INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING
THE APPLICATION OF ARTICLE 11, PARAGRAPH 1,
OF THE INTERIM ACCORD OF 13 SEPTEMBER 1995
(THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA v. GREECE)

MEMORIAL

VOLUME I

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CHAPTER I

INTRODUCTION AND OVERVIEW OF THE CASE

Section I. Overview

1.1. On 17 November 2008, the Applicant instituted proceedings before the International Court of Justice ("the Court") against the Respondent to protect its rights under Article 11 of the Interim Accord of 1995 ("the Interim Accord"),[1] a treaty signed by the Applicant and the Respondent ("the Parties") on 13 September 1995.[2] The proceedings are based on Article 21(2), of the Interim Accord, and seek to hold the Respondent to the obligation it undertook under Article 11 of the Interim Accord, which it violated through its objection to the Applicant's membership of the North Atlantic Treaty Organization (NATO). The Respondent's objection prevented the Applicant from receiving an invitation to proceed with membership of NATO. The case is being brought to ensure that the Applicant can continue to exercise its rights as an independent State acting in accordance with its rights under the Interim Accord and under international law, including the right to pursue membership of NATO and other international organizations.

1.2. By its Order of 20 January 2009, the Court fixed 20 July 2009 as the date for submission by the Applicant of its Memorial. This Memorial with accompanying Annexes is submitted in accordance with that Order.

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[1] Interim Accord between the Applicant and the Respondent (New York, 13 September 1995), in force on 13 October 1995: Annex 1.

[2] Application to the International Court of Justice, Dispute Concerning the Implementation of Article 11, paragraph 1 of the Interim Accord of 13 September 1995, 17 November 2008, at para. 1. The Application contains three typographical errors. Firstly, at page 7, paragraph 17, the fourth line of the quotation from Article 11(1) of the Interim Accord should read: "…..organizations and institutions of which the Party of the *First* Part … ." Secondly, at page 7, paragraph 17, the fifth line of the quotation from Article 11(1) of the Interim Accord should read: "however, the Party of the *First* Part ... ." Thirdly, at page 10, the paragraph numbering sequence skips number 'V'.

1.3. The dispute between the Parties is discrete in its scope, although this does not mean that the issues that arise, in relation to matters of law and fact, are not without considerable significance, both for the Parties and more generally. The dispute has arisen in the context of the Respondent's actions in relation to the NATO membership process pursued by the Applicant, and of related concerns regarding the European Union (EU). NATO membership – linked directly to EU membership – is one of the most important strategic priorities for the Applicant, with significant security implications for the Applicant's multiethnic democracy and for the overall stability of the Balkan region. The case requires the Court to examine and establish the fact of the Respondent's objection and to interpret and apply the Respondent's legal obligations arising under Article 11(1) of the Interim Accord.

1.4. The dispute between the Parties crystallized on 3 April 2008, although the first public indications that the Respondent was intending to object to the Applicant's membership of NATO came as early as November 2004.[3] In late March/early April 2008 – and in particular, on or about 3 April 2008 – the Respondent, in its capacity as a member of NATO, gave effect to its objection and acted to prevent the Applicant from receiving an invitation to proceed to NATO membership under the provisional reference of 'the former Yugoslav Republic of Macedonia'. As a direct consequence of the Respondent's actions, in circumstances in which membership of NATO requires the consensus of all existing members, the Applicant did not receive an invitation to join NATO.

1.5. At no time did the Respondent seek to justify its objection on the ground that the Applicant would be referred to in NATO differently than in paragraph 2 of the United Nations Security Council resolution 817 (1993) ("resolution 817"),[4] the solitary ground on which such an objection would have been permissible under Article 11(1) of the Interim Accord.[5] This is clear from contemporaneous statements made by representatives of the Respondent,

[3] See Chapter II, para. 2.60.

[4] United Nations Security Council resolution 817 (1993) (SC/RES/817) (7 April 1993): Annex 22.

[5] See Chapter IV, paras. 4.29-4.32.

indicating the Respondent's position in the lead up to and on the day of the NATO Bucharest Summit of 3 April 2008, and in the days following the decision.[6] The evidence is incontrovertible and is addressed in more detail in Chapters II and IV.

1.6. Moreover, in acting as it did, the Respondent did not object to the Applicant's NATO membership by reference to any claimed rights under the law of treaties or the law of state responsibility; prior to its objection on or about 3 April 2008, it did not allege in writing or by way of a *note verbale* directed to the Applicant, that the Applicant had in some way failed to comply materially or otherwise with its obligations under the Interim Accord; and it did not invoke justifications based on the right to take countermeasures.

1.7. As described in Chapter II, the fact that the Respondent did not object to the Applicant's membership of NATO on the solitary ground permitted by Article 11(1) is reflected in contemporaneous news accounts. Neither the Greek media nor the world media reported that the Respondent's objection to the Applicant's membership of NATO was based on any belief that the Applicant would be referred to in NATO differently than in paragraph 2 of resolution 817.[7] This has also been confirmed by representatives of other NATO members who were closely involved in the events of 3 April 2008.[8]

1.8. The Respondent's objection to the Applicant's membership of NATO amounts to a clear violation of its obligations under Article 11(1) of the Interim Accord. By this provision, the Respondent accepted an obligation, which is binding under international law, "not to object to the application by or the membership of [the Applicant] in international, multilateral and regional organizations and institutions of which [the Respondent] is a member", where, pending resolution of the difference concerning the Applicant's name, the Applicant "is to be referred to" in accordance with the provisional reference set

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6 See Chapter II, para. 2.59.

7 See Chapter II, paras. 2.61.

8 See Chapter II, paras. 2.61-2.62.

out in resolution 817 "as the former Yugoslav Republic of Macedonia" in the organization or institution in question. There is no dispute that the Applicant is already referred to as 'the former Yugoslav Republic of Macedonia' in a non-membership capacity within NATO and that the Applicant would be referred to as such as a member of the organization. The violation of Article 11(1) is therefore clear on its face. The Respondent's obligation was "not to object": that obligation applies irrespective of whether its objection amounted to a veto and irrespective of the effect or consequence of its objection. Thus, these proceedings are not concerned in any way with the acts or omissions of any third States, or with any provisions of the constituent instrument of NATO or of any other international organization or institution: the object and subject matter of these proceedings are exclusively related to the actions of the Respondent and their incompatibility with the Interim Accord.

1.9. In this regard, it is particularly important to emphasize the significance of the date on which the Respondent objected to the Applicant's membership of NATO. For the purposes of these proceedings, the date of 3 April 2008 is significant because it indicates the key date by reference to which the legality of the Respondent's actions is to be assessed. In accordance with the Court's established practice, any acts occurring after the date on which a dispute arises will necessarily be of limited consequence in assessing the legality of the Respondent's objections. Actions after that date are invariably seen as self-serving, not least because they may aim to provide an *ex post facto* justification of a state's actions. In the context of maritime delimitation disputes, the Court has consistently adopted the position that:

> "it cannot take into consideration acts having taken place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them".[9]

[9] *Sovereignty over Pulau Ligitan and Pulau Sipadan* (Indonesia v. Malaysia), Judgment, ICJ Reports 2002, p. 682, at para. 135.

1.10. The rationale of this approach is equally pertinent in the present case: in assessing the legality of the acts of the Respondent, the Court is necessarily required to look carefully at matters that occurred before and on 3 April 2008, the date of the NATO Bucharest Summit. This is all the more necessary given the efforts on the part of the Respondent to modify its position and arguments after that key date, and in particular given its actions after 17 November 2008, the date on which the Application initiating these proceedings was filed with the Court. Specifically, the Applicant is not aware of any occasion prior to 3 April 2008 on which the Respondent formally alleged, in writing or by way of a *note verbale* directed to the Applicant, that the Applicant was in material breach of the Interim Accord. In particular, on no occasion before that date did the Respondent raise any written concerns by way of *note verbale* concerning the procedure established by Article 7(3) of the Interim Accord, which provides a mechanism for one Party to notify to the other in respect of certain acts that are considered to be inconsistent with the provisions of that article. As described in Chapter II of this Memorial, it was only on 15 May 2008, after the Applicant had raised a complaint about the Respondent's violation of Article 11(1) of the Interim Accord, that the Respondent for the first time presented a formal *note verbale* to the Applicant alleging violation by the Applicant of the Interim Accord.[10] The Respondent's assertions appear to have been reactive to the Applicant's complaints. This was followed by a second *note verbale* dated 15 January 2009, two months after the Application in this case was filed, in which the Respondent formally complained in writing to the Applicant that it had not complied with its obligations under the Interim Accord.[11] It is readily apparent that these recent actions of the Respondent have been "undertaken for the purpose of improving the legal position of the Party which relies on them".[12] The fact that the issues they addressed were not raised formally in writing to the Applicant before 3 April 2008, or indeed 17 November 2008, or related to matters post-dating 17 November 2008, indicates the sharp change

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[10] Verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 51; see Chapter II, paras. 2.66-2.69.

[11] Verbal note dated 15 January 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 52

[12] *Ibid.,* note 9 *supra.*

in position adopted by the Respondent. The Applicant understands this new approach to reflect the Respondent's realization that the justifications it gave at the time of its objection, and for some time after, established a violation of its obligations under the Interim Accord.

1.11. This case is about the legality of the Respondent's objection, no more and no less. It is about ensuring respect for the Interim Accord and the law of treaties. The function of the Court is to assess whether the Respondent's objection – in late March/early April 2008 – did or did not give rise to a violation of the Respondent's obligations under Article 11(1) of the Interim Accord. The case is not about other issues, and the Court is not called upon to express any view as to the merits or demerits of either party's position in respect of the negotiations taking place pursuant to Article 5(1) of the Interim Accord relating to the difference concerning the Applicant's name. Equally, as above, the case is only about the acts and objection of the Respondent, not about the acts of any other NATO member or the acts of NATO as an organization. Nor does the Court have to express any views as to the merits of the *ex post facto* justifications raised by the Respondent since this Application was filed. The Applicant has noted with interest the range of new issues raised by the Respondent in its *notes verbales*, in particular those of 15 May 2008 and 15 January 2009.[13] The fact that the Respondent has felt the need to create a new basis for its actions of 3 April 2008 reflects a recognition that the reason given for its objection – "the failure to reach a viable and definitive solution to the name issue" – is plainly inconsistent with its obligations under Article 11 of the Interim Accord.

1.12. Equally, this case is not about the conditions of membership of NATO, or about the actions of any third States. It is not about the historic circumstances that have given rise to the difference as to the Applicant's name, and it does not require the Court to address in any way – directly or indirectly – other issues

[13] Verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 51; verbal note dated 15 January 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 52.

on which the Parties have addressed views in other fora, such as the rights of minorities on either side of the border.

Section II: Structure of the Memorial

1.13. This Memorial is in six chapters. Following this Introduction, ***Chapter II*** deals with the facts of this dispute. It is divided into seven sections. It necessarily begins with the historical context against which the dispute has arisen, describing the circumstances in which the Applicant emerged into independence following the collapse of the former Socialist Federal Republic of Yugoslavia in 1991 (**Section I**). **Section II** outlines the context in which the Interim Accord was negotiated and adopted, setting out the Applicant's path to international recognition; the conditions under which it was able to secure membership of the United Nations in 1993, in accordance with the terms of Security Council resolution 817; the United Nations-led negotiations leading to Security Council resolution 845; the Applicant's growing international integration and the resulting economic embargo imposed by the Respondent. **Section III** focuses on the content and structure of the Interim Accord, with a particular focus on Article 11(1). **Section IV** of the chapter addresses the practice under Article 11 of the Interim Accord, describing the Applicant's integration into the international community and how, following the entry into force of the Interim Accord, the Applicant was able to apply for membership of – and then join – a large number of international, multilateral and regional organizations and institutions, including the Council of Europe, under the provisional designation referred to in resolution 817. This was one of the key purposes of the Interim Accord from the Applicant's perspective. **Section V** of the chapter describes the Applicant's engagement with NATO in the period prior to 3 April 2008, including the Partnership for Peace programme, which the Applicant joined in 1995, and its Membership Action Plan, initiated in 1999. It also describes the circumstances in which the Respondent acted to prevent the Applicant from proceeding to membership of NATO. Specifically, it shows that the Applicant was to be referred to within NATO in the manner envisaged by paragraph 2 of Security Council resolution 817 (1993); that the Applicant had

accepted that position; that, despite this, the Respondent unlawfully objected to the Applicant being invited to begin accession talks to become a member of NATO; and that, but for those actions, the Applicant would have been invited to join NATO. **Section VI** of the chapter describes the institution of the current proceedings and the Respondent's conduct since 3 April 2008, in particular its efforts to find other *ex post facto* excuses for its objection. This section shows the change of direction adopted by the Respondent in the period after 3 April 2008, and again after 17 November 2008 when the Application initiating these proceedings was filed. **Section VII** sets out the conclusions to the chapter.

1.14. ***Chapter III*** addresses the Jurisdiction of the Court, which is based on Article 21(2) of the 1995 Interim Accord and Article 36(1) of the Statute of the Court. The Court's jurisdiction is clearly established: this case concerns a dispute that has arisen between the Parties "concerning the interpretation or implementation of this Interim Accord", namely its Article 11(1), and does not concern the difference concerning the Applicant's name, as set out in Security Council resolutions 817 (1993) and 845 (1993), as referred to in Article 5(1) of the 1995 Interim Accord. Similarly, the case does not concern issues of NATO membership more generally, or the actions of any third State.

1.15. ***Chapter IV*** of the Memorial sets out the basis on which the Applicant submits that the Respondent has violated its obligation under Article 11(1) of the Interim Accord. **Section I** generally sets out the object and purpose of the Interim Accord and what its adoption sought to address. **Section II** addresses the meaning of Article 11(1), the provision of the Interim Accord violated by the Respondent, in the context of the negotiating history of the Interim Accord. **Section III** addresses in greater detail the meaning and effect of Article 11 of the Interim Accord. It sets out (i) the general obligation assumed by the Respondent under Article 11(1) not to object to the Applicant's membership of organizations and institutions of which the Respondent was a member, and (ii) the sole basis permitted for the Respondent to object to any such membership. **Section IV** concludes the chapter.

1.16. ***Chapter V*** addresses the law that is applicable to the resolution of this dispute. **Section I** discusses the obligation on the Respondent set forth under Article 11(1) of the Interim Accord – which the Respondent has never sought to terminate or suspend for material breach or for any other reason and which remains in full effect – which the Respondent breached by its actions of late March/early April 2008. **Section II** makes clear that the Respondent's violation of Article 11(1) could not have been a lawful reaction to matters relating to other provisions of the Interim Accord. **Sections III** and **IV** interpret the Respondent's violation in relation to other international instruments binding on the Parties, including the 1949 North Atlantic Treaty, the 1969 Vienna Convention on the Law of Treaties, as well as the general rules of international law governing the circumstances in which a treaty may be suspended and in which unilateral "countermeasures" may be taken, none of which arise in this case. **Section V** addresses the allegations of material breach made *post facto* by the Respondent and demonstrate that they are without foundation. Conclusions to the chapter are set out in **Section VI**.

1.17. ***Chapter VI*** of the Memorial addresses the relief sought by the Applicant. The chapter begins with a brief introduction to the relief sought in the context of the International Law Commission's Articles on State Responsibility of States for Internationally Wrongful Acts. **Sections I** and **II** set out the two forms of relief sought by the Applicant, namely a declaration that the Respondent has violated its obligations under Article 11(1) of the 1995 Interim Accord, and an order that the Respondent immediately take all necessary steps to comply with its obligation under that provision. In this chapter the Applicant also explains why it seeks an order that explicitly addresses membership of NATO and other international organizations. Finally, **Section III** outlines the Applicant's reservation of its right "to modify and extend the terms of this Application, as well as the grounds involved".

1.18. The Memorial also includes an **Annex**, which sets out (i) International Instruments, (ii) National Instruments, (iii) United Nations Documents and Correspondence, (iv) Diplomatic Correspondence between the Parties, (v) Press Releases, Articles and Statements and (vi) Other Documents.

CHAPTER II

THE FACTUAL BACKGROUND

Introduction

2.1. The purpose of this chapter is to provide the factual background necessary to understand the circumstances in which the dispute before the Court has arisen. To that end, **Section I** of the chapter describes the emergence of the Applicant into statehood and sets out the State's key constitutional documents. **Section II** provides the context in which Article 11 was adopted, mapping the Applicant's path to international recognition, focusing in particular on recognition by the European Community and membership of the United Nations. **Section III** focuses on the Interim Accord of 1995 agreed between the Parties, and specifically on Article 11(1), which is the subject of the dispute before the Court. **Section IV** describes the integration by the Applicant into the international community and in particular its membership of different international, multilateral and regional organizations and institutions, following the entry into force of the Interim Accord. **Section V** maps the Applicant's engagement with NATO and sets out the Respondent's objection to the Applicant's NATO membership, which crystallized on 3 April 2008. **Section VI** describes the institution of the current proceedings and the Respondent's conduct since April 2008. Finally, **Section VII** sets out the conclusions to this chapter.

Section I. The Emergence of the Applicant into Statehood

2.2. The Applicant is a landlocked state of approximately 25,713 square kilometres in size, bordered to the North by Serbia and Kosovo, to the South by the Respondent, to the East by Bulgaria and to the West by Albania. It is a multiethnic democracy of approximately two million inhabitants.[14] Its capital is Skopje.

[14] Ministry of Foreign Affairs of the Applicant, *The Republic of Macedonia – Basic Facts*, (2007): http://www.mfa.gov.mk/default1.aspx?ItemID=288. The Applicant has a population of approximately 2,022,547 people, composed of Macedonians (64.18%

2.3. The Applicant is one of the new independent Balkan states to have emerged from the break-up of the Socialist Federal Republic of Yugoslavia (SFRY), of which it had formed one of the six constituent republics,[15] gaining its independence peacefully. On 25 January 1991, the Applicant adopted the "Declaration on the Sovereignty of the Socialist Republic of Macedonia", which asserted the sovereignty of the State and the right of its people to self-determination.[16] On 7 June 1991, the Applicant's Parliament, by way of constitutional amendment,[17] changed the name of the State to the "Republic of Macedonia" (*Republika Makedonija*) from the "Socialist Republic of Macedonia" (*Socijalistička Republika Makedonija*), by which the Republic had been known from 1963 to 1991, and as which it had been addressed by the Respondent in official correspondence.[18] Three months later, on 8 September 1991, the

of the population), Albanians (25.1%), Turks (3.85%), Romas (2.66%), Serbs (1.78%), Vlachs (0.48%) and Bosniacs (0.84%) and others: *Census of Population, Households and Dwellings in the Republic of Macedonia, 2002*, Book XIII, Skopje, (May 2005), State Statistical Office of the Applicant: http://www.stat.gov.mk/pdf/kniga_13.pdf.

15 As the 'Socialist Republic of Macedonia', alongside the Socialist Republics of Bosnia-Herzegovina, Croatia, Montenegro, Serbia and Slovenia.

16 "Declaration on the Sovereignty of the Socialist Republic of Macedonia" (25 January 1991), *Official Gazette of the Socialist Republic of Macedonia*, No 5, Year XLVII (Skopje, 1 February 1991): Annex 13.

17 "Decision Promulgating the Amendments LXXXII to LXXXV to the Constitution of the Socialist Republic of Macedonia" (7 June 1991), *Official Gazette of the Socialist Republic of Macedonia*, No. 27, Year XLVII (Skopje, 11 June 1991): Annex 14.

18 See, for example: the letter dated 14 September 1979 from the Respondent's President, Constantinos Tsatsos, to the Government of the Socialist Republic of Macedonia ("la République Socialiste de Macédoine"), and the letter dated 10 December 1990 from the Consul General of the Respondent in Skopje to the Foreign Affairs Committee of the Socialist Republic of Macedonia ("Comité sur les Relations avec l'Etranger de la République Socialiste de Macédoine"), appended to the letter dated 5 February 1993 and Memorandum from the Applicant's President, Kiro Gligorov, to the United Nations Secretary-General: (Annex 27). The Republic was renamed the 'Socialist Republic of Macedonia' in 1963, following the renaming of the Federal People's Republic of Yugoslavia as the Socialist Federal Republic of Yugoslavia. It had previously been known as the 'People's Republic of Macedonia' (*Narodna Republika Makedonija*) from the founding of the former Yugoslavia in 1945 until 1963, a name used in treaties to which the Respondent was a party. See, for example, the 1959 bilateral Convention between the Federal People's Republic of Yugoslavia and the Kingdom of Greece Concerning Mutual Legal Relations, concluded between the Respondent and the former SFRY in Athens on 18 June 1959, which provides at Article 7: "Applications for legal assistance shall be made through the competent Ministry and or State Secretariat of Justice; the said Ministry and State Secretariats (in the case of Yugoslavia, the State Secretariats of Justice

Declaration of 25 January 1991 was confirmed by way of a referendum in which participants voted overwhelmingly by a 95 percent majority (on a 75 percent electoral turnout) in favour of a "sovereign and independent Macedonia".[19] Based on the results of the referendum, on 17 September 1991, the Assembly of the Applicant adopted a "Declaration" which asserted the sovereignty and independence of the State and the right of its people to self-determination,[20] confirming the will of the State's citizens expressed in the referendum and seting out the basic principles of the State's foreign policy. This foundational document of the new State unequivocally underscored the Applicant's acceptance and observance of accepted norms and principles of international relations, including the principles of territorial integrity and sovereignty and non-interference in the internal affairs of other states. Article 2 provides as follow:

> "As a sovereign and independent state, the Republic of Macedonia shall be committed to the consistent respect for the generally accepted principles of international relations contained in the UN documents, the CSCE Helsinki Final Document and the Paris Charter. As an international law subject, the Republic of Macedonia shall be guided by the principle of the respect for international norms governing relations between states and by the total respect for the principles of territorial integrity and sovereignty, non-interference in internal affairs, the furtherance of

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of the People's Republics of Serbia, Croatia, Slovenia, Bosnia-Herzegovina, *Macedonia* and Montenegro) shall correspond with one another directly for this purpose" [emphasis added], *UNTS* vol. 368, p. 87: (Annex 2). This Convention still remains in force between the Respondent and the Applicant pursuant to Article 12(1) of the Interim Accord of 1995 (Annex 1), which provides:

> "Upon entry into force of this Interim Accord, the Parties shall in their relations be directed by the provisions of the following bilateral agreements that had been concluded between the former Socialist Federal Republic of Yugoslavia and the Party of the First Part on 18 June 1959:
>
> (a) The convention concerning mutual legal relations..."

[19] "Results of the Referendum held on 8 September 1991 in the Republic of Macedonia", *Official Gazette of the Republic of Macedonia*, No. 43, Year XLVII (Skopje, 20 September 1991): Annex 16

[20] "Declaration" (17 September 1991), *Official Gazette of the Republic of Macedonia*, No. 42, Year XLVII (Skopje, 18 September 1991): Annex 15.

respect and trust between states and the development of comprehensive cooperation with all countries and nations, based on mutual interest."

2.4. Article 3 sets out the commitment of the new State to good neighbourliness. It provides in material part as follows:

> "In furtherance of these principles, the Republic of Macedonia shall be committed to the comprehensive development of good-neighborly relations and cooperation with all its neighbours, as well as to the development and cooperation with all European and other countries, international organizations and groups... ."

2.5. The Declaration also called for a strict respect of existing borders and reaffirmed the Applicant's lack of territorial claims on any neighbouring countries. Article 4 provides:

> "Strictly adhering to the principle of the inviolability of borders, and as a guarantee of peace and security in the region and more widely, the Republic of Macedonia hereby reaffirms that its does not harbour territorial claims or territorial aspirations against any country in its neighborhood. Furthermore, the Republic of Macedonia shall act decisively against any violation of or threats against its territorial integrity and sovereignty. The Republic of Macedonia shall strictly adhere to the principle of peaceful dispute resolution in its dealings with other states through negotiation and on the basis of mutual respect."[21]

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[21] On 13 November 1991, the Applicant's President, Kiro Gligorov, wrote to the Respondent's Prime Minister, Constantine Mitsotakis, informing him of the Declaration of 17 September 1991 and underscoring the solemn commitment by the Applicant to the "persistent respect of the generally adopted principles of international relations" and to the development of good neighbourly relations. The letter further underscored the Applicant's commitment to the principle of the inviolability of borders, and its "strong and unequivocal confirmation" of its lack of any "territorial claims" against any neighbouring country "including the Hellenic Republic": Annex 48.

2.6. This Declaration was followed by the adoption on 17 November 1991 of a new Constitution,[22] which reaffirmed the inviolability of state borders. Article 3 of the new Constitution provided:

> "The territory of the Republic of Macedonia is indivisible and inalienable.
> The existing borders of the Republic of Macedonia are inviolable.
> The borders of the Republic of Macedonia may be changed only in accordance with the Constitution."[23]

2.7. Article 8 of the new Constitution declared the rule of law as a fundamental system of government:

> "The fundamental values of the constitutional order of the Republic of Macedonia are:
> – the fundamental freedoms and rights of the individual and citizen, recognized in international law and determined in the Constitution;
> – the free expression of national identity;
> – the rule of law;
> – the separation of state powers into legislative, executive and judicial;
> – political pluralism and free, direct and democratic elections;
> – the legal protection of property;
> – the freedom of the market and entrepreneurship;
> – humanity, social justice and solidarity;

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[22] "Decision on Promulgating the Constitution of the Republic of Macedonia" (17 November 1991), *Official Gazette of the Republic of Macedonia*, No. 52, Year XLVII (Skopje, 22 November 1991): Annex 17.

[23] Article 3 was amended by way of constitutional amendment on 6 January 1992; see the "Decision Promulgating Amendments I and II to the Constitution of the Republic of Macedonia" (6 January 1992), *Official Gazette of the Republic of Macedonia,* No. 1, Year XLVIII (10 January 1992): Annex 19 (see further para. 2.12 and note 33 below). It now reads as follows:

> "The territory of the Republic of Macedonia is indivisible and inviolable.
>
> The existing borders of the Republic of Macedonia are inviolable.
>
> The borders of the Republic of Macedonia can only be changed in accordance with the Constitution and on the principle of free will, as well as in accordance with generally accepted international norms.
>
> The Republic of Macedonia has no territorial pretensions towards any neighboring state."

