INTERNATIONAL COURT OF JUSTICE

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**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)**

# REPLY

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# CHAPTER I

# INTRODUCTION

## Section I: Overview

1.1. The Applicant instituted these proceedings before the International Court of Justice ("the Court") on 17 November 2008. In accordance with an Order of the Court, the Applicant filed its Memorial on 20 July 2009, and the Respondent filed its Counter-Memorial on 19 January 2010. By Order dated 12 March 2010, the Court authorized the submission of a Reply by the Applicant and a Rejoinder by the Respondent, and fixed 9 June 2010 as the time limit for the filing of the Reply. This Reply is submitted in accordance with that Order, together with accompanying Appendices and Annexes.

1.2. The Applicant has followed the dispositions of the Court in using its Reply for the purposes of responding to factual claims and legal arguments made by the Respondent in its Counter-Memorial. For the avoidance of doubt, the Applicant maintains the totality of the factual claims and legal arguments, as set out in its Application and Memorial. As explained below and later in this Reply, the Respondent has sought to recast the facts of the dispute in order to address a case that the Applicant has not filed. In this respect the Respondent has raised issues, for example in relation to the conduct of the North Atlantic Treaty Organization ("NATO"), that are not relevant to this dispute and which do not need to be addressed by the Court. The Applicant will not deal with such matters in detail, other than to explain why they are not within the scope of this dispute.

1.3. In this regard it is pertinent to recall why the Applicant brought these proceedings to the Court. This was set out in the Introduction to the Memorial, at paragraph 1.1, which explained that this case has been brought:

> "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."

1.4. Despite this clear statement, and despite the clarity of the arguments made by the Applicant in its Memorial which do not address in any way any acts of NATO or of other NATO Member Countries, it is apparent that the Respondent has sought to transform the case into one that impleads NATO and its other members generally. The reason for this is clear: since the Respondent is unable to justify in law its own actions, it seeks to transform the case into one that it is not, and then apply the law to that other case. The Court will note that a common theme runs throughout the Counter-Memorial, touching on issues of jurisdiction, the merits and even the relief sought: the Respondent seeks to rewrite the case.

1.5. In order to do this the Respondent has difficulty in coming to grips with observable facts that one would have thought could not be challenged. This is particularly evident when it comes to the Respondent's treatment of contemporaneous statements by its own Prime Minister and Foreign Minister explaining the reason for its objection to the Applicant being invited to accede to NATO at the NATO summit, held in Bucharest on 2 to 4 April 2008 ("the Bucharest Summit"). These statements, set out in the Applicant's Memorial, include public statements: by the Respondent's Foreign Minister that "[a]s long as there is no… solution [to the name issue], there will be an insurmountable obstacle to FYROM's Euroatlantic ambitions" (6 March 2008);[1] by the Respondent's

[1] See Memorial, para. 2.60, citing the Respondent's Foreign Minister, Dora Bakoyannis, "NATO Enlargement and Alliance Principles", *Atlantic-community.org* (uploaded 7 March 2008): Memorial, Annex 83. The Applicant's quotation of texts using the acronym 'FYROM' in no way represents an acceptance of the use of the term. The use of the acronym 'FYROM' by the

Prime Minister that "[w]ithout a mutually acceptable solution to the name issue, there can be no invitation to participate in the [NATO] alliance" (22 March 2008);[2] and again by the Respondent's Foreign Minister that it would continue to object to NATO "so long as [the Applicant's] leaders refuse to settle the issue of its name" (31 March 2008).[3] These and many other statements have now been abandoned by the Respondent as it seeks to rewrite its own case. In one of the more remarkable passages of the Counter-Memorial, the Respondent seeks to distance itself from these statements, on the grounds that they were "unilateral", that they did not express an intention to be bound, that they had "no legal effect insofar as the decision in Bucharest is concerned", and that "[t]hey were not an attempt accurately to describe Greece's conduct in terms of NATO processes".[4]

1.6. The Respondent misses the point: the statements provide an authoritative, contemporaneous confirmation of both the fact of and the true motivation for the Respondent's objection. As the Court noted in the *Case concerning Armed Activities on the Territory of the Congo*:

> "it will prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 41. para. 64)."[5]

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Respondent does not conform to Article 1(1) of the Interim Accord (whereunder the Respondent recognised the Applicant "as an independent sovereign state, under the provisional designation"), or to the regime set out in Part B of the Memorandum on "Practical Measures" of 13 October 1995: Memorial, Annex 3. See further: *Note verbale* dated 26 October 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, No. 32-8031/1: Reply, Annex 42.

[2] Memorial, para. 2.60, citing the Respondent's Prime Minister, Kostas Karamanlis: "Premier dangles FYROM veto", *Kathimerini* (23 February 2008): Memorial, Annex 80.

[3] See note 1, *supra.*

[4] Counter-Memorial, paras. 5.54-5.55.

[5] *Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005*, at para. 61.

1.7. These and other statements are "contemporaneous", they come from high ranking persons "with direct knowledge", and they "acknowledg[e] facts or conduct unfavourable" to the Respondent, by demonstrating that the Respondent *did* object to the Applicant's membership of NATO and by explaining the true motivation for the Respondent's objection. The Applicant notes that in the period between these statements being made and the preparation of the Counter-Memorial, the Respondent's Government, Prime Minister and Foreign Minister have all changed, but this does not alter the Respondent's responsibility for the acts of the previous Government. This is all the more so where the same arguments are being advanced by the current Government in relation to the Applicant's membership of both NATO and the European Union.[6]

1.8. Conversely, throughout its Counter-Memorial the Respondent introduces facts that are of no relevance to the dispute; this is particularly evident in Chapter 1 ("Introduction"), Chapter 2 ("The 'Name Issue'"), Chapter 4 ("FYROM's Violations of the Interim Accord") and Chapter 5 ("NATO's Decision on the FYROM's Membership"), which can only be understood as an effort to rewrite the case by introducing issues that are not relevant to the Court's decision. Four examples from the opening five paragraphs – and there are many more throughout the Counter-Memorial – are sufficient to illustrate the manner in which the Respondent plays fast and loose with the case put by the Applicant:

(1) The Respondent alleges that the Applicant "calls on the Court to decide that it was only the conduct of Greece that caused NATO not to invite the FYROM to accede":[7] *this is wrong, as nowhere in the Memorial does the Applicant invite the Court to express any view as to the conduct of any other NATO members – the case is only about the conduct of the Respondent*.

(2) The Respondent asserts that the Applicant's case "implies the Court's making factual and legal findings as to the internal affairs of international organizations to an unprecedented extent":[8] *this too is wrong, as the*

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6 Examples of such statements are included in Appendices I and II to this Reply.

7 Counter-Memorial, para. 1.2.

8 Counter-Memorial, para. 1.3.

*case only requires the Court to make findings of fact and law on the Respondent's objection and not any "internal affairs" of NATO*.

(3) The Respondent argues that "[a]t the core of the dispute between the Parties is the 'name issue'":[9] *wrong again, as the dispute before the Court does not require the Court to resolve the difference over the Applicant's name or to express any views on that matter*.

(4) The Respondent asserts that the Applicant "asks the Court to look behind the decision of NATO taken at Bucharest";[10] *doubly wrong, since the Applicant has asked no such thing and the Court is not required to express any view as to NATO's decision*.

1.9. The Applicant is confident that the Court will engage in a rigorous assessment of the facts and arguments as they have been made. In the meantime it invites the Court to treat with caution each and every assertion of fact that is made by the Respondent. The Applicant regrets having to raise this issue with the Court, but it is made necessary by the Respondent's erroneous presentation of facts in its case. For example, the Respondent implies (at paragraph 4.62, and footnotes 108, 112 and 156 of its Counter-Memorial) that the United States House of Representatives and the United States Senate *adopted* resolutions finding that the Applicant had acted in contradiction to its obligations under the Interim Accord. The Respondent also submitted the text of the resolutions purportedly *adopted* by those bodies (Counter-Memorial Annexes 156-157). In fact, no such resolution was adopted by either the United States House of Representatives or the United States Senate. The text appearing at Annex 156 of the Counter-Memorial (H. Res. 356) was introduced on 1 May 2007 in the United States House of Representatives by certain Representatives and referred to the House Committee on Foreign Affairs, which thereafter took no action whatsoever on the proposed resolution. The text appearing at Annex 157 of the Counter-Memorial (S. Res. 300) was introduced on 3 August 2007 in the United States Senate by certain Senators and was referred to the Senate Foreign Relations Committee, which thereafter

[9] Counter-Memorial, para. 1.4.

[10] Counter-Memorial, para. 1.4.

took no action whatsoever on the proposed resolution. Neither resolution was reported out of committee and neither resolution was voted on by the respective bodies, let alone adopted.[11] Misleading factual representations of this kind to the Court are wholly inappropriate and require the Court to proceed with great caution.

1.10. Equally troubling is the Respondent's repeated redaction of quotations in a selective and highly misleading manner. At paragraph 5.50 of the Counter-Memorial, for example, the Respondent quotes a NATO spokesperson as stating that there is "a *unanimous* view within the Alliance that the FYROM should as soon as possible be offered the opportunity in accession talks […] But the general *consensus*, and that includes the *consensus* of the Greek government is they wish to see all three MAP countries join the Alliance as quickly as possible once the necessary conditions are in place. And in this case that means resolution of the name issue." In the place indicated by square brackets, the Respondent leaves out the following words, that indicate that, contrary to the impression of unanimity and consensus created by the selective quotation, it was *the Respondent* that prevented the Applicant being invited to accede to NATO membership at the Bucharest Summit: "But well there's no secret, the Greek delegation made it very clear that until the name issue is resolved, it has not yet been resolved, that will not be possible".[12]

1.11. A second example is even more egregious. At paragraph 5.38 of the Counter-Memorial the Respondent quotes NATO Secretary-General, Mr Jaap de Hoop Scheffer, as follows:

> "Euro-Atlantic integration of course also demands and requires good neighbourly relations and it is crystal clear that there were a lot of pleas from around the table to find a solution to the name issue ... I would not

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[11] Insofar as the Respondent purports to suggest at footnote 112 of its Counter-Memorial that Resolution 521(2005) was adopted by the United States House of Representatives, that too is wrong. The text appearing at Annex 154 of the Counter-Memorial (H. Res. 521) was introduced on 27 October 2005 in the United States House of Representatives by certain Representatives and referred to the House Committee on International Relations, which thereafter took no action whatsoever on the proposed resolution.

[12] Press Conference by NATO Secretary General following the North Atlantic Council Summit meeting, 3 April 2008: Counter-Memorial, Annex 31.

> give you a complete report if I would not say referring to the communiqué by the way of the NATO Foreign Ministers last December where there is this line on good neighbourly relations and the name issue."

1.12. The Respondent uses the quotation in support of its argument that "there can be no doubt that NATO considered the resolution of the outstanding name issue to be a 'performance-based standard'",[13] claiming that the name issue was a NATO matter. Yet the true position is exactly the opposite: the Respondent has removed key words spoken by the NATO Secretary-General, as here set out in italics:

> "a solution to the name issue *which is not a NATO affair. This is Mr. Nimetz, Ambassador Nimetz, under the UN roof. This is not a NATO affair, NATO responsibility*."[14]

1.13. This makes clear that the resolution of the name issue *was not* a NATO matter.

1.14. The Applicant also regrets the need to invite the Court to treat the Respondent's treatment of legal authorities with caution. It is an unfortunate feature of the Respondent's legal argument that it sometimes invokes authorities in a manner that does not accurately reflect their views. This is the case, for example, in its treatment of the authorities it invokes in relation to the *exceptio non adimpleti contractus*. Thus, in paragraph 8.14 of its Counter-Memorial, the Respondent's drafting leaves the reader with the impression that one International Law Commission ("ILC") Special Rapporteur on State Responsibility "endorsed" an approach taken by an earlier ILC Special Rapporteur on State Responsibility, whereas a careful reading of the relevant texts shows that this was not the case at all. More to the point, the Respondent's account of the negotiating history of texts such as the ILC Articles on State Responsibility leaves the reader with an erroneous impression: the reader of Chapter 8 of the Counter-Memorial would

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[13] Counter-Memorial, para. 5.39.

[14] *Joint Press Point with NATO Secretary-General Jaap de Hoop Scheffer and the Prime Minister of the former Yugoslav Republic of Macedonia, Nikola Gruevski*, 23 January 2008: Counter-Memorial, Annex 26, page 1.

not appreciate that the ILC expressly *rejected* the argument as to the *exceptio* for which the Respondent contends. The Applicant has set out an accurate account of this issue in Chapter V of this Reply.

1.15. The same point may be made in relation to the citation of academic authorities. At paragraph 8.11 of the Counter-Memorial, for example, the Respondent refers to the writings of Dr Laly-Chevalier in support of its argument on the *exceptio non adimpleti contractus*, giving the impression that this author generally argues in favour of the existence of the *exceptio* as a general principle of law. Yet this is not her view. The passage quoted by the Respondent at footnote 424 of the Counter-Memorial is merely the exposition by Dr Laly-Chevalier of the views of authors who defend the idea of the "survival" of the *exceptio*, but in the very next paragraph of this author's work – that is not cited by the Respondent – she rejects the argument relied upon by the Respondent.[15] Numerous other examples of misleading citation are set out in Chapter V of this Reply.

1.16. Once the Respondent's arguments are stripped down to their bare essentials it becomes apparent that there are important points of convergence or agreement between the Parties. For example, the Respondent's objections to jurisdiction are more properly treated as issues of interpretation for the merits. The Parties are in accord that at no time prior to 3 April 2008 did the Respondent formally inform the Applicant in writing that the Respondent considered the Applicant to be in material breach of the Interim Accord, or that any acts or omissions of the Applicant

[15] See Dr C. Laly-Chevalier, *La violation du traité* (Bruylant, 2005) at p. 424: "Pour généreuses qu'elles soient à l'égard de l'entité lésée, ces vues ne cadrent pas avec les travaux préparatoires des Conventions de Vienne sur le droit des traités et ne semblent donc pas devoir emporter la conviction. Les rédacteurs ont en effet entendu limiter strictement le recours tant à l'extinction du traité qu'à la suspension de l'application de ce dernier, afin d'assurer la stabilité des relations conventionnelles. C'est par conséquent délibérément que les Conventions de Vienne, *déclaratoires du droit coutumier à cet égard*, ne prévoient pas de ripostes qui se situeraient en deçà de la suspension d'application du traité" [emphasis added]. She concludes: "En dernière analyse, la thèse d'E. Zoller n'est acceptable que si l'on sort du cadre du droit des traités et que l'on envisage la réciprocité en tant que *specific reprisal*, c'est-à-dire en tant que mesure de suspension de la disposition conventionnelle strictement correspondante à l'obligation violée et relevant exclusivement du droit de la responsabilité. A ce tître, la non-exécution par mesure de réciprocité peut effectivement être décidée pour répondre à une violation mineure du traité et en tous les cas, échapper aux règles de l'article 65 CV. Mais la finalité de la mesure n'est, alors, plus la meme": *ibid*., at p. 424.

were of a nature to justify harsh consequences in accordance with the rules and procedures of international law. The Respondent has not invoked suspension or termination of the Interim Accord in accordance with Article 60 of the 1969 Vienna Convention on the Law of Treaties (both the Applicant and the Respondent are parties to the Vienna Convention and have relied upon the Vienna Convention's rules on treaty interpretation in their pleadings to this Court[16]). And the Respondent has not invoked the right to take lawful countermeasures, in accordance with the scheme reflected in the ILC Articles on State Responsibility.

1.17. These are important points of convergence that go far in narrowing the real issues on which the Court should focus. At the heart of this case are two key issues of fact:

(1) Did the Respondent object to the Applicant being invited to become a NATO member at the Bucharest Summit, in circumstances where the Applicant was not to be referred to in NATO "differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)"?

(2) Did the Respondent object to the Applicant's NATO membership because it was to be referred to in NATO by something other than the provisional reference, the solitary circumstance in which the Respondent was entitled to object under the Interim Accord?

1.18. On the basis of the evidence that both Parties have put before the Court, it is clear that the Respondent's case is in real difficulty. It has put before the Court no evidence that challenges the Applicant's assertion that the Respondent objected to the Applicant's NATO membership in March and April 2008, prior to and distinctly from the NATO Bucharest decision, in circumstances where the Applicant was to be referred to in NATO no differently than in resolution 817. Its *post facto* assertion that the Applicant was not to be referred to in NATO under the provisional reference – on the basis that the Applicant calls itself by its constitutional name – is unsupported by the evidence before the Court, and is

[16] Memorial, para. 5.7 and Counter-Memorial, paras. 6.55, 7.27 and 7.84.

contradicted by Mr Matthew Nimetz, the Special Envoy of the United States to the name negotiations at the time of the conclusion of the Interim Accord, who expresses an independent and authoritative view.[17] The Applicant has put no evidence before the Court that is contemporaneous to its objection to challenge the conclusion that the real reason for the objection was as stated by its Prime Minister and Foreign Minister, namely to force a resolution of the difference over the name on the Respondent's terms. And it is readily apparent that the reason does not conform to the sole reservation of right set forth in the second clause of Article 11(1). This case does not implicate NATO or its other Member Countries in any way. It is not about the conditions of membership of NATO, or about the actions of the organization or of any third States. It is not about the historic circumstances that have given rise to the difference over the Applicant's name, or about the conduct of negotiations between the Parties.

1.19. This is a case in which the facts dominate, and in which the application of the law becomes clear once the facts are established. The Respondent appears to recognise this, abandoning any effort to make classical arguments (based on the 1969 Vienna Convention on the Law of Treaties and the law of State responsibility) and embracing instead arguments that are novel (in relation to the *exceptio*) or based on unpersuasive interpretations of the Interim Accord that seek to fetter the rights of the Applicant concerning its own use of its constitutional name (the argument made as to the meaning of Article 11(1)) and that would render Article 11 meaningless (the argument made in relation to Article 22 of the Interim Accord).

1.20. In dealing with this case, the facts are paramount, and it is important to deal with the facts as they were in the spring of 2008, not as the Respondent has since sought to recast them or re-present them. The Court should discount the Respondent's actions taken after its objection and only after the Applicant asserted that the Respondent's objection gave rise to a material breach of the Interim Accord. The Respondent's later actions, including those that made new legal and factual arguments only after the Application was filed, are a self-serving effort to bolster a weak case.

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[17] See further para. 2.30 below.

## Section II: Structure of the Reply

1.21. In general this Reply follows the structure adopted in the Applicant's Memorial, and is divided into six Chapters. Following this Introduction, ***Chapter II*** revisits the facts of the dispute that is actually before the Court, not the alleged "dispute" that the Respondent might wish to have before the Court, in order to correct the factual misrepresentations advanced by the Respondent in its Counter-Memorial. It is divided into five sections, plus an introduction. **Section I** establishes the unequivocal fact of the Respondent's objection to the Applicant being invited to join NATO at the Bucharest Summit, and the reason advanced contemporaneously by the Respondent for that objection, namely the non-resolution of the difference concerning the Applicant's name. **Section II** demonstrates that, contrary to the Respondent's recent and novel assertions, the Applicant *is not*, as a matter of fact, referred to in NATO differently than in paragraph 2 of United Nations Security Council resolution 817 ("resolution 817"), and *would not* be referred to differently as a NATO member, pending resolution of the difference concerning the Applicant's name. It also establishes that the Respondent's objection to the Applicant's membership of NATO was not based on the claim that it would be referred to differently than in paragraph 2 of resolution 817. **Sections III** and **IV** respond to the factual misrepresentations in the Respondent's Counter-Memorial concerning NATO processes and the bilateral difference concerning the Applicant's name in the NATO context. **Section III** makes clear that NATO's consensus-based decision-making procedures do not act to shield the Respondent from the consequences of its objection. It also responds to the Respondent's argument that the lack of a formal veto procedure within NATO somehow shields it from its breach of Article 11(1): it does not. Whether the Respondent's objection amounts to a formal veto is entirely irrelevant to the current proceedings, which are based on the fact of the Respondent's *objection* to the Applicant's NATO membership. **Section IV** responds to the Respondent's erroneous assertion that the Applicant's NATO membership had always been predicated on the resolution of the difference concerning the Applicant's name. Lastly, **Section V** presents the conclusions to the Chapter.

1.22. ***Chapter III*** confirms that the Court has jurisdiction over the dispute before it, and that there are no grounds of inadmissibility. The Parties agree that there can be no objections to jurisdiction based on Article 21(2) of the 1995 Interim Accord or Article 36(1) of the Statute of the Court. The Applicant submits that the three jurisdictional arguments put forward by the Respondent in Chapter 6 of the Counter-Memorial are such that they confirm that the Court's jurisdiction is clearly established. Following an introductory section, **Section I** responds to the Respondent's contorted argument that the dispute before the Court actually concerns the difference referred to in Article 5(1) of the Interim Accord, so that jurisdiction is excluded by Article 21(2); but the dispute before the Court does not require it to resolve the difference over the Applicant's name referred to in Article 5(1), or express any view on that matter. **Section II** responds to the argument that jurisdiction is excluded by operation of Article 22; that provision has nothing to say about jurisdiction, and the Respondent has misunderstood the distinction between a jurisdictional objection and an issue of treaty interpretation of the Interim Accord. **Section III** responds to the Respondent's claim that the dispute actually relates to the conduct of NATO and its members. The argument is based on a misreading of the Applicant's case, an erroneous appreciation of the facts and fundamental misconceptions of law and fact. **Section IV** concludes the Chapter.

1.23. ***Chapter IV*** returns to the issues relating to the law that is applicable to the resolution of this dispute, namely the obligations set forth in the 1995 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. After an introductory section, **Section I** responds to the Respondent's legal argument that its opposition to the Applicant's NATO membership did not constitute an 'objection' in breach of Article 11(1); the Respondent *did* as a matter of law "object to" the Applicant's NATO membership. **Section II** responds to the Respondent's novel claim that its objection was justified on the basis that the Applicant calls *itself* by its constitutional name; it was not. Prior to the receipt of the Applicant's Memorial in this case, the Respondent had never claimed that it had objected to the Applicant's NATO membership on that basis. **Section III** considers the various

alternative justifications that the Respondent has advanced for its objection, either contemporaneously to the Bucharest Summit or thereafter. Each of these reasons demonstrably falls outside the scope of the second clause of Article 11(1) and, as such, confirms the fact of the Respondent's breach. **Section IV** sets out the conclusions to the Chapter.

1.24. ***Chapter V*** of the Reply responds to the Respondent's arguments by which it seeks to avoid responsibility for its unlawful actions. The Respondent has recognized the force of the Applicant's argument in the Memorial that the Respondent cannot meet the conditions to be able either to invoke Article 60 of the 1969 Vienna Convention to justify a response to alleged breaches by the Applicant that it now characterizes as "material", or to justify its actions as lawful countermeasures under the law of State responsibility. Instead it raises two novel and unpersuasive arguments. The first is that Article 22 of the Interim Accord preserves for the Respondent a "right" or "duty" under the North Atlantic Treaty to object to the Applicant's membership in NATO, an argument that would have the effect of depriving Article 11(1) – and indeed the totality of the Interim Accord – of any practical meaning or purpose. Following an introductory section, **Section I** of this Chapter demonstrates that Article 22 is not intended to address the rights or duties of the Respondent. **Section II** demonstrates that even if Article 22 *does* concern the Respondent's rights and duties under other agreements, it is nothing more than a statement of fact that cannot transform obligations arising under other articles of the Interim Accord, and certainly cannot be interpreted and applied in a manner that would denude Article 11(1) of any relevance. It also demonstrates that even if Article 22 *were* capable of eviscerating Article 11(1) in some circumstances where the Respondent has a right or duty at an organization in relation to the admission of new members, the Respondent has not identified any "right" or "duty" under the North Atlantic Treaty that would require the Respondent to object to the Applicant's membership. **Section III** addresses the Respondent's second argument, which asserts that the "*exceptio inadimpleti non est adimplendum*" entitles the Respondent to react to the Applicant's alleged failure to comply with miscellaneous obligations under the Interim Accord, by not complying with its own obligation under Article 11(1). The section explains

that no general defence of the *exceptio* can justify the breach of Article 11(1), that the *exceptio* is not part of the law of treaties except in form articulated in Article 60 of the 1969 Vienna Convention, and that the *exceptio* does not form part of the law of State responsibility as contended by the Respondent. It also establishes that the entire factual basis for the Respondent's purported recourse to the *exceptio* is baseless: the obligations the Respondent identifies as reciprocal or "synallagmatic" are not so, and the Applicant is not in breach of its obligations under the Interim Accord. Lastly, **Section IV** presents the conclusions to the Chapter.

