's alleged objection to the Applicant's admission to NATO, and that, on the merits, the Court will only have to determine whether or not that conduct demonstrates that the Respondent failed to comply with its obligations under the Interim Accord, irrespective of NATO's final decision on the Applicant's membership application.

44. The Court accordingly finds that the Respondent's objection based on the argument that the dispute relates to conduct attributable to NATO and its member States or that NATO and its member States are indispensable third parties not before the Court cannot be upheld.

3. Whether the Court's Judgment Would Be Incapable of Effective Application

45. The Respondent argues that a Court ruling in the present case would be devoid of any effect because the Court's Judgment would not be able to annul or amend NATO's decision or change the conditions of admission contained therein. It further contends that even if the Court were to find in the Applicant's favour, its Judgment would have no practical effect concerning the Applicant's admission to NATO. Accordingly, the Respondent claims that the Court should refuse to exercise its jurisdiction in order to preserve the integrity of its judicial function.

46. The Applicant, for its part, submits that it is seeking a declaration by the Court that the Respondent's conduct violated the Interim Accord, which in its view represents a legitimate request in a judicial procedure. The Applicant argues that it is "only by misrepresenting the object of the Application that the respondent State can claim that a judgment of the Court would have no concrete effect". By contrast, the Applicant claims that a judgment of the Court would have a concrete legal effect, and in particular, it "would result in the applicant State once more being placed in the position of candidate for NATO membership *without running the risk of once again being blocked by an objection on grounds not covered in the Interim Accord*" (emphasis in the original).

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47. As established in the Court's case law, an essential element for the proper discharge of the Court's judicial function is that its judgments "must have some practical consequence in the sense that [they] can affect existing legal rights or obligations of the parties, thus removing uncertainty from their legal relations" (*Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 34).

48. In the present case, the Court recalls that, in its final submissions, the Applicant requests the Court,

> "(i) to reject the Respondent's objections as to the jurisdiction of the Court and the admissibility of the Applicant's claims;
> (ii) to adjudge and declare that the Respondent, through its State organs and agents, has violated its obligations under Article 11, paragraph 1, of the Interim Accord; and
> (iii) to order that the Respondent immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1, of the Interim Accord, and to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant's membership of the North Atlantic Treaty Organization and/or of any other 'international, multilateral and regional organizations and institutions' of which the Respondent is a member, in circumstances where the Applicant is to be referred to in such organization or institution by the designation provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)."

49. In its request, the Applicant asks the Court to make a declaration that the Respondent violated its obligations under Article 11, paragraph 1, of the Interim Accord. It is clear in the jurisprudence of the Court and its predecessor that "the Court may, in an appropriate case, make a declaratory judgment" (*Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 37). The purpose of such declaratory judgment "is to ensure recognition of a situation at law, once and for all and with binding force as between the Parties; so that the legal position thus established cannot again be called in question in so far as the legal effects ensuing therefrom are concerned" (*Interpretation of Judgments Nos. 7 and 8 (Factory at Chorzów), Judgment No. 11, 1927, P.C.I.J., Series A, No. 13*, p. 20).

50. While the Respondent is correct that a ruling from the Court could not modify NATO's decision in the Bucharest Summit or create any rights for the Applicant vis-à-vis NATO, such are not the requests of the Applicant. It is clear that at the heart of the Applicant's claims lies the Respondent's conduct, and not conduct attributable to NATO or its member States. The Applicant is not requesting the Court to reverse NATO's decision in the Bucharest Summit or to modify the conditions for membership in the Alliance. Therefore, the Respondent's argument that the Court's Judgment in the present case would not have any practi-

cal effect because the Court cannot reverse NATO's decision or change the conditions of admission to NATO is not persuasive.

51. The *Northern Cameroons* case is to be distinguished from the present case. The Court recalls that, in the former case, Cameroon, in its Application, asked the Court to "adjudge and declare . . . that the United Kingdom has, in the application of the Trusteeship Agreement of 13 December 1946, failed to respect certain obligations directly or indirectly flowing therefrom", and that, by the time the case was argued and decided in 1963, the Agreement had already been terminated. By contrast, in the present case, Article 11, paragraph 1, of the Interim Accord remains binding; the obligation stated therein is a continuing one and the Applicant's NATO membership application remains in place. A judgment by the Court would have "continuing applicability" for there is an "opportunity for a future act of interpretation or application of that treaty in accordance with any judgment the Court may render" (*Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, pp. 37-38).

52. Similarly, the Respondent's reliance on the *Nuclear Tests* cases does not support its position. In these cases, the Court interpreted the Applications instituting proceedings before it, filed by Australia and New Zealand, as concerning future testing by France of nuclear weapons in the atmosphere. On the basis of statements by France which the Court considered to constitute an undertaking possessing legal effect not to test nuclear weapons in the atmosphere, the Court held that there was no longer a dispute about that matter and that the Applicants' objective had in effect been accomplished; thus no further judicial action was required (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 271, para. 56; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 476, para. 59).

53. The present dispute is clearly different from the latter cases: the Respondent has not taken any action which could be seen as settling the dispute over the alleged violation of Article 11, paragraph 1. Furthermore, a judgment of the Court in the present case would not be without object because it would affect existing rights and obligations of the Parties under the Interim Accord and would be capable of being applied effectively by them.

54. The Court accordingly finds that the Respondent's objection to the admissibility of the Application based on the alleged lack of effect of the Court's Judgment cannot be upheld.

4. Whether the Court's Judgment Would Interfere with Ongoing Diplomatic Negotiations

55. The Respondent contends that if the Court were to exercise its jurisdiction, it would interfere with the diplomatic process envisaged by the Security Council in resolution 817 (1993) and this would be contrary

to the Court's judicial function. It argues that a judgment by the Court in favour of the Applicant "would judicially seal a unilateral practice of imposing a disputed name and would thus run contrary to Security Council resolutions 817 (1993) and 845 (1993), requiring the Parties to reach a negotiated solution on this difference". The Respondent thus submits that, on the basis of judicial propriety, the Court should decline to exercise its jurisdiction.

56. In response, the Applicant argues that the Court, in determining the scope of Security Council resolution 817 (1993) and of the Interim Accord, would in no way settle the dispute over the name, or impose a conclusion on the ongoing negotiation process between the Parties on this subject since the object of its claim in the present case and the object of the negotiation process are different. The Applicant contends that the Respondent's argument is premised on a confused understanding of the object of the Applicant's claim. The Applicant contends that the existence of negotiations does not preclude the Court from exercising its judicial function.

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57. Regarding the issue of whether the judicial settlement of disputes by the Court is incompatible with ongoing diplomatic negotiations, the Court has made clear that "the fact that negotiations are being actively pursued during the present proceedings is not, legally, any obstacle to the exercise by the Court of its judicial function" (*Aegean Sea Continental Shelf (Greece* v. *Turkey), Judgment, I.C.J. Reports 1978*, p. 12, para. 29; see also *United States Diplomatic and Consular Staff in Tehran (United States of America* v. *Iran), Judgment, I.C.J. Reports 1980*, p. 20, para. 37).

58. As a judicial organ, the Court has to establish

> "first, that the dispute before it is a legal dispute, in the sense of a dispute capable of being settled by the application of principles and rules of international law, and secondly, that the Court has jurisdiction to deal with it, and that that jurisdiction is not fettered by any circumstance rendering the application inadmissible" (*Border and Transborder Armed Actions (Nicaragua* v. *Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 91, para. 52).

The question put before the Court, namely, whether the Respondent's conduct is a breach of Article 11, paragraph 1, of the Interim Accord, is a legal question pertaining to the interpretation and implementation of a provision of that Accord. As stated above, the disagreement between the Parties amounts to a legal dispute which is not excluded from the Court's jurisdiction. Therefore, by deciding on the interpretation and implementation of a provision of the Interim Accord, a task which the Parties agreed to submit to the Court's jurisdiction under Article 21, paragraph 2, the Court would be faithfully discharging its judicial function.

59. The Parties included a provision conferring jurisdiction on the Court (Art. 21) in an agreement that also required them to continue negotiations on the dispute over the name of the Applicant (Art. 5, para. 1). Had the Parties considered that a future ruling by the Court would interfere with diplomatic negotiations mandated by the Security Council, they would not have agreed to refer to it disputes concerning the interpretation or implementation of the Interim Accord.

60. Accordingly, the Respondent's objection to the admissibility of the Application based on the alleged interference of the Court's Judgment with ongoing diplomatic negotiations mandated by the Security Council cannot be upheld.