– local self-government;
– space development based on urban and rural planning to promote and improve social wellbeing and protection and promotion of the environment and nature; and
– respect for the generally accepted norms of international law.

Anything that is not prohibited by the Constitution or by law is permitted in the Republic of Macedonia."

2.8. Articles 9 to 49 guaranteed respect for fundamental human rights, minority rights and socio-economic rights. The Constitution also emphasized the Applicant's policy aimed at the recognition and respect of the human rights and freedoms of minority groups identifying themselves as Macedonian living in neighbouring states (Article 49).[24]

Section II. The Quest for International Recognition: the European Community and the United Nations

2.9. This section provides the contextual information to explain the circumstances in which the Interim Accord came to be drafted and agreed by the Parties. As made clear in Chapter I, the dispute before the Court does not relate to the difference between the Parties concerning the Applicant's name.

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[24] Article 49 was amended by way of constitutional amendment on 6 January 1992 to include an additional provision clarifying that "[i]n the exercise of this concern the Republic will not interfere in the sovereign rights of other states or in their internal affairs…": see the "Decision Promulgating Amendments I and II of the Constitution of the Republic of Macedonia" (6 January 1992), *supra*: Annex 19 (see further paragraph 2.12 below). In relation to the issue of minorities, see further, for example: the Council of Europe, Commissioner for Human Rights, *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008. Issue reviewed: Human rights of minorities*, (19 February 2009), CommDH(2009)9), paragraph 16; see also UN Human Rights Council, *Report of the Independent Expert on Minority Issues, Gay McDougall: addendum: mission to Greece (8-16 September 2008)*, (18 February 2009), A/HRC/10/11/Add.3, paragraphs 84 and 90; Council of Europe, European Commission against Racism and Intolerance, *Third Report on Greece*, (8 February 2004), CRI(2004)24, paragraph 81. See also: *Ouranio Toxo and Others v. Greece*, (2007) 45 *EHRR* 8, paragraph 40 and *Sideropoulos and Others v. Greece*, (1999) 27 *EHRR* 633, paragraphs 30-47.

A. Initial engagement with the European Community

2.10. Following its proclamation of independence, the Applicant, along with other former Yugoslav republics, sought recognition from the European Community (EC). It participated in the Peace Conference on the Former Yugoslavia and engaged with the Arbitration Commission (known as "the Badinter Committee", after its chair Robert Badinter),[25] set up under the auspices of the EC to evaluate applications for recognition made to the EC by former Yugoslav republics. The Badinter Committee was mandated to assess claims for recognition against the *Declaration on the Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union* ("the *Guidelines*")[26] and

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[25] The Badinter Committee comprised five senior jurists from different European Countries: Mr Badinter, President of the French Constitutional Court, the Presidents of the German, Spanish and Italian Constitutional Courts, namely Roman Herzog, Franciso Tomás y Valiente and Aldo Corasaniti, and the President of the Belgian Court of Arbitration, Irene Petry. Established by the Council of Ministers of the EC, the Committee provided legal advice on applications for recognition made by former Yugoslav states, as well as on other legal matters arising from the dissolution of SFRY.

[26] *Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and the Soviet Union",* annexed at Annex II to a letter dated 17 December 1991 from the Representatives of Belgium, France and the United Kingdom of Great Britain and Northern Ireland addressed to the President of the United Nations Security Council, UN doc. S/23293 (17 December 1991): Annex 24. The *Guidelines* underscored the EC's recognition of the "the principle of self-determination" and affirmed the readiness of the EC to recognize new states "subject to the normal standards of international practice and the political realities in each case." The Guidelines provided that, in order to be recognized, new States must have "constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiations." The Guidelines further set out the following requirements which former Yugoslav republics had to satisfy in order for recognition to be granted:

> "– Respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights;
>
> – Guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE *[Commission on Security and Cooperation in Europe]*;
>
> – Respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement;
>
> – Acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability;
>
> – Commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes."

the *Declaration on Yugoslavia* ("the *Declaration*"),[27] issued by EC Foreign Ministers at an Extraordinary Meeting in Brussels on 17 December 1991. The *Declaration* provided that any former Yugoslav republic wishing to be recognized as an independent state should submit its application for recognition – which was to include a statement of acceptance of the principles set out in the *Declaration* and *Guidelines* – to the newly established Badinter Committee. It also included a specific condition for recognition, included at the insistence of the Respondent and directed to the Applicant, which provided as follows:

> "The Community and its Member States also require a Yugoslav Republic to commit itself, prior to recognition, to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring community State and that it will conduct no hostile propaganda activities versus a neighbouring community State, including the use of a denomination which implies territorial claims."

2.11. Two days after the Brussels Meeting, on 19 December 1991, the Assembly of the Applicant adopted the "Declaration on the International Recognition of the Republic of Macedonia as a Sovereign and Independent State".[28] The Declaration underscored the Applicant's desire for international recognition as an independent and sovereign state and its commitment to the EC *Guidelines* and *Declaration*.

2.12. The Applicant's formal request for recognition by EC Member States was submitted to the EC on 20 December 1991[29] and was considered by the Badinter Committee over the following month. During that time, the

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[27] *Declaration on Yugoslavia*, annexed at Annex I to a letter dated 17 December 1991 from the Representatives of Belgium, France and the United Kingdom of Great Britain and Northern Ireland addressed to the President of the United Nations Security Council, UN doc. S/23293 (17 December 1991): Annex 24.

[28] "Declaration on the International Recognition of the Republic of Macedonia as a Sovereign and Independent State" (19 December 1991), *Official Gazette of the Republic of Macedonia,* No. 57, Year XLVII (24 December 1991): Annex 18.

[29] Letter dated 20 December 1991 from the Applicant's Minister for Foreign Relations, Dr. Denko Maleski, to the President of the Council of Ministers of the European Communities: Annex 107.

Applicant, once again, reaffirmed unequivocally in dialogue with the Badinter Committee that it harboured no irredentist claims towards – nor would it engage in any hostile activity against – the Respondent or any other European state.[30] Furthermore, it was willing to reiterate those commitments – already set out in Articles 2 to 4 of the Declaration "on [the] sovereign and independent state of Macedonia" of 17 September 1991 of (see paragraphs 2.3 to 2.5 above) and already guaranteed under Articles 3 and 8 of its Constitution (see paragraphs 2.6 and 2.7 above) – by way of constitutional amendment, in order to allay the Respondent's fears.[31] Amendments 1 and 2 to the Constitution place beyond doubt the Applicant's lack of territorial claims in relation to the Respondent or to any other state:

> "Amendment 1
>
> 1. The Republic of Macedonia has no territorial pretentions towards neighbouring state.
>
> 2. The borders of the Republic of Macedonia can only be changed in accordance with the Constitution, and on the principle of free will, as well as in accordance with generally accepted international norms... .

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[30] See, for example, the responses by the Applicant's Ministry of Foreign Relations to questions posed by the Badinter Committee, *Answers of the Republic of Macedonia to the Questions of the Arbitration Commission of the Conference for Peace in Yugoslavia* (29 December 1991): Annex 108; and the formal undertaking, given by the Applicant's Minister for Foreign Affairs, Dr. Denko Maleski, by way of letter dated 10 January 1992 to the President of the Arbitration Commission of the Conference on Yugoslavia, that the Applicant would refrain from any hostile propaganda against any neighbouring Member State of the European Community: (Annex 111), as referenced at paragraph 2 of Arbitration Commission's *Opinion No. 6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States* (14 January 1992), annexed at Annex III to the letter dated 26 May 1993 from the United Nations Secretary-General to the President of the Security Council, UN doc. S/25855 (28 May 1993): Annex 33.

[31] "Decision Promulgating Amendments I and II to the Constitution of the Republic of Macedonia", *supra*: Annex 19. See also the letter dated 6 January 1992 from the Applicant's Minister for Foreign Affairs, Dr. Denko Maleski, to the President of the Arbitration Commission of the Conference on Yugoslavia, Robert Badinter, informing him of the adoption of the constitutional amendments by the Applicant's Assembly: Annex 110. It is important to underscore that this is one of the only examples in history of a State voluntarily amending its constitution in order to allay the concerns of a neighbouring State.

Amendment 2

1. In the exercise of this concern the Republic will not interfere in the sovereign rights of other states or in their internal affairs...".[32]

2.13. In its *Opinion No. 6* of 14 January 1992,[33] the Badinter Committee determined that the Applicant fulfilled *all* the conditions for recognition as determined by the EC. It noted in particular that the Applicant had formally renounced all territorial claims and confirmed *inter alia* that "the use of the name Macedonia" *did not* imply any territorial claim against the Respondent.[34]

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[32] "Decision Promulgating Amendments I and II to the Constitution of the Republic of Macedonia", *supra*. Clause 1 of Amendment I is an Addendum to Article 3 of the Constitution. Clause 2 of Amendment I replaces Paragraph 3 of the same Article. Amendment II is an Addendum to paragraph 1 of Article 49 of the Constitution. Twenty-nine further amendments have been made to the Constitution since 1992: see "Constitution of the Republic of Macedonia: with the amendments to the constitution I-XXX", *Official Gazette of the Republic of Macedonia*, ISBN 978-9989-617-65-2 (Skopje, 2007) at http://www.slvesnik.com.mk/WBStorage/Files/USTAV-eng.pdf, and the "Decision Promulgating Amendment XXXI to the Constitution of the Republic of Macedonia", *Official Gazette of the Republic of Macedonia*, No. 3 (Skopje, 9 January 2009).

[33] Arbitration Commission on the Conference on Yugoslavia, *Opinion No. 6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States* (14 January 1992) annexed at Annex III to the letter dated 26 May 1993 from the United Nations Secretary-General to the President of the Security Council, UN doc. S/25855 (28 May 1993): Annex 33. This was one of four Opinions handed down by the Badinter Committee on 14 January 1991, concerned with the question of whether the individual former Yugoslav federal republics in question, namely Bosnia-Herzegovina (*Opinion 4*), Croatia (*Opinion 5*), Macedonia (*Opinion 6*) and Slovenia (*Opinion 7*), had satisfied the conditions for recognition by EC Member States, as laid down by the Council of Ministers of the EC on 16 December 1991.

[34] See paragraph 5 of *Opinion 6*, *supra*, at pg. 11:

> "...the Republic of Macedonia satisfies the tests in the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union and the Declaration on Yugoslavia adopted by the Council of the European Communities on 16 December 1991;
>
> - ...the Republic of Macedonia has, moreover, renounced all territorial claims of any kind in unambiguous statements binding in territorial law; ... *the use of the name "Macedonia" cannot therefore imply any territorial claim against another State* [emphasis added]; and
>
> - ...the Republic of Macedonia has given a formal undertaking in accordance with international law to refrain, both in general and pursuant to Article 49 of its Constitution in particular, from any hostile propaganda against any other State...".

2.14. However, to the considerable regret of the Applicant,[35] the EC Member States, under direct pressure from the Respondent,[36] set aside the clear legal advice provided by the Badinter Committee and declined to grant recognition to the Applicant.[37] Therefore, as a result of the Respondent's objections, and despite unequivocal independent confirmation that the Applicant harboured no territorial claims against the Respondent, the Applicant remained in a state of suspense, denied recognition of its independent statehood.

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[35] See, for example, the statement of the Applicant's President, Kiro Gligorov, *Statement on the Declaration of the European Community on Macedonia, dated 2 May 1992* (2 May 1992): Annex 115; and the "Declaration" of the Assembly of the Applicant in relation to the Declaration on the former Yugoslavia of the Council of the European Communities (3 July 1992): Annex 20.

[36] See letters from the Respondent's President, Kostas Karamanlis to the EC Heads of Government dated 3 January 1992: (Annex 109); and to Italy's Prime Minister dated 21 January 1992: (Annex 113) both in G. Valinakis & S. Dalis (eds.), *The Skopje Question — Attempts towards Recognition and the Greek Position, Official Texts 1990-1996*, (2nd ed., 1996), Sideris/ELIAMEP, at pp. 63-64 and 83-84 respectively; and the letter dated 17 January 1992 from the Respondent's Minister for Foreign Affairs, Andonis Samaras, to the European Communities Foreign Ministers) and the Official address of the Respondent's Minister for Foreign Affairs, Andonis Samaras, *Address of Foreign Minister Andonis Samaras* (Lisbon, 17 February 1992) in A. Tziambiris, *Greece, European Political Cooperation and the Macedonian Question* (2000), at pp. 207-213 (Annex 112) and pp. 218-232 (Annex 114) respectively.

[37] On 15 January 1992, the EC announced that it would give official recognition to Slovenia and Croatia exclusively, effectively setting aside the legal advice of the Badinter Committee (Statement by the Presidency on Recognition of Yugoslav Republics (15 January 1992), EPC Press Release 9/92). Subsequent decisions and pronouncements by the EC bodies made clear that the refusal to recognize the Applicant was due to the Respondent's opposition to the name of the State: see for example the statement made by the Council of Ministers at Guimaraes on 2 May 1992 to the effect that EC Member States "were willing to recognise that State [the Applicant] as a sovereign and independent state, within its existing borders, and under a name that can be accepted by all parties concerned", (Informal Meeting of Ministers for Foreign Affairs, *Declaration on the former Yugoslav Republic of Macedonia*, Guimaraes, 1-2 May 1992, EPC Press Release 53/92); and the statement by the Council of the EC at the Lisbon Summit of 27 June 1992 that it would only recognize the new Applicant "under a name which does not include the term Macedonia", (European Council, *Declaration on the former Yugoslavia*, Lisbon, 27 June 1992, *Bull. EC* 6-1992, p. 22: http://aei.pitt.edu/1420/01/Lisbon_june_1992.pdf), a position maintained at the EC Summit in Edinburgh on 12 December 1992 (European Council, *Conclusions of the Presidency*, SN/456/92, Section D, External Relations (11-12 December 1992): http://www.europarl.europa.eu/summits/edinburgh/d0_en.pdf).

2.15. The failure by the EC to recognize the Applicant was followed by a vote of no confidence in the Applicant's Government in July 1992, leading to fears that it could spark serious social unrest within the fledgling state. Those fears were compounded by a fuel embargo imposed by the Respondent on the Applicant in August 1992 on all oil imports, which caused extreme economic damage to the Applicant[38] and was to serve as a prelude to the full economic embargo the Respondent was to impose on the Applicant in 1994.[39] Due to the lack of international recognition of the Applicant, membership of – and assistance from – international financial institutions and organizations, such as the World Bank, remained out of reach for the Applicant during this period of economic crisis.[40]

B. The Applicant's Membership of the United Nations and Resolution 817

2.16. During the course of 1992 and early 1993 the independent statehood of the Applicant was recognized by a number of states, including Bulgaria,[41] Turkey,[42] Croatia,[43] Slovenia,[44] Lithuania,[45] the Russian Federation,[46] and Morocco.[47] However, recognition by the EC and its Member States remained elusive, due primarily to the Respondent's objections to the Applicant's constitutional

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38 See the letter dated 1 October 1992 from the Applicant's President, Kiro Gligorov, to the Foreign Affairs Minister of the Kingdom of the Netherlands, Hans van den Broek: (Annex 117); similar letters were sent to all EC States' foreign ministers. The difficulties faced by the Applicant in gaining international recognition due to the difference over the name were widely recognized as one of the significant risks to the internal stability of the State. See for example the United States Congressional Research Service*, Report for Congress on Macedonia: Recognition and Conflict Prevention* (Washington DC, April 1993), p. 4.

39 See further paragraphs 2.27 to 2.28 below.

40 See for example, President of the Applicant, *Exposé at the Fifty-second Session of the Assembly of the Republic of Macedonia* (Skopje, 9 December 1992): Annex 118.

41 15 January 1992.

42 6 February 1992.

43 12 February 1992.

44 12 February 1992.

45 25 June 1992.

46 5 August 1992.

47 18 September 2002.

name.[48] It was against this background that the Applicant sought membership of the United Nations. On 30 July 1992 it submitted a formal application for membership to the United Nations[49] which was forwarded by the United Nations Secretary-General to the Security Council by way of a Note dated 22 January 1993.[50]

2.17. The Applicant's request for membership of the United Nations was met with strong objections from the Respondent, similar to those raised within the EC context.[51] However, in March 1993, following protracted negotiations led by the three EC members on the Security Council (France, Spain and the United Kingdom), the Parties eventually agreed to measures to enable the Applicant

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48 See in this regard, for example, Office of the President, *Statement by the Applicant's President, Kiro Gligorov, in respect of the EC Declaration of June 27, 1992 in Lisbon*, following the determination by the EC not to recognize the Applicant under any name containing the word 'Macedonia', (Skopje, 28 June 1992): Annex 116.

49 Note by the United Nations Secretary-General, circulating the application dated 30 July 1992 from the Applicant's President, Kiro Gligorov, for admission to membership of the United Nations, UN doc. S/25147 (22 January 1993): Annex 25.

50 The delay was in large part intended to facilitate various mediation efforts facilitated by the EC, under the presidencies of Portugal and the United Kingdom, to find a resolution to the difference concerning Applicant's name. However, in December 1992, despite the Applicant not being a member of the United Nations, and at the request of the Applicant, the Security Council, by way of resolution 795 of 11 December 1992, authorized the Secretary-General to establish a United Nations presence in the Applicant state, to prevent instability within the country and to prevent it being drawn into the conflicts raging in other parts of the former Yugoslavia. Resolution 795 referred to the Applicant as 'the former Yugoslav Republic of Macedonia'.

51 See the letter dated 25 January 1993 from the Respondent's Permanent Representative to the United Nations, Antonios Exarchos, to the United Nations Secretary-General, forwarding a letter and annex of the same date from the Respondent's Minister for Foreign Affairs, Michael Papaconstantinou, to the United Nations Secretary-General, UN doc. S/25158 (25 January 1993), formally objecting to the admission of the Applicant to membership of the United Nations "prior to a settlement of certain outstanding issues necessary for safeguarding peace and stability, as well as good neighbourly relations in the region", UN doc. S/25158 (25 January 1993): Annex 26. The Applicant's President, Kiro Gligorov, responded to the Respondent's allegations in a memorandum submitted to the United Nations Secretary-General on 5 February 1993: Annex 27.

to become a member of the United Nations.[52] Thus, United Nations Security Council resolution 817[53] of 7 April 1993 provides as follows:

> "The Security Council,
>
> Having examined the application for admission to the United Nations in document S/25147,
>
> Noting that the applicant fulfils the criteria for membership in the United Nations laid down in Article 4 of the Charter,
>
> Noting however that a difference 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,
>
> Welcoming the readiness of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, at the request of the Secretary-General, to use their good offices to settle the above-mentioned difference, and to promote confidence-building measures among the parties,
>
> Taking note of the contents of the letters contained in documents S/25541, S/25542 and S/25543 received from the parties,
>
> 1. Urges the parties to continue to cooperate 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. Recommends to the General Assembly that the State whose application is contained in document S/25147 be admitted to

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[52] See letters from the Applicant's Prime Minister, Branko Crvenkovski, to the President of the Security Council dated 24 March 1993, UN doc. S/25541 (6 April 1993): Annex 28; and 5 April 1993, UN doc. S/25542 (6 April 1993): Annex 29; and the letter dated 6 April 1993 from the Respondent's Minister for Foreign Affairs, Michael Papaconstantinou, to the President of the Security Council, UN doc. S/25543 (6 April 1993): Annex 30. Agreed measures included, *inter alia*, the non-hoisting at the United Nations buildings of the Applicant's national flag on the date of its admission (see UN doc. S/25543 (6 April 1993): Annex 30), and the seating of the Applicant in the General Assembly under 'T' for 'the' former Yugoslav Republic of Macedonia, rather than under 'M' (as sought by the Applicant) or 'F' (as sought by the Respondent).

[53] United Nations Security Council resolution 817 (1993) (SC/RES/817) (7 April 1993): Annex 22.

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. Requests 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."

2.18. Preambular paragraph 2 of resolution 817 made clear that there was no dispute that the Applicant fulfilled all the criteria for membership of the United Nations Charter.[54] Although resolution 817 urged the Parties to cooperate to arrive at a speedy settlement of their difference regarding the Applicant's name, under the auspices of the United Nations Secretary-General, the text of resolution 817 also made clear that the Applicant's membership of the United Nations was in no way qualified or conditional on any such settlement.

2.19. The Applicant is not identified by name within resolution 817. Rather, the State is referred to as "the State whose application is contained in document S/25147"[55] or simply as "the State". In view of the "difference" between the parties concerning the Applicant's name, the Resolution provides that the Applicant will be "provisionally referred to ... within the United Nations as 'the former Yugoslav Republic of Macedonia'", until such time as a settlement is reached between the Applicant and the Respondent regarding the name of the State.[56] Thus, following resolution 817, by way of General Assembly Resolution 225,[57] the Applicant was admitted to the United Nations on 8 April

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[54] As set out at Article 4 of the United Nations Charter: "Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations."

[55] The application to join the United Nations was made in the name of the 'Republic of Macedonia'.

[56] Resolution 817, *supra*: Annex 22, see also note 52 *supra*: Annexes 28-30.

[57] This followed a favourable opinion of the Committee on the admission of new members: *Report of the Committee on the Admission of New Members Concerning the Application*

1993, becoming its 181st member. It took up its seat alphabetically next to Thailand, under the letter 't' (as in 'the').

2.20. As is made clear by the language of paragraph 2 of Resolution 817, 'the former Yugoslav Republic of Macedonia' was not intended to represent a new provisional *name* for the Applicant state; rather, the formulation was a provisional descriptive *designation* referring to the State's previous status in order for it to be identifiable within the UN, pending resolution of the dispute over its name.[58] Significantly, the Resolution did not require the Applicant *to call itself* 'the former Yugoslav Republic of Macedonia', and the Applicant never agreed to refer to itself as such. Consequently, in accordance with resolution 817 and without raising any difficulties with the United Nations Secretariat, the Applicant has always used its constitutional name in written and oral communications with the United Nations, its members and officials:

- *Written communications*: Written documents, including letters, *notes verbales*, reports and ratification instruments are submitted by the Applicant to the United Nations using its constitutional name. Where they are to be circulated as official United Nations documents, a cover sheet is attached to the document by the United Nations Secretariat, bearing the United Nations logo and using the provisional reference referred to in resolution 817, and the document is circulated unaltered.[59] Neither the United Nations nor the Respondent has ever objected to this practice, or refused to accept or consider documents from the Applicant in which the Applicant uses its constitutional name. Furthermore, in signing multilateral agreements for which the United Nations is the depository, the practice of the Applicant is and has always been for the

for Admission to Membership in the United Nations contained in Document S/25147, UN doc. S/25544 (7 April 1993): Annex 31.

[58] See further Chapter V, para. 5.66.

[59] For recent examples, see: the United Nations Human Rights Council, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1. The former Yugoslav Republic of Macedonia*, UN doc. A/HRC/WG.6/5/MKD/1 (23 February 2009); General Assembly, Security Council, *Letter from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the Secretary-General*, UN doc. S/2008/763 (5 December 2008).

person signing on its behalf to insert on the signature page, above his or her signature and below the provisional reference, the words: "on behalf of the Republic of Macedonia".[60]

- *Oral communications:* Representatives of the Applicant at the United Nations always use the Applicant's constitutional name in oral communications and statements, as agreed in discussions preceding resolution 817. This practice is in-keeping with resolution 817, and as such has never been criticized by the United Nations. The Respondent routinely objected to the use by representatives of the Applicant of its constitutional name over the course of the initial years following the admission of the Applicant to the United Nations, and was repeatedly advised by the Applicant to seek the opinion of the United Nations Office of Legal Affairs as to the lawfulness of the Applicant's usage. Its objections since that time have been few and far between.

C. United Nations-Led Negotiations and Security Council Resolution 845

2.21. Following the adoption of resolution 817, and pursuant to its terms, further negotiations between the Parties, intended to resolve the difference concerning the Applicant's name and to devise and seek agreement on "confidence building measures", were initiated by the Co-Chairs of the Steering Committee on the International Conference on the former Yugoslavia, namely Cyrus Vance, the United Nations representative at the Conference, and Lord Owen, the EC representative.

2.22. As a result of those discussions, a draft treaty entitled Treaty Confirming the Existing Frontier and Establishing Measures for Confidence Building,

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[60] See for example, the following acts of ratification: United Nations, Convention on Environmental Impact Assessment in a Transboundary Context, *C.N.784.1999. TREATIES-10*, (3 September 1999); United Nations, Rome Statute of the International Criminal Court, *C.N.210.2002.TREATIES-6*, (7 March 2002); United Nations, United Nations Convention against Transnational Organized Crime, *CN.29.2005.TREATIES*-3, (24 January 2005).

Friendship and Neighbourly Cooperation[61] ("the 1993 draft Treaty") was presented to the Parties by Mr Vance and Lord Owen on 14 May 1993, and circulated to the United Nations Security Council, pursuant to resolution 817, as an annex to a letter from the United Nations Secretary-General dated 26 May 1993.[62] The 1993 draft Treaty proposed the name 'the Republic of Nova Makedonija' as a name for the Applicant, "to be used for all official purposes, domestic and international".[63] It comprised a preamble, *inter alia* "recalling the principles of the inviolability of frontiers and the territorial integrity of States...", and twenty-five articles, divided into six sections: Part A of the 1993 draft Treaty set out a number of special provisions designed to promote friendly relations between the Parties and to constitute confidence-building measures. Parts B to E set out provisions for mutual respect and neighbourly cooperation: Part B dealt with human and cultural rights, Part C with European institutions, Part D with treaty relations, Part E with economic, commercial, environmental and legal relations, and Part F with final clauses, including the peaceful settlement of disputes. Part C is the section of the 1993 draft Treaty most relevant to the current proceedings. It provided as follows at draft Article 11, under the heading 'European Institutions':

> "1. The Republic of Greece shall endeavour to support, wherever possible, the admission of the Republic of Nova Makedonija to those European institutions of which Greece is a member.
>
> 2. The Parties agree that the ongoing economic transformation of the Republic of Nova Makedonija should be supported through international cooperation, as far as possible by a closer relationship of the Republic of Nova Makedonija with the European Economic Area and the European Community."