1.25. ***Chapter VI*** of the Reply returns to the two forms of relief sought by the Applicant in the Memorial. After an introductory section, the Applicant explains in **Section I** why the Respondent's arguments against a declaration in the terms sought by the Applicant are without merit: the Court has jurisdiction over the merits, the Respondent has breached its obligation under Article 11(1), there is no defence to that violation, and the relief sought would be effective and fully compatible with the Court's judicial function. In **Section II** the Applicant addresses the arguments against the second head of relief that would order the Respondent to restore the *status quo ante* and refrain from further violations of Article 11(1). The Respondent's three objections lack any legal or factual basis: the requested order corresponds with the requirements of Article 11(1), the order sought is not directed against NATO and would be effective in preventing future unlawful objections by the Respondent, and would not amount to an endorsement of any alleged "violations" by the Applicant. In **Section III** the Applicant responds to the Respondent's ill-founded argument that the Applicant has somehow erred in seeking to reserve its rights to modify the grounds invoked and/or the relief sought.

1.26. This Reply also includes three Appendices, which respond to issues raised by the Respondent in its Counter-Memorial. **Appendix I** includes a selection of over sixty press articles from the global media, providing overwhelming evidence of the Respondent's threatened and actual objection to the Applicant's NATO membership, and the reasons provided contemporaneously by the Respondent for it. These are introduced to counter the Respondent's assertion that it played no

independent or autonomous role in objecting to the Applicant's NATO membership or that its objection was based on reasons other than the non-resolution of the difference over the Applicant's name. **Appendix II** responds to the Respondent's suggestion that the Applicant's concerns regarding the Respondent's objection to its membership of the European Union are hypothetical. It sets out a number of quotations by the Respondent's representatives clearly indicating its intention to object and/or the fact of that objection in the context of the Applicant's European Union membership process. **Appendix III** responds to the Respondent's allegations against the Applicant of unilateral "intransigence" in the negotiations concerning the Applicant's name. It sets out extracts from statements by the Respondent's representatives concerning its "non negotiable" "red line" position in relation to the name negotiations.

1.27. The Reply also includes a further **Annex**, which sets out additional documents divided into the following categories: (i) documents relating to NATO, (ii) documents relating to the United Nations, (iii) diplomatic correspondence and documents, (iv) other documents, and (v) press articles and statements.

## CHAPTER II

## THE FACT AND BASIS OF THE RESPONDENT'S OBJECTION TO THE APPLICANT'S NATO MEMBERSHIP

### Introduction

2.1. The Respondent seeks to deny in its Counter-Memorial that it objected to an invitation being extended to the Applicant to join NATO at the Bucharest Summit, in circumstances where the Applicant was to be referred to in NATO no "differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)". In order to do so, the Respondent makes the following assertions. First, it claims that it did not object to the Applicant's NATO membership and that its sustained and aggressive opposition to the Applicant's membership had no bearing on the subsequent decision by NATO not to extend a membership invitation to the Applicant at the Bucharest Summit. In making this argument, the Respondent relies *inter alia* on a mischaracterization of NATO decision-making processes as providing for "no mechanism of objection"[18]. Secondly, the Respondent appears to assert that the Applicant *was* in fact referred to in NATO differently than in resolution 817, and would have continued to be referred to differently on admission to membership.[19] Third, the Respondent contends that resolution of the difference over the Applicant's name was a NATO membership criterion, which had always been established by NATO, and understood by the Applicant, as a condition precedent for the Applicant to be invited to become a member of the Alliance.[20] In so contending, the Respondent relies on misquotations and distortions of statements made by NATO representatives. As this Chapter demonstrates, all of these assertions made by the Respondent are wrong.

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[18] Counter-Memorial, para. 1.6.

[19] Counter-Memorial, para. 7.104.

[20] Counter-Memorial, paras. 5.38 to 5.47.

2.2. Contrary to the Respondent's assertions, the historical record, comprised *inter alia* of official *communiqués* from and statements by the Respondent's representatives, by NATO and by representatives of other NATO Member Countries, unequivocally demonstrates the following. First, the Respondent *did* object, individually and autonomously, to the Applicant being invited to join NATO at the Bucharest Summit. Second, that objection was made in circumstances where the Applicant was referred, was to continue to be referred, and had agreed to be referred to in NATO in the manner provided for in paragraph 2 of resolution 817. Third, the Respondent's objection was based on the non-resolution of the difference over the Applicant's name, and not on any contemporaneous claim that the Applicant was to be referred to in NATO differently than in paragraph 2 of resolution 817; rather, the latter claim has now been put forward by the Respondent in its Counter-Memorial in an *ex post facto* attempt to justify its breach of Article 11(1). An analysis of NATO documentation and statements by NATO representatives also makes clear that NATO processes, misrepresented by the Respondent in its Counter-Memorial, cannot and do not assist the Respondent in avoiding the consequences of its objection to the Applicant's NATO membership at Bucharest.

2.3. In responding to the Respondent's erroneous assertions of fact, the Applicant has structured this Chapter in the following way. **Section I** sets out the incontrovertible fact of the Respondent's objection, which crystallized on or about 3 April 2008 on the occasion of the NATO Bucharest Summit. It also establishes that the reason given by the Respondent contemporaneously for its objection was the non-resolution of the difference over the Applicant's name. **Section II** demonstrates that the Applicant was referred to in NATO no differently than in resolution 817, and that it would continue to be so referred as a NATO member. It also establishes that the Respondent did not object to the Applicant being invited to join NATO at the Bucharest Summit on the ill-founded basis it now seeks to advance, namely that the Applicant was not referred to (or would not be referred to in the future) in NATO in conformity with paragraph 2 of resolution 817. **Sections III** and **IV** respond to the key misrepresentations and inaccuracies in the Counter-Memorial concerning NATO and the Applicant's engagement therewith, which

the Respondent purports to rely on. **Section III** explains the consensus-based decision-making procedure within NATO, which preserves the sovereignty and responsibility of NATO Member Countries in relation to their actions within NATO. Lastly, **Section IV** establishes that, prior to the Bucharest Summit, resolution of the difference over the Applicant's name had never been identified by NATO as a condition-precedent for the Applicant's accession to the Alliance, and had not been recognized or accepted as such by other NATO Member Countries.

## Section I. The Respondent Objected to the Applicant's Membership in NATO Due to the Ongoing Difference Over the Applicant's Name

2.4. The Respondent asserts in its Counter-Memorial that "Greece had no individual or autonomous role to play in NATO's decision"[21] not to invite the Applicant to accede to NATO membership at the Bucharest Summit, and that "the decision to delay the FYROM's accession to NATO is the common decision of the Members [sic] States with which Greece agrees but which is not the result of its opposition."[22] Given the extent of the evidence, including statements by the Respondent's officials, by NATO representatives and by representatives from other NATO Member Countries, describing the Respondent's opposition to the Applicant's NATO membership, its intention to object to its candidacy and the fact of that objection at Bucharest, as set out in Chapter II of the Applicant's Memorial, Appendix I, and in the following paragraphs, the above assertions are unsustainable and manifestly untrue.

2.5. Contrary to the Respondent's denials, the Respondent *did* object, individually and autonomously, to the Applicant being invited to join NATO at the Bucharest Summit under the provisional reference of 'the former Yugoslav Republic of Macedonia'; the basis of its objection was the ongoing difference over the Applicant's name; and that objection had a direct bearing on the Alliance's decision not to extend a membership invitation to the Applicant in April 2008.

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21 Counter-Memorial, para. 6.74.

22 *Ibid*.

The Respondent's objection preceded the NATO Bucharest Summit decision and was juridically distinct from any action by NATO. Contemporaneous official pronouncements by the Respondent's representatives make this absolutely clear, and contradict its current, self-serving stance. Thus, on 10 April 2008, just a week after the Bucharest Summit, Ms Dora Bakoyannis, the Respondent's Foreign Minister, speaking in Parliament, described the Respondent's independent and autonomous objection and the effect of that objection on the Applicant's candidacy:

> "*The wording used by the Prime Minister here at the Greek Parliament has become the wording of the Allies*. *It has been adopted word for word in NATO's conclusions*."[23] [emphasis added]

2.6. This was reiterated by Mr Georgios Koumoutsakos, spokesperson for the Respondent's Foreign Ministry, in an article published on the Ministry's webpage and in the Respondent's national newspaper *Kathimerini*:

> "*Greece's positions became those of the alliance*. This was neither an inevitable outcome nor a natural process. In between the Greek stance and the adoption of Greece's positions by the alliance, there were constant meetings and intensive negotiations."[24] [emphasis added]

2.7. Ms Bakoyannis has also confirmed this more recently in a speech published on the website of the Respondent's Foreign Ministry, in which she stated that: "[a]t the NATO meeting in Bucharest… *the Greek position on FYROM's accession became a binding, allied position*."[25]

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[23] Statement made by the Respondent's Foreign Minister, Dora Bakoyannis, in the Respondent's Parliament, *Session of the Greek Parliament Held on 10 April 2008*: Reply, Annex 79. It also features on the website of the Respondent's Ministry of Foreign Affairs, belying any suggestion by the Respondent that this or other similar statements did not represent the Respondent's official position: Respondent's Ministry of Foreign Affairs, *Parliamentary Speech of Foreign Minister Dora Bakoyannis* (11 April 2008): Reply, Annex 148.

[24] Embassy of the Respondent in Washington, DC, *FYROM: article by FM spokesman Mr G. Koumoutsakos in the Athens daily Kathimerini, entitled 'Bucharest: The day after'* (9 April 2008): Reply, Annex 145.

[25] Respondent's Ministry of Foreign Affairs, *Speech of FM Bakoyannis at an event hosted by the Constantine Karamanlis Institute for Democracy* (16 February 2009): Reply, Annex 189 [emphasis added]. See further: Peter Baker: "For Macedonia, NATO Summit a Disappointment",

2.8. As the above statements make clear, the Respondent's objection to the Applicant being invited to join NATO at the Bucharest Summit was articulated by the Respondent in numerous "meetings and intensive negotiations"[26] in the weeks and months leading up to the summit. Those meetings included the meeting of NATO Foreign Ministers in Brussels on 6 March 2008, and at the Bucharest Summit itself. The Respondent's efforts to garner support for its objection were described contemporaneously by the Respondent's Foreign Minister, Ms Bakoyannis, and its Government spokesperson, Mr Theodoros Roussopoulos:

- "We have *outlined our views publicly and, of course, we have contacted foreign leaders*… Greek diplomacy uses all those arguments that can be drawn from history, geography and the international environment in order to persuade its allies and partners in this case."[27] [emphasis added]

- "[O]ur government gradually built – *step by step, in a methodical and well-organised 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."[28] [emphasis added]

- "Last April, we reached a significant stage in Bucharest, as part of our longstanding efforts for a mutually acceptable solution. Thanks to the right, structured preparation, through *painstaking negotiations* and with the valuable support of the Greek community across the world,

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*The Washington Post* (4 April 2008): "Because it operates on consensus, embarrassed NATO leaders had no choice but to bow to Greek objections and cross Macedonia off the list." Reply, Annex 143.

[26] Reply, Annex 145, *supra*.

[27] "Government on Karamanlis-Papandreou talks over name issue", *Athens News Agency* (1 April 2008): Reply, Annex 121.

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

> we managed to convince our allies and friends on the soundness of our positions and the reliability of our arguments."[29] [emphasis added]

2.9. Speaking triumphantly to the "men and women of Greece" after the Bucharest Summit Declaration, the Respondent's Prime Minister, Mr Kostas Karamanlis, boasted of the individual and autonomous role played by the Respondent in objecting to the Applicant being invited to join NATO at the Bucharest Summit:

> "United, with confidence in our abilities, we fought a successful battle… *Due to Greece's veto, FYROM is not joining NATO*… I have said to everyone – in every possible tone and in every direction – that 'a failure to solve the name issue will impede their invitation' to join the Alliance. And *that is what I did… We fought hard for many months… Today and yesterday, during the meeting, we reiterated our strong arguments,* clearly stating our positions and intentions."[30] [emphasis added]

2.10. The "battle" fought by the Respondent throughout the period leading up to the Bucharest Summit, involved it articulating its objection to the Applicant's NATO membership, orally and in writing, to other NATO Member Countries and to the general public, as evidenced by numerous contemporaneous speeches, interviews, letters, diplomatic communiqués and newspaper articles. The Respondent was not passively observing events as they unfolded. Rather, it actively opposed the Applicant's application, as the following paragraphs illustrate.

2.11. Official documents, written and distributed by the Respondent to NATO Member Countries prior to the Bucharest Summit, set out the Respondent's objection to the Applicant's NATO candidacy, and the reasons provided by the Respondent therefor:[31]

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[29] Respondent's Ministry of Foreign Affairs, *Speech of FM Bakoyannis at an event hosted by the Constantine Karamanlis Institute for Democracy* (16 February 2009): Reply, Annex 189.

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

[31] See also in this regard the entry on the webpage of the Respondent's Embassy in Washington, DC, *PM sends letters to leaders of NATO members states on FYROM* (2 April 2008): "Prime Minister Costas Karamanlis on Tuesday sent letters to the leaders of the member-states of

- "For my country, *in addition to any accession criteria*, it is of cardinal importance that the overall levels of security, military or political, be properly served by any enlargement process. This necessitates the *resolution of the existing problems* which lie at the heart of the notion of good neighbourly relations between old and prospective Alliance members beforehand. [...] *The satisfactory conclusion of the said negotiations is a* ***sine qua non*** *in order to enable Greece to continue to support the Euro-atlantic aspirations of Skopje*":[32] *Aide mémoire* circulated by the Respondent to every NATO Member Country prior to the Bucharest Summit. [emphasis in italics added; emphasis in bold supplied]

- "*Greece faces a serious issue with the candidacy of the third aspirant, namely the former Yugoslav Republic of Macedonia, concerning its name* which, despite the ongoing negotiations under UN auspices during the last thirteen years, remains unresolved":[33] letter dated 31 March 2008 from the Respondent's Prime Minister sent to every NATO Member Country. [emphasis added]

2.12. The Respondent's Prime Minister and Foreign Minister, the most senior representatives of the Respondent's government, and spokespersons from the Respondent's Foreign Ministry, also made numerous official statements in the months leading up to the Bucharest Summit, at the summit itself, and immediately following it, concerning the Respondent's position vis-à-vis the Applicant's NATO membership. Those official statements announce the Respondent's objection to the Applicant being invited to join NATO at Bucharest due to the ongoing difference between the Parties over the name, and describe the fact thereof. They also clearly

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NATO, in which he expounds on Greece's positions on the name issue of the Former Yugoslav Republic of Macedonia (FYROM), in view of the alliance's Bucharest summit": Reply, Annex 129.

[32] The Respondent, *Aide Memoire*, sent to all NATO Member Countries: Memorial, Annex 129. It is noteworthy that the Respondent acknowledges in this document that its requirement that "existing problems" be resolved prior to the Applicant being able to accede to NATO is not one of NATO's "accession criteria", but something "in addition" to that.

[33] Letter dated 31 March 2008 from the Respondent's Prime Minister, Kostas Karamanlis, as sent to all NATO Member Countries (31 March 2008): Reply, Annex 6. See further note 31 *supra*.

state the contemporaneous reason provided by the Respondent for its objection. A selection of those statements – many of which were made in formal settings, including the Respondent's Parliament – is set out below:

- "*Without a mutually acceptable solution* allied relations cannot be established, *there cannot be an invitation extended to the neighboring country to join the Alliance*. No solution means – no invitation":[34] the Respondent's Prime Minister, speaking in Parliament on 22 February 2008. [emphasis added]

- "The philosophy, the strategic goal, the framework, the basic elements of our policy are well-known. The strategy we mapped is clear. Our will for a mutually acceptable solution is genuine. *Our position, "no solution – no invitation", is clear. If there is no solution, our neighbouring state's aspirations to participate in NATO will remain unrealised*". And this is because the principle of good neighbourly relations is a basic and necessary prerequisite for allied relations"[35]: the Respondent's Prime Minister speaking in Parliament on 29 February 2008. [emphasis added]

- "*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 "vetos"... *As long as there is no... solution, there will be an insurmountable obstacle to FYROM's Euroatlantic ambitions*":[36] the Respondent's Foreign Minister, speaking after the Informal Meeting of NATO Foreign Ministers in Brussels on 6 March 2008. [emphasis added]

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[34] Statement made by the Respondent's Prime Minister, Kostas Karamanlis, during a foreign policy debate held in the Respondent's Parliament, *Session of the Greek Parliament Held on 22 February 2008*: Reply, Annex 75; see also: "Premier dangles FYROM veto", *Kathimerini* (23 February 2008): Memorial, Annex 80.

[35] Embassy of the Respondent in Washington, DC, *Prime Minister on FYROM: 'No solution means no invitation'* (29 February 2008): Reply, Annex 97.

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

- "*No solution means no invitation*, in other words, *no accession to NATO*":[37] the Respondent's Prime Minister speaking at a press conference in Brussels, on the sidelines of the European Summit. [emphasis added]

- "*If there is no compromise, we will block their [the Applicant's] accession*":[38] the Respondent's Foreign Minister speaking to German newspaper *Suddeutsche Zeitung* on 17 March 2008. [emphasis added]

- "*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":[39] the Respondent's Prime Minister, speaking to the governing party's Parliamentary Group on 27 March 2008. [emphasis added]

- "Only a mutually acceptable solution confirmed by the Security Council… can form the basis for building allied relations and relations of solidarity… *[N]o solution means no invitation*":[40] the Respondent's Prime Minister, speaking in Parliament on 28 March 2008. [emphasis added]

- "*As long as the problem persists we cannot and will not endorse FYROM joining NATO or the European Union*. No Greek government will ever agree to it. No Greek Parliament will ever approve it":[41] the Respondent's Foreign Minister, speaking to the *International Herald Tribune* on 28 March 2008. [emphasis added]

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37 "Athens talks tough on FYROM", *Kathimerini* (15 March 2008): Reply, Annex 109.

38 Consulate General of the Respondent, San Francisco, CA, *Interview of FM Ms. Bakoyannis with the German daily Suddeutsche Zeitung* (17 March 2008): Reply, Annex 110.

39 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): Memorial, Annex 88.

40 Statement made by the Respondent's Prime Minister, Kostas Karamanlis, in the Respondent's Parliament, *Session of the Greek Parliament Held on 28 March 2008*: Reply, Annex 77.

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

- "*We have stated our position repeatedly* – I will say it again: *No solution means no invitation*":[42] the Respondent's Foreign Minister on 31 March 2008. [emphasis added]

- "*We have said that no solution (to the name dispute) means no invitation (for Macedonia)*":[43] the Respondent's Foreign Minister, speaking to reporters after meeting the Respondent's Prime Minister on 2 April 2008, shortly before leaving for the Bucharest Summit. [emphasis added]

- "Men and women of Greece… *Due to Greece's veto, FYROM is not joining NATO*":[44] the Respondent's Prime Minister, speaking to the people of Greece in a televised address immediately following the announcement of the Bucharest Summit decision on 3 April 2008. [emphasis added]

- "We did not surrender anything… We were just persuasive. We gave a battle with self-confidence and arguments. *It was the first time a NATO member-state used the veto right, seriously and responsibly*":[45] the Respondent's Prime Minister, addressing Parliament on 10 April 2008. [emphasis added]

- "On April 2, Greece kept its date. *It followed through on its publicly declared stance on the Former Yugoslav Republic of Macedonia name issue*:"[46] spokesperson for the Respondent's Foreign Ministry, writing in an article published in Greek newspaper *Kathimerini* and on the Respondent's Foreign Ministry's website on 10 April 2008. [emphasis added]

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42 "FYROM veto seems likely", *Kathimerini* (1 April 2008): Reply, Annex 122.

43 David Brunnstrom and Justyna Pawlak: "Greece stands by NATO veto threat for Macedonia", *Reuters* (2 April 2008): Reply, Annex 131.

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

45 Consulate Office of the Respondent in Los Angeles, CA, *Prime Minister addresses off-the-agenda discussion on FYROM issue* (11 April 2008): Reply, Annex 147.

46 Embassy of the Respondent in Washington, DC, *FYROM: Article by FM spokesman Mr G. Koumoutsakos in the Athens daily Kathimerini, entitled 'Bucharest: The day after'* (9 April 2008): Reply, Annex 145.

2.13. Official letters and *aides mémoires* sent by the Respondent to other States and to various international and regional organizations and institutions, in the weeks and months following the Bucharest Summit provide further evidence of the fact and basis of the Respondent's objection. See, for example, the following descriptions by the Respondent of the fact of its objection:

- "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": letters from the Respondent's Prime Minister to the United Nations Secretary-General, dated 14 April 2008,[47] and from the Respondent's Permanent Representative to the United Nations to the Permanent Representatives of Costa Rica[48] and China[49]. [emphasis added]

- "At the NATO's Summit in Bucharest in April 2008, allied leaders, *upon Greece's proposal,* agreed to postpone an invitation to FYROM to join the Alliance, until a mutually acceptable *solution to the name issue* is reached":[50] *Aide Mémoire* dated 1 June 2008 from the Respondent's Permanent Observer Mission to the Organization of American States and its Member States. [emphasis added]

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[47] Letter dated 14 April 2008 from the Respondent's Prime Minister to the Secretary-General of the United Nations, forwarded to the United Nations Secretary-General by Letter of the Respondent's Permanent Representative to the United Nations, Ambassador John Mourikis, under reference F.4608/434/AS1121: Counter-Memorial, Annex 9.

[48] Letter dated 14 April 2008 from the Respondent's Permanent Representative to the United Nations, Ambassador John Mourikis, to the Permanent Representative of Costa Rica to the United Nations, Jorge Urbina: Memorial, Annex 132.

[49] Letter dated 14 April 2008 from the Respondent's Permanent Representative to the United Nations, Ambassador Mourikis, to Permanent Representative of China to the United Nations H.E. Ambassador Wang Guangya, Ref. F.4608/450/AS 1161: Counter-Memorial, Annex 54.

[50] Permanent Observer Mission of the Respondent to the Organization of American States, Washington, D.C., *Aide Memoire: Greece and the Former Yugoslav Republic of Macedonia (FYROM), The name issue and OAS member states*, as attached to a letter dated 1 June 2008 from the Respondent's Permanent Observer Mission to Heads of Delegation, the Secretary-General and the Assistant Secretary-General of the Organization of American States (1 June 2008): Reply, Annex 33.

2.14. The overwhelming evidence of official oral and written statements and letters by the Respondent's highest-ranking representatives addressed to the United Nations, to NATO Member Countries and to the "men and women of Greece"[51], confirms that the Respondent *did* play an individual and autonomous role in objecting to the Applicant being invited to join NATO at the Bucharest Summit, and that its objection was based on the non-resolution of the difference over the Applicant's name. The Respondent now attempts in its Counter-Memorial to repudiate those statements and communications as "unilateral acts" which made no "attempt accurately to describe Greece's conduct".[52] That claim has no foundation in fact or law. The Court has determined that statements made by a State's Foreign and Prime Ministers have a particular authority.[53] There can be no question that these oral and written statements and explanations, often made in formal settings such as the Respondent's Parliament, were made by the Respondent's high-ranking representatives acting in their official capacity. They were intended to accurately describe – and did so describe – the fact of, and the basis for, the Respondent's objection to the Applicant's NATO membership in or around April 2008.

2.15. The Respondent also seeks to distance itself from the statements made and official communiqués sent by its highest ranking officials regarding its objection, on the basis that they "did not qualify that conduct in terms of the Interim Accord"[54]. This argument is unmeritorious. This is demonstrated by the following excerpt from an *aide mémoire* sent by the Respondent's Prime Minister to every NATO Member Country prior to the Bucharest Summit:

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

[52] Counter-Memorial, paras. 5.54-55.

[53] See, e.g., *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2006*, para. 46: "it is a well established rule of international law that the Head of State, the Head of Government and the Minister for Foreign Affairs are deemed to represent the State merely by virtue of exercising their functions, including for the performance, on behalf of the said State, of unilateral acts having the force of international commitments." Although the current proceedings do not concern unilateral acts, the case underscores that the Court has recognized that statements made by a State's highest ranking officials carry particular weight.

[54] Counter-Memorial, para. 5.55.

> *"[W]e cannot accept the argument of Skopje that Greece is obliged by article 11 of the Interim Accord not to object to the membership of FYROM to NATO with that name.* Firstly because the Interim Accord is binding for both Parties as a whole (Art. 5, 7 and 11) and cannot be selectively implemented. Secondly, *because the time has come to solve this problem*, otherwise accession of FYROM into NATO not only it [sic] will perpetuate it, but it will also create insurmountable difficulties to the day-to-day operation of the Alliance."[55] [emphasis added]

2.16. The Respondent's Foreign Minister also clearly "qualified" the Respondent's objection in relation to the Interim Accord. Thus, the press report of a formal statement, given by the Respondent's Foreign Minister on the very day of the Bucharest Summit decision, records as follows:

> "'We wish to see Skopje get into NATO but a condition for this are good neighbor relations and finding a mutually accepted solution to the name issue,' Bakoyannis underlined, adding that Athens would continue to work with UN mediator Matthew Nimetz toward this end… Regarding *Greece's refusal to agree to FYROM's entry with the temporary name established under the interim agreement of 1995* and currently in use at the UN, the minister said that *this proposal would not have solved the problem but only covered it up.*"[56] [emphasis added]

2.17. In fact, the statements by the Respondent's officials (a selection of which are set out above and in Chapter II of the Applicant's Memorial) made before

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[55] The Respondent, *Aide Memoire:* Memorial, Annex 129.