5. Conclusion concerning the Jurisdiction of the Court over the Present Dispute and the Admissibility of the Application

61. In conclusion, the Court finds that it has jurisdiction over the legal dispute submitted to it by the Applicant. There is no reason for the Court to decline to exercise its jurisdiction. The Court finds the Application admissible.

III. Whether the Respondent Failed to Comply with the Obligation under Article 11, Paragraph 1, of the Interim Accord

62. The Court turns now to the merits of the case. Article 11, paragraph 1, of the Interim Accord provides:

> "the Party of the First Part [the Respondent] agrees not to object to the application by or the membership of the Party of the Second Part [the Applicant] in international, multilateral and regional organizations and institutions of which the Party of the First Part is a member; however, the Party of the First Part reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)".

The Parties agree that this provision imposes on the Respondent an obligation not to object to the admission of the Applicant to international organizations of which the Respondent is a member, including NATO, subject to the exception in the second clause of paragraph 1.

63. The Applicant contends that the Respondent, prior to, and during, the Bucharest Summit, failed to comply with the obligation not to object contained in the first clause of Article 11, paragraph 1.

64. The Respondent maintains that it did not object to the Applicant's admission to NATO. As an alternative, the Respondent argues that any

objection attributable to it at the Bucharest Summit does not violate Article 11, paragraph 1, because it would fall within the second clause of Article 11, paragraph 1. In support of this position, the Respondent asserts that the Applicant would have been referred to in NATO "differently than in" paragraph 2 of resolution 817. In addition, the Respondent argues that, even if it is found to have objected within the meaning of Article 11, paragraph 1, such an objection would not have been inconsistent with the Interim Accord because of the operation of Article 22 of the Interim Accord.

65. The Applicant counters with the view that the Respondent's objection does not fall within the scope of the second clause of Article 11, paragraph 1, of the Interim Accord and that the obligation not to object is not obviated by Article 22.

66. The Court will first address the two clauses of Article 11, paragraph 1, and then will consider the effect of Article 22.

1. The Respondent's Obligation under Article 11, Paragraph 1, of the Interim Accord not to Object to the Applicant's Admission to NATO

A. The meaning of the first clause of Article 11, paragraph 1, of the Interim Accord

67. The first clause of Article 11, paragraph 1, of the Interim Accord obliges the Respondent not to object to "the application by or membership of" the Applicant in NATO. The Court notes that the Parties agree that the obligation "not to object" does not require the Respondent actively to support the Applicant's admission to international organizations. In addition, the Parties agree that the obligation "not to object" is not an obligation of result, but rather one of conduct.

68. The interpretations advanced by the Parties diverge, however, in significant respects. The Applicant asserts that in its ordinary meaning, interpreted in light of the object and purpose of the Interim Accord, the phrase "not to object" should be read broadly to encompass any implicit or explicit act or expression of disapproval or opposition, in word or deed, to the Applicant's application to or membership in an organization or institution. In the Applicant's view, the act of objecting is not limited to casting a negative vote. Rather, it could include any act or omission designed to oppose or to prevent a consensus decision at an international organization (where such consensus is necessary for the Applicant to secure membership) or to inform other members of an international organization or institution that the Respondent will not permit such a consensus decision to be reached. In particular, the Applicant notes that NATO members are admitted on the basis of unanimity of NATO member

States, in accordance with Article 10 of the North Atlantic Treaty. That provision states, in the relevant part, as follows:

> "The Parties may, by unanimous agreement, invite any other European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty." (North Atlantic Treaty, 4 April 1949, Art. 10, *UNTS*, Vol. 34, p. 248.)

69. The Respondent interprets the obligation "not to object" more narrowly. In its view, an objection requires a specific, negative act, such as casting a vote or exercising a veto against the Applicant's admission to or membership in an organization or institution. An objection does not, under the Respondent's interpretation, include abstention or the withholding of support in a consensus process. As a general matter, the Respondent argues that the phrase "not to object" should be interpreted narrowly because it imposes a limitation on a right to object that the Respondent would otherwise possess.

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70. The Court does not accept the general proposition advanced by the Respondent that special rules of interpretation should apply when the Court is examining a treaty that limits a right that a party would otherwise have. Turning to the Respondent's specific arguments in regard to the first clause of Article 11, paragraph 1, the Court observes that nothing in the text of that clause limits the Respondent's obligation not to object to organizations that use a voting procedure to decide on the admission of new members. There is no indication that the Parties intended to exclude from Article 11, paragraph 1, organizations like NATO that follow procedures that do not require a vote. Moreover, the question before the Court is not whether the decision taken by NATO at the Bucharest Summit with respect to the Applicant's candidacy was due exclusively, principally, or marginally to the Respondent's objection. As the Parties agree, the obligation under the first clause of Article 11, paragraph 1, is one of conduct, not of result. Thus, the question before the Court is whether the Respondent, by its own conduct, did not comply with the obligation not to object contained in Article 11, paragraph 1, of the Interim Accord.

71. The Court also observes that the Respondent did not take the position that any objection by it at the Bucharest Summit was based on grounds unrelated to the difference over the name. Therefore, the Court need not decide whether the Respondent retains a right to object to the

Applicant's admission to international organizations on such other grounds.

B. Whether the Respondent "objected" to the Applicant's admission to NATO

72. The Court now turns to the evidence submitted to it by the Parties, in order to decide whether the record supports the Applicant's contention that the Respondent objected to the Applicant's membership in NATO. In this regard, the Court recalls that, in general, it is the duty of the party that asserts certain facts to establish the existence of such facts (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 71, para. 162; *Maritime Delimitation in the Black Sea (Romania* v. *Ukraine), Judgment, I.C.J. Reports 2009*, p. 86, para. 68). Thus, the Applicant bears the burden of establishing the facts that support its allegation that the Respondent failed to comply with its obligation under the Interim Accord.

73. To support the position that the Respondent objected to its admission to NATO, the Applicant refers the Court to diplomatic correspondence of the Respondent before and after the Bucharest Summit and to statements by senior officials of the Respondent during the same period. The Respondent does not dispute the authenticity of these statements. The Court will examine these statements as evidence of the Respondent's conduct in connection with the Bucharest Summit, in light of its obligation under Article 11, paragraph 1, of the Interim Accord.

74. The Applicant referred to diplomatic correspondence from the Respondent to other NATO member States exchanged prior to the Bucharest Summit. An aide-memoire circulated by the Respondent to its fellow NATO member States in 2007 points to the ongoing negotiations between the Parties pursuant to resolution 817 and states that "[t]he satisfactory conclusion of the said negotiations is a *sine qua non*, in order to enable Greece to continue to support the Euro-atlantic aspirations of Skopje". The aide-memoire further states that the resolution of the name issue "is going to be the decisive criterion for Greece to accept an invitation to FYROM to start NATO accession negotiations".

75. The Applicant also introduced evidence showing that, during the same period, the Respondent's Prime Minister and Foreign Minister stated publicly on a number of occasions that the Respondent would oppose the extension of an invitation to the Applicant to join NATO at the Bucharest Summit unless the name issue was resolved. On 22 February 2008, the Respondent's Prime Minister, speaking at a session of the Respondent's Parliament, made the following statement with regard to the difference between the Parties over the name: "[W]ithout a mutually acceptable solution allied relations cannot be established, there cannot be an invitation to the neighbouring country to join the Alliance. No solution means — no invitation." The record indicates that the Prime Minister reiterated this position publicly on at least three occasions in March 2008.

76. The Respondent's Foreign Minister also explained her Government's position prior to the Bucharest Summit. On 17 March 2008, she declared, referring to the Applicant, that "[i]f there is no compromise, we will block their accession". Ten days later, on 27 March 2008, in a speech to the governing party's Parliamentary Group, she stated that until a solution is reached, "we cannot, of course, consent to addressing an invitation to our neighbouring state to join NATO. No solution — no invitation. We said it, we mean it, and everyone knows it."

77. The Applicant also points to the statement of the Respondent's Prime Minister, made on 3 April 2008 at the close of the Bucharest Summit in a message directed to the Greek people:

> "It was unanimously decided that Albania and Croatia will accede to NATO. Due to Greece's veto, FYROM is not joining NATO.
>
> I had said to everyone — in every possible tone and in every direction — that 'a failure to solve the name issue will impede their invitation' to join the Alliance. And that is what I did. Skopje will be able to become a member of NATO only after the name issue has been resolved."

The Applicant notes that this characterization of events at the Summit is corroborated by other contemporaneous statements, including that of a NATO spokesperson.