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61 See further Chapter IV, Sections I and II. The 1993 draft Treaty was itself based on an earlier treaty drafted by Sir Robin O'Neill, Special Envoy of the President of the European Community, entitled "Treaty for the Confirmation of the Existing Frontier".

62 Annex V of the letter dated 26 May 1993 from the United Nations Secretary-General, Boutros Boutros-Ghali, to the President on the Security Council, entitled *Draft Proposed by Cyrus Vance and Lord Owen, 14 May 1993*, UN doc. S/25855 (28 May 1993): Annex 33.

63 Annex I of the letter dated 26 May 1993 from the United Nations Secretary-General, Boutros Boutros-Ghali, to the President on the Security Council, *supra*: Annex 33.

2.23. The 1993 draft Treaty was rejected by the Respondent on 27 May 1993[64] and by the Applicant on 29 May 1993,[65] primarily due to the proposal of 'the Republic of Nova Makedonija' as the name for the Applicant, a proposal deemed unacceptable by both Parties. In light of the continued lack of agreement between the Parties, three weeks later, the United Nations Security Council passed a further resolution, expressing its thanks to the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for their efforts to find a resolution, and commending the 1993 draft Treaty as a "basis for the settlement" of the difference concerning the Applicant's name. Resolution 845 (1993) provides as follows:

> "The Security Council,
>
> Recalling its resolution 817 (1993) of 7 April 1993, in which it urged Greece and the former Yugoslav Republic of Macedonia to continue to cooperate 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,
>
> Having considered the report of the Secretary-General submitted pursuant to resolution 817 (1993), together with the statement of the Government of Greece and the letter of the President of the former Yugoslav Republic of Macedonia dated 27 and 29 May 1993 respectively (S/25855 and Add.1 and 2),
>
> 1. Expresses its appreciation to the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia for their efforts and *commends to the parties as a sound basis for the settlement of their difference the proposals set forth in annex V to the report of the Secretary-General*;

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[64] Letter dated 28 May 1993 from the United Nations Secretary-General to the President of the Security Council, circulating a statement transmitted to him by the Respondent's Ambassador and Special Envoy, George D. Papoulias, on 27 May 1993, UN doc. S/25855/Add.1 (3 June 1993): Annex 34.

[65] Letter dated 3 June 1993 from the United Nations Secretary-General to the President of the Security Council, transmitting a letter dated 29 May 1993 to him from the Applicant's President, Kiro Gligorov, UN doc. S/25855/Add.2 (3 June 1993): Annex 35.

2. Urges 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;

3. Requests the Secretary-General to keep the Council informed on the progress of these further efforts, the objective of which is to resolve the difference between the two parties before the commencement of the forty-eighth session of the General Assembly, and to report to the Council on their outcome in good time, and decides to resume consideration of the matter in the light of the report." [emphasis added][66]

2.24. Negotiations continued pursuant to resolution 845 until October 1993 under the lead of Mr Vance, acting as the United Nations Secretary-General's Envoy. However, they came to an abrupt end in October 1993 when the Respondent's newly-elected Socialist government withdrew from the negotiations with the ultimatum that the Respondent was only willing to proceed with the negotiations, provided that the Applicant acquiesce to the Respondent's demands.[67]

D. The Applicant's Growing International Integration and Recognition and the Economic Embargo

2.25. Following resolution 817 and pursuant to the Applicant's membership of the United Nations, the Applicant was able to secure membership of numerous

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[66] United Nations Security Council resolution 845 (1993) (SC/RES/845) (18 June 1993): Annex 23.

[67] See the letter dated 5 November 1993 from the Respondent's Minister of Foreign Affairs, Karolos Papoulias, to the United Nations Secretary-General: Annex 36; and the letter in response dated 8 November 1993 from the United Nations Secretary-General to the Respondent's Minister of Foreign Affairs, Karolos Papoulias: Annex 37; both in G. Valinakis & S. Dalis (eds.), *op. cit.*, at pp. 177-180 and 181-182 respectively (Annex 37), as well as the letter dated 24 November 1993 from the Applicant's Minister of Foreign Relations, Stevo Crvenkovski, to the United Nations Secretary-General: Annex 38. This toughening of the Respondent's stance was directly linked to the change of its Government: see the letter dated 31 March 1994 from the United Nations Secretary-General, Boutros Boutros-Ghali, to the President of the Security Council, UN doc. S/1994/376 (1 April 1994): Annex 39.

United Nations bodies and agencies, including the World Health Organization (WHO),[68] the International Labor Organization (ILO)[69] and the United Nations Educational, Scientific and Cultural Organization (UNESCO).[70] However, the Applicant was met with objections by the Respondent in its attempts to join various other non-United Nations affiliated international, multilateral and regional institutions and organizations of which the Respondent was already a member, including the Council of Europe and the Conference on the Security and Cooperation in Europe, due to the difference concerning the Applicant's name. The destabilizing effect on the Applicant of its unsuccessful applications to join those organizations was noted by the United Nations Special Rapporteur of the Commission on Human Rights in his 1994 report on the situation of human rights in the territory of the former Yugoslavia. His recommendations relating to the Applicant included:

> "... that equal and fair treatment should be given to the former Yugoslav Republic of Macedonia in regard to its applications to join international organizations. It is particularly important that the former Yugoslav Republic of Macedonia be promptly allowed to join all relevant security mechanisms, particularly the Conference on Security and Cooperation in Europe."[71]

2.26. Admission to the United Nations paved the way for diplomatic recognition to be extended to the Applicant by numerous states across the world. Thus, in the months following the adoption of Security Council resolution 817, countries including New Zealand,[72] Slovakia[73] and the People's Republic of China[74]

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68 22 April 1993.

69 28 May 1993.

70 28 June 1993.

71 Note by the United Nations Secretary-General transmitting the *Ninth Periodic Report on the Situation of Human Rights in the territory of the former Yugoslavia*, submitted by Tadeusz Mazowiecki, Special Rapporteur of the United Nations Commission on Human Rights, UN doc. S/1994/1252 (4 November 1994), p. 52, para. 243: Annex 41.

72 4 April 1993.

73 26 June 1993. Diplomatic relations were established in 4 March 1994.

74 12 October 1993.

formally recognized the Applicant. Six European Union (EU)[75] Member States (Denmark, France, Germany, Italy, the Netherlands and the United Kingdom) followed suit on 16 December 1993, establishing full diplomatic relations with the Applicant and, by the end of December 1993, all EU Member States – with the exception of the Respondent – had recognized the Applicant under the provisional reference.[76] This trend continued through early 1994, with the United States of America formally recognizing the Applicant on 9 February 1994,[77] followed by Japan on 1 March 1994.

2.27. Increased international recognition of the Applicant prompted strong protests on the part of the Respondent,[78] and on 16 February 1994, in direct response to the recognition of the Applicant by the United States, the Respondent imposed a trade and transit embargo on the Applicant,[79] blocking all goods to the land-locked State, save for medicine and humanitarian aid. The embargo lasted 19 months and cost the Applicant an estimated $1 billion,[80] causing significant damage to its economy, and bringing the State to the brink of economic collapse. The Respondent's position was strongly criticized within Europe.[81]

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75 The European Union was formally established on 1 November 1993, with the coming into force of the Maastricht Treaty.

76 Formal diplomatic relations between the Applicant and the EU were established on 10 January 1996.

77 Diplomatic relations were established on 13 September 1995.

78 John Shea, *Macedonia and Greece: The Struggle to Define a New Balkan Nation*, McFarland & Company (1997), p 284.

79 The Applicant immediately denounced the embargo as "an act violating the provisions of the Charter of the United Nations, CSCE documents and international law", *Statement with regard to the decision of the Government of the Republic of Greece of 16 February 1994*, UN doc. S/1994/194 (18 February 1994). For the impact of the embargo, see: *Information about the losses the economy of the Republic of Macedonia has suffered as a consequence of the trade and transport embargo imposed by the Republic of Greece*, Government of the Republic of Macedonia, Skopje, (15 April 1994).

80 The effect of the Respondent's embargo was heightened by the United Nations embargo on the Applicant's main trading partner, Serbia, to the North of the Applicant, cutting off not only trade, but also trucking routes and the Applicant's only rail link to the rest of Europe: United Nations Secretary-General, *Report of the Secretary-General pursuant to Resolution 908 (1994)*, UN doc. S/1994/1067 (17 September 1994), paragraph 24: Annex 40.

81 See, for example, Resolution 1027 (1994) of the Council of Europe "strongly [disapproving] of the measures taken by the Greek Government which could have a

2.28. Throughout the embargo, and despite the crippling effects on its economy and social structure brought about by the Respondent's actions,[82] the Applicant remained fully open and willing to negotiate with the Respondent.[83] In October 1994, the Applicant's President, Kiro Gligorov, used the opportunity of a re-election speech to reiterate that the Applicant was "... prepared to discuss all issues of importance to Macedonian-Greek relations which do not threaten our national identity and the dignity of our country and our people" and "... prepared to approach the signing of an agreement with the Republic of Greece regarding the inviolability of our mutual border ... guaranteed by the United Nations, the European Union, the United States ... ." He also gave yet another solemn guarantee that the "... Constitution of the Republic of Macedonia does

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destabilising effect in a region particularly vulnerable at this time"; further (although it is accepted that individual Parliamentarians from the Council of Europe cannot be deemed to represent the views of states), see the comments of Mr Atkinson (United Kingdom) at the Council of Europe's Parliamentary Assembly, Parliamentary Assembly of the Council of Europe, 1994 Session, 21st Sitting, (30 June 1994): "[q]uite how Greece thought that Macedonia could invade its northern territories it has never said, which is not surprising. It would be impossible for Macedonia to invade Greece. It has had no tanks, no artillery and no rockets since the Yugoslav army sequestrated all essential military equipment from Macedonia. True, Macedonia has sixty qualified jet fighter pilots, but it has no planes for them to fly and there is, of course, no Macedonian navy because Macedonia has no coast" (Council of Europe, Parliamentary Assembly, *Official Report of Debates*, 1994 Session, vol. 3, (1998) p. 584). See also, the statement of Mr Seitlinger (France): "As far as the alleged territorial threats are concerned, Mr Atkinson has already explained that Macedonia is the most demilitarized area in Europe. It does not have a single aircraft, missile or tank and cannot therefore threaten anyone. The allegation is preposterous." (Council of Europe, Parliamentary Assembly, *Official Report of Debates*, 1994 Session, vol. 3, p 585 (1998).

[82] See, for example, the United Nations Secretary-General's *Report* of 17 September 1994, pursuant to Resolution 908 (1994), acknowledging the direct role played by the Respondent's embargo in the economic and social crisis faced by the Applicant: UN doc. S/1994/1067 (17 September 1994), paragraph 24: Annex 40; and the report by the Special Rapporteur of the United Nations Commission on Human Rights, expressing concern over the negative influence of the economic situation on the social stability of the country and its impact on broader social issues: United Nations Commission on Human Rights, *Ninth Periodical Report on the Situation of Human Rights in the former Yugoslav Republic of Macedonia*, submitted by Tadeusz Mazowiecki, UN doc. S/1994/1252 (4 November 1994), p. 49, paragraph 225: Annex 41.

[83] See, for example, the letter dated 23 February 1994 from the Applicant's President, Kiro Gligorov, to the Respondent's Prime Minister, Andreas Papandreou, requesting a meeting and reiterating the Applicant's readiness to sign an agreement guaranteeing the inviolability of the border between the Applicant and the Respondent, guaranteed by the United Nations or the EU: Annex 49.

not contain any territorial pretensions nor expressions of interference in the internal affairs of Greece or any other neighbor."[84]

Section III. The Interim Accord and its Application

A. The Content and Structure of the Interim Accord

2.29. Against the background set out in Section II, the Parties negotiated and adopted the Interim Accord. The Interim Accord is a provisional agreement, intended to enable and facilitate the bilateral relationship between the Applicant and the Respondent for the period prior to a permanent agreement resolving the name difference. It contains one provision, Article 5, which reaffirms the framework for negotiations concerning the name difference.

2.30. The text of the Interim Accord was largely based on the 1993 draft Treaty proposed by Mr Vance and Lord Owen,[85] and its structure and many of its provisions mirror those of the 1993 draft Treaty. It was signed on 13 September 1995 by the Parties' Foreign Ministers, after six months of intense diplomatic activity following the reengagement by the Respondent in bilateral negotiations with the Applicant.[86]

2.31. Pursuant to the Interim Accord, the Respondent undertook to recognize the Applicant under the provisional designation of 'the former Yugoslav Republic of Macedonia' (Article 1) and to lift the embargo imposed against it (Article 8). For its part, the Applicant reaffirmed that it did not hold or pursue territorial claims against the Respondent, and that nothing in its Constitution should be construed as such (Article 6). The Applicant also undertook to change its

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[84] The Applicant's President's, *Inaugural Address at the Inauguration Ceremony at the Parliament of the Republic of Macedonia* (Skopje, 19 November 1994): Annex 122.

[85] As described in paragraphs 2.22 and 2.23 above, and as dealt with in detail in Chapter IV below.

[86] The deal, mediated by UNSG personal envoy Mr Vance, with the assistance of US Assistant Secretary of State Richard Holbrooke, was signed on the eve of the Dayton negotiations that ended the war in Bosnia-Herzegovina.

national flag (Article 7), a significant concession that was made in the interests of developing a peaceful relationship and ending the Respondent's embargo.[87]

2.32. Articles 2 to 4 of the Interim Accord reaffirm the Parties' respect for the "enduring and inviolable" nature of the border between the two Parties and for their respective "sovereignty ... territorial integrity and ... political independence". Both Parties undertook not to seek to alter the border between the two States or to support any call for such an alteration. Pursuant to Article 7, the Parties further agreed to take effective measures to prohibit hostile activities or propaganda by State agencies and to discourage any such acts by private entities. Article 7(3) provides for specific procedures to be followed where one of the Parties believes that the other may be using "symbols constituting part of its historic or cultural patrimony":

> "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."

2.33. Thus, the Interim Accord provided for the normalization of relations between the Applicant and the Respondent and set forth a framework for settling the difference concerning the Applicant's name and for developing practical measures to prevent the difference concerning the name from affecting bilateral relations (Article 5), and a framework for fostering and developing good neighbourly relations and mutual cooperation. It also included commitments relating to human and cultural rights (Articles 9 and 10), international,

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[87] As stated by the Applicant's President Gligorov in a television interview of 16 September 1995: "Are we now going to wage a battle after 2,300 years? Are we going to transform this question into a Cypriot issue that cannot be solved even after 10 years? If we wage a battle for the symbol, we could find ourselves in the following situation: Our young people who are now 20 years old will be 40 years old before they can start a normal life, before they have access to the world, and before we start the process of joining the European Union. Do we have to pay this price for insisting on the symbol? The symbol is beautiful, the flag is also beautiful, but when all matters are seen from both sides, I think that, in the absence of understanding from anybody in the world, we would have waged a quixotic battle for something that has often been a subject of Balkan wars in history." *Nova Makedonija*, (Skopje, 17 September 1995).

multilateral and regional institutions (Article 11), treaty relations (Articles 12 to 14), economic, commercial, environmental and legal relations (Articles 15 to 20), and the peaceful settlement of disputes (Article 21).

B. Reference to the Applicant in the Interim Accord and Related Agreements

2.34. The Interim Accord was not intended to introduce a final solution with respect to the difference concerning the Applicant's name. Rather, pursuant to Article 5(1), the Parties undertook to resume negotiations concerning that difference, under the auspices of the United Nations Secretary-General, pursuant to Security Council resolution 845.

2.35. Avoiding the use of any names, the Interim Accord refers to the Respondent as the 'Party of the First Part', and the Applicant as the 'Party of the Second Part'. Neither Party is referred to by its constitutional name nor is the provisional reference of 'the former Yugoslav Republic of Macedonia', as set out in resolution 817, used to refer to the Applicant. Article 5(2) preserves and guarantees the right of each Party to deal with the other "in a manner consistent with their respective positions":

> "Recognizing the difference between them with respect to the name of the Party of the Second Part, each Party reserves all of its rights consistent with the specific obligations undertaken in this Interim Accord. The Parties shall cooperate with a view to facilitating their mutual relations notwithstanding their respective positions as to the name of the Party of the Second Part. In this context, the Parties shall take practical measures, including dealing with the matter of documents, to carry out normal trade and commerce between them in a manner consistent with their respective positions in regard to the name of the Party of the Second Part. The Parties shall take practical measures so that the difference about the name of the Party of the Second Part will not obstruct or interfere with normal trade and commerce between the Party of the Second Part and third parties."

2.36. The "practical measures" referred to in Article 5(2) were intended to enable the Parties to develop mutual relations in a manner which did not compromise their respective positions relating to the difference concerning the Applicant's name, which were to be the subject of further negotiation. Such "practical measures" were agreed upon in the Memorandum on "Practical Measures" Related to the Interim Accord of New York of September 13, 1995, signed in Skopje on 13 October 1995 ("Memorandum 1"),[88] and the Memorandum Related to the Interim Accord of New York of September 13, 1995, on the Mutual Establishment of Liaison Offices, signed in Athens on 20 October 1995 ("Memorandum 2").[89] These two Memoranda have the status of bilateral treaties; they set out practical measures to facilitate mutual relations on matters such as official correspondence between the Parties, the establishment of liaison offices, visa arrangements, bank transfers and vehicle registration. The "practical arrangements" specifically envisaged that the Applicant would be able to continue to use its constitutional name in its dealings with the Respondent, confirming the practice in the United Nations that followed the adoption of resolution 817. Two examples suffice to illustrate this fact:

- *Official correspondence between the two Parties*: Memorandum 1 provides that the Applicant will call itself by its constitutional name in official correspondence with the Respondent, and that, conversely, the Respondent will refer to the Applicant by the provisional designation set out in resolution 817. On receipt of a document from the Applicant in which the constitutional name is used, the Respondent is to "affix a seal" bearing the provisional reference; conversely, on receipt of a document from the Respondent using the provisional reference, the Applicant is to "affix a seal" bearing its constitutional name.[90]

- *Liaison offices:* Memorandum 2 permits the Applicant to erect a sign bearing its constitutional name within its liaison offices in the Respondent

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88 Memorandum on "Practical Measures" Related to the Interim Accord of New York of September 13, 1995 (Skopje, 13 October 1995): Annex 3.

89 Memorandum Related to the Interim Accord of New York of September 13, 1995, on the Mutual Establishment of Liaison Offices (Athens, 20 October 1995): Annex 4.

90 *Ibid.*, note 88 *supra.*: Annex 3, at p. 3.

State. It also provides for another sign to be erected outside those premises referring to the Applicant by the provisional reference, bearing an explanation to the effect that it has not been erected by the Applicant.[91]

C. The Respondent's Undertaking Regarding the Applicant's Application to and Membership of International, Multilateral and Regional Organizations and Institutions

2.37. Article 11 of the Interim Accord includes the undertaking that lies at the heart of this case, which is addressed in detail in Chapter IV. Under Article 11(1) of the Interim Accord, the Respondent undertook not to object to the Applicant's membership of international, multilateral or regional organizations or institutions to which the Respondent belonged, provided that the Applicant was "to be referred to" within those organizations or institutions as 'the former Yugoslav Republic of Macedonia'. Thus, the dispute concerning the Applicant's name was not to serve as an obstacle to the Applicant's further integration into international, multilateral and regional organizations or institutions:

> "Upon entry into force of this Interim Accord, 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 [the Respondent] is a member; however, the Party of the First Part [the Respondent] reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part [the Applicant] is to be referred to in such organization or institution differently than in paragraph 2 of the United Nations Security Council resolution 817 (1993)."

2.38. Article 11 was intended to address difficulties faced by the Applicant in gaining membership of various international and regional organizations due to objections by the Respondent. The Council of Europe was a case in point: the

[91] Memorandum Related to the Interim Accord of New York of September 13, 1995, on the Mutual Establishment of Liaison Offices (Athens, 20 October 1995): Annex 4, at pp. 1-2.

Respondent objected to the Applicant's membership of the Council for over two years, from the date of the Applicant's application for accession on 25 June 1993, due primarily to the difference concerning the name.[92] Given that the Council of Europe's decisions to extend invitations to States to become members of the Council must be taken on the basis of consensus, the Respondent's objections contributed to the blocking of the Applicant's membership of the Council. Similar objections were made by the Respondent at the Organization for Security and Co-operation in Europe (OSCE).

D. The Entry into Force of the Interim Accord

2.39. Pursuant to the terms of the Interim Accord, on 6 October 1995, the Applicant's Parliament passed the Law on the National Flag 1995, replacing the national flag objected to by the Respondent with a new design, depicting a yellow sun on a red background. Seven days later, on 13 October 1995, the Interim Accord entered into force, pursuant to Article 22(1). It was registered by the Respondent with the United Nations (with number 32193) on the same day and has been binding on the Parties since that date. It has served as an effective framework for bilateral relations, notwithstanding the continuing difference between the Parties as to the Applicant's name. The Interim Accord has remained in force, pursuant to Article 23(2). It has not been superseded by a definitive agreement, and the Respondent has never sought to withdraw from the Interim Accord, by giving twelve months' written notice or to claim that any part of the Interim Accord had been suspended. The Applicant is also unaware of any formal, written objection from the Respondent directed to the Applicant alleging material breach of Article 7 of the Interim Accord or any of its other provisions prior to late March/early April 2008.

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[92] Council of Europe, Committee of Ministers, *506th Meeting of the Ministers' Deputies (held in Strasbourg from 10 to 14 and 20 January 1994)* (CM/Del/Act(94)506) (10 March 1994) pp. 3-5: Annex 121.

Section IV. The Integration of the Applicant into the International Community

2.40. The signing of the Interim Accord heralded a new era of increasing cordial, bilateral relations between the Parties. It also facilitated the Applicant's full integration into the international community, as characterized by the entry of the Applicant into membership of numerous "international, multilateral and regional organizations and institutions," as provided for by Article 11 of the Interim Accord. Those organizations and institutions include:

- Council of Europe (9 November 1995)
- Organization for Security and Co-operation in Europe (12 October 1995)
- Intergovernmental Organisation for International Carriage by Rail (1 June 1996)
- South Eastern European Initiative (6 December 1996)
- European Civil Aviation Conference (3 July 1997)
- Intra-European Organization of Tax Administrations (1997)
- Organisation for the Prohibition of Chemical Weapons (20 July 1997)
- European and Mediterranean Plant Protection Organization (1998)
- European Charter for Energy (27 March 1998)
- European Organisation for the Safety of Air Navigation (1 November 1998)
- Bank for International Settlements (26 November 1998)
- Joint Aviation Authority (15 December 1999)
- Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (14 March 2000)
- Permanent Court of Arbitration (17 February 2001)
- International Organisation of Vine and Wine (2004)
- the European Patent Organisation (1 January 2009).[93]

[93] The decision to allow the Applicant to accede to the European Patent Convention was made by the European Patent Organization's Administrative Council on 10 March 2006, although the Applicant did not become a full member of the organization until 1 January 2009.

2.41. Pursuant to Article 11(1) of the Interim Accord, the Respondent did not object to the Applicant's application for membership of those organizations, wherein the Applicant is referred to as 'the former Yugoslav Republic of Macedonia'.[94] Where it had previously objected, it ceased that objection, paving the way for the Applicant's successful membership. Thus, for example, in relation to the Council of Europe, the Respondent dropped its objection to the Applicant's membership in September 1995, enabling the Applicant's to become a member of the institution two months later.[95]

2.42. During the years following the Interim Accord, the Applicant also established diplomatic relations with a significant number of additional countries, including the Republic of Sierra Leone,[96] the Federative Republic of Brazil,[97] the Hashemite Kingdom of Jordan,[98] the United Mexican States,[99] and the Somali Democratic Republic.[100] It currently has diplomatic relations with 160 states across the world.

2.43. Bilateral negotiations on the outstanding matters of dispute between the Applicant and the Respondent continued throughout this period, notwithstanding the lack of a permanent resolution as to the difference concerning the Applicant's name. Between 1995 and 2005, over 20 agreements and protocols were signed between the Parties, on a broad range of matters from transport to development to financial investments, including numerous bilateral agreements on security and

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[94] In relation to each of these organizations, the Applicant's application for membership was made under its constitutional name, on the understanding that it would be provisionally referred to within the organization or institution under the provisional reference set out in resolution 817 (1993). This practice did not raise objections from the Respondent nor has it caused difficulties in the Applicant's participation in the relevant organizations. See Annex V of the Application to the Court in this matter of 17 November 2008 for examples of membership documents.

[95] See: Parliamentary Assembly of the Council of Europe, *Official Report*, 1995 session, 29th sitting, (27 September 1995).

[96] 17 July 1998.

[97] 14 October 1998.

[98] 15 September 2000.

[99] 4 October 2001.

[100] 17 February 2005.

military cooperation.[101] Throughout that period, the failure to find a permanent resolution over the name difference did not serve – nor was it perceived – as a bar to growing cooperation between the Parties or to good neighbourly relations. Indeed, the increased cooperation between the two States prompted the Respondent's Prime Minister, Costas Simitis, to declare in 2000:

> "the period of tension has been left behind and we have entered a new era of cooperation and development in our bilateral relations." [102]

Section V. The Applicant's Engagement with the North Atlantic Treaty Organization and the Respondent's Objection to the Applicant's Membership Thereof

A. NATO and its Membership Process

2.44. The North Atlantic Treaty Organization ('NATO'), also referred to as the 'North Atlantic Alliance', is an intergovernmental military alliance, established by the North Atlantic Treaty of 4 April 1949, pursuant to which Member Countries commit themselves to the principle of collective defence, mutual assistance and cooperation. The Alliance, which originally counted twelve

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[101] Examples include the Protocol on Mutual Visa Regime and Fees (Athens, 20 October 1995): Annex 6; the Protocol on Transport and Communications (Athens, 20 October 1995): Annex 5; the Protocol on Border Cooperation (Athens, 23 June 1998): Annex 7; the Protocol of Cooperation on Police Matters (Ohrid, 8 July 1998): Annex 8; the Agreement on Military Cooperation (Skopje, 14 December 1999): Annex 9; the Protocol on Co-operation in the Field of Military Education (Skopje, 19 December 2002): Annex 10; the Memorandum on the Mutual, Establishment of Offices for Consular, Economic and Commercial Affairs in Bitola and Thessaloniki (Skopje, 22 January 2004): Annex 11; and the Memorandum of Understanding Concerning Support to the Combined Medical Team for Participation in NATO-Led Operation ISAF in Afghanistan (Athens, 27 July 2005): Annex 12. All bar one of the agreements were concluded using the nomenclature of the Interim Accord, i.e. "the Party of the First Part" and "the Party of the Second Part." Neither party is referred to by name, nor is the provisional reference used.