[56] Embassy of the Respondent in Washington, DC, *Bakoyannis: Greece satisfied with NATO result on FYROM* (4 April 2008): Reply, Annex 139. See also the statement made by Ms Bakoyannis in response to a question posed by a journalist asking if she had considered whether "[a] painless solution for the government would be to postpone the issue, to *invoke the interim agreement and agree to FYROM joining NATO under that name*": "Politically painless solutions do not benefit the nation. Burying one's head in the sand always comes at a cost, as does *political cowardice*": Dora Antoniou: "FYROM solution lies in compound name", *Kathimerini* (15 October 2007) [emphasis added]: Reply, Annex 167. See further a statement by Ms Bakoyannis to the effect that "[t]he provisional name "Former Yugoslav Republic of Macedonia" seemed to have outgrown its usefulness": Memorial, Annex 89.

the Respondent's official organs, to international organizations and during press conferences and interviews, are of the highest probative value, acknowledging facts unfavorable to the Respondent's asserted position. The Court was quite clear in the *Nicaragua v. United States* case regarding the value of such statements as evidence:

> "The material before the Court … includes statements by representatives of States, sometimes at the highest political level. Some of these statements were made before official organs of the State or of an international or regional organization, and appear in the official records of those bodies. Others, made during press conferences or interviews, were reported by the local or international press. The Court takes the view that statements of this kind, emanating from high-ranking official political figures, sometimes indeed of the highest rank, are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them. They may then be construed as a form of admission."[57]

2.18. The Court has recently confirmed that it will "prefer contemporaneous evidence from persons with direct knowledge. It will give particular attention to reliable evidence acknowledging facts or conduct unfavourable to the State represented by the person making them."[58]

2.19. In addition to the above, the extensive press coverage of the Respondent's objection to the Applicant's NATO membership at the Bucharest Summit, including articles reported on the official websites of the Respondent,[59] provides further evidence of the fact of that objection. Examples of the vast number of articles on the topic are provided at Appendix I to this Reply.[60] They demonstrate public

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[57] *Nicaragua v. United States (Merits)*, 1986 I.C.J. at para. 64. This is dealt with further at Chapter IV below.

[58] *Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Merits), Judgment of 19 December 2005,* at para. 61.

[59] A selection of these is set out at Section 1 to Appendix I.

[60] A selection of the vast number of articles reporting the Respondent's objection is set out at Appendix I. See also Memorial, Chapter II, paras. 2.58 to 2.60, and corresponding footnotes and Annexes.

knowledge of the Respondent's conduct. As indicated by the Court in *Nicaragua v. United States*:

> "although it is perfectly proper that press information should not be treated in itself as evidence for judicial purposes, public knowledge of a fact may nevertheless be established by means of these sources of information, and the Court can attach a certain amount of weight to such public knowledge. In the case of *United States Diplomatic and Consular Staff in Tehran,* the Court referred to facts which "are, for the most part, matters of public knowledge which have received extensive coverage in the world press and in radio and television broadcasts from Iran and other countries" *(I.C.J. Reports* 1980, p. *9,* para. 12). On the basis of information, including press and broadcast material, which was "wholly consistent and concordant as to the main facts and circumstances of the case", the Court was able to declare that it was satisfied that the allegations of fact were well-founded *(ibid.,* p. 10, para. 13)."[61]

2.20. In the face of such evidence, it is simply unsustainable for the Respondent to claim that it played no individual or autonomous role in objecting to the Applicant's NATO membership. Moreover, NATO *itself* has confirmed the fact and the stated basis of the Respondent's objection. NATO Spokesman, Mr James Appathurai, stated to the press during the course of deliberations at the Bucharest Summit on 3 April:

> "Final decisions, discussions will take place tomorrow. But I think it is safe to say that for the moment there is consensus for two of the three countries to enter the Alliance or to be offered invitations to begin accession talks, starting tomorrow. There's also a shared, indeed unanimous view within the Alliance that the third country the former Yugoslav Republic of Macedonia should as soon as possible be offered the opportunity in accession talks. *But well there's no secret, the Greek delegation made it very clear that until the name issue is resolved, it has not yet been resolved,*

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[61] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), Judgment, Merits, I.C.J. Reports 1986,* para. 63.

*that will not be possible.* So that is where we stand on the name issue."[62] [emphasis added]

*"The Greek government has been very clear, including this evening's discussions.* And until and unless the name issue is resolved, there cannot be consensus on an invitation for the former Yugoslav Republic of Macedonia to begin accession talks."[63] [emphasis added]

2.21. The Respondent has repeatedly asserted in its Counter-Memorial that the statements of NATO representatives are "entitled to full deference from the Court".[64]

2.22. Accounts provided by other NATO Member Countries in attendance at the Bucharest Summit also describe the fact of, and basis for, the Respondent's objection to the Applicant's NATO membership at the Bucharest Summit.[65] For example, the Spanish Foreign Minister, Mr Miguel Angel Moratinos, speaking in Bucharest, stated that "[f]or the moment, Greece is not in a position to agree to the entry of Macedonia…".[66] The former Slovenian Prime Minister, Mr Janez Janša, also in attendance at the Bucharest Summit has confirmed that the Respondent had formalized its objection in the meetings leading up to the Bucharest Summit, and at the summit itself.[67] Further examples are provided in

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62 Press Briefing by NATO Spokesman, James Appathurai of 3 April 2008: Counter-Memorial, Annex 30, pages 1-2.

63 *Ibid.*,at p. 3.

64 See, e.g., Counter-Memorial, para. 7.40.

65 Memorial, paras. 2.61-62.

66 See also, the account of the Bucharest Summit meeting provided by the Spanish Foreign Minister, Angel Miguel Moratinos, as reported by Reuters in "NATO to admit Croatia and Albania but delays Macedonia", *Reuters* (2 April 2008): Reply, Annex 132. The same statement is repeated in 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): Memorial, Annex 100.

67 "Greece had in fact exercised a veto at the bodies that had been previously deciding, and finally, in Bucharest": 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): Memorial, Annex 106.

the Applicant's Memorial.[68] The United States Congressional Research Service has more recently described the objection as follows:

> "*Greece, whose position is "no solution means no invitation" for Macedonia to join NATO and the EU, prevented NATO from reaching a consensus* on extending an invitation to Macedonia to join the alliance *because no solution to the name dispute had been found*."[69] [emphasis added]

2.23. Seasoned diplomats and former NATO officials have also confirmed the fact and basis of the Respondent's objection to the Applicant's NATO candidacy at the Bucharest Summit and the consequences of that objection. NATO's former Secretary-General, Lord Robertson, speaking at a symposium in 2009 to mark NATO's sixtieth anniversary, condemned the Respondent's objection:

> "Disgracefully, Macedonia will not be invited due to *an arcane and indefensible and shocking blockage by a NATO country* on a democratic neighbor... *Greece is stopping Macedonia*, a country that managed to save itself from a civil war and us from a lot of cost and misery, has been *stopped and vetoed by Greece simply over the name of the country*...". [70] [emphasis added]

2.24. Mr Robin O'Neill, Personal Representative in 1992 of the Chair of the Council of Ministers of the European Community (British Foreign Secretary, Mr Douglas Hurd MP), has also recently spoken out about the Respondent's objection. Mr O'Neill, who was tasked in 1992 with establishing a basis for the recognition of the Applicant by the European Community, in the face of the

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[68] Memorial, para. 2.61 and corresponding Annexes.

[69] United States Congressional Research Service, *Greece Update* (16 December 2009), p. 8: Reply, Annex 82. See also the House of Commons Defence Committee, *The future of NATO and European defence: Government response to the Committee's Ninth Report of Session 2007-08*, Eight Special Report of Session 2007-08, HC 660 (19 June 2008) at para. 34: "At Bucharest, Albania and Croatia were invited to join NATO and will now begin accession talks. It was disappointing that an invitation was not also extended to Macedonia because of a bilateral dispute with Greece over its constitutional name": Reply, Annex 80.

[70] Council on Foreign Relations, *Transcript: Remarks by Former NATO Secretary-General* (25 February 2009): Reply, Annex 81.

Respondent's contemporaneous objection to its recognition, stated in a recent televised telephone interview, broadcast on the Applicant's national television station:

> "I hope that the Greek government will now accept the importance of readiness to work for European stability and will do this by deciding *to raise its refusal alone among the member states of NATO to admit Macedonia to the Alliance*. This refusal by Greece goes against Article 11 of the Interim Agreement, as I understand it, that the differences between Greece and Macedonia over the name of Macedonia will not stand in the way of Macedonia joining international organizations. I think that Greece should accept that playing a full part in international organizations means giving as well as taking."[71] [emphasis added]

2.25. The Respondent has not sought to claim that representatives of NATO and of other NATO Member Countries have misrepresented the Respondent's actions prior to and at the Bucharest Summit. Nor does it claim that statements made by them concerning the Respondent's objection to that candidacy were "not an attempt accurately to describe Greece's conduct";[72] it cannot. Those statements alone provide incontrovertible evidence of the role played by the Respondent in objecting to the Applicant's membership of NATO at the Bucharest Summit, and the reason provided by the Respondent contemporaneously for that objection.

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[71] Transcript of a television interview with Robin O'Neill for a television programme "Otvoreno so Narodot", broadcast on *Macedonian Television (MTV*) on 10 May 2010: Reply, Annex 201. See also, the letter sent on 19 May 2008 to the NATO Secretary-General 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*: Memorial, Annex 133.

[72] Counter-Memorial, para. 5.55.

## Section II. The Applicant is Referred to in NATO in Accordance with Paragraph 2 of Resolution 817 and the Respondent's Objection to the Applicant's NATO Membership in Bucharest Was Not Based on Any Contrary Claim

2.26. In *none* of the Respondent's official written or oral statements or communications predating the institution of these proceedings, in which the Respondent set out the reasons for its objection, did the Respondent claim that it objected to the Applicant's NATO membership on the basis that the Applicant was to be referred to in NATO "differently than that in paragraph 2 of Security Council resolution 817".[73] Indeed, in circumstances where the Applicant *is* referred to and was to continue to be referred to in NATO as 'the former Yugoslav Republic of Macedonia' pending resolution of the name issue, such an objection would not and could not have been made.

2.27. At *no* stage prior to the institution of these proceedings did the Respondent ever seek to assert formally to the Applicant that the manner in which the Applicant called *itself* in NATO was non-compliant with the Interim Accord or that the Respondent was objecting to its membership on that purported basis. Indeed, even in its Counter-Memorial, the Respondent acknowledges that "if Greece *had* objected to the FYROM's membership application at the Bucharest meeting... the failure to resolve the difference over the name would have been the sole reason".[74]

2.28. It is therefore somewhat surprising that, faced with the realization that its breach of Article 11(1) of the Interim Accord is inescapable, the Respondent should seek to justify its objection on the basis that the Applicant *calls itself* by its constitutional name in its dealings with NATO.[75] Thus the Respondent claims that "it is not only the international organization itself which is to refer to the FYROM under that name but that the FYROM itself must do so"[76].

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73 See Memorial, para. 2.60.

74 Counter-Memorial, para. 6.40 [emphasis added].

75 Counter-Memorial, paras. 4.12, and 4.70 to 4.72.

76 Counter-Memorial para. 7.62.

2.29. As set out in the Applicant's Memorial, the Applicant has always been and continues to be referred to in NATO as in "paragraph 2 of the United Nations Security Council resolution 817".[77] It was invited to join the NATO Partnership for Peace (PfP) and Membership Action Plan (MAP) as 'the former Yugoslav Republic of Macedonia'; it was – and continues to be – referred to as such in the context of those programmes, and had agreed to continue to be so referred on accession.[78] There can be no doubt that, had the Applicant been invited to join NATO at the Bucharest Summit, it would have been referred to "in such organisation" no "differently… than in paragraph 2 of United Nations Security Council resolution 817" (Article 11(1)).

2.30. At the same time, the Applicant has always called itself by its constitutional name of the 'Republic of Macedonia' in its dealings with NATO and with NATO Member Countries, as it is entitled to do.[79] The Applicant reiterates that it is *not* required *to call itself* 'the former Yugoslav Republic of Macedonia' in NATO, or in its dealings with the Respondent or other third parties, including international organizations and institutions, nor did it ever agree to call itself such. This is not a "unilateral and unsupported assertion"[80], as charged by the Respondent. To the contrary, it is a fact supported unequivocally in 1995 by Mr Matthew Nimetz, who then held the position of Special Envoy of the United States to the name negotiations and was one of the primary actors in negotiating the Interim Accord. Speaking to the press in the very week the Interim Accord was signed, he stated:

> "FYROM is not the name of a country. It just means that there's some disagreement. And internationally, until that agreement is resolved, international organizations and certain countries like the U.S. will not feel

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[77] See, e.g., NATO press briefings where it uses the provisional reference: NATO, *Joint Press Point with NATO Secretary-Genera, Mr Jaap de Hoop Scheffer and the President of the former Yugoslav Republic of Macedonia, Branko Crvenkovski* (5 October 2007): Reply, Annex 4; NATO Press Conference, *NATO Secretary-General Jaap de Hoop Scheffer following the North Atlantic Council Summit meeting* (3 April 2008): Reply, Annex 7.

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

[79] See further Chapter IV of this Reply.

[80] Counter-Memorial, para. 7.88.

comfortable using that name because of the delicacy of the relationship. So we use a temporary reference, but we don't pretend it is the name of the country.

[...]

But the people from that country, *when they talk about themselves, use their constitutional name, Republic of Macedonia*. And we have found this to be the case, that *there is no requirement for them to use a name that they don't accept*. But that doesn't mean that the organization accepts that name. It's a subtlety, but maybe you can accept that."[81] [emphasis added]

2.31. This contemporaneous explanation by an independent authority on the Interim Accord and on the name negotiations, should be accorded the highest deference by the Court.

2.32. Thus, while the Applicant is referred to within the PfP and MAP under the provisional reference of 'the former Yugoslav Republic of Macedonia', it has signed all written instruments and official correspondence with NATO relating to those programmes and otherwise using its constitutional name;[82] it has also always called itself by its constitutional name in its dealings with NATO. This practice, in conformity with the Applicant's constitutional provisions and consistent with the established practice within the United Nations pursuant to resolution 817,[83] has never been remarked upon by NATO negatively. Importantly, the Respondent did not contemporaneously identify this practice as the reason for its objection to the Applicant's NATO membership at the Bucharest Summit, nor did it formally object to the Applicant's use of its

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[81] "Foreign Press Center briefing with Ambassador Matthew Nimetz, special White House Envoy subject: Macedonia-Greek agreements", *White House Briefing* (18 September 1995): Reply, Annex 87.

[82] See, e.g., Agreement among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace regarding the status of their forces, Brussels 19 June 1995: Counter-Memorial, Annex 16; and Additional Protocol to the Agreement among the States Parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace regarding the status of their forces, Brussels 19 June 1995: Counter-Memorial, Annex 17.

[83] See Chapter IV, paras. 4.40-4.51.

constitutional name in NATO. The total absence of any evidence to the contrary in the Respondent's Counter-Memorial is telling. Rather, on documents signed by both Parties, in which the Applicant used its constitutional name, as it was entitled to do, the Respondent simply noted that "its own signing of [the agreements] can in no way be interpreted as an acceptance from its part, or as recognition in any form and content of a name other than that of 'the former Yugoslav Republic of Macedonia'"[84]. The Respondent now seeks to present this practice as a "react[ion]"[85] against the Applicant's practice. It was nothing of the sort: it was a practical measure adopted by the Respondent in the NATO context, in keeping with, and reflective of, its practice in bilateral dealings with the Applicant, pursuant to the Memorandum of "Practical Measures" agreed between the parties in 1995.[86]

2.33. The Respondent's ill-conceived claims that the manner in which the Applicant calls *itself* is capable of constituting a breach of Article 11(1) of the Interim Accord or of resolution 817, represents a misrepresentation of the facts, as demonstrated above. It is also unsustainable as a matter of law, as dealt with in Chapter IV of this Reply.

## Section III. The Respondent Seeks to Escape the Consequences of its Objection by Misrepresenting NATO Decision-Making on Accession

2.34. The Respondent's Counter-Memorial contains two significant factual misrepresentations concerning NATO processes on which the Respondent purports to rely in order to deny the fact of its objection to the Applicant's NATO membership at Bucharest, and the consequences thereof.

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84 Note 82, *supra*.

85 Counter-Memorial, para. 4.71.

86 'Memorandum on "Practical Measures" Related to the Interim Accord of New York of September 13, 1995' (Skopje, 13 October 1995): Memorial, Annex 3. See further paragraphs 2.36, 2.43 and 5.6 of the Memorial, and Chapter IV, para. 4.62 of this Reply.

2.35. This section first deals with the Respondent's misrepresentation of NATO decision-making as exclusively collective in nature. It further addresses the Respondent's misrepresentation, based on syllogistic reasoning, that the fact that its objection to the Applicant being invited to join NATO at Bucharest was described by its own representatives and by the press as a "veto", in circumstances where there is no formal "veto" procedure within NATO, means that it cannot be found to have objected to the Applicant's membership. Neither of the Respondent's arguments bears scrutiny. Moreover, the Applicant reiterates that, contrary to the attempt by the Respondent to recast its case, the Applicant's claim is *not* directed at NATO as an organization, at NATO decision-making or at any NATO decision. The objection by the Respondent, which is the subject matter of the case before the Court, is entirely distinct from and preceded the NATO Bucharest Summit decision.

## A. NATO's Consensus-Based Decision-Making Procedures Cannot and Do Not Shield the Respondent from the Consequences of Its Objection

2.36. The Respondent attempts to hide behind the NATO consensus-based decision-making procedure in order to deny the fact of its own autonomous objection to the Applicant's NATO membership at Bucharest. It erroneously asserts that "there is no mechanism… of objection… in the Alliance"[87] and that "the fact that decisions within NATO may be taken only by consensus makes it impossible to individualise Member States' responsibility"[88]. To the contrary, and as NATO's own documentation (including those NATO materials submitted by the Respondent) makes clear, NATO consensus procedure *does not* prevent individual Member Countries from objecting to certain proposed decisions tabled by NATO, including decisions at the highest level, such as NATO enlargement, nor does it shield Member Countries from the consequences of those objections. Rather, consensus safeguards the autonomy of a Member Country to oppose decisions on the basis *inter alia* of its own foreign policy, and ensures that each Member Country retains sovereignty and responsibility for its own decisions.

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87 Counter-Memorial, para. 1.6.

88 Counter-Memorial, para. 6.88.

2.37. Pursuant to Article 10 of the North Atlantic Treaty, decisions concerning NATO enlargement must be made "by unanimous agreement",[89] reached through a process of consensus-building,[90] spanning many months. Enlargement decisions are taken by NATO's highest political decision-making body, the North Atlantic Council ("the Council"), constituted of representatives from each NATO Member Country, and chaired by NATO's Secretary-General. Final decisions concerning enlargement are taken at summit meetings, such as the Bucharest Summit of April 2008, attended by Heads of State and Government. However, consensus is sought through a lengthy process over the weeks and months preceding summit meetings, at Council meetings held weekly at lower ministerial levels. Thus, the candidacies of the Applicant, as well as its co-aspirants, Albania and Croatia, were discussed at numerous Council meetings prior to the Bucharest Summit, including the informal meeting of NATO Foreign Ministers held in Brussels on 6 March 2008. The *NATO Handbook* explains that Council "meetings take place with a minimum of formality; discussion is frank and direct".[91] "When decisions have to be made, action is agreed upon on the basis of unanimity and common accord. There is no voting or decision by majority."[92]

2.38. Consensus is achieved in circumstances where, taken at its highest, all NATO Member Countries are in agreement on a given issue, or, taken at its lowest, where all Member Countries acquiesce in the proposed decision by not stating their objection to it (termed "the silence procedure"[93]). Conversely, consensus is not reached where one or more Member Country formally objects

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89 Article 10 of the North Atlantic Treaty 1949: Memorial, para. 2.44.

90 NATO On-line Library, "Consensus decision-making at NATO", *NATO Publications*, accessed 21 May 2010: Reply, Annex 1. See further, Leo Michel, "NATO Decisionmaking: Au Revoir to the Consensus Rule?", *Strategic Forum*, No. 202 (August 2003): Reply, Annex 66.

91 NATO Handbook, Public Diplomacy Division, 2006: Counter-Memorial, Annex 22, page 38.

92 *Ibid*., page 35.

93 "The NAC [North Atlantic Council] *achieves consensus through a process in which no government states its objection*. A formal vote in which governments state their position is not taken. […] At NATO, the "silence procedure" may be used for any decision requiring consensus. At times… *a government can avoid the step of stating its explicit objection to a policy* if it believes other allies are set on a course of action […]": United States Congressional Research Service, *Report for Congress – NATO's Decision-Making Procedure* (5 May 2003): Reply, Annex 65.

to the tabled proposal. This can lead to the objection by one or more Member Country serving to block consensus, thereby preventing a decision being reached.[94] This was understood by the Respondent at the time of the Bucharest Summit.[95] Although such an objection is not called a "veto" within the NATO context, its practical impact is the same, as NATO itself acknowledges,[96] and as the Respondent ultimately accepts (indeed, having spent much of its Counter-Memorial erroneously seeking to deny the ability of individual Member Countries to block consensus, the Respondent eventually concedes that a Member Country *is* able in practice to single-handedly "block the adoption of NATO decisions" and even to "paralys[e] the Alliance's decision making procedure"[97]).

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[94] It is noteworthy that the Respondent's objection to the Applicant's NATO membership has prompted one influential NATO Member Country to call for the consensus rule to be changed in relation to enlargement decisions to prevent a Member Country singlehandedly blocking another Country's accession: see "Canadian Defense Minister asks for change in NATO consensus on admitting new members", *Macedonian Information Agency* (8 March 2009): Reply, Annex 153. See also "Time to abolish the national veto on new NATO and EU members", *The Henry Jackson Society* (31 March 2008): Reply, Annex 78.

[95] See, e.g., the statement of the Respondent's Foreign Minister, Ms Bakoyannis, on 5 March 2008, in response to a question as to whether other NATO Member Countries would support Greece's position: "... A veto is exercised by one party. This is known from the point of view of the procedure": Embassy of the Respondent in Washington, DC, *Interview of Foreign Minister Ms. D. Bakoyannis on MEGA Channel's evening news, with journalist Olga Tremi on 4 March 2008* (5 March 2008): Reply, Annex 100.

[96] "Il est certain que la règle de l'unanimité peut conduire à un veto de fait dans la pratique des choses." *OTAN Documentation sur l'Organisation du Traité de l'Atlantique Nord, Analyse du Traité*, Publication OTAN, Service de l'Information, Paris, 1962, p. 18: Counter-Memorial, Annex 15.

[97] Counter-Memorial, para. 4.72. This acknowledgment is made in the context of a disingenuous suggestion by the Respondent that the Applicant might act in such a way after admittance to NATO membership. In response to this suggestion by the Respondent, the Applicant draws the Court's attention to the Applicant's long-standing membership in other organizations, such as the Organization for Co-operation and Security in Europe, which also function on the basis of consensus, and in which the Applicant has never sought to block consensus on decisions on the grounds that it is referred to under the provisional reference. The Applicant also refers the Court to the *NATO Handbook Documentation* at Annex 19 to the Counter-Memorial, which provides: "the Alliance rests upon commonality of views and a commitment to work for consensus; part of the evaluation of the qualifications of a possible new member will be its demonstrated commitment to that process and those values. We will invite prospective new members to confirm that they understand and accept this and act in good faith accordingly. The Alliance may require, if appropriate, specific political commitments in the course of accession negotiations": *NATO Handbook Documentation*, NATO Office of Information 1999, pp. 166-193 and 335-369: Counter-Memorial, Annex 19. Given the fact that the Applicant was adjudged to have fulfilled *all* NATO membership criteria (see further para. 2.55 of the Memorial, and Section IV of this Chapter), the suggestion by the Respondent that the Applicant would act capriciously to

2.39. In the present case, the Respondent chose to repeatedly and explicitly voice its opposition to the Applicant's NATO membership at the Council meetings leading up to the Bucharest Summit, including the Informal Meeting of NATO Foreign Ministers in March 2008, and in oral and written communications with NATO Member Countries. It repeated that objection at the summit, as confirmed by representatives of NATO Member Countries in attendance at the summit, including the Slovenian Prime Minister, Mr Janez Janša[98] and the Spanish Foreign Minister, Mr Miguel Angel Moratinos,[99] and, importantly, by NATO itself.[100]

2.40. The existence of the "silence procedure" makes clear that NATO Member Countries are not under a duty or obligation to formally object to a NATO decision where they do not agree with it. This is the case even in relation to decisions of the utmost importance, such as enlargement decisions or decisions as to whether to use force. This is explained in a report by the United States Congressional Research Service:

> "During the Kosovo conflict… it was clear to all governments that Greece was immensely uncomfortable with a decision to go to war. *NATO does not require a government to vote in favor* of a conflict, but rather to *object explicitly* if it opposes such a decision. Athens chose not to object, knowing its allies wished to take military action against Serbia. […] At NATO, the "silence procedure" may be used for any decision requiring consensus. At times, the procedure allows governments in opposition to a measure to avoid confronting other allies around the table during a session of the NAC. The procedure can also provide cover for a government from unwanted press reporting that might characterize its policy as out of step with other allies."[101]

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paralyse the NATO decision-making process and/or that the Respondent's stated concerns could not have been dealt with through usual NATO processes, is as baseless as it is inflammatory.