78. In addition, the Applicant relies on diplomatic correspondence from the Respondent after the Bucharest Summit, in which the Respondent characterizes its position at the Summit. In particular, the Applicant introduced a letter, dated 14 April 2008, from the Respondent's Permanent Representative to the United Nations to the Permanent Representative of Costa Rica to the United Nations that included the following statement:

> "At the recent NATO Summit Meeting in Bucharest and in view of the failure to reach a viable and definitive solution to the name issue, Greece was not able to consent to the Former Yugoslav Republic of Macedonia being invited to join the North Atlantic Alliance."

The Applicant asserts that the Respondent sent similar letters to all other Members of the United Nations Security Council and to the United Nations Secretary-General. The Respondent does not refute this contention.

79. On 1 June 2008, in an aide-memoire sent by the Respondent to the Organization of American States and its member States, the Respondent made the following statement:

> "At the NATO's Summit in Bucharest in April 2008, allied leaders, upon Greece's proposal, agreed to postpone an invitation to FYROM to join the Alliance, until a mutually acceptable solution to the name issue is reached."

80. The Respondent stresses the absence of a formal voting mechanism within NATO. For that reason, the Respondent asserts that, irrespective of the statements by its government officials, there is no means by which a NATO member State can exercise a "veto" over NATO decisions. The Respondent further maintains that its obligation under Article 11, paragraph 1, does not prevent it from expressing its views, whether negative or positive, regarding the Applicant's eligibility for admission to an organization, and characterizes the statements by its government officials as speaking to whether the Applicant had satisfied the organization's eligibility requirements, not as setting forth a formal objection. The Respondent further contends that it was "unanimously" decided at the Bucharest Summit that the Applicant would not yet be invited to join NATO, and thus that it cannot be determined whether a particular State "objected" to the Applicant's membership. According to the Respondent, "Greece did not veto the FYROM's accession to NATO . . . It was a *collective* decision made on behalf of the Alliance as a whole." (Emphasis in the original.)

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81. In the view of the Court, the evidence submitted to it demonstrates that through formal diplomatic correspondence and through statements of its senior officials, the Respondent made clear before, during and after the Bucharest Summit that the resolution of the difference over the name was the "decisive criterion" for the Respondent to accept the Applicant's admission to NATO. The Respondent manifested its objection to the Applicant's admission to NATO at the Bucharest Summit, citing the fact that the difference regarding the Applicant's name remained unresolved.

82. Moreover, the Court cannot accept that the Respondent's statements regarding the admission of the Applicant were not objections, but were merely observations aimed at calling the attention of other NATO member States to concerns about the Applicant's eligibility to join NATO. The record makes abundantly clear that the Respondent went beyond such observations to oppose the Applicant's admission to NATO on the ground that the difference over the name had not been resolved.

83. The Court therefore concludes that the Respondent objected to the Applicant's admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord.

2. The Effect of the Second Clause of Article 11, Paragraph 1, of the Interim Accord

84. The Court turns now to the question whether the Respondent's objection to the Applicant's admission to NATO at the Bucharest Summit fell within the exception contained in the second clause of Article 11, paragraph 1, of the Interim Accord.

85. In this clause, the Parties agree that the Respondent "reserves the right to object to any membership" by the Applicant in an international, multilateral or regional organization or institution of which the Respondent is a member "if and to the extent the [Applicant] is to be referred to in such organization or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)". The Court recalls that paragraph 2 of resolution 817 recommends that the Applicant be admitted to membership in the United Nations, 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 of the State".

86. The Applicant maintains that the exception in the second clause of Article 11, paragraph 1, applies only if the Applicant is to be referred to by the organization itself as something other than "the former Yugoslav Republic of Macedonia". In its view, resolution 817 contemplated that the Applicant would refer to itself by its constitutional name ("Republic of Macedonia") within the United Nations. The Applicant asserts that this has been its consistent practice since resolution 817 was adopted and that the Parties incorporated this practice into the second clause of Article 11, paragraph 1. The Applicant also cites evidence contemporaneous with the adoption of resolution 817 indicating, in its view, that it was understood by States involved in the drafting of that resolution that the resolution would neither require the Applicant to refer to itself by the provisional designation within the United Nations nor direct third States to use any particular name or designation when referring to the Applicant. On this basis, it is the Applicant's position that the Respondent's right to object pursuant to Article 11, paragraph 1, does not apply to the Applicant's admission to NATO because the same practice would be followed in NATO that has been followed in the United Nations. The Applicant asserts that the reference to how it will be referred to "in" an organization means, with respect to an organization such as NATO, *inter alia*: the way that it will be listed by NATO as a member of the organization; the way that representatives of the Applicant will be accredited by NATO; and the way that NATO will refer to the Applicant in all official NATO documents.

87. The Respondent is of the view that the Applicant's intention to refer to itself in NATO by its constitutional name, as well as the possibility that third States may refer to the Applicant by its constitutional name, triggers the exception in the second clause of Article 11, paragraph 1, and thus permitted the Respondent to object to the Applicant's admission to NATO. In the Respondent's view, resolution 817 requires the Applicant to refer to itself as the "former Yugoslav Republic of Macedonia" within the United Nations. The Respondent does not dispute the Applicant's claim of consistent practice within the United Nations, but contends that the Respondent engaged in a "general practice of protests" in regard to

use of the Applicant's constitutional name, before and after the conclusion of the Interim Accord. To support this assertion, the Respondent submits evidence of eight instances during the period between the adoption of resolution 817 and the conclusion of the Interim Accord in which the Respondent claimed that the Applicant's reference to itself by the name "Republic of Macedonia" within the United Nations was inconsistent with resolution 817.

88. With respect to the text of Article 11, paragraph 1, the Respondent points out that the second clause of that Article applies when the Applicant is to be referred to "in" an organization, not only when the Applicant is to be referred to "by" the organization in a particular way. Moreover, the Respondent argues that the phrase "if and to the extent that" in the second clause means that Article 11, paragraph 1, is not merely an "on/off switch". Instead, in the Respondent's view, the phrase "to the extent" makes clear that the Respondent may object in response to a limited or occasional use of a name other than the provisional designation (such as when the Applicant "instigates the use" of a different name by the officers of an organization or by other member States of the organization). In support of this interpretation the Respondent asserts that the phrase "if and to the extent that" would lack *effet utile* if it were not interpreted as the Respondent suggests, because this would render the words "to the extent that" without legal content.

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89. The Court notes that the Parties agree on the interpretation of the second clause of Article 11, paragraph 1, in one circumstance: the exception contained in the second clause permits the Respondent to object to the Applicant's admission to an organization if the Applicant is to be referred to by the organization itself other than by the provisional designation. The Respondent also asserts that it has the right to object in two other circumstances: first, if the Applicant will refer to itself in the organization using its constitutional name and, secondly, if third States will refer to the Applicant in the organization by its constitutional name. The Applicant disagrees with both of these assertions.

90. Although the Parties articulate divergent views on the interpretation of the clause, i.e., whether the Respondent may object if third States will refer to the Applicant using its constitutional name, the Respondent does not pursue, as a factual matter, the position that any objection at the Bucharest Summit was made in response to the prospect that third States would refer to the Applicant in NATO using its constitutional name. Thus, in the present case, the Court need not decide whether the second clause would permit an objection based on the prospect that third States would use the Applicant's constitutional name in NATO. On the other

hand, the Parties agree that the Applicant intended to refer to itself within NATO, once admitted, by its constitutional name, not by the provisional designation set forth in resolution 817. Thus, the Court must decide whether the second clause of Article 11, paragraph 1, permitted the Respondent to object in that circumstance.

91. The Court will interpret the second clause of Article 11, paragraph 1, of the Interim Accord, in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969 (hereinafter the "1969 Vienna Convention"), to which both the Applicant and the Respondent are parties. The Court will therefore begin by considering the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.

92. The Court observes that the Parties formulated the second clause using the passive voice: "if and to the extent the [Applicant] is to be referred to . . . differently than in" paragraph 2 of resolution 817. The use of the passive voice is difficult to reconcile with the Respondent's view that the clause covers not only how the organization is to refer to the Applicant but also the way that the Applicant is to refer to itself. As to the inclusion of the phrase "to the extent", the Court recalls the Respondent's contention that the phrase lacks legal effect ("effet utile") unless it is interpreted to mean that the Respondent's right to object is triggered not only by the anticipated practice of the organization, but also by the use of the constitutional name by others. The Court cannot agree that the phrase would have legal effect only if interpreted as the Respondent suggests. The phrase would still have a legal significance, for example, if it were interpreted to mean that the Respondent has a right to object for so long as the organization refers to the Applicant by the constitutional name. Accordingly, the Court rejects the Respondent's contention that the phrase "to the extent" is without legal effect unless the second clause of Article 11, paragraph 1, permits the Respondent to object to admission to an organization if the Applicant is to refer to itself in the organization by its constitutional name.