[102] Statement by the Respondent's Prime Minister, Costas Simitis, "PM: Our Policy on Balkan Reconstruction and FYROM", *Macedonian Press Agency: News in English* (7 April 2000), available at: http://www.hri.org/news/greek/mpab/2000/00-04-07.mpab.html. Mr Simitis also declared that the name dispute was "the only pending issue in our relations with the former Yugoslav Republic of Macedonia [which] has not stopped [the two countries] from developing bilateral relations in all sectors."

countries,[103] has adopted what it calls an 'open door policy' to new members, and has more than doubled in size during the past sixty years to include twenty-eight Member States: Greece joined the Alliance in 1952, alongside Turkey, followed by West Germany in 1955, Spain in 1982 and a large number of former Eastern-bloc states (the Czech Republic, Hungary and Poland in 1999; Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia in 2004; and Albania and Croatia, which were invited to become members at the NATO Summit in Bucharest in April 2008, in 2009). The expansion of the Alliance has proceeded pursuant to Article 10 of the North Atlantic Treaty, which provides 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. Any State so invited may become a Party to the Treaty by depositing its instrument of accession with the Government of the United States of America. The Government of the United States of America will inform each of the Parties of the deposit of each such instrument of accession." [emphasis added]

2.45. Thus, in order for a state to be invited to become a member of the Alliance it must (i) be invited to join by unanimous agreement, (ii) be in Europe, (iii) be in a position to further the principles of the North Atlantic Treaty, and (iv) be in a position to contribute to the security of the North Atlantic Area. Stipulation (i) is the most important for the purposes of this case: it sets out the requirement for consensus across all Member Countries in relation to decisions concerning the enlargement of the Alliance;[104] this means that an objection from a single NATO Member Country is sufficient to block another state's membership bid.

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[103] Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom and the United States of America.

[104] NATO Member Countries retain full sovereignty within the Alliance. All decisions, including those concerning enlargement, require consensus across all 28 Member Countries.

2.46. The process by which states interested in membership may join NATO has been refined since the end of the Cold War. The Alliance has created a number of programmes to foster cooperation with non-Member Countries and to assist states seeking membership of NATO to meet requirements (3) and (4) set out above, such as Partnership for Peace ('PfP'), launched in 1994, and the Membership Action Plan ('MAP'), launched in 1999.

2.47. PfP is a programme of practical bilateral cooperation between partner countries and NATO, aimed at promoting trust and bilateral relations between NATO and former Eastern-bloc countries, and at diminishing threats to peace in and between partner countries. Through participation in PfP, non-member states may train with NATO forces and participate in peacekeeping missions. The MAP is a complementary process to PfP, created to assist those countries wishing to join NATO in their preparations for membership by providing tailored advice, assistance and practical support on the different requirements for NATO membership. Each country participating in MAP must prepare an Annual National Programme, detailing its preparations towards membership in the political, economic, defence, resource, security and legal spheres, which NATO officials assess for progress. Although participation in and successful completion of MAP are no guarantee to eventual membership of NATO, of the ten countries which have participated in the programme since 1999, the Applicant is the only one not to have been offered membership. [105]

2.48. Decisions on whether to invite a candidate country to become a member of NATO are usually made at NATO summits, organized approximately once every two years. Following a positive unanimous decision regarding the candidacy of a given country, the country is invited to begin accession talks to join the Alliance. This invitation marks the beginning of the accession process, which typically takes two years to complete.[106] Following the invitation, the candidate country embarks on a round of accession talks with NATO experts to discuss and formally confirm the country's willingness and ability to meet the

[105] The ten countries which have participated in the MAP are: the Applicant, Albania, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia.

[106] Although the process can be considerably shorter, as in the cases of Croatia and Albania.

political, legal and military obligations and commitments of NATO membership, and to discuss further reforms expected before and after accession to enhance the country's contribution to the Alliance. Upon the completion of those talks, the foreign minister of the invited country must send a letter of intent, setting out the country's interest to join NATO, whereupon NATO prepares an accession protocol to the North Atlantic Treaty, to be signed and ratified by all NATO Member Countries. On completion of the ratification process, the country in question is invited by the NATO Secretary General to become a party to the North Atlantic Treaty. Following the completion of required national procedures to enable accession to NATO, the country deposits its instrument of accession with the United States, and formally becomes a party to the North Atlantic Treaty, and consequently a member of NATO.

B. The Applicant's Relationship with NATO

2.49. Membership of NATO and the EU – have been vital and long sought-after security goals for the Applicant, strongly supported by over 90 percent of its population. The Applicant's engagement with NATO in order to secure accession has spanned a period of more than 15 years, beginning on 23 December 1993, when the Applicant adopted a resolution setting out its desire to become a NATO member.[107]

2.50. In 1995, following the signing of the Interim Accord, the Applicant was offered – and accepted – membership of PfP, under the provisional designation of 'the former Yugoslav Republic of Macedonia'. Four years later, in 1999, the Applicant was invited – and accepted – to participate in the MAP, also under the provisional designation. Since that time, the Applicant's military forces have participated in numerous NATO exercises, and the Applicant has contributed to a number of NATO campaigns: in relation to the Balkans, it

[107] "Decision on the Attainment of Membership by the Republic of Macedonia of the North Atlantic Treaty Organization - NATO" (23 December 1993), *Official Gazette of the Republic of Macedonia*, No. 78, Year XLIX (27 December 1993): Annex 21.

provided logistical support for the NATO-led Kosovo Force (KFOR) mission[108] from the NATO Headquarters in Skopje from 1999 until 2007, when it assumed complete responsibility for the KFOR Co-ordination Centre;[109] it has also contributed to the NATO-led operation in Afghanistan since 2002, and currently has approximately 170 serving personnel under NATO command.

2.51. The Applicant has always been referred to within NATO as 'the former Yugoslav Republic of Macedonia' and has made clear its acceptance of that *modus vivendi* in order to facilitate membership. As stated by the then President, Branko Crvenkovski:

> "Naturally, our accession to NATO under our constitutional name would be the most satisfactory for us. Nevertheless, if no solution to the dispute is found before we join NATO, we are ready to become a full member with the name with which we are currently referred to at the United Nations, as a temporary solution."[110]

2.52. The Respondent had stated that, in conformity with its obligations under Article 11(1) of the Interim Accord, it would not object to the Applicant's membership of NATO, provided that the Applicant was to be referred to within the organization as 'the former Yugoslav Republic of Macedonia'. See, for example, the following statements by the Respondent's Foreign Minister, Petros Molyviatis, and by its Foreign Ministry Spokesman, George Koumoutsakos, as reported in 2005:

> " ... Molyviatis told ... reporters that the Greek government's position vis-a-vis the FYROM name issue was crystal clear. He indirectly but clearly put forward a warning of on [sic] Greece's right of veto. "*We have the right, on the basis of the 1995 interim agreement, to oppose the neighbouring country's accession to international organizations under*

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[108] KFOR is an international force, established by United Nations Security Council resolution 1244 (S/RES/1244) (10 June 1999) to establish a safe and secure environment in Kosovo.

[109] This achievement significantly reduced NATO financial and personnel costs, while ensuring NATO-standard services in support of KFOR operations.

[110] Stavros Tzimas, "We are ready to join NATO as FYROM", *Kathimerini* (4 June 2007): Annex 69.

any name other than that of 'Former Yugoslav Republic of Macedonia'" ... The name 'Former Yugoslav Republic of Macedonia' used in relations between the neighboring country and the European Union *"causes no problems to Greece so long as it remains that"*, Foreign Ministry Spokesman George Koumoutsakos said … ." [111] [emphasis added]

C. The 2008 NATO Summit in Bucharest

2.53. The Applicant's candidacy for membership of NATO under the provisional reference of 'the former Yugoslav Republic of Macedonia' was considered at the NATO summit in Bucharest on 2 to 3 April 2008, alongside the candidacies of Albania and Croatia. In the lead up to the Summit, there was widespread support for Macedonia's NATO membership and no issue as regards the Applicant having met the criteria for membership,[112] as the examples in the following statements make clear:

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[111] Press Office of the Embassy of the Respondent in Washington, DC, Press Release, *FM Molyviatis briefs premier on developments in FYROM issue* (12 October 2005): Annex 68.

[112] Government of the Republic of Slovenia, Ministry of Defence, *Defence Minister Says Macedonia Meeting NATO Standards*" (27 July 2007): Annex 70; "Czech Defence Minister promises help to Macedonia on path to NATO", *Czech News Agency*, (14 September 2007): Annex 72; "Foreign minister receives UK support for Macedonia's EU, NATO integration", *BBC Monitoring Europe* (18 October 2007): Annex 74; "Macedonian, Canadian ministers view NATO reforms, peacekeeping missions", *BBC Monitoring Europe* (1 November 2007): Annex 75; "Macedonian, Slovak Foreign Ministry officials discuss relations, EU, NATO", *BBC Monitoring Europe* (23 January 2008): Annex 76; "Turkey pledges to lobby for Macedonia's NATO accession", *BBC Monitoring Europe* (10 February 2008): Annex 77; "Macedonia, Luxembourg prime minister discuss NATO, EU accession", *BBC Monitoring Europe* (15 February 2008): Annex 78; Ministry of Foreign Affairs of the Republic of Latvia, Press Release, *Latvian Foreign Minister expresses support for integration of Croatia into EU and NATO* (19 February 2008): Annex 79; "Bulgaria backs Macedonia for NATO membership", *Sofia News Agency* (5 March 2008): Annex 81; Ministry of Foreign Affairs of the Republic of Lithuania, Press Release, *Lithuania firmly supports the open door policy principle of the NATO Alliance* (6 March 2008): Annex 82; Norwegian Ministry of Foreign Affairs, *Meeting of NATO Foreign Ministers – NATO Headquarters, Brussels, 6 March 2008 – The Minister's talking points for his address and remarks*, official web-page (uploaded 6 March 2008): Annex 125; Romanian Ministry of Foreign Affairs, Press Release, *Participation of the Minister of Foreign Affairs, Adrian Cioroianu, in the meeting of NATO Foreign Ministers* (7 March 2008): Annex 84; "Netherlands deputies say name no condition for Macedonia's NATO entry", *BBC Monitoring Europe* (11 March 2008): Annex 85; "Slovakia supports Macedonia's effort to join NATO, EU", *People's Daily Online* (12 March 2008): Annex 86; Government of the Republic of Estonia, Press Release, *Prime Minister Ansip confirmed Estonia's support of Macedonia's aspirations*

- Statement of 11 March 2008 of Daniel Fried, United States Assistant Secretary of State for European and Eurasian Affairs, before the United States Senate Committee on Foreign Relations, in Washington DC:

> "NATO enlargement has been a major success, thanks to the work of many on this Committee. *The Administration strongly supports the aspirations of Albania, Croatia, and Macedonia to join NATO*. They have all made substantial progress, especially over the past one to two years. Their forces serve with us in Afghanistan and other global peacekeeping operations. They continue to play important roles on Kosovo. In short, *they have shown a clear commitment to bearing the responsibilities of NATO membership*. … Macedonia has made significant strides since 2001 in building a multiethnic democracy. The government has taken strong steps on rule of law by implementing several critical laws on its courts and police and taking action against trafficking in persons. *Macedonia, like the other aspirants, is punching above its weight in operations, and its progress on defense reforms has been impressive*. One issue threatens Macedonia's NATO candidacy – the dispute between Greece and Macedonia over Macedonia's name. Without a resolution of this

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towards NATO (26 March 2008): Annex 87; Ministry of Foreign Affairs of the Republic of Hungary, *Hungary supports further enlargement of the Atlantic Alliance at the next week's NATO Summit in Bucharest – Briefing by State Secretary and Political Director Gábor Szentiványi for the members of the Hungarian Parliament's NATO Club*, official web-page (uploaded 26 March 2008): Annex 127; "CzechRep, USA to agree on radar treaty in a couple of days…", *CTK National News Wire* (31 March 2008): Annex 91; "Hungary, Germany support NATO membership of three Balkan states", *Budapest Times* (31 March 2008): Annex 92; Lech Kaczynski, "Nato must embrace Ukraine and Georgia", the *Financial Times* (30 March 2008): Annex 93; "President leaves for NATO summit on Wednesday", *PAP News Wire* (1 April 2008): Annex 94; "President Kaczynski in Bucharest for NATO Summit", *PAP News Wire* (2 April 2008): Annex 95; NATO, Official Web-page of the Bucharest Summit, *Keynote address by Prime Minister Călin Popescu-Tăriceanu at the Bucharest Conference "NATO: The Responsibility to Transform"* (2 April 2008), available at: http://www.summitbucharest.ro/documente/fisiere/en/Discurs_Premierul_Tariceanu_la_GMF_engleza.pdf: Annex 128; "Slovene premier hopes for compromise on Macedonia's name", *BBC Monitoring Europe* (2 April 2008): Annex 96; "Bush Delivers Remarks at NATO Summit", *The Washington Post* (2 April 2008): Annex 97; "Italian embassy denies media reports on support of veto on Macedonian NATO entry", *BBC Monitoring Europe* (4 April 2008): Annex 101; Canadian Department of Foreign Affairs and International Trade, *Canada- Republic of Macedonia Relations*, official web-page (uploaded October 2008): Annex 134.

issue, Greece has said it would block an invitation for Macedonia to join NATO ...".[113] [emphasis added]

- Statement of 14 September 2007 by the Czech Defence Minister, Vlasta Parkanova:

  "My visit [to the Applicant] is a symbol of our support to Macedonia on its path to Euro-Atlantic organizations. I hope that Macedonia will be invited to join NATO at its summit in Bucharest in April 2008."[114]

- Statement by Hungary's State Secretary and Political Director, Gábor Szentiványi:

  "We consider it of particular importance that a new wave of enlargement be initiated on the occasion of the Bucharest Summit and that the three candidate states (Albania, Croatia and the former Yugoslav Republic of Macedonia/FYROM) receive invitations to join the Alliance."[115]

2.54. Regrettably, following an objection by the Respondent to the Applicant's membership, in circumstances where NATO requires consensus of all its Member Countries, NATO announced on 3 April 2008 that it would be inviting Albania and Croatia to begin accession talks to join the Alliance, but that it would not extend an invitation to the Applicant.

2.55. The declaration made by NATO following the Bucharest Summit commended the Applicant for its "commitment to NATO values and Alliance

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[113] United States Mission to NATO, *Testimony of Daniel Fried, Assistant Secretary of State for European and Eurasian Affairs, before the Senate Committee on Foreign Relations "NATO: Enlargement and Effectiveness"* (11 March 2008): Annex 126.

[114] "Czech Defence Minister promises help to Macedonia on path to NATO", *Czech News Agency* (14 September 2007): Annex 72.

[115] Ministry of Foreign Affairs of the Republic of Hungary, *Hungary supports further enlargement of the Atlantic Alliance at the next week's NATO Summit in Bucharest – Briefing by State Secretary and Political Director Gábor Szentiványi for the members of the Hungarian Parliament's NATO Club*, official web-page (uploaded 26 March 2008): Annex 127.

operations", making clear that there was no dispute that the Applicant had met all the conditions for NATO membership – a position underscored by the President of the United States in an official statement made two days after the Summit:

> "[l]ike Croatia and Albania, Macedonia has met all the criteria for NATO membership."[116]

2.56. However, notwithstanding that fact, following the Respondent's objection, it was decided that it would only be possible to extend an invitation to the Applicant to join the Alliance once "a mutually acceptable solution to the name issues has been reached". The statement issued by the Alliance on 3 April 2008 includes a recognition of "the hard work and the commitment" demonstrated by the Applicant "to NATO values and Alliance operations" and a commendation for the State's "efforts to build a multi-ethnic society". However, it continued:

> "Within the framework of the United Nations, many actors have worked hard to resolve the name issue, but the Alliance has noted with regret that these talks have not produced a successful outcome. Therefore we agreed

[116] United States Office of the Press Secretary, Radio Address of the United States President, George W. Bush, *President's Radio Address* (5 April 2008): Annex 102. See further statement by the then United States Secretary of State Condoleezza Rice at a press briefing immediately following the Bucharest Summit: "[w]e certainly regret that Macedonia was not invited today, and we and many others worked to try and make it happen. But NATO is a consensus organization, and the good thing here is that there was no effort to suggest that Macedonia was not ready in any other way, that it didn't somehow meet the criteria. So if you read the language, what it says is that Macedonia essentially is invited pending the name – resolution of the name issue. I certainly hope it's going to be resolved soon, and I think we've made no secret of the fact that we believe that Macedonia should have been invited, but it's a consensus organization". United States Department of State, White House Office of the Press Secretary, *Press Briefing by Secretary of State Condoleezza Rice and National Security Advisor Stephen Hadley* (3 April 2008): Annex 98. See also the letter dated 19 May 2008 from twenty European and American senior diplomats, academics and international officials to the NATO Secretary-General, *Invitation to the Republic of Macedonia to join NATO*: "We understand and appreciate the Alliance's commitment at Bucharest, provided in paragraph 20 of the Summit Declaration, effectively acknowledging that Macedonia has fulfilled the criteria for entry. We also note, however, that this paragraph appears to make an Alliance invitation to Macedonia contingent upon its coming to terms with Greece over the country's name. If true, this requirement would appear to be at variance with Greece's commitment under the 1995 Interim Accord not to block Macedonia's accession, provided the latter is referred to as 'the former Yugoslav Republic of Macedonia'": Annex 133.

that an invitation to the former Yugoslav Republic of Macedonia will be extended as soon as a mutually acceptable solution to the name issue has been reached. We encourage the negotiations to be resumed without delay and expect them to be concluded as soon as possible."[117]

2.57. The Respondent's objection leading to the rejection of the Applicant's membership of NATO on 3 April 2008 served to crystallize the dispute between the Parties as regards the Respondent's obligations under Article 11(1). That is the critical date for the dispute.

D. The Respondent's Objection to the Applicant's Membership of NATO

2.58. There can be no dispute as to the fact that the Respondent, which has been a member of NATO since 1952, objected to the Applicant's accession to NATO. That objection ultimately served to prevent the Applicant from being invited to join NATO. The Respondent's Prime Minister made this explicit in a statement to the "men and women of Greece" on the day of the Bucharest Summit, following the announcement by NATO that no invitation was to be extended to the Applicant:

> "Men and women of Greece,
>
> United with confidence in our abilities, we fought a successful battle... At the NATO Summit Meeting here in Bucharest, we discussed the applications of three countries that want to become new members of the North Atlantic Alliance: Albania, Croatia and the former Yugoslav Republic of Macedonia. It was unanimously decided that Albania and Croatia will accede to NATO. *Due to Greece's veto, FYROM is not joining NATO*. ... Today and yesterday, during the meeting, we reiterated our strong arguments, clearly stating our positions and intentions."[118] [emphasis added]

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[117] NATO Press Release (2008)049, *Bucharest Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008* (3 April 2008): Annex 65.

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

2.59. Prime Minister Karamanlis's statement leaves no room for doubt or ambiguity. It was confirmed a few days later by the Respondent's Permanent Representative to the United Nations, in a letter dated 14 April 2008 to other Member States' Permanent Representatives:

> "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*."[119] [emphasis added]

2.60. A great number of statements made before, during and after the Bucharest Summit confirm that the Respondent intended to and did object to the Applicant's membership of NATO on or about 3 April 2008. The Respondent has also asserted that it will also object to the Applicant's application to join another regional institution, namely the European Union.[120] The Respondent's unambiguous position is reflected in numerous letters, newspaper articles, speeches and interviews leading up to the Bucharest Summit, in particular following the informal meeting of NATO Foreign Ministers, held in Brussels on 6 March 2008.[121] The following examples serve as a non-exhaustive illustration

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[119] Letter dated 14 April 2008 from the Respondent's Permanent Representative to the United Nations, John Mourikis, to the Permanent Representative of Costa Rica to the United Nations, Jorge Urbina: Annex 132. Similar letters were sent by the Respondent to all other members of the UN Security Council and to the UN Secretary-General.

[120] See, for example: "Karamanlis: Greece to veto Macedonia's EU, NATO bids if name issue not resolved", *Southeast European Times* (7 September 2007): Annex 71; and Dora Bakoyannis, "The view from Athens", *International Herald Tribune* (31 March 2008): Annex 90.

[121] The Respondent had previously threatened to block the Applicant's NATO accession, threats which began on 5 November 2004, the day after the United States announced its decision to recognize the Applicant under its constitutional name (see the statement by the Respondent's Government spokesperson, Evangelos Antonaros, as reported in "Greece May Block Macedonia's NATO, EU Bids Over Name Issue", *Dow Jones International News* (5 November 2004): Annex 67; see also "Greece to veto Macedonia's EU, NATO accession if no deal on name: reports", *Agence France Presse* (5 November 2004): Annex 66). These threats were repeated sporadically in the intervening years (see, for example, the Statement made by the Respondent's Prime Minister Kostas Karamanlis [during a foreign policy debate in the Respondent's Parliament] (2 November 2006): Annex 123; and "Karamanlis: Greece to veto Macedonia's EU, NATO bids if name issue not resolved", *Southeast European Times* (7 September 2007): Annex 71). Indeed, on 14 October 2007, the Respondent's Foreign Minister Dora Bakoyannis went so far as to suggest that for the

of the Respondent's stance which is inconsistent with its obligation arising under the Interim Accord. As they make clear, the Respondent's objection was *not* based on the single ground of objection permitted under Article 11(1), nor did the Respondent ever explain its objection in those terms, prior to late March/ early April 2008:

- Statement made in Parliament by the Respondent's Prime Minister, Kostas Karamanlis, on 22 February 2008:

  > "Without a mutually acceptable solution to the name issue, there can be no invitation to participate in the same alliance."[122]

- Statement by the Respondent's Foreign Minister, Dora Bakoyannis, following the informal meeting of NATO Foreign Ministers in Brussels on 6 March 2008:

  > "As far as the former Yugoslav Republic of Macedonia is concerned, I stressed to our Allies that unfortunately, the policy that was followed by the government of our neighbouring country in its relations with Greece… does not allow us to take the same positive stance as in the case of Croatia and Albania ... *Greece was therefore unable to provide its consent to the invitation*, as I stressed to my fellow colleagues in the Council. We are not happy about that. Nobody likes "vetoes" … As long as there is no … solution, there will be an insurmountable obstacle to FYROM's Euroatlantic ambitions."[123] [emphasis added]

- The speech made by the Respondent's Prime Minister, Kostas Karamanlis, to the governing party's Parliamentary Group on 27 March 2008:

Respondent to abide by the terms of the Interim Accord and to permit the Applicant to join NATO under the provisional reference of 'the former Yugoslav Republic of Macedonia' would be tantamount to "political cowardice", Embassy of the Respondent in Washington, DC, *Interview of FM Ms. Bakoyannis in Athens daily Kathimerini, with journalist Ms. D. Antoniou (Sunday, 14 October 2007)* (15 October 2007): Annex 73. However, it was not until 2008 that it became clear that the Respondent was going to follow through on that threat.

122 "Premier dangles FYROM veto", *Kathimerini* (23 February 2008): Annex 80.

123 Dora Bakoyannis, "NATO Enlargement and Alliance Principles", *Atlantic-community.org* (uploaded 7 March 2008): Annex 83.

"These past few months, we have responsibly made it clear that without a mutually acceptable solution the road to NATO cannot be opened for our neighbouring country. It cannot be invited to join...".[124]

- The speech by the Respondent's Foreign Minister, Dora Bakoyannis, to the governing party's Parliamentary Group on 27 March 2008:

  "[O]ur government gradually built – step by step, in a methodical and well-organized manner – the option of exercising its inalienable right of veto as a NATO member state. We thus succeeded in making clear the position we presented on 6 March at the Informal Meeting of NATO Foreign Ministers in Brussels: essentially, *the first veto on sending an invitation to Skopje at the Bucharest Summit… No solution – no invitation. We said it, we mean it, and everyone knows it*."[125] [emphasis added]

- The article by the Respondent's Foreign Minister, Dora Bakoyannis, on 31 March 2008 in the *International Herald Tribune*:

  "As the region's oldest member of both NATO and the European Union, we feel a heightened sense of responsibility for our neighbourhood, an obligation to be constructive, pragmatic and supportive. *We will strongly back the inclusion of Albania and Croatia in NATO. We will not be able to do the same for FYROM*, however, as long as its leaders refuse to settle the issue of its name, which they promised the United Nations to do more than 13 years ago... *As long as the problem persists we cannot and will not endorse FYROM joining NATO or the European Union* ...".[126] [emphasis added]

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[124] Embassy of the Respondent in Washington, DC, *Excerpts from Prime Minister Mr. Kostas Karamanlis' speech on foreign policy before the governing party's Parliamentary Group* (27 March 2008): Annex 88.

[125] Embassy of the Respondent in Washington, DC, *Speech of FM Ms. Bakoyannis before the governing party's Parliamentary Group* (27 March 2008): Annex 89.

[126] Dora Bakoyannis, "The view from Athens", *International Herald Tribune* (31 March 2008): Annex 90.