98 See para. 2.22 *supra*.

99 *Ibid.*

100 NATO, *Press Briefing by the NATO Spokesman James Appathurai* (5 March 2008): Reply, Annex 5.

101 United States Congressional Research Service, *Report for Congress – NATO's Decision-Making Procedure* (5 May 2003): Reply, Annex 65.

2.41. The "silence procedure" is incompatible with the Respondent's assertion that it owed an "obligation" to NATO to object to the Applicant's NATO membership.[102]

2.42. Further and importantly, the consensus rule does not shield Member Countries from the consequences of their individual acts taken within NATO, whether at summit meetings or otherwise. The Respondent's assertions that "the fact that decisions within NATO may be taken only by consensus makes it impossible to individualise Member States' responsibility"[103] or that consensus precludes the Respondent from having an "individual or autonomous role"[104] in relation to NATO decisions are simply wrong. The accurate position is the very opposite of that presented by the Respondent: the consensus rule reflects the nature of NATO as an alliance of independent and sovereign countries, rather than as a supranational body.[105] Therefore, although Council decisions are the expression of the collective will of member governments, arrived at by common consent, each Member Country retains sovereignty and responsibility for its own decisions and actions contributing to, modifying or preventing consensus. This is underscored in the *NATO Handbook*:

> "Each member country represented at the Council table or on any of its subordinate committees *retains complete sovereignty and responsibility for its own decisions*."[106]

2.43. The consensus rule thus ensures *"that policy-making remains the ultimate prerogative of the sovereign member states."*[107] In such circumstances, the

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[102] Counter-Memorial, para. 7.45.

[103] Counter-Memorial, para. 6.88.

[104] Counter-Memorial, para. 6.74.

[105] NATO On-line Library, "NATO Transformed: How NATO Works", *NATO Publications*: Annex 3.

[106] NATO Handbook, Public Diplomacy Division, 2006: Counter-Memorial, Annex 22, page 35.

[107] Fredo Dannenbring: "Consultations: The political lifeblood of the Alliance", *NATO Review*, volume 33/6, 1985, p. 5-11: Counter-Memorial, Annex 145, page 10. See further the following extract from the British Government website: "Every decision taken by NATO is based on consensus. This means that *every country in NATO must agree before a decision can be taken*. Although this can lead to lengthy discussion, it has two advantages. Firstly, *the sovereignty and*

Respondent's attempt to claim that NATO acts as some form of "veil" shielding the Respondent from the consequences of its objection to the Applicant's NATO membership at the Bucharest Summit[108] represents a fundamental misunderstanding or misrepresentation of the nature of NATO as an alliance: NATO processes do not, in fact, assist the Respondent in its attempt to evade the consequences of its objection to the Applicant's NATO membership at the Bucharest Summit. Contrary to the Respondent's claims, the Respondent was at all times – and remains – responsible for its objection to the Applicant's NATO membership, which served to prevent the Applicant being invited to join NATO in Bucharest. This is dealt with in further detail in Chapter IV below.

### B. Whether the Respondent's Objection to the Applicant's NATO Membership Amounted to a "Veto" Is Irrelevant

2.44. Contrary to the recasting of the Applicant's claim by the Respondent in its Counter-Memorial, the current proceedings are predicated on the fact that the Respondent *objected* to the Applicant's NATO membership, not on any claim that its actions amounted to a formal *veto*; it is therefore irrelevant for the purposes of this claim whether there is a formal veto procedure within NATO, whether the Respondent's objection was capable of – or did – constitute a formal veto, or whether NATO recognizes such a term. What matters is the fact that it *objected* to the Applicant being invited to accede to NATO membership at Bucharest.

2.45. The Respondent seeks to deny the fact of its objection by focusing on the original language used *by its own representatives* and by the world media to describe its objection as a "veto". Its argument is summed up at paragraph 6.74 of its Counter-Memorial: "Mr. De Hoop Scheffer, Secretary-General of NATO in a Press Conference on 19 February 2009... rejected the idea of a veto by Greece and stated that "NATO does not know the word veto. We operate by consensus and

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*independence of each member country is respected*, and secondly, when a decision is reached it has the full backing of all the NATO countries. This helps to strengthen the role of NATO": DirectGov (UK Government's Digital Service), "NATO: How NATO Works", *Directgov.*: Reply, Annex 57.

[108] Counter-Memorial, para. 6.84.

unfortunately there was no consensus last year at the summit in Bucharest [...].” This statement clearly rules out any attempt to link NATO’s decision to Greece.” Put simply, the syllogism adopted by the Respondent to evade the consequences of its objection would posit that because the Respondent’s objection has been described as a “veto”, and because NATO “does not know the word “veto””, the Respondent cannot be said to have objected. This assertion constitutes a misrepresentation of NATO’s account of what happened at Bucharest. It is also entirely beside the point.

2.46. As set out in detail in the Applicant’s Memorial and in Chapter IV of the Reply, the current proceedings are based on the breach by the Respondent of its obligation arising under Article 11(1) of the Interim Accord “not to object” to the Applicant’s membership of NATO. The Article 11(1) obligation applies “irrespective of whether its objection amounted to a veto and irrespective of the effect or consequence of its objection.”[109] It is entirely irrelevant that the Respondent’s representatives erroneously described its objection as a “veto”,[110] or that such description was adopted by the global media in describing the fact of the Respondent’s objection. As the Respondent has put it, “[i]n order to make out its case, the FYROM relies on certain statements by the Prime Minister and Foreign Minister of Greece stressing Greek opposition to FYROM’s

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[109] Memorial, para. 1.8; Reply, Chapter IV.

[110] Counter-Memorial, paras. 5.53 and 5.55. Notably, the Respondent’s official governmental websites, including those of its Ministry of Foreign Affairs in Athens, of its Embassy in Washington, DC, and of its Consulate in San Francisco, posted and continue to display articles describing the Respondent’s objection to the Applicant’s NATO membership in Bucharest as a “veto”. See, e.g.,: Press Office of the Respondent’s Embassy in Washington DC, *Bakoyannis on use of veto against FYROM* (16 November 2007): Reply, Annex 95; Embassy of the Respondent in Washington, DC, *Interview of Foreign Minister Ms. D. Bakoyannis on MEGA Channel’s evening news, with journalist Olga Tremi on 4 March 2008* (5 March 2008): Reply, Annex 100; the Embassy of the Respondent in Washington, DC, “Speech of FM Ms. Bakoyannis before the governing party’s Parliamentary Group” (27 March 2008): Memorial, Annex 89; the Ministry of Foreign Affairs of the Respondent, *Message of Prime Minister Mr. Kostas Karamanlis* (3 April 2008): Memorial, Annex 99; the Respondent’s Ministry of Foreign Affairs, *Interview of Alternate FM Droutsas on ‘Thema 98.9’ radio, with journalists B. Koutras & R. Bizogli* (29 October 2009): Reply, Annex 158; the Respondent’s Ministry of Foreign Affairs, *Alternate Foreign Minister Droutsas’ interview on NET radio with journalist S. Trilikis* (4 November 2009): Reply, Annex 159; and the Respondent’s Ministry of Foreign Affairs, *Interview of Alternate FM Droutsas in the “Real News” daily (22.11.09)* (22 November 2009): Reply, Annex 194.

NATO membership, and claiming to have vetoed an invitation to the FYROM to accede."[111] However, contrary to the thrust of the Respondent's assertions in its Counter-Memorial, the Applicant relies on those statements (amongst other evidence) for the fact that they "stress[...] Greek *opposition* to [the Applicant's] NATO membership", as acknowledged by the Respondent at paragraph 5.53 of its Counter-Memorial, not for the fact that they "claim[...] to have *vetoed* an invitation to [the Applicant] to accede".

2.47. It is equally irrelevant that NATO "does not know the word veto":[112] the fact that the NATO Secretary-General has accurately stated that NATO has no formal veto procedure, in no way equates to his denying the fact of the Respondent's objection, as the Respondent repeatedly misrepresents.[113] What *is* relevant is that the Respondent *objected* to the Applicant being invited to accede to NATO membership at the Bucharest Summit, a fact confirmed by NATO itself.[114] The Respondent cannot now, by some sleight of hand, seek to rely on *its own* mischaracterization in formal NATO terms of its objection in order to avoid the consequences of that objection.

## Section IV. The Respondent Misrepresents the Applicant's NATO Membership as Having Always Been Predicated on Resolution of the Difference Over the Applicant's Name

2.48. The Respondent contends that from the very beginning of the Applicant's engagement with NATO in 1995 "it was well known that the FYROM's disagreement with Greece over its name… would have to be resolved before the

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111 Counter-Memorial, para. 5.53.

112 Jaap de Hoop Scheffer: "Press Conference by NATO Secretary-General Jaap De Hoop Scheffer after the informal Meeting of NATO Defense Ministers, with Invitees with non NATO ISAF Contributing Nations", Cracow, Poland, dated 19 February 2009: Counter-Memorial, Annex 33. Although, see note 96 *supra*, in which NATO makes clear that the objection by a Member State can act as a veto.

113 Counter-Memorial, paras. 6.74 and 7.40.

114 See para. 2.20 *supra*.

FYROM would receive an invitation to begin accession",[115] and that "FYROM understood, and there could have been under no misapprehension that, the prior resolution of the difference on the name was a necessary condition for the integration of the FYROM in both NATO and the EU"[116]. That claim is wrong on all counts and is contradicted by the historical record. First, in relation to the Respondent itself: the Respondent's decision to object to the Applicant's NATO membership in circumstances where the Applicant was to be referred to no differently than in resolution 817 is of recent vintage. Second, in relation to NATO: resolution of the name dispute had never been established as a condition-precedent for the Applicant's NATO accession. As numerous statements by NATO and by other Member Countries make clear, the resolution of the difference over the name was simply never perceived to be "NATO's business".

## A. The Respondent's Refusal to Allow the Applicant to Accede to NATO Membership Due to the Difference Over the Name Is the Result of a Recent Strategy, Not a Criteria Imposed since 1999

2.49. In 1999, when the Applicant's MAP process began, and indeed until at least 2005, the Respondent's stance concerning the Applicant's NATO membership was that, pursuant to its obligations under the Interim Accord, it *would not object* to the Applicant's membership in international, multilateral and regional organizations and institutions, *including NATO*, if the Applicant was to be referred to in those organizations and institutions no differently than in resolution 817. Indeed, in 2001, the Respondent's Ambassador at its Liaison Office in Skopje denied any suggestion that the Respondent might act to block the Applicant's NATO membership process.[117] Contemporaneous statements by the Respondent's officials underscore the Respondent's public support for the Applicant's accession to NATO as "a way for promotion of stability and peace

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[115] Counter-Memorial, para. 5.34.

[116] Counter-Memorial, para. 5.36.

[117] Responding to a rumour of "an alleged Greek action to block Macedonia's integration into NATO's structures if the name issue is not resolved", the Liaison Office asserted that it was "a clear misunderstanding": "Greek office says report on blocking of FYROM NATO, EU Bids 'Misunderstanding'", *MIA Daily Report* (25 January 2001): Reply, Annex 89.

in the region"[118], and as a reward due to the Applicant for all it had "suffered… from the Kosovo crisis"[119].

2.50. In 2005, the Respondent's public position still appeared to be that it would not object to the Applicant's membership in organizations and institutions under the provisional reference, pending resolution of the difference over the Applicant's name. Statements made by the Respondent's Foreign Minister in 2005, set out in the Applicant's Memorial, bear repetition in this regard:

> "… Molyviatis told … reporters that the Greek government's position vis-à-vis the FYROM name issue was crystal clear… "*We have the right, on the basis of the 1995 interim agreement, to oppose the neighbouring country's accession to international organizations under any name other than that of 'Former Yugoslav Republic of Macedonia'.*"[120]

2.51. The Respondent's Prime Minister, Mr Karamanlis made this position explicit in relation to the European Union in a speech in the Respondent's Parliament:

> "[U]nder the 1995 bilateral Interim Accord, the neighboring country agreed that *Greece has the right to object to its membership in international integrations if this is done under any other not agreed name but this - FYROM*. Consequently, and I would like to be very clear - *the way to integration into the European Union can proceed only in two cases: either after a mutually acceptable solution or under the name FYROM*. There is no other way."[121]

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[118] "Greece announces support for Macedonia's Entrance in NATO and EU", *MIA Daily Report* (23 May 2004): Reply, Annex 90.

[119] The Ambassador went on to state that the Applicant had "deserve[d] to be rewarded" through "steady and speedy integration in the direction that the country chooses": *Ibid*., note 117 *supra*.

[120] 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): Memorial, Annex 68.

[121] Statement made by the Respondent's Prime Minister, Kostas Karamanlis, during a foreign policy debate in the Respondent's Parliament, *Session of the Greek Parliament Held on 31 October 2005*: Reply, Annex 68; see also: "PM on foreign offensive", *Kathimerini* (1 November 2005): Reply, Annex 164.

2.52. The Respondent's change of stance appears to have been linked to recognition of the Applicant under its constitutional name by other countries, including in particular, the United States. Indeed, on 4 November 2004, the very day that the United States announced that it would henceforth call the Applicant by its constitutional name, the Respondent's spokesman, Mr Evangelos Antonaros, made the following statement:

> "It is well known that the accession of a European country to the EU or NATO requires the unanimous agreement of all existing members… Greece will not be part of such a decision unless a commonly acceptable solution [to the name dispute] is reached."[122]

2.53. A recent speech by the Respondent's former Foreign Minister, Ms Bakoyannis, indicates that the Respondent's decision to object to the Applicant's NATO membership until such time as the difference over the name is resolved was not in fact formalized until some time prior to the summer of 2007.[123] In such circumstances, it is unsustainable for the Respondent to assert that the Applicant could and should have understood in 1999 that the Respondent would act nine years later, contrary to its stated policy, to object to the Applicant's membership of NATO, in circumstances where the Applicant was to be referred to in the organization no differently than in resolution 817.[124] It is particularly so in circumstances where it appears that the policy adopted by the Respondent was

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[122] Statement by Government spokesperson Evangelos Antonaros: "Greece May Block Macedonia's NATO, EU Bids Over Name Issue", *Dow Jones International News* (5 November 2004): Memorial, Annex 67. See also: "Athens won't back FYROM's EU and NATO entry without mutually agreed solution, gov't says", *Athens News Agency* (5 November 2004): Reply, Annex 91.

[123] "We knew what strategy we would pursue on the Skopje issue even before the summer of 2007. The decision had been made": Respondent's Ministry of Foreign Affairs, *Speech of FM Bakoyannis at an event hosted by the Constantine Karamanlis Institute for Democracy* (16 February 2009): Reply, Annex 189.

[124] See, e.g., "Athens will not dare apply veto", *Skopje Vreme* (14 September 2007) which testifies to the fact that, contrary to the Respondent's claim, the Applicant did not believe that the Respondent would act, in breach of its obligations, to block its accession to NATO on the basis of the non-resolution of the name issue: Reply, Annex 94. See, also: "Athens won't back FYROM's EU and NATO entry without mutually agreed solution, gov't says", *Athens News Agency* (5 November 2004): Reply, Annex 91;

the result of a calculated political decision, largely in reaction to the Applicant's recognition by the United States under its constitutional name.

## B. The Resolution of the Difference Over the Applicant's Name Did Not Constitute a pre-Bucharest NATO Accession Criterion

2.54. Contrary to the Respondent's assertions, the claim before the Court concerns the Respondent's objection to the Applicant being invited to accede to NATO membership. It does not concern the subsequent and distinct Bucharest Summit decision. The Court is not asked in any way to adjudicate on NATO's decisions or actions. However, given the significant misrepresentations by the Respondent in its Counter-Memorial of the Applicant's engagement with NATO, and of the decision reached at the Bucharest Summit, the following information is necessary to present to the Court an accurate account of the facts of the matter. This is particularly so in circumstances where the Respondent erroneously asserts that the resolution of the difference over the name constituted a NATO membership criterion that the Applicant had failed to meet, the failure of which placed the Respondent under a purported "obligation" to object to its membership in the Alliance.

2.55. The Respondent asserts that "NATO considered the resolution of the outstanding issue to be a 'performance-based standard' in the context of good-neighbourliness, which FYROM would have to satisfy before being invited to join the Alliance"[125] and that "the 'resolution of outstanding issues' as a condition to join the Alliance included the resolution of the name issue"[126]. These claims are without basis in fact. In order to attempt to substantiate them, the Respondent purports to rely in its Counter-Memorial on two key NATO pronouncements, which it both misquotes and selectively quotes to such an extent as to distort their meaning.

2.56. The first pronouncement is the Final Communiqué, issued following the Ministerial Meeting of the Council in Brussels in December 2007. A crucial clause, edited from the Respondent's citation of the document in its Counter-

[125] Counter-Memorial, para. 5.39.

[126] Counter-Memorial, para. 5.38.

Memorial, *commended* the Applicant's performance in the area of "mutual cooperation", and identified it as a model for other NATO Partner countries to follow.[127] Although the "promoti[on] of cooperation in the region, good neighbourly relations, and mutually acceptable, timely solutions to outstanding issues" were described in the communiqué as being "necessary for long-term stability" in the Western Balkans, neither they nor the resolution of the difference over the name was advanced as a condition for membership or "performance-based standard" which the Applicant had not yet met.[128]

2.57. The second NATO pronouncement on which the Respondent purports to rely is a statement of 23 January 2008 by NATO's Secretary-General, Mr de Hoop Scheffer. The Respondent's Counter-Memorial redacts this statement so as to remove the following crucial clauses which underscore that the difference over the name was *not* a NATO matter: "[*the* name issue*,*] *which is not a NATO affair*. This is Mr. Nimetz, Ambassador Nimetz, under the UN roof. *This is not a NATO affair, NATO responsibility*."[129] The Respondent's deliberate redaction entirely distorts the Secretary-General's comments. Neither of the documents is in fact capable of supporting the Respondent's claim that resolution of the difference over the name was a pre-Bucharest NATO membership criterion for the Applicant.

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[127] "We commend the three Membership Action Plan (MAP) countries for the level of mutual cooperation achieved and we encourage the Partner countries in the region to follow this example": NATO Press Release, (2007) 130, *Final Communiqué*, *Ministerial meeting of the North Atlantic Council held at NATO Headquarters Brussels* (7 December 2007), para 14: Counter-Memorial, Annex 25. This is omitted by the Respondent in its citation of this statement: see Counter-Memorial, para. 5.37.

[128] The Council's Final Communiqué following the Ministerial Meeting in Brussels on 7 December 2007 *did not* include the expression "resolution of outstanding issues", as purportedly quoted at paragraph 5.38 of the Respondent's Counter-Memorial; nor did the Communiqué state that any such resolution constituted "a condition" for the Applicant to join the Alliance, as the Respondent appears to assert in the same paragraph. The Communiqué simply stated: "In the Western Balkans, Euro-Atlantic integration, based on solidarity and democratic values, remains necessary. This involves *promoting* cooperation in the region, good-neighbourly relations, and mutually acceptable timely solutions to outstanding issues": NATO Press Release, (2007) 130, *Final Communiqué*, *Ministerial meeting of the North Atlantic Council held at NATO Headquarters Brussels* (7 December 2007), para. 14: Counter-Memorial, Annex 25.

[129] NATO, *Joint Press Point with NATO Secretary-General Jaap de Hoop Scheffer and the Prime Minister of the former Yugoslav Republic of Macedonia, Nikola Gruevski*, 23 January 2008: Counter-Memorial, Annex 26, page 1.

2.58. The Respondent's claim that "[i]n the MAP Progress Reports on the FYROM between 1999 and the Bucharest Summit, NATO underscored that that State would have to satisfy the criterion of good neighbourly relations and it would have to resolve all outstanding bilateral issues with any Member State of the Alliance, before NATO could start the accession process for the FYROM"[130] is simply wrong, and entirely unsubstantiated by any supporting material in its Counter-Memorial.[131] The Respondent has not referred to a single official NATO document or statement, predating the Bucharest Summit decision, other than the two misquoted pronouncements dealt with above, in support of its contention that the resolution of the difference over the name was a condition-precedent for the Applicant to be invited to accede to NATO. It appears there are none. In the 15 years of the Applicant's involvement with NATO prior to the meetings leading up to the Bucharest Summit in April 2008, resolution of the difference over the name was *never* raised with the Applicant by NATO as a condition-precedent for its membership of the Alliance.[132] This is quite simply because the difference over the name was never perceived by NATO to be a NATO matter and did not enter into the NATO membership framework. Statements by the NATO Secretary-General, Mr de Hoop Scheffer, and by NATO spokesperson, Mr Appathurai, put this beyond doubt:

- "DE HOOP SCHEFFER: ... On the main issue, you know that NATO has... and is not seeking direct involvement, *that is not NATO's business, that is not NATO's affair*. At the same time, of course, I

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130 Counter-Memorial, para. 7.41.

131 Insofar as the Respondent purports to rely on the Ninth NATO MAP Progress Report relating to the Applicant, a report *postdating* the Bucharest Summit, as having "identified the difference concerning the name as an issue affecting good neighbourly relations", this is yet a further example of misrepresentation on the Respondent's behalf. The Report in fact merely records that "good-neighbourly relations remain crucial", a statement with which the Applicant agrees, and reiterates the text of the Bucharest and Strasbourgh/Kehl Summit Declarations relating to the Applicant. It nowhere describes the difference over the name as an "issue affecting good neighbourly relations".

132 See, e.g., NATO On-line Library, "NATO's relations with the former Yugoslav Republic of Macedonia", *NATO Publications*: Reply, Annex 2: This document maps the Applicant's ongoing cooperation with NATO under the MAP process, and its progress in certain key areas along its route to NATO accession. The *only* mention of the difference concerning the name is in relation to the Bucharest Summit decision in 2008.

can express the hope as I've done many times before that there will be a solution for the name issue. But that is in the hands of Mr Nemitz [sic] on behalf of the United Nations. And this is all that I should say about the name issue."[133] [emphasis added]

- "Q. You said taking the three countries is part of stability, so what is the sense of the veto, then?
  APPATHURAI: *This is a bilateral issue*, of course. I am not the one making that case, that's a *bilateral issue, of course, between Skopje and Athens*."[134] [emphasis added]

2.59. Individual NATO Member Countries have also confirmed that the resolution of the difference over the name *did not* constitute a NATO condition-precedent for the Applicant to be invited to begin accession talks to join NATO. See for example, the following interview with the former United States Ambassador to the Applicant, Ms Gillian Milovanovic:

> "INA**:** The name issue creates concern for Macedonia as far as its NATO membership. Does the announced veto from Greece continue to be an impediment, demanding concessions by official Skopje for changing the constitutional name of the country?
> Milovanovic**:** The 1995 Interim Accord, which allows Macedonia's admission to international organizations under a provisional name, remains valid. *The name issue is not one of NATO's membership criteria*."[135] [emphasis added]

2.60. In the lead up to the Bucharest Summit, the Respondent persistently sought to characterise the ongoing difference over the Applicant's name, and

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[133] NATO, *Joint Press Point with NATO Secretary-General Jaap de Hoop Shaeffer and the President of the former Yugoslav Republic of Macedonia, Branko Crvenkovski* (5 October 2007): Reply, Annex 4.

[134] NATO, *Press Briefing by the NATO Spokesman James Appathurai* (5 March 2008): Reply, Annex 5.

[135] Embassy of the United States of America in Skopje, *INA news agency Skopje Interview with U.S. Ambassador in Macedonia Gillian Milovanovic* (13 February 2008): Reply, Annex 96.

in particular, the Applicant's failure to acquiesce to the Respondent's demands within the name negotiations, as a breach of 'good neighbourly relations', so serious as to disqualify the Applicant from NATO membership until such time as the difference is resolved to the Respondent's satisfaction.[136] It sought to persuade other NATO Member Countries of that in meetings prior to and at the Bucharest Summit; and, despite having failed in that exercise, it now seeks to persuade the Court of the same in these proceedings. It therefore asserts, without any supporting evidence, that "NATO determined that the FYROM, in the light of the continued difference concerning the name of that State, had not fulfilled the criteria".[137] That is simply untrue. To the contrary, faced with the Respondent's objection to the Applicant becoming a NATO member in accordance with the regime set out in resolution 817, NATO could not reach a consensus decision on the Applicant being invited to accede to membership at the Bucharest Summit.