93. As for the phrase "to be referred to . . . differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)", it will be recalled that the relevant text of that resolution recommends that the Applicant be admitted to membership in the United Nations, being "provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia'" pending settlement of the difference over the name. Thus, a central question for the Court is whether the prospect that the Applicant would refer to itself in NATO by its constitutional name means that the Applicant is "to be referred to . . . differently than in paragraph 2 of Security Council resolution 817 (1993)". The Court therefore examines the text of resolution 817 in relation to the second clause of Article 11, paragraph 1. That resolution was adopted

pursuant to Article 4, paragraph 2, of the Charter of the United Nations, which states that admission of a State to membership in the Organization is effected by a decision of the General Assembly upon the recommendation of the Security Council. Thus, it could be argued that paragraph 2 of resolution 817 is directed primarily to another organ of the United Nations, namely the General Assembly, rather than to individual Member States. On the other hand, the wording of paragraph 2 of resolution 817 is broad — "for all purposes" — and thus could be read to extend to the conduct of Member States, including the Applicant, within the United Nations.

94. Bearing in mind these observations regarding the text of the second clause of Article 11, paragraph 1, and of resolution 817, the Court will now proceed to ascertain the ordinary meaning of the second clause of Article 11, paragraph 1, in its context and in light of the treaty's object and purpose. To this end, the Court will examine other provisions of the treaty and a related and contemporaneous agreement between the Parties.

95. Article 1, paragraph 1, of the Interim Accord, provides that the Respondent will recognize the Applicant as an "independent and sovereign state" and that the Respondent will refer to it by a provisional designation (as "the former Yugoslav Republic of Macedonia"). Nowhere, however, does the Interim Accord require the Applicant to use the provisional designation in its dealings with the Respondent. On the contrary, the "Memorandum on 'Practical Measures' Related to the Interim Accord", concluded by the Parties contemporaneously with the entry into force of the Interim Accord, expressly envisages that the Applicant will refer to itself as the "Republic of Macedonia" in its dealings with the Respondent. Thus, as of the entry into force of the Interim Accord, the Respondent did not insist that the Applicant forbear from the use of its constitutional name in all circumstances.

96. The Court also contrasts the wording of the second clause of Article 11, paragraph 1, to other provisions of the treaty that impose express limitations on the Applicant or on both Parties. In Article 7, paragraph 2, for example, the Applicant agrees to "cease" the use of the symbol that it had previously used on its flag. This provision thus contains a requirement that the Applicant change its existing conduct. Additional provisions under the general heading of "friendly relations and confidence-building measures" — namely, the three paragraphs of Article 6 — are also framed entirely as commitments by the Applicant. By contrast, although the Parties were aware of the Applicant's consistent use of its constitutional name in the United Nations, the Parties drafted the second clause of Article 11, paragraph 1, without using language that calls for a change in the Applicant's conduct. If the Parties had wanted the Interim Accord to mandate a change in the Applicant's use of its constitutional name in international organizations, they could have included

an explicit obligation to that effect as they did with the corresponding obligations in Article 6 and Article 7, paragraph 2.

97. The significance of this comparison between the second clause of Article 11, paragraph 1, and other provisions of the Interim Accord is underscored by consideration of the overall structure of the treaty and the treaty's object and purpose. While each Party emphasizes different aspects of the treaty in describing its object and purpose, they appear to hold a common view that the treaty was a comprehensive exchange with the overall object and purpose of: first, providing for the normalization of the Parties' relations (bilaterally and in international organizations); secondly, requiring good-faith negotiations regarding the difference over the name; and, thirdly, agreeing on what the Respondent called "assurances related to particular circumstances", e.g., provisions governing the use of certain symbols and requiring effective measures to prohibit political interference, hostile activities and negative propaganda. Viewed together, the two clauses of Article 11, paragraph 1, advance the first of these objects by specifying the conditions under which the Respondent is required to end its practice of blocking the Applicant's admission to organizations. Another component of the exchange — the provisions containing assurances, including those that impose obligations on the Applicant to change its conduct — appears elsewhere in the treaty. In light of the structure and the object and purpose of the treaty, it appears to the Court that the Parties would not have imposed a significant new constraint on the Applicant — that is, to constrain its consistent practice of calling itself by its constitutional name — by mere implication in Article 11, paragraph 1. Thus, the Court concludes that the structure and the object and purpose of the treaty support the position taken by the Applicant.

98. Taken together, therefore, the text of the second clause of Article 11, paragraph 1, when read in context and in light of the object and purpose of the treaty, cannot be interpreted to permit the Respondent to object to the Applicant's admission to or membership in an organization because of the prospect that the Applicant would refer to itself in that organization using its constitutional name.

99. The Court next examines the subsequent practice of the Parties in the application of Article 11, paragraph 1, of the Interim Accord, in accordance with Article 31, paragraph 3 *(b)*, of the 1969 Vienna Convention. The Applicant asserts that between the conclusion of the Interim Accord and the Bucharest Summit, it joined at least 15 international organizations of which the Respondent was also a member. In each case, the Applicant was admitted under the provisional designation prescribed by paragraph 2 of resolution 817 and has been referred to in the organiza-

tion by that name. However, the Applicant has continued to refer to itself by its constitutional name in its relations with and dealings within those international organizations and institutions. The Court notes, in particular, the Applicant's assertion that the Respondent did not object to its admission to any of these 15 organizations. This point went unchallenged by the Respondent. Although there is no evidence that the Respondent ever objected to admission or membership based on the prospect that the Applicant would use its constitutional name in such organizations, the Respondent does identify one instance in which it complained about the Applicant's use of its constitutional name in the Council of Europe after the Applicant had already joined that organization. The Respondent apparently raised its concerns for the first time only in December 2004, more than nine years after the Applicant's admission, returning to the subject once again in 2007.

100. The Court also refers to evidence of the Parties' practice in respect of NATO prior to the Bucharest Summit. For several years leading up to the Bucharest Summit, the Applicant consistently used its constitutional name in its dealings with NATO, as a participant in the NATO Partnership for Peace and the NATO Membership Action Plan. Despite the Applicant's practice of using its constitutional name in its dealings with NATO, as it did in all other organizations, there is no evidence that the Respondent, in the period leading up to the Bucharest Summit, ever expressed concerns about the Applicant's use of the constitutional name in its dealings with NATO or that the Respondent indicated that it would object to the Applicant's admission to NATO based on the Applicant's past or future use of its constitutional name. Instead, as detailed above, the evidence makes clear that the Respondent objected to the Applicant's admission to NATO in view of the failure to reach a final settlement of the difference over the name.

101. Based on the foregoing analysis, the Court concludes that the practice of the Parties in implementing the Interim Accord supports the Court's prior conclusions (see paragraph 98) and thus that the second clause of Article 11, paragraph 1, does not permit the Respondent to object to the Applicant's admission to an organization based on the prospect that the Applicant is to refer to itself in such organization with its constitutional name.

102. The Court recalls that the Parties introduced extensive evidence related to the *travaux préparatoires* of the Interim Accord and of resolution 817. In view of the conclusions stated above (see paragraphs 98 and 101), however, the Court considers that it is not necessary to address this additional evidence. The Court also recalls that each Party referred to additional evidence regarding the use of the Applicant's constitutional name, beyond the evidence related to the subsequent practice under the Interim Accord, which is analysed above. This evidence does not bear directly on the question whether the Interim Accord permits the Respondent to object to the Applicant's admission to or membership in an orga-

nization based on the Applicant's self-reference by its constitutional name, and accordingly the Court does not address it.

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103. In view of the preceding analysis, the Court concludes that the Applicant's intention to refer to itself in an international organization by its constitutional name did not mean that it was "to be referred to" in such organization "differently than in" paragraph 2 of resolution 817. Accordingly, the exception set forth in the second clause of Article 11, paragraph 1, of the Interim Accord did not entitle the Respondent to object to the Applicant's admission to NATO.

3. Article 22 of the Interim Accord

104. Article 22 of the Interim Accord provides:

> "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 or multilateral agreements already in force that the Parties have concluded with other States or international organizations."

105. The Applicant maintains that Article 22 "is simply a factual statement". It "does not address the rights and duties of the Respondent: it merely declares that the Interim Accord as a whole does not infringe on the rights and duties of third States or other entities". According to the Applicant, Article 22 expresses "the rule set forth in Article 34 of the 1969 Vienna Convention . . . that '[a] treaty does not create either obligations or rights for a third State without its consent'". The Applicant notes that the Respondent's interpretation would render Article 11, paragraph 1, meaningless by allowing the Respondent to object simply by invoking an alleged right or duty under another agreement.