2.61. The Respondent's intention to object to the Applicant's membership of NATO and the fact of that objection were widely reported by the world media at the time of the Bucharest Summit.[127] Accounts and official documents from other NATO member countries also unequivocally describe the Respondent's objection to the Applicant's membership of the Alliance and make clear that and that objection was not based on the single ground permitted under Article 11(1) of the Interim Accord. Thus, see for example the following excerpts from the United States Congressional Research Service's report for Congress, entitled 'NATO Enlargement: Albania, Croatia, and Possible Future Candidates':

> "At the April 2-4, 2008 NATO Summit in Bucharest, Romania, a principal issue was consideration of the candidacies for membership of Albania, Croatia, and Macedonia. The allies agreed to extend invitations to Albania and Croatia. *Although the alliance determined that Macedonia met the qualifications for NATO membership, Greece blocked the invitation due to an enduring dispute over Macedonia's name* ...
>
> For a candidate state to have been invited to join the alliance at Bucharest, consensus among the 26 member governments was necessary to approve an invitation. Each candidate was considered separately. *One or more votes against a state would have blocked that state's progress to the next stage in the process of becoming a member. It was Greece's opposition to Macedonia that resulted in Skopje's failure to obtain an invitation* ...
>
> While [the name] dispute had long been kept on a separate track from Macedonia's Euro-Atlantic aspirations, the two issues became inextricably linked in the run-up to the Bucharest summit. *Athens*

[127] See for example: Ivo H. Daalder (Mr Daalder was appointed US Ambassador to NATO in May 2009) and James M. Goldgeier, "A Mockery of Enlargement", *The New York Times* (8 April 2008): "Unfortunately, last week's actions at the NATO summit meeting undermined the seriousness and credibility of this process. Like Croatia and Albania, Macedonia also fulfilled its MAP. But Macedonia was not invited to join the Alliance because one NATO member – Greece – objects to the country's name. It is absurd enough that Greece claims to be concerned that Macedonia has designs on the area in Greece that is also known as Macedonia. But to allow that to become part of the debate over whether Macedonia should be allowed to join the world's most successful alliance makes a mockery of the process": Annex 103; Julian Borger, "Karzai Seeks Bigger Role for Larger Afghan Army: Move Cheers NATO Leaders Split over New Members: French Troop Pledge Falls Short of Partners' Hopes", *The Guardian* (3 April 2008): Annex 100.

maintained that it could not support Macedonia's NATO candidacy if no mutually acceptable agreement on the name issue was reached. Since NATO operates by consensus, the Greek position made clear that a veto would be tabled. In contrast, Macedonia's government insisted that it has made numerous concessions already, and that linking its accession prospects to the bilateral name dispute would be unacceptable and would violate an interim accord agreed to by both sides in 1995."[128] [emphasis added]

2.62. A recent television interview with the former Slovenian Prime Minister, Janez Jansa, by the journalist, Goran Momirovski, also confirms the fact of the Respondent's objection and the manner in which it occurred:

> "… Goran Momirovski: It is very interesting for us to know how this happened, who raised this issue, and how the entire matter proceeded, how Greece exercised the veto?
>
> Janez Jansa: This all took place prior to the Bucharest Summit. In Bucharest it was clear that Greece would not change its position. Another attempt was made during the dinner, which was closed to the public, at which the closest circle of leaders of NATO Member States was gathered and at which Macedonia received considerable, significant support. All who spoke supported Macedonia. Of course there were those who did not present their position, but you had our support, the support of the United States, and the support of the larger European countries. However, in the end, the Secretary General determined that there was no agreement on the matter. At NATO, all important decisions are made by way of consensus. This was the problem. The problem was not whether Greece had secured consensus for it to exercise its veto – a country does need a consensus to exercise a veto. Rather, Greece had in fact exercised a veto at the bodies that had been previously deciding, and finally, in

[128] United States Congressional Research Service, *NATO Enlargement: Albania, Croatia, and Possible Future Candidates* (14 April 2009), see summary and pages 3, and 11: Annex 135.

Bucharest. However, the Greek diplomacy had fully announced and conditioned it with the resolution of the name issue."[129]

2.63. As a result of the Respondent's objection, in circumstances in which membership of NATO requires the consent of all existing members, the Applicant's membership of that organization was denied, despite the Applicant's agreement to be referred to within NATO in accordance with the language of resolution 817 and the requirements of Article 11(1) of the Interim Accord.[130]

E. The Respondent's Stated Position concerning the Applicant's Membership of the European Union

2.64. The current proceedings before the Court were not prompted by actions attributable to the Respondent relating to the Applicant's goal of European Union membership, a goal it has been pursuing since 1998.[131] However, statements made by the Respondent set out at paragraphs 2.58 to 2.60 above indicate that it is taking a similar stance in relation to the Applicant's EU membership as it has done in relation to the Applicant's NATO membership, in circumstances where it is a veto-holding member of the EU, with the power to veto the Applicant's membership of the institution. The Applicant reserves its right to modify the relief sought in these proceedings, including in relation to incidental matters,

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[129] Goran Momirovski, "Janez Jansa: The decision not to invite Macedonia to membership was adopted because of the Greek veto on Macedonia", *Kanal 5 TV* (25 June 2009): Annex 106. See also the following two interviews with the former Slovenian Prime Minister, Janez Jansa: "You Were a Victim of the Veto", *A1 Television,* (20 March 2009): Annex 104; and Hristo Ivanovski, "Interview: Janez Jansa, Former Slovenian Prime Minister - Macedonia was a Victim in Bucharest", *Dnevnik* (21 March 2009): Annex 105.

[130] NATO Press Release (2008)049, *Bucharest Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008* (3 April 2008): Annex 65.

[131] See the *Declaration on the Development of Relations between the Republic of Macedonia and the European Union*, adopted by the Assembly of the Applicant on 4 February 1998 (No. 07-460/1), available at: http://www.sobranie.mk/en/default.asp?ItemID=EE1D606586695F408E6FC58893EED7F7; and the *Declaration on Upgrading the Relations between the Republic of Macedonia and the European Union*, adopted by the Assembly of the Applicant on 27 November 2000. Macedonia has been formally designated as an EU candidate country, but has not yet been invited to begin accession talks.

in respect of further actions that the Respondent may take in relation to the Applicant's EU membership.

Section VI. The Current Proceedings

A. The Institution of the Current Proceedings

2.65. Following the breach by the Respondent of Article 11(1) at the NATO Bucharest Summit, the Applicant wrote to the Liaison Office of the Respondent in Skopje on 17 April 2008, protesting "the gross violation by the Hellenic Republic of the Interim Accord of 13 September 1995", as evidenced by "the conduct, activities and statements of the highest officials of the Party of the First Part, confirmed by the direct objection to the invitation for NATO membership of the Party of the Second Part".[132] Further, by way of a letter from its Chargé d'Affaires to the United Nations Secretary-General dated 23 April 2008, the Applicant formally alerted the United Nations to the "flagrant violation of article 11 of the Interim Accord" by the Respondent.[133] Seven months later, on 17 November 2008, the Applicant duly submitted its application to the Court initiating the current proceedings against the Respondent for breach of Article 11(1) of the Interim Accord. As set out in its application, the dispute before the Court can be said to have crystallized on 3 April 2008, on which date the Respondent acted in violation of its obligations under Article 11(1) of the Interim Accord.

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[132] *Note verbale* dated 17 April 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Annex 50.

[133] Letter dated 23 April 2008 from the Chargé d'Affaires of the Permanent Mission of the Applicant to the United Nations Secretary-General, annexing a letter to him from the Applicant's President, Branko Crvenkovski, UN doc. S/2008/290 (2 May 2008): Annex 42.

B. The Respondent's Conduct since 3 April 2008

2.66. Importantly, prior to late March/early April 2008, the Respondent had not made any written complaint or written allegation addressed to the Applicant formally claiming material breach by the Applicant of the Interim Accord or any of its provisions. Moreover, the Respondent has never sought to withdraw from the Interim Accord by written notice or to suspend any of its provisions, as it would have been entitled to do had the Applicant been systematically violating the provisions of the Accord.[134] It is only since 3 April 2008 – and more precisely since the Applicant's *note verbale* of 17 April 2008 accusing the Respondent of material breach of the Interim Accord – that the Respondent has sought to formally allege in written letters or *note verbales* to the Applicant and to the United Nations,[135] that the Applicant "has been materially breaching the Interim Accord since its conclusion",[136] fourteen years ago.

2.67. On 15 May 2008, in its letter of response to the Applicant's above-mentioned *note verbale* of 17 April 2008, the Respondent made a number of unspecified and unsubstantiated allegations concerning purported material

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[134] Interim Accord, Article 23(2).

[135] Insofar as the Applicant has knowledge of said complaints. It is also noteworthy that in two letters setting out the Respondent's position concerning the Applicant's NATO membership sent by the Respondent to the Secretary-General of the Organization of American States and to the Permanent Representative of Costa Rica on 28 January 2008 and 14 April 2008 respectively, the Respondent makes no allegation against the Applicant of material breach of any provision of the Interim Accord, nor does it seek to justify its opposition to the Applicant's NATO membership by reference to the single permitted ground of objection under Article 11(1) of the Interim Accord: Annexes 124 and 132. However, the Applicant is aware of two undated documents that the Respondent has sent to certain NATO member countries in which the Respondent alleged "violation" by the Applicant of Article 5 of the Interim Accord, relating to discussions concerning the name, which are not subject to the Court's jurisdiction, and activity in "stark contrast with the said Accord (art.7)" (see the Respondent's *Aide Memoire* at Annex 129) and accused the Applicant of a "policy of propaganda and irredentism in violation of Articles 2, 3, 4 and 7 of the Interim Accord" (see the Respondent's Memorandum, *FYROM's Name Issue and Propaganda: A Response to Skopje's Allegations* at Annex 131, drafted to rebut the Applicant's own Memorandum, Republic of Macedonia, *NATO and EU Candidate Country* regarding its NATO and EU candidacies: Annex 130). However, these documents were never formally submitted to the Applicant by the Respondent.

[136] Verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 51.

breaches by the Applicant of Articles 2, 3, 4, 5(1), 6(2), 7(1), 7(3) and 8(1) of the Interim Accord, and failure to respect Articles 11(1) and (2).[137] These allegations were repeated in a letter from the Respondent to the United Nations Secretary-General dated 23 May 2008,[138] sent in response to the Applicant's own aforementioned letter alerting the Secretary-General to the Respondent's breach of the Interim Accord.

2.68. It is noteworthy that since the initiation by the Applicant of the current proceedings in November 2008, the Applicant has for the first time received from the Respondent a steady stream of formal, written allegations of breaches of various articles of the Interim Accord and various other complaints concerning its provisions. The majority of the allegations relate to alleged breaches of the Interim Accord *post-dating* the institution of the current proceedings. They are further discussed at Chapter V, paragraphs 5.55 to 5.65 below.

2.69. Since 3 April 2008, the Respondent has also written to the Secretary-General of the United Nations, making sweeping and unspecified allegations that the Applicant has "consistently violated the provisions of the Interim Accord"[139] and repeating a number of the specific complaints set out in letters to the Applicant as alleged evidence of conduct "which contravenes the letter and the spirit of the Interim Accord".[140] The Applicant has no record of letters

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[137] Verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 51.

[138] Letter dated 23 May 2008 from the Respondent's Permanent Representative to the United Nations, John Mourikis, to the United Nations Secretary-General, UN doc. S/2008/346 (28 May 2008): Annex 43.

[139] Letter dated 27 November 2008 from the Respondent's Permanent Representative to the United Nations, John Mourikis, to the United Nations Secretary-General, UN doc. S/2008/746 (1 December 2008); the letter also wrongly alleges that the Applicant "has for more than 10 years" disrespected Security Council resolutions by using its constitutional name before the different organs of the United Nations": Annex 44.

[140] Letter dated 6 February 2009 from the Respondent's Permanent Representative to the United Nations, John Mourikis, to the United Nations Secretary-General, UN doc. S/2009/82 (10 February 2009): Annex 45.

from the Respondent to the United Nations prior to that date, alleging any such material breaches.[141]

2.70. The Applicant has responded to the allegations raised by the Respondent since May 2008, alleging breaches of the Interim Accord, and has set out its position in letters to the United Nations Secretary-General[142] and to the Respondent[143]. Where appropriate, it has taken remedial action pursuant to Article 7(3) of the Interim Accord.[144] It has also put forward anew a number of proposals previously raised with the Respondent intended to foster and develop cooperation and good-neighbourly relations between the Parties.[145]

2.71. The Applicant denies that any of the matters complained of by the Respondent are capable of amounting to material breaches of the Interim Accord, justifying the Respondent's breach of Article 11(1) or of providing grounds for suspension of the Interim Accord or any part thereof. This is dealt with in more detail at Chapter V below.

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[141] By contrast, the Applicant has itself previously formally protested to the United Nations concerning the Respondent's "inappropriate conduct... vis-à-vis the Interim Accord", including a previous occasion of breach of Article 11(1) of the Interim Accord by the Respondent: see the letter dated 29 July 1996 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations Secretary-General, UN doc. S/1996/605 (30 July 1996).

[142] Letter dated 14 March 2009 from the Applicant's Permanent Representative to the United Nations, Slobodan Tasovski, to the United Nations Secretary-General, UN doc. S/2009/150 (18 March 2009): Annex 46.

[143] See, for example: the letters from the Applicant's Minister for Foreign Affairs, Antonio Milošoski, to the Respondent's Minister for Foreign Affairs, Dora Bakoyannis, dated 13 March 2009: (Annex 55) and 9 April 2009: (Annex 58); the letter from the Applicant's Minister of the Interior, Gordana Jankulovska, to the Respondent's Minister of the Interior, Prokopis Pavlopoulos, dated 18 March 2009: (Annex 56); the letters from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, dated 19 March 2009: (Annex 57), 16 April 2009: (Annex 61), and the two *notes verbales* of 1 June 2009: (Annexes 62 and 63).

[144] See, for example the *note verbale* dated 1 June 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, No. 32-4354/1: Annex 62.

[145] See, for example, *supra*: Annexes 55, 56 and 58.

Section VII. Conclusions

2.72. As set out in the preceding paragraphs, the essential facts in relation to the current proceedings are as follows:

- In signing the Interim Accord, the Respondent agreed not to object to the Applicant's membership of international, multilateral or regional organizations or institutions of which it was already a member, unless the Applicant was to be referred to within those bodies as anything other than 'the former Yugoslav Republic of Macedonia'.

- Following the coming into force of the Interim Accord, the Applicant became a member of a large number of organizations and institutions of which the Respondent was a member.

- In a series of statements and démarches over the course of late March/ early April 2008 at the NATO Bucharest Summit on 3 April 2008, the Respondent objected to the Applicant's membership of NATO, despite the fact that the Applicant was to be – and had agreed to be – referred to as 'the former Yugoslav Republic of Macedonia' within the organization.

- In the lead up to the Bucharest Summit and when objecting to the Applicant's membership of NATO, the Respondent did not seek to justify its objection by reference to the single permissible ground for objection, as set out in Article 11(1) of the Interim Accord.

- Throughout the thirteen years until the matters in this case crystallized in Spring 2008, the Respondent made no formal, written allegation directed to the Applicant of material breach of the Interim Accord, nor did it seek to claim that the Interim Accord had been suspended in whole or in part.

2.73. As described in further detail in Chapters IV and V, the Respondent's objection to the Applicant's NATO membership amounts to a clear violation of Article 11(1) of the Interim Accord.

CHAPTER III

JURISDICTION OF THE COURT

3.1. The Court's jurisdiction in relation to this case is based upon Article 36(1) of the Court's Statute and the Interim Accord.

3.2. Article 36(1) of the Court's Statute provides that:

> "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."

3.3. In the present case the treaty and convention in force relied upon by the Applicant is the Interim Accord.

3.4. The Interim Accord was signed by the Applicant and the Respondent on 13 September 1995. It entered into force on 13 October 1995, in accordance with its Article 23(1). It remains in force, neither Party having taken any steps to suspend it in whole or in part, or to withdraw from it by giving twelve months written notice (as permitted by Article 23(2)). It was in force at all material times, and remains in force today. Neither Party has entered any reservation or made any relevant declaration in relation to the exercise of jurisdiction by the Court under the Interim Accord.

3.5. The circumstances in which the Interim Accord was negotiated and adopted have been set out in detail in Chapter II.[146] As explained in paragraphs 2.22 to 2.23, the text of the Interim Accord is drawn from a draft treaty Confirming the Existing Frontier and Establishing Measures for Confidence Building, Friendship and Neighbourly Cooperation of 14 May 1993 ("the 1993 draft Treaty"), drafted by the Co-chairs of the Steering Committee on the International Conference of the Former Yugoslavia, Cyrus Vance and Lord

[146] Chapter II, paras. 2.21 *et seq*.

Owen,[147] as set out in a report sent by the United Nations Secretary General to the Security Council on 28 May 1993, pursuant to Resolution 817.[148] The purpose of the Interim Accord and what it sought to address are dealt with in detail in Chapter IV. Its key articles in relation to the jurisdiction of the Court are Articles 5, 11 and 21, set out below.

3.6. Article 5 of the Interim Accord sets forth the principles governing the conduct of future negotiations as to the Applicant's name. It, provides, in relevant part, that:

> "1. The Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993)."

3.7. That Article imposes an obligation of conduct, not of result. Since 1995, the Applicant has negotiated in good faith under the auspices of the United Nations, in negotiations facilitated by Cyrus Vance (1995 to 1999) and subsequently by Matthew Nimetz (1999 to the present).[149]

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147 Thorvald Stoltenberg replaced Cyrus Vance as the Co-chair of the Steering Committee in May 1993.

148 See Annex V of the letter dated 26 May 1993 from the United Nations Secretary-General, Boutros Boutros-Ghali, to the President of the Security Council, forwarding the Report of the Secretary-General submitted pursuant to resolution 817, UN doc. S/25855 (28 May 1993): Annex 33. See further Chapter II, paragraphs 2.21-2.24. The 1993 draft Treaty was rejected by the Respondent on 27 May 1993, and by the Applicant on 29 May 1993: both parties objected to the proposal contained within the draft plan of "Nova Makedonija" as the single permanent name for the Applicant: see the statement of 27 May 1993 by the Respondent's Ambassador and Special Envoy, George D. Papoulias, UN doc. S/25855/ Add.1 (3 June 1993): Annex 34; and the letter dated 29 May 1993 from the Respondent's President, Kiro Gligorov, to the United Nations Secretary-General, UN doc. S/25855/ Add.2 (3 June 1993): Annex 35.

149 In December 1999, Ambassador Nimetz of the United States was appointed by the United Nations Secretary-General to succeed Cyrus Vance as his Personal Envoy to the talks between the Applicant and Respondent, a position which he continues to hold today.

3.8. Article 11 of the Interim Accord deals with membership of international organizations. Article 11(1) is the subject of the dispute before the Court. By its terms, the Respondent agrees, upon entry into force of the Interim Accord,

> "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 [the Respondent] is a member; however, the Party of the First Part [the Respondent] reserves the right to object to any membership referred to above if and to the extent the Party of the Second Part [the Applicant] is to be referred to in such organization or institution differently than in paragraph 2 of the United Nations Security Council resolution 817 (1993)."

3.9. Article 21 of the Interim Accord deals with dispute settlement. It provides:

> "1. The Parties shall settle any disputes exclusively by peaceful means in accordance with the Charter of the United Nations.
>
> 2. Any difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the International Court of Justice, except for the difference referred to in Article 5, paragraph 1."

3.10. Article 21(2) establishes a broad basis for the jurisdiction of the Court.[150] It covers any difference or dispute relating to any provision of the Interim Accord, with the sole exception of submission to the Court of the difference referred to in Article 5(1). It is apparent from the existence of Article 21(2), from the breadth of its scope, and from the absence of procedural or substantive limitations, that the Parties have established a particular and important role for the Court in assisting them to resolve disputes that might arise. The Court's jurisdiction gives it a central role in the scheme established by the Interim Accord.

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[150] See e.g., N. Zaikos, "The Interim Accord: Prospects and Developments in Accordance with International Law", in E. Kofos and V. Vlasidis (Eds.), *Athens – Skopje: An Uneasy Symbosis (1995-2002)*, Hellenic Foundation for European and Foreign Policy (2005).

3.11. It is noteworthy that the text of Article 21(2) of the Interim Accord is drawn from Article 23 of the 1993 draft Treaty.[151] There are only two material differences to the earlier draft. Firstly, the earlier text provided for the right of recourse to the Court "unless otherwise agreed by the Parties", words which are removed from the agreed text of the Interim Accord. Secondly, the earlier text did not include an exception in relation to "the difference referred to in Article 5, paragraph 1" (because the 1993 draft Treaty was premised on the view that the name difference, dealt with in Article 5(1), was to have been resolved[152]). It is evident, therefore, that the only matter that the two States declined to have resolved by the Court was the one issue that they could not accept in the 1993 draft Treaty, namely the final resolution of the difference concerning the Applicant's name. In all other respects, the principle of the Court's broad jurisdiction was not a contentious issue and was expressly agreed to by the Parties. Importantly, the Parties favoured the Court as the primary arbiter of disputes arising between them, rather than any other process or institution that might "otherwise be agreed".

3.12. As set out in Chapter I, the dispute that has been referred to the Court by the Applicant is concerned exclusively with the meaning and effect of Article 11(1) of the Interim Accord in respect of actions that are attributable to the Respondent. In particular, the dispute concerns the question of whether the Respondent's objection to the Applicant being extended an invitation to become a NATO member is compatible with the requirements of Article 11(1). This is a legal dispute that is premised on the continued applicability of Article 11(1), and is concerned exclusively with the actions of the Respondent and its objection to the Applicant's application for NATO membership. The dispute

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[151] Draft article 23 provided:

> "1. The Parties shall settle any disputes exclusively by peaceful means in accordance with the Charter of the United Nations.
>
> 2. Unless otherwise agreed by the Parties, any difference or dispute that arises between the Parties concerning the interpretation or implementation of this Agreement may be submitted by either of them to the International Court of Justice."

[152] Indeed, the 1993 draft Treaty refers to the Applicant throughout as "Nova Makadonija", a proposal rejected by both Parties as a solution to the name difference. See further, Chapter II, para. 2.23.

before the Court does not require the Court to address the actions of any third states or any international organizations.

3.13. It is also clear that the dispute that has been referred to the Court does not call for the resolution of "the difference referred to in Article 5, paragraph 1" of the Interim Accord, which difference is not subject to the Court's exercise of jurisdiction. That difference is described in the preamble to Security Council resolution 817 (1993), which refers to "a difference … over the name of [the Applicant]".[153]

3.14. The difference referred to in Article 5(1) is not the subject matter of the dispute before the Court. That difference continues to be the subject of negotiations under the auspices of the United Nations. Nothing decided by the Court will affect the continuation of these proceedings which have proceeded since the Application in this case was filed to the Court on 17 November 2008.[154] No Order or Judgment adopted by the Court could have legal consequences for the continued conduct of those negotiations. To be clear, the Applicant does not invite the Court to express any view on the ongoing negotiations between the Parties under Article 5(1), or on any eventual outcome of those negotiations. The Applicant's case is exclusively concerned with the Respondent's objection to the Applicant's NATO membership that crystallized on 3 April 2008, and with its continuing obligation not to object to the Applicant's membership of NATO and of other organizations and institutions, regional, multilateral or international, and the compatibility of such acts with Article 11(1) of the Interim Accord.

3.15. The Interim Accord does not impose any procedural requirements to be followed by the Applicant before the exercise of its right of recourse to the

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[153] United Nations Security Council resolution 817 (1993) (SC/RES/817) (7 April 1993): Annex 22.

[154] Since the Application initiating proceedings in this case was filed, there have been two rounds of negotiations between representatives of the Parties, facilitated by Ambassador Nimetz, held in New York in February 2009 and in Geneva in June of the same year. Further, Ambassador Nimetz visited both Parties in early July 2009 and met with key officials in the conduct of the negotiation process.

Court under its Article 21, and there are no other principles that could affect that right of recourse.

3.16. Accordingly, there can be no doubt that the Application is admissible, that the Court has jurisdiction over the dispute that the Applicant has referred to it under Article 36(1) of the Court's Statute and Article 21(2) of the Interim Accord, and that such jurisdiction extends to all the relief sought by the Applicant, as set forth at Chapter VI.

CHAPTER IV

THE MEANING AND EFFECT OF ARTICLE 11(1) OF THE INTERIM ACCORD

Introduction

4.1. The meaning and effect of Article 11(1) of the 1995 Interim Accord lie at the heart of this case. As discussed in Chapter II,[155] the twenty-three articles of the Interim Accord were negotiated and adopted with a view to normalizing relations between the Parties, addressing the Respondent's concerns by, *inter alia*, reaffirming the Applicant's lack of territorial claims against it, and facilitating the Applicant's integration into the international community. In large part, the Interim Accord has had that effect. In particular, pursuant to Article 11(1), the Respondent undertook to cease its previously routine objections to the Applicant's membership of "international, multilateral and regional organizations and institutions" of which the Respondent was a member. Thus, the entry into force of the Interim Accord and the adherence by the Respondent to its obligation arising under Article 11(1) enabled the Applicant to become a member of numerous international, multilateral and regional organizations and institutions, including organizations and institutions in relation to which its membership had hitherto been blocked by the Respondent.

4.2. That situation came to an abrupt halt in the Spring of 2008, when the Respondent objected to the Applicant's membership of NATO. The Respondent's objection was inconsistent with Article 11(1) of the Interim Accord and, as will be discussed in Chapter V, amounts to a clear breach of its terms.

4.3. The purpose of this chapter is to address the meaning and effect of Article 11(1). In general, the interpretation of Article 11(1) is governed by the rules reflected in the 1969 Vienna Convention on the Law of Treaties ("the

[155] Section III.

Vienna Convention"), a treaty to which both the Applicant and the Respondent are a party. As is well established, a treaty provision is to be interpreted in "good faith" and in accordance with the "ordinary meaning" to be given to the terms of the treaty "in their context", and in the light of the treaty's "object and purpose". Subsequent agreement and subsequent practice is also to be taken into account.[156] **Section I** examines the object and purpose of the Interim Accord as a whole. **Section II** addresses Article 11 in the context of its negotiating history. **Section III** then focuses on the precise language and meaning of Article 11(1). **Section IV** concludes with a brief summary.

Section I. The Object and Purpose of the 1995 Interim Accord

4.4. As discussed in Chapters II and III,[157] the Interim Accord was largely drawn from the earlier draft Treaty Confirming the Existing Frontier and Establishing Measures for Confidence Building, Friendship and Neighbourly Cooperation ("the 1993 draft Treaty"), proposed by Cyrus Vance and Lord Owen in May 1993 in an effort to normalize relations between the two States. The 1993 draft Treaty was forwarded by the United Nations Secretary-General

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[156] Article 31 of the Vienna Convention provides:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended."