2.61. Despite the Respondent's best efforts, NATO Member Countries did not support its categorization of the ongoing bilateral difference over the name as a breach of a 'good neighbourly relations' membership criterion, debarring the Applicant from NATO membership.[138] Repeated statements by representatives of

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[136] The Respondent asserts in its Counter-Memorial that "the substantive accession criteria established under the MAP" that the Applicant failed to fulfil is "the requirement that candidate States "settle ethnic disputes or external territorial disputes including irredentist claims or internal jurisdictional disputes by peaceful means in accordance with OSCE principles and [...] pursue good neighbourly relations": paras 5.25 and 7.36 of the Counter-Memorial, citing Press Release NAC-S(99)66, *Membership Action Plan (MAP)*, dated 24 April 1999 (Counter-Memorial, Annex 21). Notably, the Respondent did not seek to oppose the Applicant's NATO membership at Bucharest on the purported basis that there existed an extant "external territorial dispute" between the Parties; indeed, such a claim would have been utterly unsustainable in the face of repeated determinations by authoritative bodies that the Applicant *does not* harbour any irredentist ambitions against the Respondent. It is also unsustainable in view of the concessions made by the Applicant in an attempt to assuage the Respondent's ill-founded concerns (see, e.g., paras. 2.3 - 2.6 and 2.12 -2.13 of the Memorial, and corresponding footnotes).

[137] Counter-Memorial, para. 7.41(7).

[138] See: Memorial, notes 112 to 116. See also the testimony given to the United States House Foreign Affairs Subcommittee on Europe by Mr R. Nicholas Burns, Under Secretary for Political Affairs: United States Department of State, *Report on United States-Greek Relations*, Washington, DC (14 November 2007): Reply, Annex 70: "Macedonia should not be denied an invitation to NATO for any reason other than failure to meet the substantive qualifications for entry. In Greece, some have raised the possibility of vetoing an invitation to Macedonia unless the "name issue" is resolved. While the United States agrees on the importance of resolving the name issue, we

other NATO Countries make clear that in their view the Applicant *had* fulfilled all NATO performance-based criteria, but that its invitation to NATO membership was blocked by the Respondent's objection based on a matter "extraneous"[139] to the NATO membership procedure. As stated by the Slovenian Prime Minister: "everybody agreed that *Macedonia had fulfilled all the membership criteria*".[140] This was further underscored by the United States Secretary of State speaking in Bucharest "*there was no effort to suggest that Macedonia was not ready in any other way, that it didn't somehow meet the criteria*."[141] The Dutch Foreign Minister, Mr Maxime Verhagen, also made clear: "[a] name cannot be an objection for the accession of a country".[142]

2.62. Importantly, the Respondent's categorization was *not* accepted by NATO.[143] This is made clear by the Bucharest Summit decision itself which, far from suggesting that the Applicant had failed to meet NATO membership criteria, *commends* the Applicant for its "commitment to NATO values and Alliance operations". The NATO Secretary-General himself expressed his regret

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do not think that disagreement on the name alone is reason to block Macedonia's membership in international organizations."

[139] United States Department of State, *Daily Press Briefing*, Tom Casey, Deputy Spokesman, Washington, DC (31 March 2008): "... we believe that the decisions that are taken on NATO membership out to be based on whether the countries meet the qualifications and criteria that NATO has established for them. We certainly understand that the name issue is one that is out there and is of particular concern to our friends and allies in Greece. But there certainly is no plan to delay the NATO summit or delay decisions on membership because of this issue. What we would hope would happen in the coming days is that there would continue to be work and intense work on the part of both the Government of Greece and the Government of Macedonia to come up with a resolution of this issue so that there would not be any *extraneous* reasons that might affect Macedonia's candidacy for membership": Reply, Annex 117 [emphasis added].

[140] Hristo Ivanovski, "Interview: Janez Jansa, Former Slovenian Prime Minister - Macedonia was a Victim in Bucharest", *Dnevnik* (21 March 2009): Memorial, Annex 105.

[141] 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): Memorial, Annex 98 (emphasis added).

[142] "Greece rejects Macedonia Nato bid", *BBC News* (6 March 2008): Reply, Annex 104.

[143] Insofar as the "name issue" was raised by the Secretary-General, it was *not* presented by him as constituting a failure to meet any 'good neighbourliness' criterion. See further, "Senior NATO officials have said over the past few months that the name of Macedonia is not a precondition for NATO accession": "NATO urges Macedonia solution", *BalkanInsight.com* (3 March 2008): Reply, Annex 98.

that the extraneous bilateral difference over the name he had described as "not a NATO affair" had served to block consensus, stating: "I'll not hide that, of course, I would have hoped that we would have seen three invitations, but there is the name issue… and that is the situation…".[144] It is inconceivable that the Secretary-General would have expressed his regret in such a way had the Applicant been debarred from acceding to NATO due to a failure on its behalf to meet the membership criteria.

2.63. That NATO and NATO Member Countries were not prepared to accept the Respondent's characterization of the Applicant's participation in the United Nations mediated discussions to resolve the difference over the name as a failure of 'good neighbourly relations' is unsurprising. The Applicant has consistently negotiated in good faith in the context of the name negotiations, and has repeatedly shown itself willing to accept concessions concerning its name to assuage the Respondent's ill-founded concerns towards it.[145] The very week before the Bucharest Summit, the Applicant *accepted* as a basis for a solution, the eleventh hour suggestion put forward by Mr Nimetz in the context of the name negotiations of the "Republic of Macedonia (Skopje)".[146] The proposal, described by Mr Nimetz as a "reasonable compromise"[147] that was "fair", honourable", and geographically distinct,[148] was flatly rejected by the Respondent on the basis that

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144 NATO Press Conference, *NATO Secretary-General Jaap de Hoop Scheffer following the North Atlantic Council Summit meeting* (3 April 2008): Reply, Annex 7.

145 This is dealt with in greater detail in Chapter V, Section III(F) below.

146 See, e.g.: Donald Steinberg, "Which Macedonia?" *International Crisis Group* (1 April 2008): Reply, Annex 120; Harry de Quetteville: "Macedonia row overshadows NATO summit", *The Telegraph* (2 April 2008): Reply, Annex 130; 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: Memorial, Annex 133. See further Chapter V, note 396; and Spiegel online: "Greece Blocking NATO Expansion – Which Macedonia Was Alexander the Great From?", *Spiegel Online* (29 March 2008): Reply, Annex 114; and "Letter: Macedonia responds to Greece", *The New York Times* (4 April 2008): Reply, Annex 180; and "Macedonia mulls name change", *The Independent* (29 March 2008): Reply, Annex 179.

147 Embassy of the Respondent in Washington, DC, *UN mediator Nimetz's complete statement following Monday's meeting* (27 March 2008): Reply, Annex 175 and "No progress in row over name of former Yugoslav Republic of Macedonia – UN envoy", *UN News Centre* (25 March 2008): Reply, Annex 112.

148 *Ibid.*

it was "far from the goals sought by Greece".[149] Rather than accept this proposal, which conformed to the Respondent's demands for a "geographic qualifier" to be included in the Applicant's name,[150] the Respondent determined instead to follow through with its threat to object to the Applicant's membership in NATO.

2.64. The March 2008 proposal by Mr Nimetz and the response by the Parties thereto entirely undermines the Respondent's characterization of the name negotiations, as described at paragraphs 4.2 to 4.13 and 8.34 to 8.43 of the Counter-Memorial and as dealt with in greater detail in paragraphs 5.86 to 5.88 below. The Respondent's failure to even mention this proposal in its Counter-Memorial is telling in the extreme.

2.65. That NATO and NATO Member Countries were not prepared to accept that the Respondent's description of the Applicant's conduct in the context of the United Nations negotiations, even taken at its highest, was capable of constituting a failure of 'good neighbourly relations' so serious as to debar the Applicant from NATO membership is also unsurprising for another reason. The existence of ongoing bilateral disputes between States, including those of a serious nature between a NATO Member Country and an aspirant State, does not in fact serve to debar the aspirant State from NATO membership. For example, the border dispute between Croatia and Slovenia was not considered by NATO to constitute an insurmountable obstacle to Croatia's NATO membership, nor did Slovenia seek to object to Croatia's NATO membership by reason of the ongoing bilateral dispute between the two States. Similarly, the United Kingdom did not object to Spain's NATO membership, despite the ongoing bilateral difference

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[149] Embassy of the Respondent in Washington, DC, *PM Karamanlis briefed on new Nimetz proposal on FYROM name* (27 March 2008): Reply, Annex 174 and "Greece dissatisfied with UN proposal on Macedonia name", *Saudi Press Agency* (26 March 2008): Reply, Annex 173; and Respondent's Ministry of Foreign Affairs, *Minister of Foreign Affairs, Antonio Milososki, gives interview for the Greek newspaper 'Eleftherotypia'* (10 August 2008): Reply, Annex 182.

[150] See "Droutsas: Greece Not Afraid of Direct Contact With FYROM", *GreekNews* (25 January 2010): "There is only one solution, as this is laid out by our national red line: A definitive composite name with geographical qualification of the term Macedonia, for all purposes (erga omnes) and for all uses": Reply, Annex 195 and 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): Memorial, Annex 43.

between the States concerning Gibraltar. Equally, the existence of bilateral disputes between aspirant Member Countries has not proven sufficient to debar their joint membership, as in the case of the Respondent and Turkey.[151] None of these bilateral disputes has prevented the Alliance from functioning effectively and decisively. Indeed, if, notwithstanding the substantial differences between the Respondent and Turkey, the countries' foreign policies are in "sufficient alignment such that th[ose] bilateral differences within the Alliance [do] not interfere with organizational decision-making or the implementation of decisions reached"[152], and are capable of demonstrating "a high degree of solidarity"[153], it is simply absurd for the Respondent to suggest that the bilateral difference between the Respondent and the Applicant concerning the Applicant's name could be capable of threatening "Alliance solidarity"[154].

## Section V. Conclusions

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

- In a series of statements and démarches leading up to the Bucharest Summit in April 2008, and at the summit itself, the Respondent objected to the Applicant's membership of NATO.
- The Respondent objected despite the fact that the Applicant was to be – and had agreed to be – referred in NATO no differently than in paragraph 2 of resolution 817.
- The objection was based on the fact that the ongoing difference over the name between the Parties had not yet been resolved.

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[151] The Respondent and Turkey both received invitations to join NATO on the same date, on 18 February 1952.

[152] Counter-Memorial, para. 5.7.

[153] *Ibid*.

[154] Counter-Memorial, para. 7.45.

- The objection was an autonomous act of the Respondent, not an act by NATO.
- The objection preceded, and is distinct from, the NATO Bucharest Summit decision or any other action of NATO concerning enlargement.
- When voicing its objection, the Respondent did not base its objection on any claim that the Applicant would use its constitutional name in NATO.
- At no point prior to the Bucharest Summit did NATO's criteria for the admission of the Applicant to the Alliance require a resolution of the bilateral difference over the name.

# CHAPTER III

# THE COURT HAS JURISDICTION AND THE CLAIMS ARE ADMISSIBLE

## Introduction

3.1. In Chapter III of its Memorial the Applicant addressed the issue of jurisdiction, concluding that "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".[155]

3.2. The Respondent has responded in Chapter 6 of its Counter-Memorial, raising three grounds on which it objects to the jurisdiction of the Court, and indicating in connection with one of these grounds certain alleged grounds of inadmissibility (as addressed further below, at times the Respondent appears somewhat confused as to whether its objections are to be treated as issues of jurisdiction or admissibility). The Respondent's submissions on the issue of jurisdiction are lengthy and lack clarity, melding together distinct issues such as the interpretation of the Interim Accord, assessment of the facts and, sometimes only incidentally, issues that are properly characterized as jurisdictional. The Respondent's three arguments appear to be as follows:

(1) The dispute before the Court concerns the difference referred to in Article 5(1) of the Interim Accord, so that jurisdiction is excluded by Article 21(2) of the Interim Accord.

(2) Jurisdiction is excluded by operation of Article 22, which provides that the Interim Accord "does not infringe on the rights and duties"

[155] Memorial, para. 3.16.

arising from agreements in force between the Respondent and other states or international organizations.

(3) The dispute before the Court relates to the conduct of NATO and its members, not the Respondent, over which the Court does not have jurisdiction.[156]

3.3. In order to establish a basis for these jurisdictional objections the Respondent has been forced to recast the case, turning it into one that is not before the Court. This is clear from the very first paragraph of the Respondent's Chapter on the Court's Jurisdiction, paragraph 6.1 of its Counter-Memorial, which contains fundamental factual errors that infect the entirety of its jurisdictional argument. In that paragraph, the Respondent submits that:

> "The FYROM claims that it has suffered an injury as the result of NATO's unanimous decision at the Bucharest Summit in 2008 not to extend an accession invitation to the FYROM at that time, and that the outcome of that meeting would have been in its favour but for Greece's alleged violation of Article 11(1) of the Interim Accord. The FYROM would locate this alleged violation in NATO's collective consensus decision, communicated in the Bucharest Summit Declaration of 3 April 2008, to postpone extending to the FYROM an invitation for NATO membership."

3.4. This paragraph contains at least three major mistakes of fact:

(1) The Applicant does not claim, and has never claimed, in these proceedings that "it has suffered an injury as the result of NATO's unanimous decision": the claim concerns only *the Respondent's* act of objection.

(2) The Applicant does not base its claim on an assertion that "the outcome of the meeting would have been in its favour but for

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156 Counter-Memorial, para. 6.99.

Greece's alleged violation of Article 11(1)", a matter on which the Court need not express any view: the claim is directed exclusively at *the Respondent's* act of objection.

(3) The Applicant has not "locate[d] [the Respondent's] alleged violation in NATO's collective consensus decision": the violation is related entirely to *the Respondent's* distinct and prior objection, and that does not require the Court to express any view on any decision that may subsequently have been taken by NATO.

3.5. The Respondent's approach is not subtle. However, it does have the merit of emphasizing the point that these jurisdictional objections are closely connected with the facts, and the need for the Court to address the jurisdictional objections on the basis of the facts alleged by the Applicant. The Applicant notes with surprise that the Respondent has invoked the opinion of Judge Higgins, in the *Oil Platforms* case, referring with approval her view that

> "The Court should thus see if, *on the facts as alleged by Iran*, the United States actions complained of might violate the Treaty articles."[157] [emphasis added]

3.6. The Applicant has no objection to proceeding on the basis of this approach to the assessment of the Court's jurisdiction. Yet, as described in Chapter II and in further detail below, the Respondent has recast the facts to support its claim that "the facts with respect to Greece's behaviour as alleged by the FYROM cannot plausibly be considered a violation of the Interim Accord".[158] It is readily apparent, however, that to justify this conclusion the Respondent relies on its version of the facts, not those alleged by the Applicant. The Court must assess whether, on the facts as alleged by the Applicant and not the recast facts invoked by the Respondent, the Respondent's actions might violate the Interim Accord. The Applicant summarized its view of the facts at paragraph 2.72 of the

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[157] See Counter-Memorial, para. 6.8 (citing *Oil Platforms (Islamic Republic of Iran v. United States of America)*, *I.C.J. Reports 1996* at p. 856, paras. 32 and 33).

[158] Counter-Memorial, para. 6.12.

Memorial. The Respondent has not put forward any evidence that undermines the Applicant's account. For the purposes of the issue of jurisdiction, the case put forward by the Applicant relies on certain facts and legal submissions, namely:

(1) In 1995 the Applicant and the Respondent concluded a bilateral agreement (the Interim Accord) that provides for the jurisdiction of the Court to resolve disputes thereunder.

(2) In a series of statements and démarches over the course of late March/early April 2008 the Respondent violated Article 11(1) of the Interim Accord, by objecting to the Applicant's membership in NATO in circumstances in which the Applicant was to be – and had agreed to be – referred to no differently than in resolution 817.

(3) The Respondent disputes this interpretation of Article 11(1) of the Interim Accord.

3.7. As described in Chapter II of this Reply, the Applicant submits that there is no real dispute between the Parties, that the statements and démarches identified above occurred *and* that they were attributable solely to the Respondent (the Respondent now seeks to distance itself from the statements and démarches of its own former Prime Minister and former Foreign Minister, but does not deny that those statements and démarches were made). Nor is there evidence before the Court to support the view that at the time the objection to the Applicant being invited to join NATO at the Bucharest Summit was made, it was based on the single permissible ground for objection as set out in Article 11(1) of the Interim Accord. But even if these facts could be seriously challenged by the Respondent, it would not be relevant to the issue of jurisdiction; as the Respondent accepts, for this purpose the task of the Court is simply to see if, on the facts as alleged by the Applicant, the Respondent's actions complained of might violate the Treaty articles.

3.8. There can be no doubt whatsoever that the facts as alleged by the Applicant are in plain violation of Article 11(1) of the Interim Accord. For this reason the

Court's jurisdiction is easily established. Against this background, and recalling the need to keep in mind the facts alleged by the Applicant, the Applicant now turns to consider in more detail each of the three grounds put forward by the Respondent to challenge the Court's jurisdiction.

## Section I. The Dispute Does Not Concern the Difference Referred to in Article 5(1) of the Interim Accord and Is Therefore Not Excluded by Article 21(2)

3.9. The Respondent's first challenge to the Court's jurisdiction is premised on its claim that the dispute in fact relates to the "difference" on the name issue referred to in Article 5(1) of the Interim Accord, such that the Court's jurisdiction is excluded by Article 21(2).[159] Article 5(1) provides that:

> "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)."

3.10. Article 21(2) provides that:

> "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."

3.11. The Respondent's objection is contorted. Against all the evidence, the Respondent begins by asserting that it did not "object" to the issuing of an invitation to the Applicant for membership in NATO. But it proceeds to argue that "even if Greece *had* objected to the FYROM's membership application at the Bucharest meeting, the documents issuing from the summit make clear that

[159] Counter-Memorial, para. 6.32-6.51.

the failure to resolve the difference over the name *would have been* the sole reason".[160] According to the Respondent, it follows that the "exception in Article 21(2) of the Interim Accord applies and the jurisdiction of the Court can not extend to the FYROM's claim".[161]

3.12. This argument suffers from a number of serious difficulties. First, it is based on a misinterpretation of the object and purpose of Article 21(2).[162] As noted at paragraph 3.11 of the Memorial, the scope and overall grant of jurisdiction by Article 21 is broad, allowing any difference or dispute relating to any provision of the Interim Accord to be referred to the Court, subject to the sole and narrow exception of "the difference referred to in [Article 5(1)]". This means that the parties have entrusted the Court with jurisdiction over a wide range of issues that have arisen against the background of the difference over the name, but have not entrusted the Court with the task of actually resolving the difference over the name itself. The Respondent does not dispute the Applicant's characterization of Article 21(2), to the effect that the "breadth of its scope, and … the absence of procedural or substantive limitations" indicate that "the Parties have established a particular and important role for the Court in assisting them to resolve disputes that might arise."[163] It is plain that Article 21(2) gives the Court a central role in ensuring that the parties comply with their obligations in the Interim Accord. That central role would be undermined by the approach proposed by the Respondent.

3.13. The only dispute excluded from the jurisdiction of the Court pursuant to Article 21(2) is "the difference referred to in [Article 5(1)]". As Article 5(1) makes clear, the "difference" in question is that described in the preamble to Security Council resolution 817 (1993), and echoed in resolution 845, as "a difference ... over the name of [the Applicant]".[164] The Applicant has not referred to the

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160 Counter-Memorial, para. 6.40 [emphasis added].

161 *Ibid*.

162 See Memorial, para. 3.11.

163 Memorial, para. 3.10.

164 Memorial, para. 3.13, citing resolution 817.

Court for resolution of the difference over name. In the Memorial the Applicant made clear that the difference over the name "continues to be the subject of negotiations under the auspices of the United Nations": the Respondent has not challenged that fact. The Applicant asserted that nothing decided by the Court would affect the continuation of negotiations, which continued after the case was filed at the Court: the Respondent has not challenged this fact. The Applicant asserted that "[n]o Order or Judgment adopted by the Court could have legal consequences for the continued conduct of those negotiations": the Respondent has not challenged that assertion either. The Applicant asserted that it did "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":[165] this too is not challenged by the Respondent, even if it accuses the Applicant of participating in those negotiations in bad faith (an allegation the Applicant firmly rejects). The Respondent sees the difference over the name as relevant to this case because the Applicant "has not respected its obligation to find a resolution to the name issue";[166] however, that allegation, which concerns the settlement of the "difference over the name", is not one on which the Court needs to express a view to resolve the actual dispute referred to the Court by the Applicant.

3.14. In short, the dispute that has been submitted to the Court does not require the Court to resolve the difference referred to in Article 5(1), or to express any view on that matter (and in any event the Respondent has provided no evidence in its Counter-Memorial, independent from its own statements and pronouncements, to support its assertion that the Applicant is in breach of Article 5(1), an assertion the Applicant strongly denies). The burden is on the Respondent to persuade the Court that the dispute put before the Court by the Applicant requires the Court to resolve difference over the name. It cannot do so when it accepts – by the silence of its pleading – that nothing the Court might say in its Judgment on the merits could have any effect whatsoever on the difference over the name. In these circumstances the Applicant submits that the Respondent's first challenge to jurisdiction does not even get off the ground. The dispute

[165] Memorial, para. 3.14

[166] Counter-Memorial, para. 6.34.

concerns the interpretation and application of Article 11(1): it does not concern the difference over the name, nor does it require the Court to interpret or apply Article 5(1).

3.15. Indeed, the effects of the Respondent's first ground of challenge to the Court's jurisdiction would have far-reaching consequences for the Interim Accord, and would effectively serve to deprive Article 21 of any practical meaning or effect. It would remove the central role for the Court, as agreed by the Parties in signing the Interim Accord: since the very purpose of the Interim Accord was to enable the Parties to avoid difficulties posed by the ongoing difference over the Applicant's name, any dispute concerning any provision of the Interim Accord is necessarily related to the name issue. Consequently, pursuant to the first jurisdictional challenge put forward by the Respondent any dispute related to the Interim Accord would fall to be excluded from the jurisdiction of the Court pursuant to Article 21(2). The merits of that argument speak for themselves.

3.16. The argument is manifestly inconsistent with one of the fundamental objects and purposes of the Interim Accord, namely the desire to find a way to allow the Applicant to apply for and to become a member of the Council of Europe and other "international, multilateral and regional organizations and institutions of which [the Respondent] is a member", including NATO and the European Union. If the Respondent is correct in stating that Article 21(2) reserves for it the right to object to the Applicant's membership of NATO because of the non-resolution of the difference over the name, then the very purpose of the Interim Accord and its Article 11(1) is undermined.

3.17. The second difficulty faced by the Respondent is that its challenge is based on an inaccurate factual record, which differs significantly from that relied on by the Applicant; the Respondent accepts that it is the facts as stated by the Applicant that have to be taken into account by the Court in determining whether it has jurisdiction. The "documents issuing from the summit"[167] express

[167] Counter-Memorial, para. 6.40.

the views of NATO, but these views are not the subject matter of the dispute. The fact that NATO members issued a statement indicating that NATO membership would be extended to the Applicant "as soon as a mutually acceptable solution to the name issue has been reached", does not transform a dispute between the Parties as to the wrongfulness of the conduct under Article 11(1) into a dispute concerning the name issue. As set out in the Memorial and in this Reply, there is a distinction between the objection for which the Respondent is responsible (which is the subject of this dispute) on the one hand, and the effects of that objection on the NATO decision (which decision is not the subject of the dispute before the Court) on the other hand.

3.18. The documents that are relevant to this dispute are those emanating from the Respondent, including those reflecting the statements of its own Prime Minister and Foreign Minister, as set out in Chapter II of the Applicant's Memorial and Chapter II of this Reply. These statements indicate without ambiguity that the dispute does not concern "the failure to resolve the difference over the name". They confirm that the Respondent's objection to the Applicant's membership of NATO occurred in circumstances in which the Applicant was to be referred to no differently than in resolution 817.

3.19. By this factual sleight of hand, the Respondent seeks to transform the dispute put before the Court by the Applicant – a dispute concerning the interpretation and application of Article 11(1) – into a different dispute, namely one concerning the interpretation and application of Article 5(1) or the difference over the name. But that is not the dispute before the Court. In order to resolve the dispute before it, the Court does not have to express any view on any matters addressed by Article 5(1). Even if these may be relevant to understanding the context in which the dispute has arisen, the Court does not have to express any view on the conduct of negotiations under the auspices of the United Nations Secretary General, or the behaviour of either Party in the context of those negotiations, or the reasons for the lack of resolution of the difference over the name. These matters are simply not relevant to the dispute before the Court.