106. The Respondent takes the position that, even assuming that the Court were to conclude that the Respondent had objected to the Applicant's admission to NATO, in contravention of Article 11, paragraph 1, such objection would not breach the Interim Accord, because of the effect of Article 22. In the written proceedings, the Respondent construed Article 22 to mean that both the rights and the duties of a party to the Interim Accord under a prior agreement prevail over that party's obligations in the Interim Accord. In particular, the Respondent argued that it was free to object to the Applicant's admission to NATO because "any rights of Greece under NATO, and any obligations owed to NATO or to the other NATO member States must prevail in case of a conflict" with the restriction on the Respondent's right to object under Article 11, paragraph 1. The Respondent relied on its right under Article 10 of the North Atlantic

Treaty to consent (or not) to the admission of a State to NATO and its "duty to engage actively and promptly in discussions of concern to the Organization". The Respondent argues that Article 22 "is a *legal* provision" (emphasis in the original) and not "simply a factual statement" and that the Applicant's interpretation of Article 22 — that it restates the rule in Article 34 of the [1969 Vienna Convention] — "would render Article 22 essentially an exercise in redundancy".

107. In the course of the oral proceedings, however, the Respondent appears to have narrowed its interpretation of Article 22, stating that it has a right to object "if, and only if, the rules and criteria of those organizations *require* objection in the light of the circumstances of the application for admission" (emphasis added). From the fact that NATO is a "limited-membership organization" with the specific objective of mutual defence, the Respondent also infers a duty "to exercise plenary judgment in each membership decision". In the Respondent's view, each member State thus has not only a right but also a duty to raise its concerns if it believes that an applicant does not fulfil the organization's accession criteria. With respect to the content of those accession criteria as they relate to the Applicant, the Respondent relies principally on a NATO press release entitled "Membership Action Plan (MAP)", adopted at the close of the Washington, D.C. NATO Summit on 24 April 1999, stating that aspiring members would be expected, *inter alia*, "to settle ethnic disputes or external territorial disputes including irredentist claims . . . by peaceful means" and "to pursue good neighbourly relations".

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108. The Court first observes that if Article 22 of the Interim Accord is interpreted as a purely declaratory provision, as the Applicant suggests, that Article could under no circumstances provide a basis for the Respondent's objection.

109. Turning to the Respondent's interpretation of Article 22, the Court notes the breadth of the Respondent's original contention that its "rights" under a prior agreement (in addition to its "duties") take precedence over its obligation not to object to admission by the Applicant to an organization within the terms of Article 11, paragraph 1. That interpretation of Article 22, if accepted, would vitiate that obligation, because the Respondent normally can be expected to have a "right" under prior agreements with third States to express a view on membership decisions. The Court, considering that the Parties did not intend Article 22 to render meaningless the first clause of Article 11, paragraph 1, is therefore unable to accept the broad interpretation originally advanced by the Respondent. In this regard, the Court notes that the Court of Justice of the European Communities has rejected a similar argument. In particu-

lar, that court has interpreted a provision of the Treaty establishing the European Economic Community which states that "rights and obligations" under prior agreements "shall not be affected by" the provisions of the treaty. The European Court has concluded that this language refers to the "rights" of third countries and the "obligations" of treaty parties, respectively (see Case 10/61 *Commission* v. *Italy* [1962] ECR, p. 10; see also Case C-249/06 *Commission* v. *Sweden* [2009] ECR I-1348, para. 34).

110. The Court thus turns to the Respondent's narrower interpretation of Article 22, i.e., that "duties" under a prior treaty would take precedence over obligations in the Interim Accord. Accepting, *arguendo*, that narrower interpretation, the next step in the Court's analysis would be to evaluate whether the Respondent has duties under the North Atlantic Treaty with which it cannot comply without being in breach of its obligation not to object to the Applicant's admission to NATO. Thus, to evaluate the effect of Article 22, if interpreted in the manner suggested by the Respondent in the narrower and later version of its argument, the Court must also examine whether the Respondent has established that the North Atlantic Treaty imposed a duty on it to object to the Applicant's admission to NATO.

111. The Respondent offers no persuasive argument that any provision of the North Atlantic Treaty required it to object to the Applicant's membership. Instead the Respondent attempts to convert a general "right" to take a position on membership decisions into a "duty" by asserting a "duty" to exercise judgment as to membership decisions that frees the Respondent from its obligation not to object to the Applicant's admission to an organization. This argument suffers from the same deficiency as the broader interpretation of Article 22 initially advanced by the Respondent, namely, that it would erase the value of the first clause of Article 11, paragraph 1. Thus, the Court concludes that the Respondent has not demonstrated that a requirement under the North Atlantic Treaty compelled it to object to the admission of the Applicant to NATO.

112. As a result of the foregoing analysis, the Court concludes that the Respondent's attempt to rely on Article 22 is unsuccessful. Accordingly, the Court need not decide which of the two Parties' interpretations is the correct one.

4. Conclusion concerning whether the Respondent Failed to Comply with Article 11, Paragraph 1, of the Interim Accord

113. Thus, the Court concludes that the Respondent failed to comply with its obligation under Article 11, paragraph 1, of the Interim Accord by objecting to the Applicant's admission to NATO at the Bucharest

Summit. The prospect that the Applicant would refer to itself in NATO using its constitutional name did not render that objection lawful under the exception contained in the second clause of Article 11, paragraph 1. In the circumstances of the present case, Article 22 of the Interim Accord does not provide a basis for the Respondent to make an objection that is inconsistent with Article 11, paragraph 1.

IV. Additional Justifications Invoked by the Respondent

114. As an alternative to its main argument that the Respondent complied with its obligations under the Interim Accord, the Respondent contends that the wrongfulness of any objection to the admission of the Applicant to NATO is precluded by the doctrine of *exceptio non adimpleti contractus*. The Respondent also suggests that any failure to comply with its obligations under the Interim Accord could be justified both as a response to a material breach of a treaty and as a countermeasure under the law of State responsibility. The Court will begin by summarizing the Parties' arguments with respect to those three additional justifications.

1. The Parties' Arguments with regard to the Respondent's Additional Justifications

A. The Parties' arguments with regard to the exceptio non adimpleti *contractus*

115. The Respondent states that the *exceptio non adimpleti contractus* is a general principle of international law that permits the Respondent "to withhold the execution of its own obligations which are reciprocal to those not performed by [the Applicant]". According to the Respondent, the *exceptio* would apply in respect of the failure of one party to perform a "fundamental provision" of the Interim Accord. In the view of the Respondent, the *exceptio* permits a State suffering breaches of treaty commitments by another State to respond by unilaterally suspending or terminating its own corresponding obligations. In particular, the Respondent contends that its obligation not to object (under Article 11, paragraph 1) is linked in a synallagmatic relationship with the obligations of the Applicant in Articles 5, 6, 7 and 11 of the Interim Accord, and thus that under the *exceptio*, breaches by the Applicant of these obligations preclude the wrongfulness of any non-performance by the Respondent of its obligation not to object to the Applicant's admission to NATO.

116. The Respondent also states that "the conditions triggering the exception of non-performance are different from and less rigid than the conditions for suspending a treaty or precluding wrongfulness by way of countermeasures". According to the Respondent, the *exceptio* "does not

have to be notified or proven beforehand . . . There are simply no procedural requirements to the exercise of the staying of the performance through the mechanism of the *exceptio*." The Respondent also points to several situations in which it maintains that it complained to the Applicant about the Applicant's alleged failure to comply with its obligations under the Interim Accord.

117. The Applicant asserts that the Respondent has failed to demonstrate that the *exceptio* is a general principle of international law. The Applicant also argues that Article 60 of the 1969 Vienna Convention provides a complete set of rules and procedures governing responses to material breaches under the law of treaties and that the *exceptio* is not recognized as justifying non-performance under the law of State responsibility. The Applicant further disputes the Respondent's contention that the Applicant's obligations under Articles 5, 6 and 7 of the Interim Accord are synallagmatic with the Respondent's obligation not to object in Article 11, paragraph 1. The Applicant also takes the position that the Respondent did not raise the breaches upon which it now relies until after the Respondent objected to the Applicant's admission to NATO.

B. The Parties' arguments with regard to a response to material breach

118. The Respondent maintains that any disregard of its obligations under the Interim Accord could be justified as a response to a material breach of a treaty. The Respondent initially stated that it was not seeking to suspend the Interim Accord in whole or in part pursuant to the 1969 Vienna Convention, but later took the position that partial suspension of the Interim Accord is "justified" under Article 60 of the 1969 Vienna Convention (to which both the Applicant and Respondent are parties) because the Applicant's breaches were material. The Respondent took note of the procedural requirements contained in Article 65 of the 1969 Vienna Convention, but asserted that, if a State is suspending part of a treaty "in answer to another party . . . alleging its violation", *ex ante* notice is not required.