[157] See Chapter II, paras. 2.22 to 2.23 and Chapter III, para. 3.5.

to the Security Council pursuant to paragraph 3 of resolution 817 (1993),[158] and then served as the basis for the negotiation of the 1995 Interim Accord, as provided for by resolution 845 and as can be seen in the common structure and elements of the two documents.

4.5. The 1993 draft Treaty comprised a preamble and twenty-five articles (the Interim Accord consists of twenty-three articles). It was divided into six sections:

A. Friendly Relations and Confidence-Building Measures
B. Human and Cultural Rights
C. European Institutions
D. Treaty Relations
E. Economic, Commercial, Environmental and Legal Relations
F. Final Clauses.

4.6. The sections of the Interim Accord mirror those draft sections exactly, with one exception: Section C relating to the Applicant's organizational and institutional membership, entitled "European Institutions" in the 1993 draft Treaty, was expanded in the Interim Accord to cover all "International, Multilateral and Regional Institutions".

4.7. The Interim Accord comprises a preamble and twenty-three articles that are divided – like the earlier draft treaty – into six sections. Section A, entitled "Friendly Relations and Confidence-Building Measures", consists of eight articles concerning:

- the establishment of diplomatic relations and liaison offices in Skopje and Athens (Article 1);
- the inviolability of the existing frontier (Article 2);
- respect for sovereignty, territorial integrity and political independence (Article 3);

[158] See Annex V of the letter dated 26 May 1993 from the United Nations Secretary-General, Boutros Boutros-Ghali, to the President on the Security Council, entitled *Draft Proposed by Cyrus Vance and Lord Owen, 14 May 1993*, UN doc. S/25855 (28 May 1993): Annex 33.

- obligations to refrain from the threat or use of force and not to assert or support claims to any part of each other's territory or claims for a change of the existing frontier (Article 4);
- agreement to continue negotiations under the auspices of the UN Secretary-General on the Applicant's name, and to cooperate with a view to facilitating mutual relations, including by taking "practical measures" to carry out normal relations (Article 5);
- commitments on the part of the Applicant in relation to territorial claims and the interpretation or application of its Constitution (Article 6);
- commitments to prohibit hostile activities or propaganda, to not use a particular symbol on the Applicant's flag, and to address concerns relating to such matters through certain procedures (Article 7); and
- commitments on movement of people and goods and the possible use of the good offices of the European Union and the United States (Article 8).

4.8. Section B of the Interim Accord addresses "Human and Cultural Rights". It comprises two articles: Article 9 provides that the Parties shall be guided by the spirit and principles of democracy, fundamental freedoms, respect for human rights and dignity and the rule of law, by reference to eight instruments, including the United Nations Charter, which it affirms, together with the principle of territorial integrity. Article 10 encourages contact between the Parties' citizens.

4.9. Section C of the Interim Accord, which relates to "International, Multilateral and Regional Institutions", consists of a single provision – Article 11 – that lies at the heart of this dispute.

4.10. Section D of the Interim Accord addresses "Treaty Relations", and comprises three articles that are intended to normalize the treaty relations between the Parties. Article 12, which aims at bilateral treaties between the Parties, identifies three earlier treaties concluded between the SFRY and the Respondent which should serve as a basis for new bilateral arrangements. Noting that the Applicant is a land-locked state, Article 13 provides for a guiding

role for the United Nations Convention on the Law of the Sea in the practice and treaty relations of the two Parties. Article 14 provides for the negotiation of cooperation agreements on economic, transport and communication matters, and the observance of international rules.

4.11. Section E of the Interim Accord addresses "Economic, Commercial, Environmental and Legal Relations", and comprises six articles that concern:

- strengthening economic relations (Article 15);
- the development and improvement of scientific and technical cooperation (Article 16);
- actions on the environment (Article 17);
- cooperation on the consequences of disasters (Article 18);
- cooperation on business and tourist matters (Article 19); and
- cooperation on organized crime, terrorism and a range of other crimes and offences (Article 20).

4.12. Section F of the Interim Accord contains "Final Clauses", which address the settlement of disputes (Article 21), the Accord's effect on third states and international organizations (Article 22), and the Accord's entry into force (Article 23).

4.13. The object and purpose of the Interim Accord is readily apparent from its provisions. The Interim Accord was intended to provide for the immediate normalization of relations between the Applicant and Respondent and for their future cooperation, notwithstanding the continuing difference concerning the Applicant's name. In particular, having regard to the mutual interest of the Parties "in the maintenance of international peace and security", reflected in its Preamble, it provided for the recognition of the Applicant by the Respondent, the establishment of diplomatic relations, the adoption of practical measures in those relations, a commitment to the free movement of persons and goods (implying the lifting of the economic embargo) and the confirmation of "the existing frontier" between the Parties as "an enduring international border".

It reaffirmed the Applicant's lack of territorial claims against the Respondent and set out, *inter alia*, procedures for adressing concerns relating to historical and cultural symbols. Importantly, the Interim Accord also provided for the Applicant to join the family of nations and to become an active member of the international community. At its heart is the binding and clear commitment in Article 11 that would enable the Applicant to join international organizations from many of which it had been excluded owing to objections by the Respondent relating to the difference over its name.

Section II. Article 11 in the Context of its Negotiating History

4.14. Although the meaning and effect of Article 11(1) is informed by the object and purpose of the Interim Accord as a whole, the dispute before this Court is concerned only with that paragraph. Article 11 provides:

> "1. 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 the Party of the Second Part is to be referred to in such organization or institution differently than in paragraph 2 of the United Nations Security Council resolution 817 (1993).
>
> 2. The Parties agree that the ongoing economic development of the Party of the Second Part should be supported through international cooperation, as far as possible by a close relationship of the Party of the Second Part with the European Economic Area and the European Union."

4.15. The meaning and effect of the words used in Article 11(1) may be illuminated in part by contrasting them with Article 11 of the 1993 draft Treaty. That article provided as follows:

"1. The Republic of Greece shall endeavour to support, wherever possible, the admission of the Republic of Nova Makedonija to those European institutions of which Greece is a member.

2. The Parties agree that the ongoing economic transformation of the Republic of Nova Makedonija should be supported through international cooperation, as far as possible by a closer relationship of the Republic of Nova Makedonija with the European Economic Area and the European Community."[159]

4.16. As compared with Article 11(1) of the Interim Accord, the 1993 draft Treaty provision was more limited in scope. The latter referred only to "European institutions of which Greece is a member", whereas the Interim Accord applies to all "international, multilateral and regional organizations and institutions of which [the Respondent] is a member". As NATO is not a European institution, if the 1993 draft Treaty language had been retained in the Interim Accord, the obligation it imposed would not have applied to the Applicant's admission to NATO.

4.17. Further, the 1993 draft Treaty and Article 11(1) of the Interim Accord differ in another material respect. Whereas the 1993 draft Treaty provided for only a soft, positive obligation for the Respondent to "endeavour to support, wherever possible, [the Applicant's] admission to European institutions", Article 11(1) of the Interim Accord stipulates a firm and unconditional negative obligation for the Respondent "not to object" to any membership of the Applicant in international, multilateral and regional organizations and institutions of which the Respondent is a member. The replacement of the words "endeavour to support" with the obligation "not to object" emphasizes the intention of the drafters to impose a clear, unambiguous and unlimited obligation on the Respondent in relation to the Applicant's membership of international, multilateral and regional organizations and institutions. The

[159] *Draft Proposed by Cyrus Vance and Lord Owen, 14 May 1993*, UN doc. S/25855 (28 May 1993), note 158 *supra*: Annex 33. The name 'Nova Makedonija' that appeared in this provision was a name that was ultimately rejected by both sides: Annexes 34 and Annex 35. See Chapter II, para. 2.23.

removal of the 1993 draft Treaty's words of qualification – "wherever possible" – confirms the broad and far reaching scope of the text as adopted.

4.18. Finally, under the Interim Accord the Respondent agrees not to object to the Applicant's "application" or "membership" of international, multilateral and regional organizations and institutions. This formulation differs from that used in the 1993 draft Treaty, where the commitment related only to the Applicant's "admission" to certain organisations. By extending the scope of the obligation to include any "application" as well as "membership", the Interim Accord indicates that the obligation "not to object" cuts in at any stage of a process that may lead to an application or membership, so that the obligation is violated if the objection occurs at any point once the Applicant initiates the process for joining a particular organization or institution.

Section III. The Obligation Set forth in Article 11

4.19. While the majority of the Interim Accord's provisions are addressed to both Parties (the words "the Parties shall …" appear in most of the provisions), Article 11(1) adopts a different formulation. It is one of only four provisions directed to just one of the Parties (Article 6 is directed only to the Applicant, and part of Article 1(1) and Article 7(2) are directed only to the Respondent). As such, Article 11(1) establishes an obligation solely upon the Respondent.

4.20. Against the background of the object and purpose of Interim Accord as a whole, including its negotiating history, Article 11(1) admits of no ambiguity: it establishes an immediate and binding international legal obligation on the Respondent to take no action that would constitute an objection to the Applicant's membership of international organizations or institutions of which the Respondent is a member, at any stage of the membership or accession process. Article 11(1) imposes a fetter on whatever discretionary rights the Respondent might otherwise have had under international law, a fetter that is drafted in a clear and unlimited manner. A single basis for an objection by

the Respondent is clearly articulated: the Respondent can object only if the Applicant is to be referred to in an organization or institution differently than under the reference set out in paragraph 2 of resolution 817 (1993). All told, Article 11(1) raises no particular difficulty of interpretation, having regard to the established principles of interpretation reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties and the practice of the Parties: it has a clear meaning that leaves no room for doubt.

4.21. Article 11(1) comprises two clauses: the first establishes the general obligation on the Respondent not to object, and the second specifies the solitary, exceptional condition on which the Respondent may object notwithstanding the general obligation. The first clause expresses the clear intention of the Parties to bring to an end objections by the Respondent to the Applicant's admission to membership in regional, multilateral and international organizations and institutions; the second clause sets forth the solitary ground on which the Respondent may object to the Applicant's membership in such organizations or institutions.

A. The First Clause of Article 11(1): the Respondent's Obligation "Not to Object"

4.22. The first clause of Article 11(1) provides:

> "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".

4.23. As discussed in Chapter II,[160] Article 11 was intended to facilitate the Applicant's membership of international organizations, which membership had been or might have been objected to by the Respondent.

4.24. A number of points may be made, underscoring the broad scope of the provision: while the obligation set forth in Article 11(1) applies only

[160] See Chapter II, paras. 2.37 and 2.38.

to the Respondent, it applies to *all* international, multilateral and regional organizations and institutions of which the Respondent is a member; further, as above, the provision is not limited – unlike the earlier provision of the 1993 draft Treaty – to European institutions. The provision plainly encompasses NATO, of which the Respondent is a member.

4.25. The obligation "not to object" is also broad. It is more extensive than other possible formulations, such as an obligation "not to veto" or "not to block" (implying an obligation that only arises where the Respondent's action would prevent the Applicant from joining an organization). In this way the obligation is engaged and violated when the Respondent "objects", irrespective of the consequences of that objection. The obligation encompasses any implicit or explicit act or expression of disapproval or opposition in word or deed to the Applicant's application to or membership of an organization or institution.[161] An act of objection may be expressed in different forms, including in writing and orally, by silence or in some other form.

4.26. The formulation encompasses positive acts, such as a vote, as well as a failure to act, such as the failure to attend a meeting where participation is necessary in order to express a required view. In this way, the obligation covers at least two types of situation: (1) where the Respondent is in a position by its act of objection to prevent the Applicant from joining an international organisation (the NATO case), and (2) where the Respondent's act of objection would not have the effect of preventing membership (where unanimity is not required for membership decisions). In other words, the drafters' choice of

[161] To object: "1. to say that you disagree with, disapprove of or oppose sth; 2. to give sth as a reason for opposing sth; synonym: protest" (Oxford University Press Dictionary); "1. to feel or express dislike or disapproval for , 2. to state something as a ground for disapproval or objection" (Chambers Dictionary); "to feel or express opposition to or dislike of something or someone" (Cambridge Advanced Learner's Dictionary); "1. to oppose something firmly and usually with words or arguments; 2. to feel distaste for something" (Webster's Dictionary). Definitions in international law follow a similar approach: see for example *Dictionnaire de Droit International Public* under the direction of Professor Jean Salmon: "Opposition manifestée par un sujet de droit en vue d'empêcher l'entrée en vigueur ou l'opposabilité à son égard". The *Dictionnaire* also defines the "procédure de non-objection" as "[p]rocédure d'acceptation implicite de la demande d'adhésion à certaines conventions".

the words "not to object" indicates that it is the act of objection itself that is prohibited, irrespective of its consequences. It is also clear that the obligation is unconditional, in the sense that there are no grounds – subject to the solitary issue referred to in Article 11(1) – that may be invoked by the Respondent to justify any objection on its part.

4.27. The formulation concerns any objection to the "application by" or "the membership of" the Applicant in such organizations and institutions. The breadth of this language captures the whole range of processes by which the Applicant might proceed to membership, without fixating on the objection occurring at any specific point in the process.

4.28. In sum, the language of Article 11(1) envisages an immediate, broad and unconditional scope of application to the Respondent's conduct. This is confirmed by subsequent practice in applying the provision: as described in Chapter II, between 13 October 1995 and 3 April 2008 the Applicant joined a large number of international organizations without objection by the Respondent.[162]

B. The Second Clause of Article 11(1): the Sole Basis Permitted for the Respondent to Object

4.29. The second clause of Article 11(1) of the Interim Accord sets out the solitary exception to the immediate, broad and unconditional obligation accepted by the Respondent in the first clause. It provides:

> "however [the Respondent] reserves the right to object to any membership referred to above if and to the extent that [the Applicant] is to be referred to in such organization or institution differently than in paragraph 2 of the United Nations Security Council resolution 817 (1993)."

4.30. The ordinary meaning of this clause admits of no difficulties: in specifying the sole circumstance in which the Respondent "reserves the right to object" to

[162] See Chapter II, paras.2.40 and 2.41.

certain memberships, the Parties have strictly limited the conditions in which the grant of the Respondent's right to object may be exercized. Whereas the general obligation "not to object" is immediate, broad and unconditional, the right to object is limited and highly conditional. Where the single condition set forth in this clause is not met, the Respondent has no right to object.

4.31. The Respondent's right to object may be exercised if – and only if – the Applicant "is to be referred to in such organization or institution differently than in paragraph 2 of the United Nations Security Council resolution 817 (1993)". As described in Chapter II, paragraph 2 of that resolution provides that the Applicant shall be

> "provisionally referred to for all purposes within the United Nations as "the former Yugoslav Republic of Macedonia" pending settlement of the difference that has arisen over the name of the State".[163]

4.32. In the sixteen years that have passed since the Applicant became a member of the United Nations on 8 April 1993, practice in relation to resolution 817 has been consistent. The Applicant has joined a significant number of organizations both within and outside the United Nations system, having applied using its constitutional name and thereafter being provisionally referred to in the manner set out in resolution 817. At the same time, as described in Chapters II and V,[164] and in accordance with resolution 817, the Applicant has continued to refer to itself by its constitutional name, including in its relations with international organizations and institutions. This approach is consistent with the approach taken under the bilateral instruments made in connection with the conclusion of the Interim Accord, including the Memorandum on "Practical Measures" Related to the Interim Accord of New York of September 13, 1995, signed in Skopje on 13 October 1995.[165] That Memorandum recognized that the Applicant could continue to use its constitutional name in its official

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[163] Chapter II, para. 2.17.

[164] Chapter II, para. 2.20 and Chapter V, para. 5.64.

[165] Memorandum on "Practical Measures" Related to the Interim Accord of New York of September 13, 1995 (Skopje, 13 October 1995): Annex 3. See Chapter II, para. 2.36.

relations with the Respondent, as indeed the Applicant has continued to do. The Memorandum and subsequent bilateral agreements signed between the Parties, as well as the practice related to the Interim Accord are relevant for the interpretation of the Interim Accord, pursuant to Article 31(2) and (3) of the 1969 Vienna Convention. In short, there is no question that, in the context of NATO, the Applicant's process towards membership was fully in accordance with the requirements of resolution 817.

C. Article 11(2)

4.33. Article 11(2) indicates the agreement of the Parties that the Applicant should develop a "close relationship … with the European Economic Area and the European Union." This provision is of particular significance to the interpretation and application of Article 11(1) in relation to the Applicant's desire to join the EU. The violation of Article 11(1) that would be occasioned by any objection by the Respondent's to the Applicant's membership of the EU, in circumstances in which the conditions set by resolution 817 were met, would be all the more egregious given the agreement between the Parties on the language of Article 11(2).

Section IV. Conclusion

4.34. The ordinary meaning and effect of Article 11(1) poses little difficulty. The only ground on which the Respondent may object to the Applicant's membership of NATO is if the Applicant is to be referred to in that organisation differently than in the manner envisaged by paragraph 2 of the Security Council resolution 817. In circumstances in which the Applicant has always been referred to in that manner in NATO – and has expressly agreed to be referred to as such in membership – Article 11(1) precludes the Respondent from voicing or acting on any objection to the Applicant's membership at any stage of the accession process, including by objecting to any offer to the Applicant of an invitation to begin accession talks to join NATO.

CHAPTER V

THE RESPONDENT HAS VIOLATED ARTICLE 11(1) OF THE INTERIM ACCORD BY OBJECTING TO THE APPLICANT'S MEMBERSHIP OF NATO

Introduction

5.1. As discussed in Chapter IV, this case turns upon the interpretation and application of one article of a treaty – Article 11(1) of the Interim Accord – that is binding as between the Applicant and the Respondent and is governed by the rules reflected in the 1969 Vienna Convention on the Law of Treaties. Further, as described in Chapter III, Article 21(2) of the Interim Accord provides that any "difference or dispute that arises between the Parties" shall be submitted to the Court "except for the difference referred to in Article 5, paragraph 1" (in other words, resolution of the difference regarding the name of the Applicant). The Applicant reemphasizes that the present dispute is limited in scope and is *not* about the resolution of the difference over the name.

5.2. Rather, the basis of the Applicant's case against the Respondent is that, before and during the NATO Bucharest Summit meeting held from the 2nd to the 4th of April 2008, the Respondent violated its obligation under Article 11(1) of the Interim Accord "not to object to the application by or the membership of [the Applicant] in international, multilateral and regional organizations and institutions of which [the Respondent] is a member", in circumstances in which the Applicant is to be referred to within the organization or institution in question as 'the former Yugoslav Republic of Macedonia'.

5.3. Prior to its violation of Article 11(1), the Respondent never formally communicated to the Applicant through a *note verbale* or other written communication that the Applicant had violated any part of the Interim Accord, to request cessation of any such violation, or to initiate available dispute

resolution procedures to address such a violation. As such, there is no basis for the Respondent to argue that its violation of Article 11(1) of early April 2008 was either justifiable because the Interim Accord had been suspended prior to April 2008 due a material breach by the Applicant, or justifiable as a proportionate countermeasure designed to induce compliance by the Applicant. Only after early April 2008 – when the Applicant formally complained to the Respondent that the latter's conduct violated Article 11(1) – did the Respondent allege in writing, through vague and unspecified allegations, that the Applicant had breached the Interim Accord. Moreover, only after this case was filed before this Court in November 2008, did the Respondent begin to send a steady stream of written communications alleging various purported violations by the Applicant, relating to matters which arose in most part after April 2008. In short, the Respondent's *post hoc* complaints about alleged violations by the Applicant of the Interim Accord are designed to lay the groundwork for the Respondent's defense of this case and are not genuine reasons for its conduct in late March/early April 2008.

5.4. **Section I** of this chapter applies the facts of the Respondent's actions, as recounted in Chapter II, to the obligation of Article 11(1), as set out in Chapter IV. Those actions of 3 April 2008 give rise to a clear violation of Article 11(1), entitling the Applicant to appropriate relief. **Section II** demonstrates that the Respondent's violation was not a lawful reaction to alleged violations of other parts of the Interim Accord, principally because of the Respondent's failure to pursue the dispute resolution procedures of the Interim Accord that are required in the event that a breach is thought to have occurred. **Section III** further explains why there are no grounds for the Respondent to explain its failure to abide by Article 11(1) on the basis of suspension of that article or the Interim Accord as a whole. Such an explanation is not sustainable since the Respondent did not take the necessary steps under treaty law for suspension. **Section IV** addresses why the Respondent's violation cannot properly be viewed as a countermeasure to an antecedent unlawful act under the law of state responsibility. Finally, while this Court need not reach the merits of any possible violations of the Interim Accord by the Applicant, **Section V** explains

why the mostly vague or unsubstantiated allegations articulated to date by the Respondent, to the extent they can be understood, are without merit.

Section I. The Respondent's Conduct in Late March/Early April 2008 Violated Article 11(1) of the Interim Accord

5.5. As described in Chapter II, this dispute concerns the Respondent's actions leading up to and culminating in its action in late March/early April 2008 to prevent the Applicant from proceeding with the process of obtaining membership of NATO. Those facts, when applied to the meaning and effect of Article 11(1) as discussed in Chapter IV, lead to certain key conclusions.

5.6. First, the Applicant is only concerned in this case with the international responsibility of the Respondent, not of any other state, entity or person. Article 2 of the International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts* of 2001 ("the ILC Articles")[166] (the key principles of which are broadly recognized to reflect general international law[167]) makes clear that for there to be an internationally wrongful act of a state, the action must be attributable to that state under international law. In the present case, the action in question relates exclusively to the Respondent's conduct in violating a bilateral treaty,[168] namely its acts of objection to the extending of an invitation by NATO to the Applicant to begin accession talks to join that organization. These acts are attributable solely to the Respondent, within the meaning of Article 4 and the other provisions of Chapter II of the ILC Articles. This is not a case in which several states may be said to be responsible for the same internationally wrongful act, and therefore Article 47 of the ILC Articles is of

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[166] UN GAOR 56th Sess., Supp. No.10 at 43-58, UN doc. A/56/10 and corr.1, arts. 2(b), 49 (comment 6); International Law Commission, *Yearbook of the International Law Commission,* vol. II (Part Two) (2001).

[167] See, for example: *Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgement, I.C.J. Reports 1997, p. 7, at pp. 39-46.

[168] See *Interpretation of Peace Treaties (Second Phase)*, Advisory Opinion, I.C.J. Reports 1950, p. 221, at p. 228 ("refusal to fulfil a treaty obligation involves international responsibility").

no relevance. This case is solely about the acts of the Respondent, not the acts of any other state or of any international organization.

5.7. Second, as discussed in Chapter IV,[169] the first clause of Article 11(1) establishes a clear obligation on the Respondent not to object to the Applicant's membership of NATO. The Respondent is bound, in accordance with Article 26 of the Vienna Convention on the Law of Treaties, to which both the Applicant and the Respondent are party,[170] to observe this obligation in good faith.[171]

5.8. Third, as described in Chapter II,[172] the Applicant's candidacy for membership of NATO under the provisional reference of 'the former Yugoslav Republic of Macedonia' was considered at the NATO Summit in Bucharest on 2 and 3 April 2008, alongside the candidacies of Albania and Croatia. Regrettably, following strong objections by the Respondent in late March/ early April, NATO announced on 3 April 2008 that it would be inviting Albania and Croatia to begin accession talks to join the Alliance, but that it would not extend an invitation to the Applicant.[173] There is no question that the Respondent objected to the Applicant's accession to NATO and that its objection ultimately served to prevent the Applicant from being invited to join NATO. Under such circumstances, the Respondent's objection gives rise to a clear violation of the obligation set forth in Article 11(1), for which the Applicant is entitled to relief.[174]

5.9. Finally, as set out in detail in Chapter IV, Article 11(1) provides a solitary exception to the Respondent's obligation "not to object".[175] Specifically, Article 11(1) could allow the Respondent an exceptional right to object to the

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169 See Chapter IV, Section III.

170 Vienna Convention on the Law of Treaties (Vienna, 23 May 1969) 1155 *UNTS* 331, 8 ILM 679 (1969).

171 See *Gabcikovo-Nagamaros Project* (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, p. 7, at pp. 78-79.

172 See Chapter II, paras. 2.53-2.56.

173 See Chapter II, paras. 2.54-2.56.

174 See further Chapter VI.

175 See Chapter IV, paras. 4.29-4.33.

Applicant's membership of NATO if – and only if – "in the period pending settlement of the difference that has arisen over the name of the State", the Applicant is to be referred to in NATO in a manner different to that set out in paragraph 2 of resolution 817 (1993) (i.e., 'the former Yugoslav Republic of Macedonia'). However, that is emphatically not the case here. The Applicant is already referred to within NATO in the context of the PfP programme and MAP process[176] as 'the former Yugoslav Republic of Macedonia' and has made clear its acceptance of that provisional appellation for purposes of its admission to membership in NATO. Indeed, the Applicant's President, Branko Crvenkovski, could not have been clearer when he affirmed that:

> "if no solution to the dispute is found before we join NATO, we are ready to become a full member with the name with which we are currently referred to at the UN, as a temporary solution."[177]

5.10. Importantly, the evidence shows that the Respondent did not rely on that sole exception to its obligation "not to object" when it threatened to veto the Applicant's membership of NATO prior to or at the Bucharest summit.[178] Having regard to the contemporaneous statements made by the highest political authorities of the Respondent, there can be no doubt that the objection by the Respondent in the circumstances of the Applicant's efforts to join NATO is inconsistent with the limited exception set out in Article 11(1) of the Interim Accord.

5.11. On 17 April 2008 the Applicant sent a *note verbale* to the Respondent complaining about the Respondent's actions and alleging a violation of Article 11(1) of the Interim Accord.[179] This was followed on 23 April 2008, by a letter from the Applicant's President, Branko Crvenkovski, to the United Nations Secretary-General to inform the United Nations of its view that the

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[176] See Chapter II, paras. 2.50-2.51.

[177] Stavros Tzimas, "We are ready to join NATO as FYROM", *Kathimerini* (4 June 2007): Annex 69.

[178] See Chapter II, paras. 2.58-2.63.

[179] See Chapter II, para. 2.65: Annex 50.