3.20. Moreover, the fact that the Respondent's objection to the Applicant's membership of NATO may have been a reaction to non-resolution of the difference over the name on the terms desired by the Respondent cannot of itself transform that failure into the subject matter of the dispute currently before the Court. The subject matter of the dispute is the interpretation and application of Article 11(1) of the Interim Accord, including whether the Respondent can justify its objection to NATO membership on the ground that the Applicant would "be referred to in [NATO] differently than in paragraph 2 of United Nations Security Council resolution 817". That is not to say that the Respondent's motivation for its objection is wholly unconnected to the dispute: the Respondent has put no evidence before the Court to support a claim that its objection was based on the sole ground permissible under Article 11(1). It did not argue when it acted in March and April 2008 that it was motivated by the belief that the Applicant would be referred to as a NATO member differently than in resolution 817. This is fatal to its case. By arguing that its "hypothesised objection inescapably relates to the 'difference'"[168] over the name, the Respondent in effect confirms that its objection was not motivated by the ground permitted by Article 11(1).

3.21. As the above paragraphs make clear, the dispute before the Court does not concern the resolution of the difference referred to in Article 5(1) and jurisdiction is consequently not excluded by Article 21(2).

## Section II. Jurisdiction Is Not Excluded by Article 22 of the Interim Accord

3.22. The Respondent's second jurisdictional challenge is premised on its claim that the jurisdiction of the Court is excluded by operation of Article 22 of the Interim Accord, a provision that it describes as "decisive" for the purposes of this argument.[169] At no point, however, does the Respondent actually explain how precisely the terms of Article 22 might be said to have any jurisdictional

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[168] Counter-Memorial, para. 6.51.

[169] Counter-Memorial, paras. 6.52-6.63, specifically para. 6.52.

effect. The Respondent's argument appears to be based on a misunderstanding as to the difference between a claim as to jurisdiction, on the one hand, and a claim as to interpretation of the Interim Accord, on the other.

3.23. Article 22 is located in Part F of the Interim Accord entitled 'Final Clauses'. It provides that:

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

3.24. It will be readily apparent that Article 22 is silent about matters of jurisdiction. It is also difficult to see on what basis it might be said to address the issue of jurisdiction in some implicit way. As described in further detail in Chapter V, Article 22 confirms that the Interim Accord:

(1) "is not directed against any other State or entity", a proposition that cannot possibly imply any agreement or understanding in relation to the jurisdiction of the Court;

(2) does not affect the rights and duties of other States and entities (and/or of the Parties arising under other international agreements), a proposition that also cannot possibly imply any *jurisdictional* limitation on the Court in regards to the interpretation and application of the Interim Accord itself.

3.25. The closest that the Respondent seems to get to an explanation as to how either of these two propositions might limit the jurisdiction of the Court is at paragraph 6.63 of its Counter-Memorial. The Respondent seems to assert that (i) in some way the North Atlantic Treaty required it to object to the Respondent's application for NATO membership "because of the unresolved 'difference'", that accordingly (ii) the Respondent's objection "could not possibly constitute a violation of the Interim Accord", and therefore that (iii) the Applicant's claims are neither admissible nor subject to the jurisdiction of the Court.

3.26. The Applicant has some difficulty understanding the logic of the Respondent's argument. Even assuming points (i) and (ii) to be correct (and they are not, a matter that is addressed in Chapter V), point (iii) would not follow. The reason for that is that the issues addressed in Article 22 go to the merits of the dispute; to the extent that Article 22 is at all relevant, in reality it is being invoked by the Respondent to support an argument that the Respondent's unlawful objection under Article 11(1) is somehow excused by the interposition of Article 22. In order to make that argument, the burden is on the Respondent to prove that its interpretation of Article 22 is correct and, further, that it has rights and duties under the North Atlantic Treaty that trump its obligations under the Interim Accord. As described in Chapter V, neither claim is sustainable. However, the essential point is that this argument goes to the merits and is not about jurisdiction.

3.27. The Court has frequently addressed confusions between arguments as to jurisdiction and the merits, and it did so robustly in the *Avena* case[170]. In that case the United States argued that Article 36 of the 1963 Vienna Convention on Consular Relations "creates no obligations constraining the rights of the United States to arrest a foreign national" and that the "detaining, trying, convicting and sentencing of Mexican nationals could not constitute breaches of Article 36, which merely lays down obligations of notification. Accordingly, the United States argued that Mexico's interpretation of the 1963 Vienna Convention went beyond the jurisdiction of the Court. This was rejected by the Court:

> "For Mexico to contend, on this basis, that not merely the failure to notify, but the arrest, detention, trial and conviction of its nationals were unlawful is to argue in favour of a particular interpretation of the Vienna Convention. Such an interpretation may or may not be confirmed on the merits, but is not excluded from the jurisdiction conferred on the Court by the Optional Protocol to the Vienna Convention. The second objection of the United States to jurisdiction cannot therefore be upheld."[171]

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

[171] *Ibid*. at p. 32 (see in particular para. 30).

3.28. Adopting the approach of the Court, the Applicant submits that, for the Respondent to contend that its otherwise unlawful objection is made lawful by rights arising under the North Atlantic Treaty, is to argue in favour of a particular interpretation of Articles 11(1) and 22 of the Interim Accord. That interpretation may (or, in the Applicant's view, may not) be confirmed on the merits, but cannot be a matter that is excluded from the jurisdiction conferred on the Court by Article 21 of the Interim Accord.

## Section III. The Dispute Relates to the Conduct of the Respondent, Not the Conduct of NATO or its other Members

3.29. The Respondent's third objection is weaker still. It asserts that the entire case is in reality "directed against NATO", which is not a party to the Statute of the Court and hence outside the jurisdiction of the Court.[172] In order to lay the ground for this jurisdictional objection, the Respondent has been forced to rewrite the facts and recast the claim, attributing to the Applicant arguments and claims that it has simply not made.

3.30. As noted throughout the Memorial,[173] and addressed again in this Reply, the Applicant's case is directed exclusively to actions of the Respondent, not to any decision by NATO or acts of any member of NATO except the Respondent. The Applicant made its point crystal clear in paragraph 3.12 of the Memorial, which is worth repeating in full:

> "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

[172] See Counter-Memorial, paras. 6.64-6.98.

[173] See, for example, Memorial, paras. 1.11-1.12.

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

3.31. The Applicant's case is directed exclusively at the Respondent's objection to the Applicant being invited to join NATO at the Bucharest Summit, an objection that crystallized on 3 April 2008. Any decisions by NATO following that objection are not and cannot be the subject of these proceedings. As stated repeatedly, the Applicant does not ask that the Court express any view on the legality of any acts of NATO or any of its other Members by reference to the standards established by the Interim Accord. To the extent that any acts of NATO or any other NATO Members Countries are relevant, it is only in shedding light on the Respondent's objection, which is the subject of these proceedings. For the avoidance of any doubt, the Applicant does not invite the Court to express any view on the legality or propriety of the NATO Bucharest Summit decision. The only act that the Applicant submits that the Court must assess for legality by reference to Article 11(1) of the Interim Accord is the Respondent's objection to the Applicant being invited to accede to NATO membership at the Bucharest Summit.

3.32. The Respondent's objection to the Applicant's NATO membership, which crystallized in April 2008, is distinct from any decision taken by NATO. The Respondent asserts that its acts are somehow attributable to NATO,[174] but it has provided no support or argument in support of that untenable proposition. It asserts that "NATO did not breach any international obligation":[175] yet the Applicant has never suggested that NATO might be in breach of any obligation. The Respondent further asserts that individual members of NATO "cannot be held responsible for the Alliance's decision":[176] yet the Applicant has not targeted,

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174 Counter-Memorial, para. 6.71 *et seq.*

175 Counter-Memorial, para. 6.78.

176 Counter-Memorial, para. 6.83.

directly or indirectly, any decision taken by NATO. For its part, the Respondent cannot seek to hide behind the NATO Bucharest Summit declaration or any other statements or actions made or taken by NATO. This case is concerned solely with the responsibility of the Respondent for its own, distinct objection to the Applicant being invited to join NATO at the Bucharest Summit.

3.33. The Respondent has fallen into confusion as to the distinction between the objection by the Respondent to the Applicant being invited to join NATO at the Bucharest Summit, on the one hand, and the decision of NATO on the other hand, which is consequential to, but juridically distinct from, the Respondent's objection. In these circumstances the Respondent's arguments as to "the veil effect" and the *Monetary Gold* principle are wholly irrelevant.

3.34. The Respondent's third jurisdictional challenge, whether characterized as an issue of jurisdiction or admissibility, is premised on a misreading of the Applicant's case, an erroneous appreciation of the facts, and fundamental misconceptions of law. The challenge goes to the merits of the case – the issue of which acts are being subjected to legal scrutiny – and not to the Court's exercise of jurisdiction. That jurisdiction plainly encompasses an assessment of the facts relating to the Respondent's objection to the Applicant being invited to join NATO at the Bucharest Summit and the interpretation of the Interim Accord and its application to those facts, and those facts alone.

## Section IV. Conclusion

3.35. For the reasons set out above, each of the Respondent's objections to jurisdiction and/or to the admissibility of the Applicant's claim is misconceived. They should be rejected by the Court.

## CHAPTER IV

## THE RESPONDENT'S OBJECTION BREACHED ARTICLE 11(1) OF THE INTERIM ACCORD

### Introduction

4.1. In Chapter IV of its Memorial, the Applicant explained why the conduct of the Respondent before and during the NATO Bucharest Summit meeting of April 2008 violated Article 11(1) of the 1995 Interim Accord. Article 11(1) states:

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

4.2. The Respondent's conduct with respect to NATO, recounted in Chapter II, is precisely the conduct that Article 11(1) was designed to prevent – an objection to the Applicant's admission notwithstanding the fact that the latter would be provisionally referred to in NATO no differently than in paragraph 2 of resolution 817.

4.3. In its Counter-Memorial, the Respondent introduces an array of points about the meaning of Article 11(1) and its application to the facts of this case. The Respondent's points are opaque and at times predicated upon confused readings of history, such as the assertion that the Applicant was "admitted to the United Nations" in 1993 "by virtue of the Interim Accord" (which was only concluded in 1995).[177]

[177] Counter-Memorial, para. 6.43.

Nevertheless, the Respondent's approach to Article 11(1) can be distilled into two principal lines of argument. First, the Respondent argues that its conduct was not an "objection" within the meaning of the first clause of Article 11(1). This argument embraces three general propositions: that the meaning of "object" in Article 11(1) is narrow and does not cover "withholding of assent"; that the Respondent's conduct was largely passive and did not rise to the level of an "objection" within Article 11(1); and that the real conduct at issue in this case is not that of the Respondent, but rather, that of either NATO or of NATO Member Countries acting collectively. All three propositions are patently wrong.

4.4. The Respondent's second line of argument maintains that even if the Respondent did object within the meaning of the first clause of Article 11(1), that objection falls within the scope of the second clause of Article 11(1) and therefore was permissible. This argument is also built upon various unsustainable propositions: that by referencing resolution 817, the second clause of Article 11(1) allowed the Respondent to object to NATO membership since the Applicant would have used its constitutional name in future relations with NATO; that the second clause of Article 11(1) allowed the Respondent to object as a means of "correcting" similar conduct by the Respondent in non-NATO international organizations; and that the Applicant's use of its constitutional name reflects an "irredentist claim" that was prohibited by Security Council resolution 817 (1993). Each of these propositions is also incorrect.

4.5. **Section I** of this Chapter demonstrates that, contrary to the Respondent's claims, the Respondent did "object to" the Applicant being invited to join NATO at the Bucharest Summit, within the meaning of the first clause of Article 11(1). The Respondent's narrow recasting of Article 11(1) renders the provision largely meaningless and unable to prevent the mischief it was intended to address. Further, the Respondent's conduct in the period leading to and including the Bucharest Summit fully fits within the Respondent's narrow conception of "to object", for the Respondent actively engaged in efforts to prevent the Applicant's membership. Finally, the Respondent's purported effort to recharacterize the conduct at issue as being conduct of NATO, and thereby to shield the Respondent from any responsibility for its objection, is unfounded in law and in fact.

4.6. **Section II** demonstrates that, contrary to the Respondent's contentions, the Respondent did not object to the Applicant's membership in NATO on the sole basis permitted by the second clause of Article 11(1). The only basis upon which the Applicant reserved the right to object was in a situation where the Applicant would be referred to within the relevant organization or institution "differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)". Since the Applicant *is already* referred to, and was to continue to be referred to in NATO, no differently than in paragraph 2 of United Nations Security Council resolution 817, the Respondent could not exercise any reserved right to object, and its objection was therefore in breach of Article 11(1). Further, this section demonstrates that, contrary to the Respondent's position, the Applicant's use of its constitutional name when interacting with NATO (or any other organization or institution) cannot possibly be regarded as falling with the scope of the situation contemplated in the second clause of Article 11(1).

4.7. **Section III** considers the various alternative justifications that the Respondent has advanced for its objection, either contemporaneously to the Bucharest Summit or for the first time in its Counter-Memorial. In each instance, these reasons demonstrably fall outside the scope of the second clause of Article 11(1) and, as such, cannot be relied upon by the Respondent to avoid responsibility for its breach. To the contrary, they confirm the Respondent's breach of Article 11(1).

## Section I: The Respondent Did "Object" to the Applicant's Membership in NATO within the Meaning of the First Clause of Article 11(1)

4.8. Chapter II recounted in detail the steps taken by the Respondent to prevent the Applicant from being invited at the Bucharest Summit to become a NATO member. This section deals with the Respondent's argument that its conduct did not constitute an "objection" within the meaning of the first clause of Article 11(1) (which the Respondent refers to as the "non-objection clause"). That clause provides:

> "Upon entry into force of this Interim Accord, the Party of the First Part [i.e., the Respondent] agrees not to object to the application by or membership of the Party of the Second Part [i.e., the Applicant] in international, multilateral and regional organizations and institutions of which the Party of the First Part is a member".

4.9. In support of its argument, the Respondent advances the three propositions identified in the Introduction above. As discussed below, none of these propositions is sustainable.

## A. The Obligation Not to "Object" Encompasses Any Conduct That Opposes the Applicant's Membership in An International Organization

4.10. The Respondent asserts that the term "to object" in the first clause of Article 11(1) is extremely narrow in meaning, covering only "a specific, negative act by Greece in an international organisation" undertaken through "active conduct, not mere abstention or other withholding of assent."[178] In proposing such a narrow interpretation, the Respondent seeks to exclude from Article 11(1) its systematic campaign of lobbying other NATO Member Countries in opposition to the Applicant's membership in NATO. In this campaign, waged by the Respondent in the weeks and months preceding the Bucharest Summit, the Respondent made clear that it would not join in a consensus decision at the Bucharest Summit in favour of extending a membership invitation to the Applicant. However, the Respondent's narrow interpretation of the meaning of "to object" is untenable given the ordinary meaning of the first clause of Article 11(1), read in context, and in light of its object and purpose.

### *1. The Text of Article 11(1)*

4.11. Article 11(1) simply states that the Respondent "agrees not to object". As explained in the Applicant's Memorial,[179] the ordinary meaning is that the

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[178] Counter-Memorial, para. 7.14.

[179] Memorial, paras. 4.22-4.28.

Respondent is obligated not to engage in any act of disapproval or opposition to the Applicant's application to or membership in any international organization or institution. There are no limitations of the kind that the Respondent now seeks to read into the words: it does not limit the term to cover only "specific" acts or "negative" acts or acts that are "active" in nature. By attempting to inject such terms into Article 11(1), the Respondent is trying to transform the language into something like "agrees not to vote against" the Applicant's membership. The clause could have been written that way, but it was not. There is no reference to narrow concept of a specific act of voting; rather, the much broader term "not to object" was chosen.

4.12. Curiously, the Respondent points to the practice at the United Nations Security Council for evidence of the meaning of "to object", saying that there is a difference between "active rejection" by a Permanent Member of a proposed Security Council resolution on matters of substance (which blocks adoption of a resolution) and "abstention" (which does not).[180] Apparently the Respondent believes that this Security Council practice establishes that the act of "objecting" at issue in Article 11(1) must be comparable to a negative vote by a Permanent Member. Since United Nations Charter Article 27 does not provide that Security Council resolutions are adopted unless "objected to" by a Permanent Member, the Respondent can find no direct support there. Moreover, to the extent that such an analogue is at all relevant, it does not support the Respondent's position. The reason a Permanent Member might only be regarded as "objecting" to a proposed resolution when it casts a negative vote is precisely because neither an affirmative vote nor an abstention blocks adoption of the resolution. If, for example, an abstention on admission of a new Member State to the United Nations also had the effect of blocking the adoption of the proposed resolution, then the common understanding would be that the Permanent Member had "objected" to the admission of that State, when it either voted against or abstained on the resolution. As such, in situations where the Respondent blocks membership by either active or passive conduct, then it has "objected" within the meaning of Article 11(1).

[180] Counter-Memorial, para. 7.13.

4.13. The Respondent invokes the specialized area of reservations to treaties to support its narrow concept of "to object." The Respondent argues that, since a contracting State's objection to a treaty reservation by another contracting State under the Vienna Convention must be formulated in writing and communicated to other contracting States, this shows that "object to" cannot include "mere abstention or other withholding of assent."[181] Here too the Respondent's comparison is ill-founded. The Vienna Convention is only concerned with written instruments; hence it is no surprise that both a reservation altering such an instrument, and an objection to its attempted alteration, must be formulated in writing. Further, the reason for requiring that an objection be communicated to the other contracting Parties is that, when a reservation is filed, in most instances it is deemed tacitly accepted by other contracting States after the expiration of twelve months. Use of a tacit consent procedure only can operate if the objection is communicated directly to the other contracting States. However, there is nothing inherent about the words "to object" in Article 11(1) that requires the formalities present in the Vienna Convention with respect to objections to reservations; those formalities are driven by the particular processes of that particular legal regime.

4.14. The Respondent also asserts that, in negotiations between two States, the concept of "to object" entails a "formal complaint".[182] Objections, of course, can be made in various ways, including in the context of written communications from one State to another, but under international law the concept is hardly limited to that form of objection. Indeed, the best that the Respondent can do to support this proposition is to point to a 1938 letter by the Ruler of Qatar to the United Kingdom, which in fact does *not* assert that, under international law, an objection only exists in circumstances where a "formal complaint" is made. Rather, the Qatari letter is simply an example of an objection being communicated by way of a formal complaint.

4.15. In order to buttress its remarkably narrow interpretation, the Respondent seeks to disparage the ordinary meaning of "to object" in the first clause of

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[181] Counter-Memorial, para. 7.14.

[182] *Ibid*.

Article 11(1) by postulating that it would prohibit "a nod and a wink in the corridor", or similar conduct.[183] The Court need not explore all the outer margins of what conduct might fall within the scope of Article 11(1). Rather, the Court is confronted with particular conduct (undertaken by the Respondent in 2007/2008) arising in a particular context (the Applicant's NATO candidacy), where the Respondent engaged in numerous acts that were unambiguously intended to block the Applicant's entry into NATO, pending resolution of the difference over the name. Such conduct plainly falls within the ordinary meaning of "to object" in Article 11(1).

*2. The Object and Purpose of Article 11(1)*

4.16. This ordinary meaning of "to object" is consistent with the object and purpose of Article 11(1). One of the main functions of the Interim Accord was to allow the Parties to *move forward* with normalized relations during an interim period, notwithstanding the ongoing difference over the Applicant's name. As such, the Interim Accord was not a mere "*modus vivendi*"[184] or "holding operation", as the Respondent repeatedly claims.[185] To the contrary, the Interim Accord fundamentally altered the relationship that existed between the Applicant and the Respondent prior to September 1995. It provided, for example, for the Respondent's recognition of the Applicant (Article 1), and ended the crippling economic embargo imposed by the Respondent upon the Applicant following the Applicant's admission to the United Nations (Article 8). Article 11(1) was intended to enable and facilitate the Applicant's integration into the international community, including through its accession to international, multilateral and regional organizations and institutions. It achieved this objective: following the adoption of the Interim Accord, the Applicant was admitted to numerous organizations and institutions (as set out in detail at paragraph 2.40 of the Applicant's Memorial). This completely transformed the *status quo* that existed at the time of the signing of the Interim Accord, when the Applicant's

183 Counter-Memorial, para. 7.12.

184 Counter-Memorial, paras. 3.39-3.40.

185 Counter-Memorial, paras. 1.10, 3.9, 3.10, 3.39, 3.41, 3.44, 7.68, and 7.90.

membership in such organizations and institutions had been completely blocked by the Respondent.[186]

4.17. The Applicant's inability to accede to international organizations in the early 1990s, due to the Respondent's objections, was addressed first by resolution 817 and then by Article 11(1) of the Interim Accord. In its Memorial, the Applicant recounted the circumstances of its emergence as an independent and sovereign State.[187] The central issue, for the purposes of this case, was the Respondent's objection to the Applicant's constitutional name ('Republic of Macedonia'), and its refusal to accept the Applicant accession to international organizations under that name. Thus, although the Applicant had met the conditions necessary for recognition by European Community (EC) Member States,[188] they declined to grant recognition to the Applicant, under extreme lobbying by the Respondent. The Respondent also lobbied to deny the Applicant entry into other major international organizations and institutions, including the United Nations and its specialized agencies, which would have enabled, among other things, much-needed developmental and other assistance from the World Bank.[189] Due to concerns that the continued thwarting by the Respondent of the Applicant's efforts to secure recognition and entry into international organizations and institutions, including the United Nations, was destabilizing for the Applicant and for the wider region, a number of United Nations Member States (led by France, Spain and the United Kingdom ("the Troïka")) pursued strenuous efforts to find a practical and provisional solution to the situation.

4.18. That provisional solution took the form of the Applicant's admission to the United Nations (and subsequent admission to United Nations specialized agencies) pursuant to a regime whereby the Applicant was to be "provisionally referred to for all purposes within the United Nations as 'the former Yugoslav

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186 Memorial, para. 2.38.

187 Memorial, paras. 2.2-2.15.

188 Memorial, para. 2.13

189 United Nations Security Council resolution 817 (1993) (SC/RES/817) (7 April 1993): Memorial, Annex 22.

Republic of Macedonia' pending settlement of the difference that has arisen over the name of the State."[190] The language of resolution 817 did not resolve the difference over the name, but did provide the opportunity for the Applicant to participate in and benefit from membership in the United Nations and its specialized agencies under a provisional "reference", pending resolution of the difference over the name. It also prompted wider recognition by States of the Applicant's sovereign status.

4.19. Between 1993 and 1995, however, the Respondent continued to object to the Applicant's accession to international, multilateral and regional organizations and institutions outside the United Nations, in circumstances where the Respondent, as a member of the organization or institution, was able to take steps politically or legally to block such accession. Such organizations and institutions included the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE). Consequently, during the negotiations of the Interim Accord in 1994 to 1995, the Applicant insisted on a clause to prevent the Respondent from blocking its ability to apply for and secure membership in those and other organizations and institutions. Article 11(1) of the Interim Accord therefore provided that, so long as the Applicant was to be referred to in the organization or institution in question no differently than in resolution 817, the Respondent was not to object to the Applicant's membership, and was certainly not to engage in conduct that would have the effect of preventing the Applicant from joining such organization or institution. This was the explicit purpose of Article 11(1), as acknowledged by the Respondent itself, which states that the,

> "Interim Accord was adopted in order to stabilise the bilateral relations of Greece and the FYROM, *and to allow the FYROM access to international institutions*, but without prejudice to the eventual resolution of the difference over the name by the two parties."[191] [emphasis added]

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190 Note 189, *supra*.

191 Counter-Memorial, at para. 7.95.

4.20. The narrow meaning of "to object" proposed by the Respondent would defeat the object and purpose of Article 11(1). If the Respondent is correct that "withholding of assent" does not fall within the scope of "to object," then Article 11(1) would provide no meaningful benefit to the Applicant in relation to any of the major organizations and institutions of which it was most keen to secure membership, such as the Council of Europe, the European Union, NATO, or the OSCE. That is because each of those organizations and institutions only admits new members based upon a consensus procedure; if the Respondent were correct in asserting that it could "withhold assent" without violating Article 11(1), then it could continue to object to the Applicant's accession to all of these organizations in a manner fully consistent with its Article 11(1) obligation. As such, the Respondent's narrow interpretation of "to object" in Article 11(1) is wholly inconsistent with the object and purpose of that provision.

### *3. The Negotiating History of Article 11(1)*

4.21. To support its narrow interpretation of the expression "to object" in Article 11(1) the Respondent invokes the drafting history of the provision.[192] Yet nothing in the multiple draft formulations of the provision provides any support for the Respondent's claim. Every draft of the text from the 1993 draft Treaty[193] to the adopted text of the Interim Accord contained a provision placing an obligation on the Respondent to allow the Applicant to join international organizations, either in circumstances where the difference over the name had been resolved (e.g., the initial drafts) or in circumstances where the difference over the name had not been resolved (e.g., the Interim Accord).[194] Different formulations were proposed to capture the Respondent's obligation, variously expressed as not to "impede,"

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[192] Counter-Memorial, at paras. 7.18-7.19.