119. The Applicant contends that the Respondent never alerted the Applicant to any alleged material breach of the Interim Accord and never sought to invoke a right of suspension under Article 60 of the 1969 Vienna Convention. The Applicant notes that the Respondent confirmed its non-reliance on Article 60 in the Counter-Memorial. In addition, the Applicant calls attention to the "specific and detailed" procedural requirements of Article 65 of the 1969 Vienna Convention and asserts that the Respondent has not met those. The Applicant further contends that prior to the Bucharest Summit, the Respondent never notified the Applicant of any ground for suspension

of the Interim Accord, of its view that the Applicant had breached the Interim Accord or that the Respondent was suspending the Interim Accord.

C. The Parties' arguments with regard to countermeasures

120. The Respondent also argues that any failure to comply with its obligations under the Interim Accord could be justified as a countermeasure. As with the Respondent's argument regarding suspension in response to a material breach, the Respondent's position on countermeasures evolved during the proceedings. Initially, the Respondent stated that it did not claim that any objection to the Applicant's admission to NATO was justified as a countermeasure. Later, the Respondent stated that its "supposed objection would fulfil the requirements for countermeasures". The Respondent described the defence as "doubly subsidiary", meaning that it would play a role only if the Court found the Respondent to be in breach of the Interim Accord and if it concluded that the *exceptio* did not preclude the wrongfulness of the Respondent's conduct.

121. The Respondent discusses countermeasures with reference to the requirements reflected in the International Law Commission Articles on State Responsibility (Annex to General Assembly resolution 56/83, 12 December 2001, hereinafter referred to as "the ILC Articles on State Responsibility"). It asserts that the Applicant's violations were serious and that the Respondent's responses were consistent with the conditions reflected in the ILC Articles on State Responsibility, which it describes as requiring that countermeasures be proportionate, be taken for the purpose of achieving cessation of the wrongful act and be confined to the temporary non-performance of the Respondent's obligation not to object. The Respondent also states that the Applicant was repeatedly informed of the Respondent's positions.

122. The Applicant calls attention to the requirements in the ILC Articles on State Responsibility that countermeasures must be taken in response to a breach by the other State, must be proportionate to those breaches and must be taken only after notice to the other State. In the view of the Applicant, none of these requirements were met. The Applicant further states its view that the requirements for the imposition of countermeasures contained in the ILC Articles on State Responsibility reflect "general international law".

2. The Respondent's Allegations that the Applicant Failed to Comply with Its Obligations under the Interim Accord

123. The Court observes that while the Respondent presents separate arguments relating to the *exceptio*, partial suspension under Article 60 of the 1969 Vienna Convention, and countermeasures, it advances certain minimum conditions that are common to all three arguments. First, the

Respondent bases each argument on the allegation that the Applicant breached several provisions of the Interim Accord prior to the Respondent's objection to the Applicant's admission to NATO. Secondly, each argument, as framed by the Respondent, requires the Respondent to show that its objection to the Applicant's admission to NATO was made in response to the alleged breach or breaches by the Applicant, in other words, to demonstrate a connection between any breach by the Applicant and any objection by the Respondent. With these conditions in mind, the Court turns to the evidence regarding the alleged breaches by the Applicant. As previously noted (see paragraph 72), it is in principle the duty of the party that asserts certain facts to establish the existence of such facts.

A. Alleged breach by the Applicant of the second clause of Article 11, paragraph 1

124. The Court begins with the Respondent's claim that the second clause of Article 11, paragraph 1, imposes an obligation on the Applicant not to be referred to in an international organization or institution by any reference other than the provisional designation (as "the former Yugoslav Republic of Macedonia"). The Respondent alleges that the Applicant has failed to comply with such an obligation.

125. The Applicant, for its part, asserts that the second clause of Article 11, paragraph 1, does not impose an obligation on the Applicant, but instead specifies the single circumstance under which the Respondent may object to admission.

126. The Court notes that on its face, the text of the second clause of Article 11, paragraph 1, does not impose an obligation upon the Applicant. The Court further notes that, just as other provisions of the Interim Accord impose obligations only on the Applicant, Article 11, paragraph 1, imposes an obligation only on the Respondent. The second clause contains an important exception to this obligation, but that does not transform it into an obligation upon the Applicant. Accordingly, the Court finds no breach by the Applicant of this provision.

B. Alleged breach by the Applicant of Article 5, paragraph 1

127. The Court next considers the Respondent's allegation that the Applicant breached its obligation to negotiate in good faith. It will be recalled that Article 5, paragraph 1, of the Interim Accord provides:

> "The Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993)."

128. The Respondent asserts that the Parties understood that the negotiations pursuant to Article 5, paragraph 1, have always been meant to reach agreement on a single name that would be used for all purposes. The Respondent contends that the Applicant has departed from this understanding by pressing for a "dual formula" whereby the negotiations are "limited solely to finding a name for use in the bilateral relations of the Parties" and thus has attempted "unilaterally to redefine the object and purpose of [the] negotiations". The Respondent further contends that the Applicant's continuous use of its constitutional name to refer to itself and its policy of securing third-State recognition under that name deprives the negotiations of their object and purpose. The Respondent also makes the more general allegation that the Applicant has adopted an intransigent and inflexible stance during the negotiations over the name.

129. The Applicant, on the other hand, is of the view that it "gave no undertaking under resolution 817, the Interim Accord or otherwise to call *itself* by the provisional reference" (emphasis in the original) and maintains that its efforts to build third-State support for its constitutional name do not violate its obligation to negotiate in good faith, as required by Article 5, paragraph 1. The Applicant contends that the Interim Accord did not prejudge the outcome of the negotiations required by Article 5, paragraph 1, by prescribing that those negotiations result in a single name to be used for all purposes. In addition, the Applicant argues that it showed openness to compromises and that it was the Respondent that was intransigent.

130. The Court observes that it is within the jurisdiction of the Court to examine the question raised by the Respondent of whether the Parties were engaged in good faith negotiations pursuant to Article 5, paragraph 1, without addressing the substance of, or expressing any views on, the name difference itself, which is excluded from the Court's jurisdiction under Article 21, paragraph 2, of the Interim Accord (see paragraphs 28 to 38 above).

131. At the outset, the Court notes that although Article 5, paragraph 1, contains no express requirement that the Parties negotiate in good faith, such obligation is implicit under this provision (see 1969 Vienna Convention, Art. 26; see also *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment, I.C.J. Reports 1984*, p. 292, para. 87; *Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, pp. 33-34, paras. 78-79; *Fisheries Jurisdiction (Federal Republic of Germany* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 202, para. 69; *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 268, para. 46; *Nuclear Tests (New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 473, para. 49; *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, pp. 46-47, para. 85).

132. The Court notes that the meaning of negotiations for the purposes of dispute settlement, or the obligation to negotiate, has been clarified through the jurisprudence of the Court and that of its predecessor, as well as arbitral awards. As the Permanent Court of International Justice already stated in 1931 in the case concerning *Railway Traffic between Lithuania and Poland*, the obligation to negotiate is first of all "not only to enter into negotiations, but also to pursue them as far as possible, with a view to concluding agreements". No doubt this does not imply "an obligation to reach an agreement" (*Railway Traffic between Lithuania and Poland, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 42*, p. 116; see also *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 68, para. 150), or that lengthy negotiations must be pursued of necessity (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 13). However, States must conduct themselves so that the "negotiations are meaningful". This requirement is not satisfied, for example, where either of the parties "insists upon its own position without contemplating any modification of it" (*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 47, para. 85; see also *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, p. 67, para. 146) or where they obstruct negotiations, for example, by interrupting communications or causing delays in an unjustified manner or disregarding the procedures agreed upon (*Lake Lanoux Arbitration (Spain/France) (1957), Reports of International Arbitral Awards (RIAA)*, Vol. XII, p. 307). Negotiations with a view to reaching an agreement also imply that the parties should pay reasonable regard to the interests of the other (*Fisheries Jurisdiction (United Kingdom* v. *Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 33, para. 78). As for the proof required for finding of the existence of bad faith (a circumstance which would justify either Party in claiming to be discharged from performance), "something more must appear than the failure of particular negotiations" (Arbitration on the *Tacna-Arica Question (Chile/Peru) (1925), RIAA*, Vol. II, p. 930). It could be provided by circumstantial evidence but should be supported "not by disputable inferences but by clear and convincing evidence which compels such a conclusion" *(ibid.)*.

133. The Court turns to examine whether the obligation to negotiate in good faith was met in the present case in light of the standards set out above.