Respondent's actions constituted a "flagrant violation of article 11 of the Interim Accord".[180] The Respondent's response is reflected in a verbal note dated 15 May 2008.[181] The verbal note implicitly recognizes that the Respondent's actions are inconsistent with the requirements of Article 11(1), and then seeks to justify those actions "from a purely legal point of view" by reference to allegations that the Applicant had been in material breach of the Interim Accord "since its conclusion" in 1995. Yet the verbal note is most noteworthy for what it does *not* say: at no point does it seek to justify the Respondent's actions in objecting to NATO membership on the basis of the one ground that might be permissible, namely that the Applicant would not be referred to in NATO in the manner provided by resolution 817.

Section II: The Respondent's Violation Was Not a Lawful Reaction to Matters related to Other Provisions of the Interim Accord, since those Provisions Call for Specific Dispute Resolution Procedures

5.12. Against this background, the Respondent is in no position to escape the unequivocal obligation it has assumed towards the Applicant under Article 11(1) of the Interim Accord by making reference to other provisions of the Interim Accord. Other than the exception noted in Article 11(1) above, there are no other bases for the Respondent to refuse to comply with its clear obligation under that provision "not to object". The language of Article 11(1) is unambiguous, and does not allow the Respondent to raise matters other than those set forth in Article 11(1) to justify its actions.[182] In particular, under the terms of the Interim Accord relating to dispute resolution, the Respondent should have pursued non-binding or binding means of resolving any concerns over interpretation or implementation of the Interim Accord rather than resort to a unilateral measure that is contrary to Article 11.

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[180] See Chapter II, para. 2.65: Annex 42.

[181] See Chapter II, para. 2.67: Annex 51.

[182] See Chapter IV, above.

5.13. In this regard, it is noteworthy that it is only since the dispute between the Parties crystallized in late March/early April 2008 with the Respondent's objection to the Applicant being extended an invitation to accede to NATO that the Respondent has informed the Applicant through diplomatic notes or letters that the purported legal justification for its opposition to the Applicant's membership of NATO relates to alleged or purported breaches of the Interim Accord by the Applicant. In particular, the Respondent's verbal note of 15 May 2008 (in response to the Applicant's aforementioned *note verbale* of 17 April 2008) alleged a vague series of purported material breaches of disparate articles of the Interim Accord – claiming that the Applicant had been "asserting and supporting territorial claims against Greece", "promoting and condoning irredentism", "inciting violence, hatred, and hostility against Greece", etc. – without connecting those alleged breaches to any specific facts.[183]

5.14. Seven months later, in its verbal note of 15 January 2009, the Respondent repeated its generalized allegation that "essential provisions of the [Interim] Accord have been consistently materially breached" by the Applicant. The verbal note purported to provide somewhat greater content to that allegation by listing one historic and four "more recent" matters alleged to constitute conduct in breach of the Interim Accord, namely: the naming of the airport in Skopje and part of the "Pan European Corridor X" after Alexander the Great, the naming of the main stadium in Skopje after "Philip II the Macedon", and the use of the sixteen-pointed sun in government-sponsored "TV spots".[184] Thereafter, further verbal notes raised other issues, such as: the use of the sixteen-pointed sun in a municipal square, the appearance on a government website of a photograph of the Applicant's former flag being held by fans at a

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[183] Verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 51; see further Chapter II, para. 2.67. The Respondent referred also to a violation in the form of "an intransigent and inflexible stance" in the negotiations concerning the difference over the name, and referred to one specific incident at the United Nations in 2007 concerning the use by of the Applicant's constitutional name.

[184] Verbal note dated 15 January 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 52; see further para. 5.59 below.

football match, and a February 2009 statement made orally by the Applicant's Foreign Minister in a television interview.[185]

5.15. Insofar as the allegations are related to "symbols constituting part of [the Respondent's] historic or cultural patrimony", the process for addressing such allegations is set forth in Article 7(3) of the Interim Accord. Article 7(3) provides as follows:

> "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."

5.16. To the extent that, prior to 3 April 2008, the Respondent believed that the Applicant was using any such symbols, that did not give the Respondent the right to act unilaterally in a manner as to violate Article 11(1) of the Interim Accord; rather, Article 7(3) prescribes a remedial process to be adopted in such cases. In thus prescribing the diplomatic remedy and procedures available to both Parties, the Interim Accord precludes recourse to unilateral measures of the kind adopted by the Respondent in relation to Article 11(1) and the Applicant's efforts to obtain membership of NATO. This Court has previously indicated the importance of meaningful and good faith negotiations in the context of treaty and even non-treaty disputes rather than resort to unilateral measures.[186]

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[185] See the *note verbale* dated 24 February 2009 from the Respondent's Ministry of Foreign Affairs to the Applicant's Liaison Office in Athens: Annex 53; and the verbal note dated 15 April 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs, No. F. 141.1/49/AS 489: Annex 60; see also the verbal notes from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs dated 15 April 2009, No. F. 141.1/49/AS 488 (Annex 59) and 3 June 2009 (Annex 64).

[186] See, for example: *North Sea Continental Shelf Case*, Judgement, I.C.J Reports 1969, p. 3, at paras. 47-48 ("The parties are under an obligation to enter into negotiations with a view to arriving at an agreement … [T]hey are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of the parties insists upon its own position without contemplating any modification of it."); *Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997,

5.17. Insofar as matters complained of by the Respondent relate to articles of the Interim Accord other than Article 7(3), they still would not justify a unilateral suspension by the Respondent of its obligation to the Applicant under Article 11(1). Article 21 of the Interim Accord provides:

> "1. The Parties shall settle any disputes exclusively by peaceful means in accordance with the Charter of the United Nations.
>
> 2. Any difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the International Court of Justice, except for the difference referred to in Article 5, paragraph 1."

5.18. In relation to the provisions of Article 21(1), Article 33(1) of the United Nations Charter lists the forms of appropriate dispute resolution available to parties to a dispute pursuant to the Charter. Those are: "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice". None of those forms of dispute resolution envisages the unilateral setting aside by one party of a treaty obligation it owes to another party.

5.19. Moreover, if the Respondent regarded it as being necessary to resort to a unilateral measure in relation to matters of the kind set out in its verbal notes, such measure is contemplated in Article 21(2) of the Interim Accord: submission of the matter to this Court for binding dispute resolution (other than resolution of the difference identified in Article 5(1)). Provision of a means of recourse to compulsory dispute resolution under Article 21(2) precludes unilateral suspension by a party of the obligation it owes to the other party.

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p. 7, at para. 139 (finding that the parties are under a legal obligation to negotiate in order to consider how to fulfil the objectives of the treaty and further that there was no right of Slovakia to act unilaterally). Most recently, in *Case Concerning certain Questions of Mutual Assistance in Criminal Matters* (Djibouti v. France), I.C.J, Judgement of 4 June 2008, at para. 145, the Court regarded even a treaty provision that provided a State with considerable discretion as nevertheless, under Article 26 of the 1969 Vienna Convention on the Law of Treaties, requiring the State to demonstrate that the reasons for refusing to fulfil the obligation fell within the exceptions allowed by the treaty provision.

5.20. When suggesting that its actions are justified by reference to the Applicant's alleged breaches of the Interim Accord, the Respondent has not articulated in any degree of specificity the basis on which it alleges that any such alleged breaches would justify the Respondent's action, such as whether that action is permissible because the Interim Accord has been suspended or is excused because the action is a lawful countermeasure. In the following sections the Applicant explains why neither of those theories may be justified in the present case, on the basis of the facts or the applicable law.

Section III. The Respondent's Non-Performance Cannot Be Explained on the Basis of a Suspension of Article 11(1) of the Interim Accord for Material Breach

5.21. As indicated above, since its action of late March/early April 2008, the Respondent has made a number of general allegations to the effect that the Applicant has breached various obligations of the Interim Accord, and has claimed that these justify the Respondent's actions. The Respondent's argument has not been fully elaborated, but might be premised on the claim that alleged material breaches by the Applicant entitled the Respondent unilaterally to decide, as of late March 2008, to suspend Article 11(1) (or perhaps the entire Interim Accord). Such a premise would be extraordinary, in that the Respondent has maintained (even recently) that the Respondent "fully respects the provisions of the Interim Accord, on the basis of the fundamental principle *pacta sunt servanda*."[187] If the Respondent "fully" respects the "provisions" of the 1995 Interim Accord, then it presumably does not now and did not in late March/early April 2008 regard Article 11(1) as suspended. Nevertheless, if the Respondent is relying on a theory of suspension of its obligations under Article 11(1), several points should be noted.

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[187] See, for example, the letter dated 2 June 2009 from the Respondent's Permanent Representative to the United Nations, John Mourikis, to the United Nations Secretary-General, UN doc. S/2009/285: Annex 47.

5.22. First, any such reliance on a theory of suspension is a tacit concession that its actions of late March/early April 2008 are – on their face – inconsistent with the requirements of Article 11(1). There is no need to argue that Article 11(1) has been suspended unless the Respondent understands that its conduct transgressed its obligations under that article.

5.23. Second, as a treaty in force, the Interim Accord is subject to the general provisions on treaty law reflected in the Vienna Convention on the Law of Treaties. Pursuant to Article 26 and the principle of *pacta sunt servanda*, the Convention makes the Respondent's obligation under Article 11(1) of the Interim Accord ("not to object") both legal and binding, and provides no excuse for the Respondent's failure to discharge this clear and important obligation that it owes to the Applicant.

5.24. Third, the Vienna Convention on the Law of Treaties envisages the possibility of suspension on grounds of material breach, but it is clear that this right is both limited and exceptional. Part V of the Vienna Convention deals with 'Invalidity, Termination and Suspension of the Operation of Treaties'. Article 60 of the Vienna Convention addresses 'Termination or suspension of the operation of a treaty as a consequence of its breach'. It provides, in relevant part, that

> "1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part …
>
> 3. A material breach of a treaty, for the purposes of this article, consists in:
> (a) repudiation of the treaty not sanctioned by the present Convention; or
> (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.
>
> 4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach...".

5.25. Thus, a treaty may only be suspended, in whole or in part, in the event that there is a "material breach" of the treaty by a party. Moreover, a "material breach" is not just any violation of the treaty; it only encompasses violations which reach the level of a "repudiation" of the treaty by the alleged violator or violations of a provision "essential" to the accomplishment of the object or purpose of the treaty. As noted in Section V below, none of the purported violations by the Applicant of the Interim Accord prior to April 2008 alleged by the Respondent were capable of constituting a material breach of the Interim Accord.

5.26. Fourth, Article 65 of the Vienna Convention provides for various procedural requirements to be followed by a Party wishing to suspend a treaty. In the present case, those conditions have not been met, since the Respondent has not followed the specific and detailed procedures that are set out in that Article. These provisions are intended to govern and limit the right of states to suspend or terminate the application of a treaty and to prevent the abuse of that right. As this Court has stated: "[T]he Vienna Convention of 1969 on the Law of Treaties confines itself to defining – in a limitative manner – the conditions in which a treaty may lawfully be denounced or suspended; while the effects of a denunciation or suspension seen as not meeting those conditions are, on the contrary, expressly excluded from the scope of the Convention by operation of Article 73."[188] Moreover, the Court has stressed that the ''stability of treaty relations'' requires that the grounds specified in the Vienna Convention be applied in accordance with their strict conditions, finding that it ''would set a precedent with disturbing implications for treaty relations and the integrity of the rule *pacta sunt servanda*'' if a party could unilaterally set aside a treaty on grounds other than those so specified. Thus, the treaty could be terminated "only on the limited grounds enumerated in the Vienna Convention."[189]

5.27. Thus, the Vienna Convention does not permit the Respondent, unilaterally, to suspend its treaty obligations simply by alleging a material breach by the Applicant. Article 65(1) of the Vienna Convention stipulates

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[188] *Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, p. 7, at para. 47.

[189] *Ibid*., at paras. 100, 104 and 114.

a detailed, orderly procedure for notifying an intent to suspend. Specifically, Article 65(1) provides:

> "A party which, under the provisions of the present Convention, invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, must notify the other parties of its claim. The notification shall indicate the measure proposed to be taken with respect to the treaty and the reasons therefor."

5.28. The Respondent has never notified the Applicant of any ground for suspending the Interim Accord, nor notified the Applicant of any "measure proposed to be taken with respect to the treaty and the reasons therefor". Specifically, at no time in the period prior to late March/early April 2008 did the Respondent notify the Applicant that it had a ground for suspending the Interim Accord and that it was suspending the Interim Accord such that Article 11(1) would not be applicable at the time of the Respondent's objection to the Applicant being invited to join NATO.

5.29. Moreover, it should be noted that the notification to be communicated under Article 65(1) of the Vienna Convention cannot be done in a cursory, informal fashion, nor even orally communicated as between diplomatic representatives of the parties to the treaty. The Vienna Convention is quite clear that the gravity of charging a material breach of a treaty, and responding to that breach by suspending the treaty in whole or in part, must be communicated in writing through an "instrument" communicated to the other Party by a senior diplomatic official. Vienna Convention Article 67 states:

> "1. The notification provided for under article 65, paragraph 1, must be made in writing.
>
> 2. Any act of … suspending the operation of a treaty pursuant to the provisions of the treaty or of paragraphs 2 or 3 of article 65 shall be carried out through an instrument communicated to the other parties. If the instrument is not signed by the Head of State, Head of

> Government or Minister for Foreign Affairs, the representative of the State communicating it may be called upon to produce full powers."

5.30. Needless to say, not only did the Respondent never notify the Applicant prior to late March/early April 2008 that it regarded a material breach to have occurred that merited suspension, the Respondent never did so through a written instrument.

5.31. Further, even had the Respondent made such a notification in writing, it still could not have unilaterally suspended the Interim Accord or any part thereof, for the Vienna Convention imposes further procedural requirements. Article 65(2) provides:

> "If, after the expiry of a period which, except in cases of special urgency, shall not be less than three months after the receipt of the notification, no party has raised any objection, the party making the notification may carry out in the manner provided in article 67 the measure which it has proposed."

5.32. Since the Applicant has never received formal, written notification of a material breach that the Respondent believed merited suspension of all or part of the Interim Accord, the minimum three-month period of notification has never begun to run. As such, the Respondent was never entitled under the Vienna Convention to "carry out" any act of suspension.

5.33. Further, if the Applicant had received such notification, which it did not, it would certainly have objected to any claim that it was in material breach of the Interim Accord. The objection would have been all the more vigorous if it had been notified that the Respondent proposed to suspend the application of the obligation set forth in Article 11(1). Article 65(3) of the Vienna Convention deals with the situation that would have followed the Applicant's objection:

> "If, however, objection has been raised by any other party, the parties shall seek a solution through the means indicated in Article 33 of the Charter of the United Nations."

5.34. This provision is to be read together with Article 65(4), which provides:

> "Nothing in the foregoing paragraphs shall affect the rights or obligations of the parties under any provisions in force binding the parties with regard to the settlement of disputes."

5.35. Taken together, these provisions indicate that if the Applicant had been provided the opportunity to object to an intention on the part of the Respondent to suspend the treaty, both Parties would then have been obligated to seek a solution through judicial settlement, arbitration, mediation or some other form of dispute settlement, before the Respondent could have resorted to a unilateral suspension of the Interim Accord or any of its provisions. In pursuit of such dispute settlement, the Respondent should have instituted proceedings before the Court under Article 21 of the Interim Accord, as discussed in the prior section. Alternatively, by providing the requisite notification, the Respondent would have provided the Applicant an opportunity to invoke proceedings before the Court in advance of the Respondent's unilateral suspension. Yet the Applicant was not placed in a position to do so because of the Respondent's failure to fulfil the procedures set forth in Vienna Convention Article 65, as it was obligated to do under international law.

5.36. Ignoring these procedural safeguards, the Respondent simply took unilateral action. It then waited until the Applicant complained in late April 2008 of the Respondent's actions and its violation of Article 11(1) of the Interim Accord. Only after receiving that complaint did the Respondent indicate through written notice, and initially without any degree of specificity, its view that the Applicant had committed a material breach of the Interim Accord, and even then not by way of notification to the Applicant that the breach merited suspension of the Interim Accord.

5.37. Such a radical short-cut to treaty suspension (if suspension is indeed the Respondent's purported explanation for transgressing Article 11(1)) is not permitted by the Vienna Convention. It undermines the requirements of the

Vienna Convention on the Law of Treaties, and the stability of the international treaty regime. The Respondent has neither notified its intent to suspend any part of the Interim Accord nor has it invoked the procedures envisaged by Article 65 of the Vienna Convention and set out in Article 33 of the United Nations Charter for resolving a dispute diplomatically. Since the Respondent has neither notified an intent to suspend any part of the Interim Accord, nor invoked the procedures envisaged by Article 33 of the Charter, the substantive obligation set out in Article 11(1) of the Interim Accord ("not to object") remains fully in effect. It is not and has never been suspended. In the absence of such suspension, there is no alternative available to the Court but to conclude that the provisions of Article 11(1) have been violated.

5.38. The procedural safeguards surrounding suspension of treaties on the ground of material breach, as set out in the Vienna Convention and the UN Charter, are absolutely central to the operation of the international treaty system. As Sir Humphrey Waldock, the Special Rapporteur of the International Law Commission which prepared the Vienna Convention draft articles, explained in commenting on the provisions dealing with invalidity, termination and suspension:

> "it is upon the procedural provisions regulating the exercise of the right to invoke these grounds that the effectiveness of this branch of the law of treaties will ultimately depend."[190]

5.39. This position was further underscored by the International Law Commission's commentary on draft Article 62 of the Vienna Convention (final Article 65) which explained:

> "[T]he Commission considered it essential that the present articles should contain procedural safeguards against the possibility that the nullity, termination or suspension of the operation of a treaty may be arbitrarily asserted as a mere pretext for getting rid of an inconvenient obligation."[191]

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[190] *Second Report on the Law of Treaties*, A/CN.4/156, (1963) p.87, para. 1.

[191] *Draft Articles on the Law of Treaties*, A/CN.4/190, (18 July 1966) p.262, para.1.

5.40. Clearly, the "inconvenient obligation" of the Respondent to the Applicant under Article 11(1) of the Interim Accord cannot be suspended merely by unilateral assertion of a material breach. At times, the Respondent appears to understand this, for it pulls back from implying any such suspension so as to instead confirm that "Greece remains committed to the Interim Accord ... ."[192] In fact, the Interim Accord, including Article 11(1), remained fully in force as between the two Parties at the time of the Respondent's action of late March/early April 2008, and remains fully in force today. The Respondent's actions at Bucharest, and before, indicates not that it claimed to have suspended Article 11(1) due to alleged material breach by the Applicant but, rather, that its actions were politically motivated. In short, the Respondent failed to take any account of the treaty obligation it had undertaken pursuant to Article 11(1) of the Interim Accord or of the procedural obligations with respect to suspension that it had accepted under the Vienna Convention on the Law of Treaties. An *ex post facto* approach to legal justification based on suspension, if that is indeed the Respondent's contention, is undermined by its own actions and statements and the relevant rules of international law.

Section IV. The Respondent's Violation of Article 11(1) Cannot Be Excused as a Lawful Countermeasure to a Precedent Wrongful Act by the Applicant

5.41. Given that its conduct in late March/early April 2008 constituted a clear violation of Article 11(1), the Respondent may attempt to claim that that conduct can be excused by reference to the rules governing countermeasures under the law of state responsibility for internationally wrongful acts, as principally reflected in the ILC Articles. Such an argument by the Respondent would differ from that of the prior section, in that the contention would not be that the obligation had been suspended, but rather that the obligation remained fully applicable

[192] Letter dated 23 May 2008 from the Respondent's Permanent Representative to the United Nations, John Mourikis, to the United Nations Secretary-General, UN doc. S/2008/346 (28 May 2008): Annex 43. See also the verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 51.

and that the Applicant's alleged material breaches "provide a justification or excuse for non-performance while the circumstance in question subsists." [193]

5.42. Countermeasures, however, are not a *carte blanche* for powerful states to hand out lessons to weaker ones. Under general international law, as reflected in the jurisprudence of this Court[194] and in the ILC Articles, a countermeasure is lawful only if (i) it is taken in response to a previously committed wrong, (ii) it is taken after the injured state calls upon the state committing the wrongful act to discontinue the conduct, forewarning the state of the intended countermeasure, and (iii) it is proportionate. The ILC Commentary to the Articles has cautioned that "countermeasures are strictly limited to the requirements of the situation and that there are adequate safeguards against abuse."[195]

5.43. The law on countermeasures is clearly set forth in Articles 49 to 54 of the ILC Articles, which reflect general international law. As with the justification for suspension in relation to material breach under the law of treaties, the Respondent has failed to meet the notification requirements relating to resort to countermeasures. Consequently, in the present case, the Applicant submits that any argument by the Respondent in this regard does not even get off the ground. Article 52(1) of the ILC Articles provides:

> "Before taking countermeasures, an injured State shall:
> (*a*) call upon the responsible State, in accordance with article 43, to fulfil its obligations ... ;
> (*b*) notify the responsible State of any decision to take countermeasures and offer to negotiate with that State."

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[193] Report of the Commission to the General Assembly on the Work of its Fifty-Third Session, *Yearbook of the International Law Commission,* vol. II, Part Two (2001), p. 71; see also *ibid*, at p. 31 ("It is a matter for the law of treaties to determine whether a State is a party to a valid treaty, whether the treaty is in force for that State and with respect to which provisions, and how the treaty is to be interpreted.")

[194] *Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, p. 7, at paras. 83-85.

[195] Report of the Commission to the General Assembly, *supra* note 193, at p. 129.

5.44. In the matter before this Court, however, the Respondent did not, before taking its alleged countermeasures, "call upon" the Applicant to fulfil its obligations by the means contemplated in Article 43 of the ILC Articles. Article 43 calls upon the allegedly injured state to "give notice of its injury", a notification that the ILC Commentary states is "analogous to Article 65 of the 1969 Vienna Convention" on the Law of Treaties.[196] Moreover, the Respondent failed to "notify" the Applicant of "any decision to take countermeasures" in the form of an objection to the Applicant's admission to NATO, let alone "offer to negotiate" with the Applicant regarding this matter, as a means of avoiding such a countermeasure, as required by Article 52(1)(b) of the ILC Articles.

5.45. The reason for prior notification, both of the alleged breach and of the intention to take a countermeasure, is to fulfil the purpose of countermeasures, which is to induce compliance by the allegedly breaching State. Article 49(1) makes it clear that

> "An injured State may only take countermeasures against a State which is responsible for an internationally wrongful act in order to induce that State to comply with its obligations … ."

5.46. Thus, rather than serve as a license to act unilaterally in punishment of an alleged wrongdoer, the doctrine of countermeasures is designed to alert a state as to potential self-help steps envisaged by another state, so that the first state can come into compliance prior to those steps even being taken. As the Commentary to the ILC Articles indicates:

> "Countermeasures may only be taken by an injured State in order to induce the responsible State to comply with its obligations … , namely, to cease the internationally wrongful conduct, if it is continuing, and to provide reparation to the injured State. Countermeasures are not intended as a form of punishment for wrongful conduct, but as an instrument for achieving compliance with the obligations of the responsible State."[197]

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[196] Report of the Commission to the General Assembly, *supra* note 193, at p. 119.

[197] *Ibid.*, at p. 130.

5.47. Further, the Commentary explains:

> "The principle underlying the notification requirement is that, considering the exceptional nature and potentially serious consequences of countermeasures, they should not be taken before the other State is given notice of a claim and some opportunity to present a response … Countermeasures can have serious consequences for the target State, which should have the opportunity to consider its position faced with the proposed countermeasures." [198]

5.48. In the absence of advance notification by the Respondent that an alleged wrong had occurred and that a planned countermeasure – in the form of the Respondent objecting to the Applicant's admission to NATO – would be undertaken, the Applicant was not in a position to respond to that planned countermeasure. Given that the Respondent did not follow the procedures for countermeasures, a countermeasure (if that is how the Respondent seeks to excuse its violation) could not lawfully be undertaken.

5.49. Further, Article 49 requires that the countermeasure operate only for "the time being" and, "as far as possible, be taken in such a way as to permit the resumption of performance of the obligations in question." As the ILC commentary observes:

> "The phrase 'for the time being' in [Article 49,] paragraph 2 indicates the temporary or provisional character of countermeasures. Their aim is the restoration of a condition of legality as between the injured State and the responsible State, and not the creation of new situations which cannot be rectified whatever the response of the latter State to the claims against it. Countermeasures are taken as a form of inducement, not punishment: if they are effective in inducing the responsible State to comply with its obligations of cessation and reparation, they should be discontinued and performance of the obligation resumed."[199]

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[198] Report of the Commission to the General Assembly, *supra* note 193, at p. 136.

[199] *Ibid.*, at pp. 130-131, and at p. 131 ("States should as far as possible choose countermeasures that are reversible").

5.50. Yet this particular countermeasure (if that is the Respondent's excuse) was not designed to permit resumption of the Respondent's Article 11(1) obligation in any meaningful sense, at least not as it relates to the Applicant's accession to NATO. The process for NATO accession is complex, involving limited opportunities to proceed with particular steps towards membership. A countermeasure that takes the form of an objection to a state's membership at a key moment in the accession process may not be quickly rectifiable by the Respondent, no matter how the Applicant might react to the countermeasure.

5.51. Moreover, as noted in Article 51 of the ILC Articles, countermeasures "must be commensurate with the injury suffered, taking into account the gravity of the internationally wrongful act and the rights in question." This concept of proportionality is well-embedded in jurisprudence relating to countermeasures, including in decisions of this Court.[200] For the Respondent to excuse its behaviour as a lawful countermeasure, it would have to demonstrate that any alleged violation of the Interim Accord by the Applicant merited a countermeasure that excluded the Applicant from the most important multilateral defense organisation operating in Europe. As noted in Section V below, this the Respondent simply cannot show. Indeed, excluding the Applicant from NATO, potentially for a significant period of time, given the process for admission, would be a vast and disproportionate overreaction by the Respondent to any of the temporary, isolated or minor issues that occasionally have arisen in the course of relations between the two Parties under the Interim Accord.