[193] Proposed by Mr Vance and Lord Owen, who served as Co-Chairmen of the Steering Committee of the International Conference on the former Yugoslavia: Memorial, para. 2.22. See also: 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): Memorial, Annex 33.

[194] For the successive texts, see Counter-Memorial, Annex 148. The one exception may be a draft dated 13 April 1994, though, as Respondent notes, this version does not appear to be a complete draft: Counter-Memorial, para. 7.18 and Annex 148.

"hamper," or "object," or to "remove any objection" to, the Applicant's efforts to join international, multilateral and regional organizations and institutions, or to "positively consider supporting the participation of" the Applicant in such organizations and institutions. They all point in the same direction.

4.22. The Respondent attempts to interpret, in particular, the shift in formulation from "endeavour to support" in the 1993 draft treaty[195] to the formulation "not to object" in the final version as somehow weakening the obligation under Article 11(1), on the basis that an obligation to "support" is purportedly a broader obligation than an obligation not to oppose.[196] Yet, as the Applicant noted in its Memorial, the transition is actually from a softer obligation upon Respondent ("*endeavour* to support") to a firmer, more definitive obligation ("not to object"), confirming the intent to establish a clear and unconditional obligation.[197] The prior drafts of Article 11(1) as introduced into evidence by the Respondent confirm, rather than contradict, the ordinary meaning and purpose of Article 11(1).

4.23. The Respondent fully accepts that a "specific, negative act by Greece in an international organization" falls within the scope of what is prohibited by Article 11(1).[198] Action by the Respondent to oppose or prevent a consensus decision at an international organization, where such consensus is necessary for the Applicant to secure membership, *is* such a "specific, negative act," as are steps taken by the Respondent to inform other members of an international organization or institution that the Respondent will not permit such a consensus decision to be reached. This is precisely the conduct in which the Respondent engaged in relation to the Applicant being invited to become a NATO member at the Bucharest Summit.

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[195] Annex V, Art. 11, of the letter dated 26 May 1993 from the United Nations Secretary-General, Boutros Boutros-Ghali, to the President of the Security Council, entitled Draft Proposal by Cyrus Vance and Lord Owen, 14 May 1993, UN Doc. S/25855 (29 May 1993): Memorial, Annex 33.

[196] See Counter-Memorial, para. 7.17.

[197] Memorial, para. 4.17.

[198] Counter-Memorial, para. 7.14.

## B. The Respondent's Conduct in Opposition to the Applicant's Effort to Join NATO Was an "Objection" within the Meaning of Article 11(1)

4.24. Having first sought, contrary to the ordinary meaning, object and purpose, and negotiating history of Article 11(1), to narrowly interpret its obligation "not to object", the Respondent alternatively seeks to assert that its conduct in 2008 falls outside the scope of that obligation because it was essentially passive in nature. Whilst seeming to have difficulty in stating exactly what it *did* do in 2008, the Respondent obliquely indicates that it was "[m]erely adducing reasons against some conduct," which was "not pressed to the point of outright opposition," and therefore was not an objection.[199] Further, the Respondent suggests that it merely "explain[ed]" or "[brought] to the attention of" other NATO members why the Applicant could not be invited to become a member at the Bucharest Summit.[200] As such, the Respondent says that its conduct cannot be seen as a transgression of Article 11(1).

4.25. This contorted characterization by the Respondent of its conduct is entirely unpersuasive in the face of the compelling evidence before this Court. As demonstrated unequivocally in Chapter II and in Appendix I of this Reply, in the period leading up to and at the Bucharest Summit, the Respondent articulated – both to other NATO Member Countries and publicly – its total opposition to the Applicant being invited to accede to NATO, until such time as the difference over the name is resolved. The evidence of this opposition is compelling and copious, based on speeches, interviews, letters and newspaper articles, many by the most senior governmental officials of the Respondent, often made at official functions or in official communications. As noted in Chapter II, this Court's jurisprudence indicates that such evidence is highly probative, especially in circumstances where the contemporaneous statements made by the Respondent's officials are adverse to the position the Respondent now espouses in this case.

4.26. Moreover, this overwhelming evidence thoroughly undermines the Respondent's contention that it was merely "explaining" concerns or "adducing

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199 Counter-Memorial, para. 7.14.

200 See, e.g., Counter-Memorial, paras. 7.36 and 7.54.

reasons" with respect to the Applicant's membership in NATO. The Respondent was not passively observing events as they unfolded and was not casually expressing or explaining its concerns. Rather, the unrebutted evidence plainly establishes that the Respondent engaged in a determined and affirmative effort to oppose the Applicant's membership in NATO.

4.27. The Respondent's conduct – whether characterized as blocking the Applicant's ability to join NATO, "vetoing"[201] the Applicant's NATO membership, refusing to consent to the Applicant's membership in NATO, or refusing to join a consensus decision that would allow for an invitation to be extended to the Applicant at Bucharest – all adds up the same thing. The Respondent specifically and deliberately exercised its power to preclude a NATO decision favourable to the Applicant's immediate accession to the organization, by telling other NATO Member Countries, in the course of the consultative process, and at the Bucharest Summit, that it opposed such a decision. In doing so, the Respondent objected to the Applicant's membership in an international organization within the meaning of Article 11(1) of the Interim Accord.

### C. The Objection Arose Solely From the Respondent's Conduct, Not the Conduct of NATO or other NATO Member Countries

4.28. In a further effort to deny that it "objected" to the Applicant's membership in NATO, the Respondent attempts to recast the nature of the Applicant's allegation. According to the Respondent, the Applicant's case is not directed at the Respondent's conduct, but rather, at the conduct of NATO as an organization, at the collective decision-making by NATO, or at the conduct of NATO Member Countries generally.[202]

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[201] As noted in Chapter II, Section III of this Reply, the Respondent makes much of the idea that there is no formal "veto" procedure at NATO (Counter-Memorial, paras. 7.46 and 7.50). Yet this case (and Article 11(1) of the Interim Accord) does not turn on the existence or exercise of a formal "veto" by the Respondent. Rather, the case turns on whether the Respondent "objected to" the Applicant's admission to NATO, which it did.

[202] See, e.g., Counter-Memorial, paras. 7.40, 7.49 and 7.53.

4.29. A central problem with this argument is that the Applicant makes no such allegation. As noted elsewhere in this Reply, the Applicant's case is focused exclusively upon the Respondent's obligation under Article 11(1) and upon the Respondent's conduct in violating that Article. This case does not turn upon any rules or procedures that may exist at NATO. Regardless of whatever decision was reached by NATO at the Bucharest Summit, it was *the Respondent* who had an obligation not to object to Applicant's effort to join NATO and it was *the Respondent* who nevertheless objected. The violation arises not from the fact that the Applicant was not admitted to NATO,[203] but from the Respondent's prior and distinct objection to the Applicant's admission, the precise conduct prohibited by Article 11(1).

4.30. Moreover, the Respondent's argument that its conduct in objecting to the Applicant's admission to NATO (or presumably to any other organization or institution) cannot be deemed conduct attributable to the Respondent, but instead must be attributed to the international organization itself,[204] is consistent neither with the manner in which NATO functions,[205] nor with this Court's views as to the obligations of *each Member State* when deciding on how to vote in the General Assembly on the admission of new United Nations members. In its advisory opinion on *Conditions of Admission*, the Court stated that the "question put is concerned with the *individual attitude of each Member* called upon to pronounce itself on the question of admission."[206] The Respondent's argument is also inconsistent with the Respondent's own representations to this Court in the *Conditions of Admission* advisory proceeding, where the Respondent focused on the right of each Member of the United Nations when voting on a request for admission, not on the decision of the organs of the United Nations.[207]

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[203] See Counter-Memorial, para. 7.44.

[204] Counter-Memorial, paras. 6.64-6.94 and 7.55-7.56.

[205] Reply, Chapter II, Section III.

[206] See *Advisory Opinion on the Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), 28 May 1948, I.C.J. Reports 1947-1948*, at p. 62 [emphasis added].

[207] *Ibid.*: Exposé du Gouvernement hellénique: "aucun Membre des Nations Unies, en votant, … sur une demande d'admission d'un État non member de l'Organisation n'a le droit

Furthermore, the Respondent's creative theory renders Article 11(1) meaningless; there is little value in imposing an obligation upon a State not to object when participating in a decision on admission to an international organization if it is not the "State" which is acting with respect to that decision.

4.31. The Respondent's theory is also inconsistent with the general law of international organizations. Over the past thirty years, for example, the European Commission on Human Rights and the European Court of Human Rights have considered applications by individuals directed against States Parties to the European Convention on Human Rights, in situations where the conduct adopted by the defendant State related to the decisions or actions of an international organization of which it was a member. The European Commission and Court have consistently ruled that they *could* pronounce on the responsibility of the individual defendant State for its action or failure to act,[208] without passing judgment on the acts of the organization concerned, since the latter was not a party to the European Convention.[209] While the situation before this Court is different in nature to those proceedings (here, the Respondent is not acting pursuant to an action or decision of an international organization), the same principle is at issue: an international court need not refrain from issuing a ruling on the conduct of a member of an international organization just because the conduct relates to that organization.

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de donner un vote affirmatif tant qu'il ne s'est pas persuadé que l'Etat demandant l'admission ait rempli toutes les conditions d'admission…" I.C.J. Pleadings, Part I, Section (C)(VIII), p. 21.

[208] See e.g. *M. & Co v. Federal Republic of Germany*, Application No. 13258/87, 9 February 1990, *D.R.*, vol. 64, 145; *Heinz v. State Parties to the European Patents* Convention, Application No 21090/92, 10 January 1994, *D.R.*, vol. 76-A, 125; Matthews *v. United Kingdom*, Application No. 24833/94, 18 February 1999, at paras. 33-34; *Bosphorus Hava Yollari Turzim Ve Ticaret Anonim Sirketi v Ireland* [GC], Application No. 45036/98, 30 June 2005, at paras. 155 *et seq.*

[209] See in particular *C.F.D.T. v. European Communities*, Application No. 8030/77, 10 July 1978, *D.R.*, vol. 13, 240.

## Section II. Since the Applicant Was Not to Be Referred to in NATO Differently than in Resolution 817, the Respondent's Objection Did Not Fall Within the Scope of the Second Clause of Article 11(1)

4.32. The Respondent's second line of argument with respect to the interpretation of Article 11(1) focuses upon the reservation for the Respondent of a limited right to object in the second clause of Article 11(1), which the Respondent refers to as the "safeguard clause." That clause provides:

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

4.33. Like the first clause in Article 11(1), this second clause has a clear and ordinary meaning. It precludes the Respondent *generally* from objecting to the Applicant's "application" or "membership" in international, multilateral or regional organizations or institutions. However, it allows the Respondent to object to the Applicant's "membership" if the Applicant is to be referred to "in" the organization or institution differently than in resolution 817, pending resolution of the difference over the name.

4.34. Section II of Chapter II demonstrated that the Applicant was referred to in NATO as 'the former Yugoslav Republic of Macedonia' prior to 2008, and that it would have continued to be so referred as a Member Country. Indeed, the Applicant has been referred to in NATO no differently than in resolution 817 for over 15 years, with respect to both the PfP programme and the MAP. Moreover, the Applicant had agreed that, after becoming a NATO Member Country, it would continue to be so referred. When the Respondent objected to the Applicant's membership in NATO, it never stated that the reason for its objection was a belief that the Applicant would be referred to in NATO differently than in paragraph 2 of resolution 817 on accession to the organization.

4.35. In light of those well-established facts, unrebutted by the Respondent, the legal consequence under the second clause of Article 11(1) is absolutely clear. Since the Applicant is already referred to, and was to continue to be referred to in NATO no differently than in resolution 817, the Respondent was not entitled to exercise the limited right to object reserved under the second clause of Article 11(1).

4.36. Unable to fit its objection within the ordinary meaning of the second clause of Article 11(1), the Respondent again reaches for an extraordinary interpretation. The Respondent now asserts in its Counter-Memorial, for the first time, that the second clause of Article 11(1) allows the Respondent to object to the Applicant's membership in NATO not just if the Applicant is to be referred to in NATO differently than in resolution 817, but also if the *Applicant does not call itself* 'the former Yugoslav Republic of Macedonia' in its dealings with NATO. The Respondent's theory is that resolution 817 requires the Applicant to call *itself* by the provisional reference in its relations with the United Nations, since it "establishes a provisional name, mandatory for the FYROM".[210] From this, the Respondent contends that the fact that the Applicant did not, in 2008, call itself by the provisional reference, permitted the Respondent to object at NATO under the second clause of Article 11(1).

4.37. There are three key problems with the Respondent's novel theory: (i) it is not supported by the facts before this Court, (ii) it is not a correct interpretation of resolution 817, and (iii) it is not a correct interpretation of the second clause of Article 11(1).

[210] Counter-Memorial, para. 1.8. The Respondent almost goes so far as to characterize the use of the provisional reference as a condition for the Applicant's admission to the United Nations, which it was not. See Counter-Memorial, para. 2.25: referring to the "provisional name" as a "major stipulation attached to admission of the FYROM to the UN". The Applicant was admitted to the United Nations based on the conditions set forth in United Nations Charter Article 4; no other conditions were, or could have been, applied to the Applicant.

## A. Prior to the Institution of these Proceedings, the Respondent Did Not Assert that its Objection Was Based on the Fact that the Applicant Would Continue to Call Itself by its Constitutional Name in its Dealings with NATO

4.38. First, a threshold problem with this legal theory concerns the facts of this case, and in particular the public assertions made by the Respondent leading up to and at the Bucharest Summit. If the Respondent had objected to the Applicant's admission to NATO on the grounds that the Applicant would continue to use its constitutional name as a NATO Member Country,[211] then that claim would be reflected in the Respondent's contemporaneous statements. Yet at no time did the Respondent state that its objection to the Applicant being admitted to NATO at the Bucharest Summit was based on the fact that the Applicant did not and would not, as a NATO member, call itself 'the former Yugoslav Republic of Macedonia' in NATO.

4.39. Hence, even if the Respondent's legal theory for interpreting resolution 817 and Article 11(1) were correct (which it is not), the factual record does not support the proposition that the Respondent objected on this basis. Rather, the factual record demonstrates that the reason for the Respondent's objection to the Applicant's admission to NATO was the lack of resolution of the difference over the name. Yet, as indicated below in Section III(A), *that* was precisely the basis of objection prohibited by Article 11(1).

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[211] Counter-Memorial, para. 7.91: "Greece had ample grounds for concluding from the FYROM's behaviour in the United Nations and in every other international organisation in which the FYROM would later secure membership that it would then insist (SC res 817 (1993) notwithstanding) on denominating itself by a name other than the one it used for purposes of securing membership". See also Counter-Memorial, para. 7.93: "In the circumstances Greece was entitled to conclude that the FYROM would be referred to within NATO, at least to some extent, differently than in paragraph 2 of SC res 817 (1993)". See Letter from the Applicant's Prime Minister to the President of the Security Council dated 24 March 1993, UN Doc. S/25541: Memorial, Annex 28.

## B. Resolution 817 Does Not Require the Applicant to Call Itself 'the former Yugoslav Republic of Macedonia'

4.40. Neither the United Nations Security Council (in resolution 817) nor the General Assembly (in resolution 47/225) required the Applicant to change its constitutional name prior to its admission to the United Nations, a step that would have required amendments to the Applicant's Constitution. Neither resolution required the Applicant to stop calling itself the 'Republic of Macedonia', either in its dealings with the United Nations or otherwise. Rather, as resolution 817 indicates, the Applicant was simply to be referred to "within the United Nations" by the provisional reference. Strikingly, the Respondent's Counter-Memorial contains not a single item of documentary evidence in support of its contrary interpretation.

4.41. Indeed, it must be noted that resolution 817 is a *recommendation* by the Council in the exercise of its responsibility under United Nations Charter Article 4(2). As such, the resolution is concerned solely with the issue of whether to admit a new United Nations Member State, not with the use by that State of its constitutional name in its external relations, whether in communications with the United Nations or otherwise. Indeed, the Security Council has never attempted to exercise a power to order a State not to use its chosen name, and it did not in this case. Any such power could only be deployed based upon the Council's mandatory powers, powers that were not invoked in the course of adopting resolution 817.

4.42. Contrary to the Respondent's assertion, resolution 817 did not purport to create a new *name* for the Applicant. Rather the formulation of 'the former Yugoslav Republic of Macedonia' was to serve as a descriptive *designation* referring to the State's previous status within the former Yugoslavia in order for it to be identifiable within the United Nations, pending resolution of the difference with the Respondent over its name.[212] Notwithstanding that accommodation, the constitutional name of the Applicant was and still is the 'Republic of Macedonia',

[212] See Letter from the Applicant's Prime Minister to the President of the Security Council dated 24 March 1993, UN Doc. S/25541: "The Republic of Macedonia will in no circumstances be prepared to accept the 'former Yugoslav Republic of Macedonia' as the name of the country": Memorial, Annex 28.

and is recognized as such by a large number of States. This was made clear in a non-paper, circulated by the Kingdom of Morocco (which held the presidency of the United Nations Security Council in 1993) to all United Nations Security Council Member States, along with a draft version of resolution 817:

> "The draft resolution that I have submitted to you […] recommends admission to the UN of the new State. For the purpose of responding to the concern that I have expressed, *the draft resolution envisages that the state have a provisional reference in the UN ("the former Yugoslav Republic of Macedonia"). This is not a matter of imposing a name on the new state*, or conditions for its admission to the UN, but *it merely concerns the manner in which it will be provisionally referred to in its activity in the United Nations (plaque, official documents, "bluebook"...*)."[213]

4.43. This has recently been confirmed by Sir Jeremy Greenstock, former Assistant Under-Secretary in the United Kingdom's Foreign and Commonwealth Office in 1993. The United Kingdom (which held the Presidency of the European Union from June to December 1992) co-drafted resolution 817, along with France and Spain, the other two members of the 'Troïka' which led the efforts to find a practical solution to enable the Applicant's admission to the United Nations, notwithstanding the difference over the name:

> "It was understood in 1993, and determined by United Nations Security Council Resolution 817, that membership of the Former Yugoslav Republic of Macedonia in the United Nations was based on the requirement that the new member state would be officially and provisionally referred to by that name by the United Nations. This meant, for example, that the nameplate and all official UN documents would refer to the member only by that name, until such time as the difference over the name had been resolved.

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[213] Kingdom of Morocco, *Non Paper* (6 February 1993): Reply, Annex 12; due to the poor quality of this document, a contemporaneous translation from the French text to the Macedonian language is appended, along with a translation of the Macedonian language text to English.

However, *this did not mean that the new member was required to refer to itself orally or in writing by that provisional designation*. It was, as I recall, informally recognized that *the new member would be likely to continue to refer to itself by its own constitutional name, the Republic of Macedonia.* Similarly, it was understood that any third state might also refer to the new United Nations member as it considered appropriate, whether by the country's own preferred name or by the agreed provisional reference that was determined by UN Security Council resolution 817.[214] [emphasis added]

4.44. As the above paragraphs make clear, the provisional reference was adopted by the United Nations to assist with practical or utilitarian arrangements within the United Nations: how the Applicant would be listed as a Member State; what name plates and plaques would be used for the Applicant; how its documents would be circulated by the secretariat of the organization; how correspondence from the United Nations to the Applicant would be addressed and other similar matters. After adoption of the resolution, the State was referred to – and continues to be referred to – within the United Nations as 'the former Yugoslav Republic of Macedonia'; it is not referred to as either 'FYROM' or the 'Republic of Macedonia'. However, the United Nations and other organizations use the term 'Macedonian' in some circumstances, including, for example, to refer to the "Macedonian Cyrillic" alphabet.[215]

4.45. Resolution 817 was not intended to change the Applicant's constitutional name, nor to require the Applicant to use some other name or reference in the United Nations, and did not do so.[216] The Respondent's assertion – made in a

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[214] Statement by Sir Jeremy Greenstock (29 May 2010): Reply, Annex 58.

[215] See, e.g., Eighth United Nations Conference on the Standardization of Geographical Names, 27 August - 5 September 2002, *Report on the current status of the United Nations romanization systems for geographical names*, E/CONF.94/CRP.81 (18 June 2002): Reply, Annex 18; and Council of Europe, Director General, *Memorandum* (8 March 2007): Reply, Annex 69.

[216] This is further reinforced by the French translation of resolution 817, relied upon by the Respondent in its Counter-Memorial. The clause "for all purposes within the United Nations" is translated "à toutes fins utiles à l'Organisation", underscoring the practical and utilitarian nature of the provisional reference.

footnote of its Counter-Memorial in relation to resolution 817 – that the term 'designation' and 'name' are interchangeable is curious given that neither term features within the text of the resolution.[217] Rather, resolution 817 describes the Applicant as "being provisionally referred to for all purposes" as the 'former Yugoslav Republic of Macedonia'. It is obviously beyond question that a term used "to refer" to an entity or person is *not* equivalent to the *name* of said entity of person: if the president of a country is referred to as "president", "president" cannot be said to be his/her *name*. Any suggestion to the contrary is untenable.

4.46. Consistent with the Applicant's use of its constitutional name when applying for admission to the United Nations, the Applicant continued, after the adoption of resolution 817 (on 7 April 1993) and its admission to the organization, to use its constitutional name in its dealings with the United Nations, including in written and oral communications.[218] Two months later, when the Security Council adopted resolution 845 (on 18 June 1993), it said nothing about the Applicant's practice contravening resolution 817.

4.47. The practice at the United Nations is that the Applicant uses its constitutional name, whereas the provisional reference is used within the United Nations, including on documents distributed by the Secretariat. For example, in February

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[217] Note 33 to para. 2.25 of the Respondent's Counter-Memorial. The French translation of resolution 817 is also of no assistance to the Respondent: it speaks of "cet État *devant être désigné provisoirement*, à toutes fin utiles à l'Organisation, sous le nom d' 'ex-République yougoslave de Macédoine'..." Such text expressly does not say "cet État devant être appellé provisoirement": it is not about what the Appellant is to be *called* but how it is to be *designated* within the United Nations. Article 1 of the Interim Accord refers to the provisional reference as a "designation", underscoring that the expression was never intended to be a new *name* for the Applicant. Indeed, as one scholar has noted: "S'il est un principe incontesté en ce domaine, c'est celui du libre choix par l'Etat lui-même du nom dont il entend être doté. Cette liberté de détermination du nom est l'une des premières manifestations de souveraineté d'un Etat independent." J.-P. Quéneudec, Le nom et les symboles de l'Etat au regard du droit international, Mélanges en l'honneur de J.-P. Puissochet, Pedone 2008, p.248.

[218] See Letters Dated 27 and 29 May 1993, United Nations Doc. S/25855 and Add. 1 and 2: Memorial, Annex34; and 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): Memorial, Annex 33.

1994, the Applicant transmitted to the Security Council a statement regarding the Respondent's imposition of an economic embargo on the Applicant. The title of the statement indicated that it was issued by the "Government of the Republic of Macedonia," and the Applicant's letter transmitting the statement to the Security Council referred to it as a "statement by the Government of the Republic of Macedonia."[219] Neither the United Nations Secretariat nor the Security Council rejected the communication; rather, the Secretariat circulated the document under the title of "Letter dated 17 February 1994 from the Permanent Representative of the Former Yugoslav Republic of Macedonia", consistent with the practice that had developed. Indeed, in April 1995, while the negotiations relating to the Interim Accord were ongoing, the Applicant sent a letter to the United Nations Secretary-General stating:

> "The name of my country is the Republic of Macedonia. The application of my country for admission to the United Nations was an application submitted by the Republic of Macedonia (S/25147). Security Council resolution 817 (1993) recommends to the General Assembly that the State whose application is contained in document S/25147, i.e., the Republic of Macedonia, be admitted to membership in the United Nations. The Security Council resolution does not and cannot contain a ban on the use of the name the 'Republic of Macedonia'."[220]

4.48. The United Nations Secretariat circulated the letter as a document of the Security Council, without seeking to change or challenge the repeated use by the Applicant of its constitutional name.

4.49. The same practice developed – and still pertains – in all of the United Nations specialized agencies, including the International Labor Organization, the World Health Organization, and the United Nations Educational, Scientific, and

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[219] Letter dated 17 February 1994 from the Applicant's Permanent Representative to the United Nations to the President of the Security Council, UN Doc. S/1994/194 (18 February 1994): Reply, Annex 15.

[220] Letter dated 5 April 1995 from the Applicant's Permanent Representative to the United Nations to the Secretary-General, UN Doc. S/1995/260 (6 April 1995): Reply, Annex 16.

Cultural Organization, wherein the Applicant is referred to under the provisional reference but calls itself by its constitutional name. At no time in the period between the adoption of resolution 817 in 1993 and the signing of the Interim Accord in 1995 (or thereafter) did the Secretariat of the United Nations or of any of the specialized agencies ever decline to accept such a communication from the Applicant.[221] And at no time has the Security Council, the General Assembly, or any other United Nations organ ever voiced official concern over, let alone rejection of, the Applicant's use of its constitutional name.