134. The Court observes that the failure of the Parties to reach agreement, 16 years after the conclusion of the Interim Accord, does not itself establish that either Party has breached its obligation to negotiate in good faith. Whether the obligation has been undertaken in good faith cannot be measured by the result obtained. Rather, the Court must consider whether the Parties conducted themselves in such a way that negotiations may be meaningful.

135. The record indicates that, during the course of the negotiations pursuant to Article 5, paragraph 1, the Applicant had resisted suggestions that it depart from its constitutional name and that the Respondent had opposed the use of "Macedonia" in the name of the Applicant. In addition, the record reveals that political leaders of both Parties at times made public statements that suggested an inflexible position as to the name difference, including in the months prior to the Bucharest Summit. Although such statements raise concerns, there is also evidence that the United Nations mediator presented the Parties with a range of proposals over the years and, in particular, expressed the view that, in the time period prior to the Bucharest Summit, the Parties were negotiating in earnest. Taken as a whole, the evidence from this period indicates that the Applicant showed a degree of openness to proposals that differed from either the sole use of its constitutional name or the "dual formula", while the Respondent, for its part, apparently changed its initial position and in September 2007 declared that it would agree to the word "Macedonia" being included in the Applicant's name as part of a compound formulation.

136. In particular, in March 2008, the United Nations mediator proposed that the Applicant adopt the name "Republic of Macedonia (Skopje)" for all purposes. According to the record before the Court, the Applicant expressed a willingness to put this name to a referendum. The record also indicates that it was the Respondent who rejected this proposed name.

137. The Court also notes that the United Nations mediator made comments during the period January-March 2008 that characterized the negotiations in positive terms, noting the Parties' obvious desire to settle their differences.

138. Thus, the Court concludes that the Respondent has not met its burden of demonstrating that the Applicant breached its obligation to negotiate in good faith.

C. Alleged breach by the Applicant of Article 6, paragraph 2

139. Article 6, paragraph 2, provides:

> "The Party of the Second Part hereby solemnly declares that nothing in its Constitution, and in particular in Article 49 as amended, can or should be interpreted as constituting or will ever constitute the basis for the Party of the Second Part to interfere in the internal affairs of another State in order to protect the status and rights of any persons in other States who are not citizens of the Party to the Second Part."

140. The Respondent's allegations under this heading relate principally to the Applicant's efforts to support or to advocate on behalf of persons now resident in the Applicant's territory (who are also, in some cases, the

Applicant's nationals) who left or were expelled from the Respondent's territory in connection with its civil war in the 1940s (or who are the descendants of such persons) and who assert claims in relation to, among other things, abandoned property in the Respondent's territory. Some allegations on which the Respondent relies refer to events subsequent to the Bucharest Summit. Thus, the objection at the Summit could not have been a response to them. The Respondent also complains about the Applicant's alleged efforts to support a "Macedonian minority" in the Respondent's territory made up of persons who are also the Respondent's nationals.

141. For its part, the Applicant asserts that its concern for the human rights of minority groups in the Respondent's territory and for the human rights of its own citizens cannot reasonably be viewed as constituting interference in the Respondent's internal affairs.

142. The Court finds that the allegations on which the Respondent relies appear to be divorced from the text of Article 6, paragraph 2, which addresses only the Applicant's interpretation of its Constitution. The Respondent has presented no convincing evidence to suggest that the Applicant has interpreted its Constitution as providing a right to interfere in the Respondent's internal affairs on behalf of persons not citizens of the Applicant. The Court therefore does not find that the Applicant breached Article 6, paragraph 2, prior to the Bucharest Summit.

D. Alleged breach by the Applicant of Article 7, paragraph 1

143. Article 7, paragraph 1, provides:

> "Each Party shall promptly take effective measures to prohibit hostile activities or propaganda by State-controlled agencies and to discourage acts by private entities likely to incite violence, hatred or hostility against each other."

144. The Respondent alleges that the Applicant breached this provision based on its failure to take effective measures to prohibit hostile activities by State-controlled agencies, citing, for example, allegations relating to the content of school textbooks. In that respect, the Respondent refers to history textbooks used in the Applicant's schools that depict a historic "Greater Macedonia" and that present certain historical figures as the ancestors of the Applicant's current population. According to the Respondent, these and other examples demonstrate that the Applicant has taken no measures to prohibit hostile activities directed against the Respondent and has actively engaged in such propaganda.

145. The Respondent also alleges that the Applicant breached a second obligation set forth in Article 7, paragraph 1: the obligation to discourage acts by private entities likely to incite violence, hatred or hostility

against the Respondent. In particular, the Respondent cites an incident on 29 March 2008 (in the days prior to the Bucharest Summit) in which several outdoor billboards in Skopje depicted an altered image of the Respondent's flag. In addition, the Respondent alleges a consistent failure by the Applicant to protect the premises and personnel of the Respondent's Liaison Office in Skopje.

146. For its part, the Applicant asserts that the school textbooks reflect differences concerning the history of the region. It further claims that the billboards in Skopje in March 2008 were erected by private individuals and that it acted promptly to have them removed. The Applicant denies the allegations regarding the Respondent's diplomatic staff and premises and refers the Court to documents relating to its efforts to provide adequate protection to those diplomatic staff and premises and to investigate the incidents alleged by the Respondent.

147. Based on its review of the Parties' arguments and the extensive documentation submitted in relation to these allegations, the Court finds that the evidence cannot sustain a finding that the Applicant committed a breach of Article 7, paragraph 1, prior to the Bucharest Summit. The textbook content described above does not provide a basis to conclude that the Applicant has failed to prohibit "hostile activities or propaganda". Furthermore, the Respondent has not demonstrated convincingly that the Applicant failed "to discourage" acts by private entities likely to incite violence, hatred or hostility towards the Respondent. The Applicant's assertion that it took prompt action in response to the March 2008 billboards was not challenged by the Respondent, and the evidence shows that, at a minimum, the Applicant issued a statement seeking to distance itself from the billboards. The Court notes the obligation to protect the premises of the diplomatic mission and to protect any disturbance of the peace or impairment of its dignity contained in Article 22 of the Vienna Convention on Diplomatic Relations, and observes that any incident in which there is damage to diplomatic property is to be regretted. Nonetheless, such incidents do not *ipso facto* demonstrate a breach by the Applicant of its obligation under Article 7, paragraph 1, "to discourage" certain acts by private entities. Moreover, the Applicant introduced evidence demonstrating its efforts to provide adequate protection to the Respondent's diplomatic staff and premises.

E. Alleged breach by the Applicant of Article 7, paragraph 2

148. Article 7, paragraph 2, provides:

> "Upon entry into force of this Interim Accord, the Party of the Second Part shall cease to use in any way the symbol in all its forms displayed on its national flag prior to such entry into force."

149. The Respondent asserts that the Applicant has used the symbol described in Article 7, paragraph 2, in various ways since the Interim Accord entered into force, thus violating this provision.

150. The Respondent does not dispute that the Applicant has changed its flag, as required. The Respondent's allegations relate to the use of the symbol in other contexts, including an alleged use by a regiment of the Applicant's army depicted in a publication of the Applicant's Ministry of Defence in 2004. The record indicates that the Respondent raised its concerns to the Applicant about that use of the symbol at that time and the Applicant does not refute the claim that the regiment did use the symbol.

151. The Applicant asserts that the regiment in question was disbanded in 2004 (an assertion left unchallenged by the Respondent), and there is no allegation by the Respondent that the symbol continued to be used in that way after 2004.

152. The Respondent also introduces evidence with respect to fewer than ten additional instances in which the symbol has been used in the territory of the Applicant in various ways, mainly in connection with either publications or public displays.

153. The Court observes that these allegations relate either to the activities of private persons or were not communicated to the Applicant until after the Bucharest Summit. Nevertheless, as previously noted, the record does support the conclusion that there was at least one instance in which the Applicant's army used the symbol prohibited by Article 7, paragraph 2, of the Interim Accord.

F. Alleged breach by the Applicant of Article 7, paragraph 3

154. Article 7, paragraph 3, provides:

> "If either Party believes one or more symbols constituting part of its historic or cultural patrimony is being used by the other Party, it shall bring such alleged use to the attention of the other Party, and the other Party shall take appropriate corrective action or indicate why it does not consider it necessary to do so."

155. The Respondent asserts that Article 7, paragraph 3, means that each party should abstain from using the symbols referred to therein because such conduct could undermine the objectives of the Interim Accord. The Respondent further asserts that the Applicant has violated this provision in a variety of ways, including by issuing stamps, erecting statues and renaming the airport of the capital.