5.52. Furthermore, as noted in Article 50(2)(a) of the ILC Articles, the Respondent was required to fulfil "its obligations … under any dispute settlement applicable between it and the responsible State". This, too, it has clearly failed to do. As discussed above in Section II, Articles 7(3) and 21(1) of the Interim Accord make specific provision for such dispute settlement, stating that the Parties "shall" pursue non-binding dispute resolution procedures. In the event that the Respondent believed there existed a material breach by the Applicant of

[200] In the *Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, p. 7, at paras. 85-87, this Court ruled that Slovakia's countermeasures against Hungary were unlawful because they had failed to respect the principle of proportionality.

the Interim Accord, structured recourse to diplomacy, mediation, or conciliation is mandated to resolve any disputes (with binding dispute settlement available to either Party if diplomacy fails), rather than recourse to a countermeasure. The ILC Commentary to the Articles notes that

> "the provisions on countermeasures are residual and may be excluded or modified by a special rule to the contrary … Thus, a treaty provision precluding the suspension of performance of an obligation under any circumstances will exclude countermeasures with respect to the performance of the obligation. Likewise [is the case for] a regime for dispute resolution to which States must resort in the event of a dispute…"[201]

5.53. So long as the dispute resolution mechanisms provided for in Articles 7(3) and 21 of the Interim Accord continue to be available to the Parties, they preclude recourse to unilateral countermeasures.

5.54. Finally, and for the avoidance of doubt, the Applicant has committed no wrong against the Respondent to warrant any sort of a "countermeasure", as discussed in Section V below. Consequently, in the present case, any argument by the Respondent that it could engage a countermeasure fails because, in the absence of any precedent internationally wrongful act by the Applicant, the Respondent cannot claim to be an "injured State" entitled to pursue a countermeasure.[202]

Section V. On the Merits, the Respondent's Allegations of Material Breach by the Applicant of the Interim Accord Are without Foundation

5.55. As explained in Section II above, the Respondent failed to pursue the dispute resolution procedures of the Interim Accord that are required in the event that a breach is thought to have occurred. Moreover, the Respondent

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[201] Report of the Commission to the General Assembly, *supra* note 193, at p. 129.

[202] See *Gabcikovo-Nagymaros Project* (Hungary v. Slovakia), Judgment, I.C.J. Reports 1997, p. 7, at para. 83 ("In order to be justifiable, a countermeasure must … be taken in response to a previous international wrongful act of another State … .").

did not follow any of the procedural requirements necessary to maintain that Article 11(1) of the Interim Accord had been suspended (Section III above) or that it was in force but could be violated as a countermeasure to an antecedent violation by Applicant (Section IV above).

5.56. In light of the points made in Sections II to IV, there is no need for the Court to consider the merits of any of the Respondent's allegations of violations by the Applicant of the Interim Accord. Nevertheless, the Applicant wishes to make absolutely clear that it strongly denies that it has, in any fashion, violated its obligations under the Interim Accord, and certainly not in a manner that would allow a claim of material breach to be raised or a countermeasure to be warranted.

5.57. Since May 2008, the Applicant has received a steady stream of verbal notes from the Respondent alleging various purported breaches by the Applicant of different provisions of the Interim Accord. These allegations on the merits cannot serve as a basis for the measures taken by the Respondent in breaching Article 11(1) of the Interim Accord.

5.58. First, many of the allegations are vague and generalized assertions, unsupported by any factual foundation. In its very first verbal note of 15 May 2008, in which it purported to explain its behaviour of late March/early April 2008, the Respondent listed a series of alleged "material breaches" by the Applicant, such as "asserting and supporting territorial claims against Greece", "promoting and condoning irredentism" and "inciting violence, hatred, and hostility against Greece". Yet the Respondent provided virtually no facts in support of such wide-ranging and serious allegations. Reliance on unsubstantiated rhetoric so as to justify its own unjustifiable conduct demonstrates that the Respondent did not act in response to a specific, concrete material breach of the Interim Accord by the Applicant, for no such breach was identified.[203]

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[203] See, for example, the verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 51. See also the *note verbale* dated 1 June 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, No. 32-4355/1, highlighting the lack of factual foundation to allegations of breach of the Interim Accord made by the Respondent: Annex 63.

5.59. Second, to the extent that the Respondent has identified specific alleged violations of the Interim Accord (principally in diplomatic communications beginning in December 2008), virtually all of those concern alleged occurrences *postdating* 3 April 2008. Examples include: the decision of the Applicant to name part of the Pan-European Corridor X in honour of Alexander the Great,[204] a decision made in December 2008, many months after the Respondent's action of late March/early April 2008; the decision by the Applicant to name a stadium in Skopje after "Philip II, the Macedon", a decision also taken in December 2008;[205] the use of an archaeological artifact displaying the sixteen-pointed sun in television 'spots' of December 2008/January 2009;[206] a comment made in an interview of Applicant's Foreign Minister published on 4 February 2009,[207] almost a year after the Respondent's conduct of late March/early April 2008; and the use of the sixteen-pointed sun in the main square of one of the Applicant's municipalities.[208] The Respondent's conduct of late March/early April 2008 cannot possibly be explained or justified by reference to alleged occurrences that post-date the Respondent's conduct.

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[204] See the verbal note dated 15 January 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 52 and the *note verbale* in response dated 27 February 2009 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Annex 54; see also the verbal note dated 15 April 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs, No. F. 141.1/48/AS 488: Annex 59, and the verbal notes in response dated 1 June 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, No. 32-4354/1: Annex 62.

[205] Verbal note dated 15 January 2009, *supra.*

[206] *Ibid.*

[207] *Note verbale* dated 24 February 2009 from the Respondent's Ministry of Foreign Affairs to the Applicant's Liaison Office in Athens: Annex 53. See also the *note verbale* in response dated 19 March 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Annex 57, and the subsequent verbal note related to this matter dated 3 June, from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 64.

[208] Verbal Note dated 15 April 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs, No. F. 141.1/49/AS 489: Annex 60; and *note verbale* of response dated 1 June 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, No. 32-4354/1: Annex 62.

5.60. Third, the limited, specific allegations made by the Respondent in the verbal notes addressed to the Applicant concerning action by the Applicant *pre*dating April 2008 do not amount to breaches of the Interim Accord. Those allegations relate to the renaming of the airport in Skopje after Alexander the Great in December 2006, the introduction of the Applicant's President at the United Nations in September 2007, and "various decisions by governmental and municipal authorities … to put up statues of historical figures of ancient Macedonia (such as Alexander the Great and Philip II) in several cities …".[209] The Applicant denies that these alleged actions constituted breaches of the Interim Accord, let alone material breaches. Certainly none of these alleged actions amounted to a repudiation of the Interim Accord or to a violation of a provision "essential" to the accomplishment of the object or purpose of the Interim Accord.

5.61. Further, to the extent that the Respondent's conduct is justified as a countermeasure, such a countermeasure would be highly disproportionate to these alleged actions of the Applicant. As noted in paragraph 5.51 above, excluding the Applicant from NATO, potentially for a significant period of time, is a vastly disproportionate overreaction by the Respondent to measures such as the renaming of an airport.

5.62. Fourth, the Respondent has at times represented that its opposition to the Applicant's application to join NATO was an exercise of its sovereign rights and duties as a member of the North Atlantic Treaty. The Respondent may seek to assert that its objection to the Applicant's membership was in some way borne out of its obligation under the North Atlantic Treaty to assess the Applicant's dedication to "mutual trust and goodwill", an essential quality in which it claims the Applicant is lacking due to its purported intransigence in relation to the Respondent's dispute with it concerning its constitutional name.[210]

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[209] Verbal note dated 15 May 2008, *supra*: Annex 59.

[210] See, for example: Dora Bakoyannis, "The view from Athens", *International Herald Tribune* (31 March 2008): Annex 90; see also the verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs, *supra*: Annex 51, (stating that the Applicant had "failed to meet the conditions of the respect for the principle of peaceful and good neighbourly relations")

5.63. This is an unsustainable argument. Such considerations have no factual foundation: as set out at Chapter II above, there is no question that the Applicant meets all the requirements for NATO membership, including a commitment to good neighbourly-relations. That has been made clear by the Alliance in its Bucharest Summit Statement, and by its Member Countries with the exception of the Respondent. Moreover, Article 11(1) of the Interim Accord does not allow such considerations to be taken into account by the Respondent as a justification for the Respondent's objection to the Applicant's NATO membership (or its membership of any other organization or institution). The only matter it allows the Respondent to take into account is the manner in which the Applicant is to be referred to within NATO. Accepting the Respondent's interpretation would eviscerate the object and purpose of Article 11(1), which was key to the Applicant's decision to conclude the Interim Accord.

5.64. Fifth, the Respondent's characterization of the Applicant's use of its own constitutional name within organizations and institutions of which it is a member, including the United Nations, as a breach of the Interim Accord amounts to a misinterpretation and misrepresentation of the treaty.[211] Chapter II, paragraph 2.20, discusses the origin and crafting of the language of paragraph 2 of resolution 817. That language makes clear that the designation of 'the former Yugoslav Republic of Macedonia' was not intended to represent a new provisional *name* for the Applicant state, as emphasized by the fact that 'the' and 'former' are uncapitalised and therefore do not form part of an official title. Indeed, during the negotiations, the Applicant's then Prime Minister submitted a letter to the President of the Security Council (S/25541)[212] (which

[211] Verbal note dated 15 May 2008 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Annex 51; see also the *note verbale* dated 16 April 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje in response to an oral protest made by the Respondent's Ambassador concerning the use by the Applicant of its constitutional name at a meeting in Skopje: Annex 61. The Respondent has also sought to misrepresent the Applicant's use of its constitutional name within the United Nations as showing "blatant disrespect for the letter and spirit of Security Council Resolutions": Letter dated 27 November 2008 from the Respondent's Permanent Representative to the United Nations, John Mourikis, to the United Nations Secretary-General, UN doc. S/2008/746 (1 December 2008): Annex 44.

[212] Note by the President of the United Nations Security Council, attaching a letter dated 24 March 1993 to him from the Applicant's Prime Minister, Branko Crvenkovski, UN doc.

is explicitly referenced in resolution 817) stating unequivocally that "the Republic of Macedonia will in no circumstances be prepared to accept 'the former Yugoslav Republic of Macedonia' as the name of the country". Rather, the formulation was a provisional descriptive *designation* referring to the State's previous status in order for it to be identifiable within the UN, pending resolution of the dispute over its name.[213]

5.65. Furthermore, resolution 817 was only intended to deal with the manner in which the Applicant was to be referred to for all purposes "within the United Nations". As made clear by one of those involved in the drafting of resolution 817, "[i]t did not purport to say anything about the position outside the United Nations (though other organizations and some states have adopted the same provisional way of referring to the state, a fact acknowledged in the 1995 Interim Accord)."[214]

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

S/25541 (6 April 1993): Annex 28.

213 Michael Wood, "Participation of Former Yugoslav States in the United Nations", *Max Planck Yearbook of United Nations Law*, Vol. 1 (1997), p 231, at p 239. Michael Wood was involved in the drafting of resolution 817. This was further emphasized in the statement made by the President of the Security Council following the adoption of resolution 817, which clarified that the reference to 'the former Yugoslav Republic' "merely reflects the historic fact that the State recommended for admission to the United Nations in the present resolution was in the past a republic of the former Socialist Federal Republic of Yugoslavia": Note by the President of the Security Council, UN doc. S/25545 (7 April 1993): see Annex 32.

214 Wood, *op.cit.*, p. 239.

5.67. Moreover, Chapter II recounted[215] the Parties' agreement to "take practical measures so that the difference about the name of the Party of the Second Part will not obstruct or interfere with normal trade and commerce between the Party of the Second Part and third parties." The "practical measures" referred to in Article 5(2) of the Interim Accord were intended to enable the Parties to develop mutual relations in a manner which did not compromise their respective positions concerning the difference relating to the Applicant's name, which were to be the subject of further negotiation. Such "practical measures" were agreed upon in the Memorandum on "Practical Measures" Related to the Interim Accord of New York of September 13, 1995, signed in Skopje on 13 October 1995,[216] and the Memorandum Related to the Interim Accord of New York of September 13, 1995, on the Mutual Establishment of Liaison Offices, signed in Athens on 20 October 1995.[217] The Memoranda, and the practical measures set out within them, confirm (i) that the Applicant expressly reserved for itself the right *to call itself* by its constitutional name, and that the Respondent did not object to it so doing; and (ii) that the Applicant also agreed to be referred to by the Respondent as 'the former Yugoslav Republic of Macedonia'. Thus, in relation to the designation of the Applicant, the Interim Accord can be said to mirror for bilateral relations the understanding reached in resolution 817 in the framework of the United Nations: it effectively maintains each Party's respective position – as it was expressly intended to do.[218]

5.68. In short, none of the Respondent's allegations has any bearing on the Respondent's conduct of late March/early April 2008. When those allegations that have some factual predicate are carefully scrutinized, it is readily apparent

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[215] See Chapter II, paras. 2.33-2.36.

[216] Memorandum on "Practical Measures" Related to the Interim Accord of New York of September 13, 1995 (Skopje, 13 October 1995): Annex 3.

[217] Memorandum Related to the Interim Accord of New York of September 13, 1995, on the Mutual Establishment of Liaison Offices (Athens, 20 October 1995): Annex 4.

[218] The Respondent's verbal note dated 15 May 2008 from its Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs (Annex 51) refers to one incident in which the (Macedonian) President of the General Assembly referred to the Applicant's President as "the President of the Republic of Macedonia". Such an act is not inconsistent with the requirements of resolution 817 or of the Interim Accord.

that they do not demonstrate any violation of the Interim Accord, let alone a violation that would be considered a material breach.

Section VI. Conclusions

5.69. In Article 11(1) of the Interim Accord, the Respondent undertook not to object to the Applicant's efforts to join international organizations or institutions, such as NATO, in circumstances in which the Applicant is to be referred to in the manner envisaged by Security Council resolution 817. In seeking to join NATO, the Applicant fully expressed its willingness to be referred to under the provisional designation of 'the former Yugoslav Republic of Macedonia', as set out in resolution 817. The Respondent, however, objected to the Applicant's admission to NATO and thereby violated Article 11(1) of the Interim Accord. There is no lawful justification for the Respondent's breach of its Article 11(1) obligation in the present case, such as a justification based on suspension of all or part of the Interim Accord for material breach or on the right of countermeasures against an antecedent unlawful act. Moreover, the various vague and unsubstantiated *ex post facto* allegations by the Respondent of alleged breaches of the Interim Accord by the Applicant, to the extent they can be understood, do not bear up under scrutiny. In light of the Respondent's breach, the Applicant is entitled to appropriate relief, as discussed in the next chapter.

CHAPTER VI

THE RELIEF SOUGHT

Introduction

6.1. In its Application the Applicant sought relief in two forms, namely (i) a declaration that the Respondent has acted illegally, and (ii) an order that the Respondent take all necessary steps to restore the Applicant to the *status quo ante* and to refrain from any action that violates its obligation under Article 11(1) in the future.

6.2. In preparing its Application, the Applicant was guided by its objectives in bringing these proceedings and by the practice of the Court. The relief sought has been narrowly crafted to meet the specific needs of the particular dispute that has been referred to the Court by the Applicant, and does not require the Court to express views on other matters that may divide the Parties but are not in issue before the Court.

6.3. The Applicant has also paid close regard to the general principles reflected in the ILC Articles. Article 28 of the ILC Articles recognizes the general principle that the international responsibility of a State which is entailed by an internationally wrongful act "involves legal consequences". Article 29 provides that:

> "The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached."

6.4. In accordance with the rule reflected in this Article, the Respondent has a continuing duty to comply with its obligations under Article 11(1) of the Interim Accord. This applies in particular in relation to such applications for membership that the Applicant has pending or may make with respect to other international organizations. At present, respect for the obligation is also of

particular importance in relation to the European Union, given the statements by the Respondent that it will object to the Applicant's membership of that institution, raising serious issues relating to its adherence to its obligation under Article 11(1). The Applicant reserves its rights in relation to any objection by the Respondent to the Applicant's EU accession process.

6.5. The Respondent's acts of objection to the Applicant's NATO membership in the period leading up to and including 3 April 2008 have therefore given rise to real and continuing uncertainty, in particular with regard to the Applicant's prospects of being able to join NATO and other international organizations in the future. This is one of the Applicant's principal motivations in bringing these proceedings: they are intended not only to address the issue of NATO membership but membership of all regional, multilateral and international organizations or institutions that the Applicant may be currently seeking or may seek in the future, which the Respondent is in a position to impede or veto. The Applicant reserves its rights in relation to any future objection by the Respondent to its membership of any such organization or institution.

6.6. To be clear, and as described in Chapter V, the Applicant is concerned only with the international responsibility of the Respondent, arising out of the actions attributable to it in relation to its objection to the Applicant's membership of NATO.[219]

6.7. The most relevant provisions of the ILC Articles are to be found in Part One, Chapter II, which addresses general principles relating to the Content of the International Responsibility of a State.

6.8. Article 30 of the ILC Articles deals with Cessation and Non-Repetition, matters with which the Applicant is greatly concerned. It provides:

> "The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require."

[219] See Chapter V, para. 5.6.

6.9. Article 31 of the ILC Article deals with Reparation. It provides:

> "1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.
>
> 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State."

6.10. Relatedly, Article 34 of Part Two, Chapter II of the Articles addresses Forms of Reparation. It provides:

> "Full reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination, in accordance with the provisions of this chapter."

6.11. The Applicant is concerned with reparation, but does not seek compensation (at this stage at least, having reserved its rights in the light of what other steps the Respondent may take in relation to other regional, multilateral or international organizations or institutions). Rather, the Applicant seeks the declaration and order identified above, to which we now turn.

Section I. The First Request

6.12. The Applicant's first request is retrospective, in the sense of looking to the past conduct of the Respondent, asking the Court:

> "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".

6.13. The relief sought is straightforward, and follows clearly from the elaboration of the facts and law as set out in the earlier chapters of this Memorial. The Applicant seeks a declaratory judgment to confirm that its interpretation of Article 11(1) of the Interim Accord is correct, and that the Respondent's

objections are inconsistent with the requirements of Article 11(1). Such a judgment would also likely have a continuing and forward reaching effect, and contribute to conditions under which the Parties would act in accordance with their obligations under the Interim Accord in the future.

6.14. There is nothing novel about the relief sought by the Applicant in this form. The approach has been followed by the Court in many of its most recent judgments. In its Judgment of 19 December 2005 in the *Case concerning Armed Activities on the Territory of the Congo*, the Court ruled that it:

> *"[f]inds* that the Republic of Uganda, by engaging in military activities against the Democratic Republic of the Congo on the latter's territory, by occupying Ituri and by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, violated the principle of non-use of force in international relations and the principle of non-intervention".[220]

6.15. More recently, in its Judgment of 19 January 2009 in the *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals*, the Court found:

> *"*… that the United States of America has breached the obligation incumbent upon it under the Order indicating provisional measures of 16 July 2008, in the case of Mr. José Ernesto Medellín Rojas; ... ."[221]

6.16. Rulings of this kind, and the form of declaratory relief sought by the Applicant, are well established in the jurisprudence of the Court. Their purpose was explained early on by the Permanent Court of International Justice. In the *Chorzow Factory (Interpretation)* case:

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[220] *Case concerning Armed Activities on the Territory of the Congo* (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005, at para. 345(1).

[221] *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals* (Mexico v. United States of America), Judgment of 19 January 2009, at para. 61(2).

> "[T]he intention … 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."[222]

6.17. In the *Northern Cameroons* case the Court indicated its understanding that where a declaratory judgment interprets a treaty (as is here requested of the Court by the Applicant in relation to the Interim Accord), it will have a continuing applicability. In this way, as the Applicant seeks, the declaratory judgment that is sought will have, as the Court put it, a "forward reach".[223]

Section II. The Second Request

6.18. The Applicant's second request is prospective, in the sense of looking to the present and future conduct of the Respondent, and asks the Court to adjudge and declare 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 Organisation 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)."

6.19. The Applicant seeks an Order in this form to ensure that the Court's judgment is not merely retrospective but that it will restore the Applicant

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[222] *Interpretation of Judgements Nos. 7 and 8 (The Chorzow Factory)*, Judgement, 1927, P.C.I.J., Series A, No. 13, p. 5, at p. 20.

[223] *Case concerning the Northern Cameroons* (Cameroon v. United Kingdom), Preliminary Objections, I.C.J. Reports 1963, p. 15, at p. 37.

to the *status quo ante* and prevent the Respondent in the future from acting incompatibly or inconsistently with its obligations under Article 11(1), particularly in relation to the Applicant's continuing desire to receive an invitation to join NATO. The effect of the Order should be to require the Respondent to communicate to all members of NATO that it does not object to the Applicant's membership of NATO in circumstances where the Applicant is to be referred to in NATO by the designation provided for in paragraph 2 of Security Council resolution 817. The need for such an Order arises because the effect of the Respondent's violation of Article 11(1) is of a continuing character: the Applicant has a continuing relationship with NATO, as described in Chapter II;[224] it has a continuing commitment to obtaining membership of NATO; and the Respondent asserts that it will not allow the Applicant to take forward its NATO membership application until such time as the outstanding name issue is subject to a "mutually acceptable solution".[225]

6.20. As the obligation set forth in Article 11(1) remains in force, the conditions for an order for cessation are plainly met.[226]

6.21. The Order sought, which is consistent with the approach reflected in Article 30 of the ILC Articles,[227] is not, however, limited to the issue of NATO

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[224] See Chapter II, para. 2.50.

[225] See NATO Press Release (2008)049, *Bucharest Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008* (3 April 2008): Annex 65. For the position maintained by Respondent, see Chapter II, para. 2.60, and in particular the statement by the Respondent's Foreign Minister, Dora Bakoyannis, following the informal meeting of NATO Foreign Ministers in Brussels on 6 March 2008: Annex 83; the speech by the Respondent's Foreign Minister, Dora Bakoyannis, to the governing party's Parliamentary Group on 27 March 2008: Annex 89; the article by the Respondent's Foreign Minister: Dora Bakoyannis, "The View from Athens", *International Herald Tribune* (31 March 2008): Annex 90; and the statement made in Parliament by the Respondent's Prime Minister, Kostas Karamanlis, on 22 February 2008, as reported in "Premier dangles FYROM veto", *Kathimerini* (23 February 2008): Annex 80; as well as the speech delivered by the Respondent's Prime Minister, Kostas Karamanlis to the governing party's Parliamentary Group on 27 March 2008: Annex 88.

[226] See *Rainbow Warrior* (New Zealand v. France), Award of 30 April 1990, 82 *ILR* 499 at 573.

[227] See also C. Derman, "La Cessation de l'Acte Illicite", *Rev. Belge de Droit International*, (1990) I, p. 477.

membership. It also relates to other ongoing or future applications on the part of the Applicant for membership of "any other 'international, multilateral and regional organizations and institutions'", including any procedures related to the Applicant's application for membership of the European Union. This aspect of the relief sought is motivated by the Applicant's serious concern that the Respondent will adopt in relation to the EU the unlawful approach that characterized its action on 3 April 2008 in respect of NATO. An Order by the Court to deal with present and future conduct is needed to bring to an immediate end the conduct of the Respondent that is wholly inconsistent with the requirements of Article 11(1) of the Interim Accord.

6.22. The requested Order is premised on the fact that, until such time as a permanent resolution to the name difference is found, the Applicant will be referred to in NATO under the reference "provided for in paragraph 2 of United Nations Security Council resolution 817 (1993)", namely 'the former Yugoslav Republic of Macedonia', without prejudice to whatever negotiated arrangements may emerge in due course over the name issue. As described in Chapter II, this is the designation by which the Applicant is presently referred to in its current relations with NATO.[228] It is also the designation by which the Applicant is referred to in all other regional, multilateral and international organizations and institutions of which the Respondent was a member prior to the Applicant.

6.23. The form of explicit Order requested – aimed at requiring steps to be taken to ensure that the future conduct of a party is consistent with its international obligations – is not novel in any way. In the *Arrest Warrant* case, for example, the Court ruled that the "Kingdom of Belgium must, by means of its own choosing, cancel the arrest warrant of 11 April 2000 and so inform the authorities to whom that warrant was circulated."[229] In the *Nicaragua* case,[230]

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[228] See Chapter II, paras. 2.50-2.51.

[229] *Case concerning the Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002, p.3, at para. 78(3).

[230] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14.

a similar explicit Order was sought from the Court to call upon the United States to *inter alia* "cease and desist immediately from all use of force".[231] In its judgment, the Court decided:

> "that the United States of America is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations".[232]

6.24. In the *LaGrand* case, an equally prospective approach was taken by the Court in ruling that:

> "should nationals of the Federal Republic of Germany nonetheless be sentenced to severe penalties, without their rights under Article 36, paragraph 1(b), of the [Vienna Convention on Consular Relations] having been respected, the United States of America, by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in that Convention."[233]

6.25. More recently, in the *Avena* case, the Court made a virtually identical ruling in relation to Mexican nationals under Article 36, paragraph (h) of the Vienna Convention on Consular Relations of 24 April 1963.[234]

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[231] Application of the Republic of Nicaragua Instituting Proceedings in the *Case Concerning Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), filed in the Registry of the Court on April 9, 1984, at para. 26(g).

[232] *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14, at para. 292(12).

[233] *LaGrand* (Germany v. United States of America), Judgment, I.C.J. Reports 2001, p. 466, at para. 128(7).

[234] *Avena and Other Mexican Nationals* (Mexico v. United States of America), I.C.J. Reports 2004, p. 12, at para. 153 (11).

Section III. Reservation of Rights

6.26. In its Application, the Applicant reserved its right "to modify and extend the terms of this Application, as well as the grounds involved". For the avoidance of doubt, the Applicant wishes to make clear that this reservation of right extends to the relief sought, in the event that further acts of the Respondent require any such additional relief to be sought.

SUBMISSIONS

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 Organisation 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).

17 July 2009

Nikola Dimitrov
Co-Agent of the Republic of Macedonia

Certification

I certify that the annexes are true copies of the documents referred to and that the translations provided are accurate.

Nikola Dimitrov
Co-Agent of the Republic of Macedonia

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Annex 13 "Declaration on the Sovereignty of the Socialist Republic of Macedonia" (25 January 1991), *Official Gazette of the Socialist Republic of Macedonia*, No 5, Year XLVII (Skopje, 1 February 1991)

Annex 14 "Decision Promulgating Amendments LXXXII to LXXXV to the Constitution of the Socialist Republic of Macedonia" (7 June 1991), *Official Gazette of the Socialist Republic of Macedonia*, No. 27, Year XLVII (Skopje, 11 June 1991)

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