156. The Court notes that in contrast to Article 7, paragraph 2, the text of Article 7, paragraph 3, does not expressly prohibit the Applicant from using the symbols that it describes. Rather, it establishes a procedure for situations in which one Party believes the other Party to be using its historical or cultural symbols.

157. Because Article 7, paragraph 3, does not contain any prohibition on the use of particular symbols, the renaming of an airport could not itself constitute a breach. The threshold question is thus whether the Respondent brought its concern "to the attention" of the Applicant prior to the Bucharest Summit. The Respondent introduced evidence showing that in December 2006, the Respondent's Foreign Minister described the Applicant's conduct as "not consistent with the obligations concerning good neighbourly relations that emanate from the Interim Agreement" and as not serving "Skopje's Euro-Atlantic aspirations", without, however, referring expressly to the renaming of the airport. During a parliamentary meeting in February 2007, the Respondent's Foreign Minister expressly characterized the Applicant's renaming of the airport as a breach of the Interim Accord. There is no evidence of communication to the Applicant on this matter.

158. Although it does not appear that the Respondent brought its concern to the attention of the Applicant in a manner contemplated by Article 7, paragraph 3, the Applicant was aware of the Respondent's concern, and the Applicant's Foreign Minister explained the rationale behind the renaming of the airport in a January 2007 interview to a Greek newspaper.

159. On the basis of this record, the Court concludes that the Respondent has not discharged its burden to demonstrate a breach of Article 7, paragraph 3, by the Applicant.

*

160. In light of this analysis of the Respondent's allegations that the Applicant breached several of its obligations under the Interim Accord, the Court concludes that the Respondent has established only one such breach. Namely, the Respondent has demonstrated that the Applicant used the symbol prohibited by Article 7, paragraph 2, of the Interim Accord in 2004. After the Respondent raised the matter with the Applicant in 2004, the use of the symbol was discontinued during that same year. With these conclusions in mind, the Court will next state its findings regarding each of the three justifications advanced by the Respondent.

3. Conclusions concerning the Respondent's Additional Justifications

A. Conclusion concerning the exceptio non adimpleti contractus

161. Having reviewed the Respondent's allegations of breaches by the Applicant, the Court returns to the Respondent's contention that the *exceptio*, as it is defined by the Respondent, precludes the Court from finding that the Respondent breached its obligation under Article 11, paragraph 1, of the Interim Accord. The Court recalls that in all but one instance (the use of the symbol prohibited by Article 7, paragraph 2 (see

paragraph 153)), the Respondent failed to establish any breach of the Interim Accord by the Applicant. In addition, the Respondent has failed to show a connection between the Applicant's use of the symbol in 2004 and the Respondent's objection in 2008 — that is, evidence that when the Respondent raised its objection to the Applicant's admission to NATO, it did so in response to the apparent violation of Article 7, paragraph 2, or, more broadly, on the basis of any belief that the *exceptio* precluded the wrongfulness of its objection. The Respondent has thus failed to establish that the conditions which it has itself asserted would be necessary for the application of the *exceptio* have been satisfied in this case. It is, therefore, unnecessary for the Court to determine whether that doctrine forms part of contemporary international law.

B. Conclusion concerning a response to material breach

162. As described above (see paragraph 118), the Respondent also suggested that its objection to the Applicant's admission to NATO could have been regarded as a response, within Article 60 of the 1969 Vienna Convention, to material breaches of the Interim Accord allegedly committed by the Applicant. Article 60, paragraph 3 *(b)*, of the 1969 Vienna Convention provides that a material breach consists in "the violation of a provision essential to the accomplishment of the object or purpose of the treaty".

163. The Court recalls its analysis of the Respondent's allegations of breach at paragraphs 124 to 159 above and its conclusion that the only breach which has been established is the display of a symbol in breach of Article 7, paragraph 2, of the Interim Accord, a situation which ended in 2004. The Court considers that this incident cannot be regarded as a material breach within the meaning of Article 60 of the 1969 Vienna Convention. Moreover, the Court considers that the Respondent has failed to establish that the action which it took in 2008 in connection with the Applicant's application to NATO was a response to the breach of Article 7, paragraph 2, approximately four years earlier. Accordingly, the Court does not accept that the Respondent's action was capable of falling within Article 60 of the 1969 Vienna Convention.

C. Conclusion concerning countermeasures

164. As described above (see paragraphs 120 and 121), the Respondent also argues that its objection to the Applicant's admission to NATO could be justified as a proportionate countermeasure in response to breaches of the Interim Accord by the Applicant. As the Court has already made clear, the only breach which has been established by the Respondent is the Applicant's use in 2004 of the symbol prohibited by Article 7, paragraph 2, of the Interim Accord. Having reached that conclusion and in the light of its analysis at paragraphs 72 to 83 concerning the reasons given by the Respondent

for its objection to the Applicant's admission to NATO, the Court is not persuaded that the Respondent's objection to the Applicant's admission was taken for the purpose of achieving the cessation of the Applicant's use of the symbol prohibited by Article 7, paragraph 2. As the Court noted above, the use of the symbol that supports the finding of a breach of Article 7, paragraph 2, by the Applicant had ceased as of 2004. Thus, the Court rejects the Respondent's claim that its objection could be justified as a countermeasure precluding the wrongfulness of the Respondent's objection to the Applicant's admission to NATO. Accordingly, there is no reason for the Court to consider any of the additional arguments advanced by the Parties with respect to the law governing countermeasures.

165. For the foregoing reasons, the additional justifications submitted by the Respondent fail.

* * *

166. Lastly, the Court emphasizes that the 1995 Interim Accord places the Parties under a duty to negotiate in good faith under the auspices of the Secretary-General of the United Nations pursuant to the pertinent Security Council resolutions with a view to reaching agreement on the difference described in those resolutions.

* * *

V. Remedies

167. The Court recalls that, in its final submissions pertaining to the merits of the present case, the Applicant seeks two remedies which it regarded as constituting appropriate redress for claimed violations of the Interim Accord by the Respondent. First, the Applicant seeks relief in the form of a declaration of the Court that the Respondent has acted illegally, and secondly, it requests relief in the form of an order of the Court that the Respondent henceforth refrain from any action that violates its obligations under Article 11, paragraph 1, of the Interim Accord.

168. As elaborated above, the Court has found a violation by the Respondent of its obligation under Article 11, paragraph 1, of the Interim Accord. As to possible remedies for such a violation, the Court finds that a declaration that the Respondent violated its obligation not to object to the Applicant's admission to or membership in NATO is warranted. Moreover, the Court does not consider it necessary to order the Respondent, as the Applicant requests, to refrain from any future conduct that violates its obligation under Article 11, paragraph 1, of the Interim Accord. As the Court previously explained, "[a]s a general rule, there is no reason to suppose that a State whose act or conduct has been declared

wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed" (*Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 267, para. 150).

169. The Court accordingly determines that its finding that the Respondent has violated its obligation to the Applicant under Article 11, paragraph 1, of the Interim Accord, constitutes appropriate satisfaction.

* * *

170. For these reasons,

THE COURT,

(1) By fourteen votes to two,

Finds that it has jurisdiction to entertain the Application filed by the former Yugoslav Republic of Macedonia on 17 November 2008 and that this Application is admissible;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue; *Judge* ad hoc Vukas;

AGAINST: *Judge* Xue; *Judge* ad hoc Roucounas;

(2) By fifteen votes to one,

Finds that the Hellenic Republic, by objecting to the admission of the former Yugoslav Republic of Macedonia to NATO, has breached its obligation under Article 11, paragraph 1, of the Interim Accord of 13 September 1995;

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Vukas;

AGAINST: *Judge* ad hoc Roucounas;

(3) By fifteen votes to one,

Rejects all other submissions made by the former Yugoslav Republic of Macedonia.

IN FAVOUR: *President* Owada; *Vice-President* Tomka; *Judges* Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; *Judge* ad hoc Roucounas;

AGAINST: *Judge* ad hoc Vukas.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fifth day of December, two thousand

and eleven, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the former Yugoslav Republic of Macedonia and the Government of the Hellenic Republic, respectively.

(*Signed*) Hisashi OWADA,
President.

(*Signed*) Philippe COUVREUR,
Registrar.

Judge SIMMA appends a separate opinion to the Judgment of the Court; Judge BENNOUNA appends a declaration to the Judgment of the Court; Judge XUE appends a dissenting opinion to the Judgment of the Court; Judge *ad hoc* ROUCOUNAS appends a dissenting opinion to the Judgment of the Court; Judge *ad hoc* VUKAS appends a declaration to the Judgment of the Court.

(*Initialled*) H.O.
(*Initialled*) Ph.C.