4.50. Consequently, at the time of the conclusion of the Interim Accord in 1995, there was a fully established institutional and State practice to the effect that the Applicant's admission to international organizations and institutions in accordance with the regime set out in resolution 817 did not require the Applicant to call itself by that provisional reference. That practice was, without question, fully known to the negotiators of Article 11(1) of the Interim Accord.

### C. The Interim Accord Does Not Require the Applicant to Call Itself 'the former Yugoslav Republic of Macedonia'

4.51. The Respondent's theory finds no support in the Interim Accord either. There is no provision in the Accord that denies to the Applicant the right to call itself by its constitutional name, whether in internal, bilateral (with the Respondent) or multilateral (with other States or with organizations or institutions) contexts. Despite the clearly developed practice within the United Nations and its specialized agencies, in place in 1993 to 1995 when the Interim Accord was being negotiated, the Respondent neither sought nor received any commitment from the Applicant regarding the use of its constitutional name (this is to be contrasted, for example, with the Respondent's request for and receipt of assurances regarding certain interpretations of the Applicant's Constitution on a different issue[222]).

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[221] Memorial, para. 2.20.

[222] See Interim Accord between the Applicant and the Respondent (New York, 13 September 1995), Art. 6: Memorial, Annex 1.

4.52. The Respondent now attempts to parse various pieces of the second clause of Article 11(1) (e.g., the use of "if and to the extent that" rather than just "if"; the use of the passive voice in the phrase "is to be referred to"; and the use of "in such organization" rather than "by such organization") to establish a meaning that – if it really had been so intended – could (and should) have been established simply by writing the clause to say as much.[223] Ultimately, from its contorted reading, the Respondent tries to develop a theory that the second clause of Article 11(1) allows the Respondent to object to the Applicant's membership in an organization or institution, in which the Applicant is referred to no differently than in resolution 817, if the Applicant is likely to call itself by its constitutional name in its dealings with that organization or institution.[224] Indeed, the Respondent apparently goes so far as to assert that in Article 11(1), the Applicant "promised Greece it would refrain from using [the constitutional name] pending settlement of the 'difference'".[225] Yet the Respondent's imaginative interpretation of the second clause of Article 11(1) finds no support in the text, context, or object and purpose of the Interim Accord, or in the subsequent practice of the Parties.

4.53. The ordinary meaning of the clause does not encompass a right of objection of the breadth now urged by Respondent. The text does not reserve a right to object if the Applicant "is to be referred to in such organization or institution, *or intends to call itself in its relations with the organization or institution*, differently than" the provisional reference. The clause might have been written that way, but it was not. Instead, the language addresses how the Applicant is to be "referred to in such organization or institution", not how it is to call itself.

4.54. At the time the clause was written and adopted, there already existed a well-known context for understanding it, in the form of the Applicant's admission to and practice in the United Nations beginning in 1993, and at several United Nations specialized agencies thereafter. As noted above, the Applicant was

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223 Counter-Memorial, paras. 7.59-7.65.

224 See, e.g., Counter-Memorial, para. 7.62: "it is not only the international organisation itself which is to refer to the FYROM under that name but that the FYROM itself must do so".

225 Counter-Memorial, para. 6.48.

admitted to those organizations on the understanding that it would be referred to in the organizations under the provisional reference, but was fully permitted to call itself by its constitutional name as a member of those organizations and did so. That provides ample context to disprove the Respondent's *ex post facto* interpretation of the second clause.

4.55. A further element of context is the express cross-reference in the second clause of Article 11(1) to resolution 817. If this clause of Article 11(1) was intended to radically deviate from the practice at the United Nations (i.e., if the intention was to reserve the Respondent's right to object to the Applicant's membership of international, multilateral and regional organizations and institutions unless, in some fashion, it committed not to call itself by its constitutional name within such organizations or institutions) then it would have done so. Many of the minor drafting matters the Respondent seeks to make with respect to Article 11(1) – the use of "referred to" in the passive voice, etc. – are equally true of resolution 817, and yet that resolution led to acceptance of the very practice that the Respondent now claims to be impermissible.

4.56. The Respondent and the United Nations Secretary-General's Special Envoy, Mr Cyrus Vance, who (jointly with Lord Owen) drafted the 1993 draft Treaty and who led the negotiations on the drafting of the Interim Accord (1993 to 1995) and on the name difference (1993 to 1999),[226] were certainly aware of the practice that existed at the United Nations in the period between 1993 and 1995. Indeed, on the day the Interim Accord was concluded, the Applicant referred to itself as the "Republic of Macedonia" in a letter to the Special Envoy[227] (since this letter was sent in relation to the Interim Accord, it provides important context for interpreting Article 11(1)).[228] If the United Nations Special Envoy believed that the Applicant had undertaken not to call itself by its constitutional name in its relations with the United Nations, either pursuant to resolution 817

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226 Memorial, 2.21-2.24 and 2.30.

227 1891 *UNTS* I-32193 at 17: Reply, Annex 58. A second letter was also sent by the Applicant, again using its constitutional name, which simply acknowledged receipt of a letter from the Special Envoy, transmitting a copy of a letter by the Respondent (1891 *UNTS* I-32193 at 14).

228 Article 31(2) of the Vienna Convention on the Law of Treaties.

or to the Interim Accord, one would have expected the Special Envoy to react adversely to the Applicant's communication. Yet no such reaction occurred; instead the Special Envoy acknowledged receipt and passed along a copy of the letter to the Respondent. Similarly, if the Respondent believed that such a communication to the United Nations violated any undertakings by the Applicant in relation to resolution 817 or the Interim Accord, or the conditions of its admission to the United Nations, one would have expected the Respondent to immediately object to the communication. Again, the Respondent has provided no evidence that such a reaction occurred. Hence, the contemporaneous conduct of the negotiators of the Interim Accord does not comport with the Respondent's view that those negotiators understood either resolution 817 or Article 11(1) as requiring the Applicant to call itself by the provisional reference as a member of any international, multilateral or regional organization or institution.

4.57. The Respondent's interpretation of Article 11(1) is further undermined by Mr Matthew Nimetz, Special Envoy of the United States to the name negotiations in 1994 and 1995.[229] He stated at a press conference held following the Accord's conclusion:

> "The United Nations, in admitting the country, did not change the name or give it a name. It uses a reference… [T]he United Nations did not choose FYROM as a name. It just said, "Temporarily we will refer to this country as the Former Yugoslav Republic of Macedonia," ... just as they might refer to us as the former British Colonies of North America. It does not mean that that is our name. It doesn't mean that FYROM is the name of a country. It just means that there's some disagreement. And internationally, until that agreement is resolved, international organizations and certain countries like the U.S. will not feel comfortable using that name because of the delicacy of the relationship. So we use a temporary reference, but we don't pretend that FYROM is the name of a country. […]

[229] Mr Nimetz subsequently became the United Nations Secretary-General's Special Envoy to the negotiations between the Applicant and the Respondent, following the resignation of Cyrus Vance in 1999.

> [M]y understanding is that the United Nations refers to the country as the Former Yugoslav Republic of Macedonia. But the people from that country, when they talk about themselves, use their constitutional name, Republic of Macedonia. And we have found this to be the case, that there is no requirement for them to use a name that they don't accept. But that doesn't mean that the organization accepts the name."[230]

4.58. The Respondent complains that the Applicant is using "subsequent unilateral practice" so as to "curtail the scope of the Safeguard Clause," for "modification of the interim regime," or to establish a "waive[r]" by the Respondent of its rights.[231] The Respondent claims that the Interim Accord is a "holding operation", which the Applicant is now seeking to change based on subsequent practice.[232] These points wholly misstate the Applicant's position. First, the relevant practice is not "subsequent" to the Interim Accord; it existed prior to and at the time of the conclusion of the Accord. The practice at the United Nations from 1993 to 1995 is relevant context for understanding the meaning of Article 11(1) *at the time Article 11(1) was adopted*.[233] Second, the practice is not "unilateral," in that it concerns not just the conduct of the Applicant, but also that of the organs and secretariats of the United Nations and its specialized agencies.

4.59. A separate element of context relevant for interpreting this clause of Article 11(1) concerns Article 1 of the Interim Accord, by which the Respondent agreed to recognize the Applicant as an independent and sovereign State based upon the provisional reference of 'the former Yugoslav Republic of Macedonia.'[234] If

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230 "Foreign Press Center briefing with Ambassador Matthew Nimetz, special White House Envoy subject: Macedonia-Greek agreements", *White House Briefing* (18 September 1995): Reply, Annex 87.

231 Counter-Memorial, paras. 7.85, 7.88 and 7.90.

232 Counter-Memorial, paras. 1.10, 3.9, 3.10, 3.39, 3.41, 3.44, 7.68, and 7.90.

233 The Respondent acknowledges to this Court, without any qualification, "the FYROM's behaviour in the United Nations and in every other international organisation in which the FYROM would later secure membership that it would then insist . . . on denominating itself by" its constitutional name: Counter-Memorial, para. 7.91.

234 Interim Accord between the Applicant and the Respondent (New York, 13 September 1995), Art. 1, read in conjunction with the letter of 13 September 1995 from Karolos Papoulias, Greece

the Respondent's interpretation of Article 11(1) were correct, the Respondent would have insisted that its recognition of the Applicant would also require that the Applicant not use its constitutional name in its communications with the Respondent. For if the Respondent, for some reason, could not tolerate the Applicant joining organizations or institutions in relation to which it would use its constitutional name, surely the Respondent could also not tolerate direct relations with the Applicant in which the Applicant would call itself and communicate with the Respondent using its constitutional name. Yet the Respondent's agreement in Article 1 to recognize the Applicant based on the provisional reference did not carry with it any expectation or obligation that, in its dealings with the Respondent, the Applicant would call itself by the provisional reference. To the contrary, one month later, the two sides concluded a Memorandum on "Practical Measures" Related to the Interim Accord in which they expressly agreed that the Applicant would call itself by its constitutional name in official correspondence with the Respondent, while the Respondent would refer to the Applicant by the provisional reference set out in resolution 817.[235]

4.60. In other words, the Respondent expressly agreed that the Applicant would continue *in its external diplomatic relations with the Respondent itself* to use its constitutional name. This approach followed the practice in place within the United Nations from 1993 onwards. Hence, at the time of the adoption of the Interim Accord, the Respondent confirmed and extended to the bilateral relationship the institutional practice that was established in the period between the adoption of resolution 817 and the conclusion of the Interim Accord.

4.61. The Respondent argues in its Counter-Memorial that its acceptance of the Applicant's use of its constitutional name in bilateral relations is not relevant to the way in which the Applicant calls itself in multilateral settings, viewing the former as relating to Article 5 and the latter as relating to Article 11 of the Interim

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Minister of Foreign Affairs, to Cyrus Vance, Special Envoy of the United Nations Secretary-General, 1891 *UNTS* I-32193, at 12: Reply, Annex 58.

[235] Memorial, para. 2.36 and Memorandum on "Practical Measures" Related to the Interim Accord of New York of September 13, 1995 (Skopje, 13 October 1995): Memorial, Annex 3, at p. 3; see also Counter-Memorial, para. 3.33.

Accord.[236] The point is not that the Applicant's ability to use its constitutional name in diplomatic communications with the Respondent somehow governs the meaning of Article 11(1); the point is that the Respondent's interpretation of Article 11(1) is wholly out of step with the broad context under which Article 11(1) was adopted. The Applicant has never been required to call itself by the provisional reference at the United Nations; has never been required to call itself by the provisional reference at United Nations specialized agencies; has never been required to call itself by the provisional reference since the opening of diplomatic relations with the Respondent in 1995; and since 1995 has not been required to call itself by the provisional reference at any international, multilateral or regional organization or institution to which it has secured membership, including the OSCE, the Council of Europe, the Organization for the Prohibition of Chemical Weapons, the European Charter for Energy, the Permanent Court of Arbitration, and the World Trade Organization.[237]

## D. The Respondent's Assertion that the Applicant Was Required to Call Itself 'the former Yugoslav Republic of Macedonia' Runs Contrary to the Object and Purpose of the Interim Accord

4.62. The Respondent's interpretation of the second clause of Article 11(1) is also inconsistent with the object and purpose of the Interim Accord. The Respondent portrays the Applicant's use of its constitutional name in dealings with international organizations as establishing "a *new name* without Greece's participation in an agreed bilateral settlement" and as unilaterally imposing a name without Greece's consent.[238] Yet the established practice at the United Nations, in the Applicant-Respondent's bilateral relations, and in Article 11(1), does no such thing. The solution preserves the Respondent's position that the constitutional name is not acceptable to it, by precluding the Applicant from becoming a member of organizations and institutions in circumstances in which it will be called by that name. This outcome is not "unilateral", given the widespread

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236 Counter-Memorial, paras. 3.37 and 7.86.

237 Memorial, para. 2.40.

238 Counter-Memorial, paras. 7.63 and 7.94 [emphasis added].

use of the provisional reference in international organizations. At the same time, the solution preserves the Applicant's position that it is entitled to use the name adopted by its people in its external relations (as well as internally). The Interim Accord and associated agreements, such as the Memorandum on Practical Measures, expressly call for this outcome in reserving the Applicant's right to call itself by its constitutional name, including in its dealings with the Respondent and with third parties.

4.63. Neither side is content with this interim solution, but neither side is precluded from maintaining its position until a final resolution of the difference over the name of the Applicant is reached. That was the object and purpose of the Interim Agreement as a whole: to find a way to allow for pragmatic cooperation bilaterally and multilaterally on an interim basis. It worked well until the Respondent's objection in relation to NATO membership.

4.64. By contrast, the Respondent's interpretation of Article 11(1) would deny the Applicant entry into organizations and institutions unless it changes the way in which it calls itself. This would mark a dramatic change in the balanced and pragmatic approach. In order to participate in the international community of States, the Applicant would be forced to begin calling itself in a way that it does not accept, overturning a decade and a half of consistent, trouble-free practice. Seen in this light, it is the *Respondent's* new interpretation of Article 11(1) that, in essence, would lead to "a new name" being imposed upon the Applicant without the mutual agreement envisaged in Article 5. As such, it is the Respondent's interpretation that is contrary to the object and purpose of the Interim Accord.

4.65. Interpreting the second clause of Article 11(1) in the manner advanced by the Respondent also leads to an unreasonable and absurd result. Under the Respondent's approach, it would be granted the power to decide, in advance of the Applicant's admission to an international organization, how the Applicant should call itself as a member of the organization or institution. According to the Respondent, "Greece will necessarily have to estimate, based in particular on the attitude of the FYROM, whether and to what extent the condition comprised

in the Safeguard Clause is to be met."[239] Yet if such a determination were left to the Respondent, the benefit of the first clause of Article 11(1) would be lost to the Applicant.

4.66. Given the plain meaning of the second clause of Article 11(1), in its context and in light of the object and purpose of the Interim Accord, there is no need for the Court to turn to the negotiating history of the provision. Nevertheless, the drafts of the clause confirm that the focus of the provision is on the manner in which the Applicant was to be referred in international organizations and institutions, not the manner in which the Applicant would call itself. None of the drafts contains any language expressly or impliedly supporting the Respondent's interpretation. The Respondent attempts to find significance in a wording change between the final drafts and the adopted text,[240] but those changes simply addressed a technical problem. The 21 July 1995 and 21 August 1995 drafts of the clause reserved a right to object if "the provisional reference under which [the Applicant] is to be admitted to such organization" differs from that of resolution 817,[241] whereas the final text of the second clause of Article 11(1) reserves a right to object if the Applicant "is to be referred to in such organization" differently than in resolution 817. For the Respondent, this change in language shows that the second clause is concerned not just with how the international organization will refer provisionally to the Applicant, but also how the Applicant will call itself before the international organization.

4.67. However, the change was not for the reason claimed by the Respondent. The problem with the draft texts was that the Applicant technically is not "admitted" to an international organization under a "provisional reference"; it is simply referred to provisionally in organizations and institutions by the reference 'the former Yugoslav Republic of Macedonia.' At a future point when the difference over the name is resolved, the Applicant does not have to be admitted again to the relevant organization or institution; rather, the Applicant remains an existing

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239 Counter-Memorial, para. 7.64.

240 Counter-Memorial, paras. 7.70-7.72.

241 See Counter-Memorial, Annex 148, drafts (i) & (j), at Art. 11.

member of the organization or institution, but no longer need be referred to by the provisional reference. The final language of the second clause of Article 11(1) correctly characterizes the manner of the Applicant's admission to organizations and institutions, as also occurred in the language of resolution 817.

### E. The Fact that the Applicant Calls Itself by Its Constitutional Name Does Not Assist the Respondent

4.68. In short, the Respondent's proposition that the Applicant must call itself by the provisional reference in its dealings with international organizations finds no support in resolution 817, in the settled practice of the United Nations and other organizations and institutions, or in Article 11(1) of the Interim Accord. Moreover, the evidence before this Court confirms that the Respondent's objection in 2008 was not based upon the Applicant calling itself by its constitutional name in international, multilateral and regional organizations and institutions. As such, the Respondent's proposition that it was permitted to object to the Applicant's membership in NATO under the second clause of Article 11(1) due to the fact that the Applicant would not call itself by the provisional reference in its dealings with NATO has no basis in law or fact.

## Section III: Other Reasons Advanced by the Respondent for Its Objection Do Not Fall Within the Scope of the Second Clause of Article 11(1)

4.69. Having established that the Respondent did not object to the Applicant's membership in NATO for the sole reason permitted under Article 11(1), it is not necessary for the Applicant to prove, or for the Court to determine, why it is that the Respondent in fact objected. Nevertheless, this section briefly assesses the basis provided contemporaneously by the Respondent for its objection, as well as a new basis advanced by the Respondent for the first time in its Counter-Memorial. It also assesses certain general statements that permeate the Counter-Memorial insofar as they are relied upon by the Respondent as a further explanation for its objection. The primary reason for which the Applicant

addresses these arguments is to demonstrate that they are as misconceived factually as they are legally.

### A. Article 11(1) Does Not Permit the Respondent to Object on Grounds that the Difference Over the Applicant's Name Has Not Been Resolved

4.70. The factual record establishes beyond any doubt that the real reason for which the Respondent objected to the Applicant's NATO membership at Bucharest was the non-resolution to its satisfaction of the difference over the Applicant's name. As set out in detail at Chapter II, just weeks before the Summit, the Respondent's Prime Minister stated in Parliament: "*Without a mutually acceptable solution to the name issue*, there can be no invitation to participate in the [NATO] alliance."[242] Days before the Summit, the Respondent's Foreign Minister, Ms Bakoyannis, writing in the International Herald Tribune, asserted that: "We will not be able to [support inclusion in NATO] for FYROM, however, *as long as its leaders refuse to settle the issue of its name*…"[243] The numerous other statements and official documents by the Respondent, other NATO Members, as well as accounts by academics, other experts, and the press, all confirm that this was the reason for the Respondent's objection.[244]

4.71. Indeed, the Respondent admits that "if the Court were to conclude that Greece had objected to the FYROM's application for membership in Bucharest, it is clear that the reason for the deferral of FYROM's membership application *was the difference over the name*."[245] Further, the Respondent states that the "judgment of Greece with respect to the FYROM's candidacy to NATO in 2008

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[242] "Premier dangles FYROM veto", *Kathimerini* (23 February 2008): Memorial, Annex 80 [emphasis added].

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

[244] Appendix 1 to this Reply; see also Memorial, paras. 2.61-2.63.

[245] Counter-Memorial, para. 7.91 [emphasis added]; see also Counter-Memorial, paras. 6.40 and 6.37.

was made clear: *the failure to achieve a negotiated settlement of the difference concerning the name*" meant that the Applicant could not join NATO.[246]

4.72. The whole point of the Interim Accord was to create certain rights and obligations of the Parties that would operate even *in the absence of* a negotiated settlement of the difference over the name. The reason Article 11(1) existed at all was to develop a mechanism for the Applicant to join international, multilateral and regional organizations and institutions during the period prior to a final resolution of the name issue. It cannot be the case that any of the obligations set forth in the Interim Accord can be negated because of a failure to resolve the difference over the name, for the purpose was to establish obligations that would operate while the negotiation of that difference remained ongoing.[247] However one might attempt to parse the meaning of Article 11(1), it cannot possibly be interpreted as allowing the Respondent – having accepted an obligation on an interim basis – to refuse to abide by that obligation because it is unhappy that the interim period has not ended. The Respondent's breach of Article 11(1) is inescapable.

### B. Article 11(1) Does Not Permit the Respondent to Object so as to "Correct" any "Balance of Interests" of the Interim Accord

4.73. The Respondent advances an unusual and unsupportable theory as to why it was entitled to object to the Applicant's membership in NATO. Under this theory, not only must the Applicant meet the condition set forth in the second clause of Article 11(1) in order for the obligation in the first clause to apply, but the Applicant must also abide by the "larger bundle of rights and obligations exchanged by the parties in the Interim Accord"[248]; in this sense, the Respondent

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246 Counter-Memorial, para. 7.45 [emphasis added].

247 See, for example, the comments by Mr Vance, made on the day the Interim Accord was signed: "Vance... conced[ed] "I can't say I am confident that (a compromise name) will come." But he argued that today's pact, officially called the Interim Accord, would not be derailed by the lingering dispute. "The mere fact that they disagree about the name is not going to budge progress," he said: Farhan Haq, "Greece-Macedonia: both sides agree to end dispute, embargo", *IPS-Inter Press Service* (13 September 1995): Reply, Annex 86.

248 Counter-Memorial, para. 3.26.

argues that the second clause of Article 11(1) "cannot be treated in isolation."[249] In advancing this theory, the Respondent relies heavily upon a characterization of the Interim Accord as a "synallagmatic agreement"[250] and as a "holding operation"[251] and somehow divines from those talismanic characterizations a conclusion that the second clause of Article 11(1) is a "corrective mechanism,"[252] one that allows the Respondent to respond to any "conduct in international organisations which was inconsistent with the principle of an interim period."[253] In other words, the Respondent is entitled to object under Article 11(1) whenever necessary to "correct" the Respondent's allegedly wrongful conduct under any other provision of the Interim Accord.

4.74. This argument finds no support whatsoever in any relevant source of fact or law. First, just as it was incorrect to characterize the Interim Accord as a holding operation, it is inappropriate to characterize the entire Interim Accord as "synallagmatic agreement", if by that it is claimed that fulfilment of each obligation is somehow linked to the fulfilment of every other obligation (as dealt with further in Chapter V, Section III(E) below). As the Respondent itself recognizes in its Counter-Memorial,[254] the Interim Accord like most bilateral agreements imposes a series of obligations on the Parties, some place a burden on the Applicant, some place a burden on the Respondent, and some place burdens on both sides equally. For example, in Article 7 the Applicant agreed to change its national flag to address concerns raised by the Respondent, while in Article 8 the Respondent agreed to lift the economic embargo it had imposed upon the Applicant. In Article 2, both Parties commit themselves to the inviolability of

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249 Counter-Memorial, para. 3.26.

250 Counter-Memorial, paras. 3.41, 3.49, 7.3, 8.15-8.18, & 8.61. The Respondent puts the characterization of the Interim Accord as "synallagmatic" to service in advancing its argument regarding the *exceptio*, which is addressed in Chapter V, Section III of this Reply.

251 Counter-Memorial, paras. 3.9, 3.39-3.41, 3.44 and 7.68.

252 Counter-Memorial, para. 7.3.

253 Counter-Memorial, para. 7.68; see also para. 1.7. The Respondent also draws upon its concept of a "synallagmatic agreement" in support of its argument concerning the *exceptio* principle, which is addressed in Chapter 5(III) of the Counter-Memorial.

254 Counter-Memorial, paras. 3.42-3.43.

their common border, while in Article 5 both Parties agreed to continue their negotiations (while preserving their respective positions), under the auspices of the United Nations Secretary-General, with a view to resolving the difference over the name. While the Interim Accord as a whole obviously imposes obligations on both Parties in different ways, in no sense are these obligations "synallagmatic," if by that it is meant that the obligation is dependent upon the other Party's fulfilling of some other obligation.[255] For example, it cannot possibly be correct that the Parties' mutual commitment in Article 2 to their common frontier is dependent upon fulfilment of commitments made elsewhere in the Accord.

4.75. Second, it is an unexplained *non sequitur* to claim that because the Interim Accord is "synallagmatic" or a "holding operation," then Article 11(1) gives the Respondent a broad license to police the Applicant's conduct, not only with respect to future membership in the specific international organization for which the objection is lodged, but also the Applicant's conduct in all international organizations of which it is already a member.[256] The *non sequitur* goes further. Remarkably, the Respondent claims the right to be able to object as a reaction to the conduct of not just the Applicant, but of *any State or international organization*. For the Respondent's view is that the second clause of Article 11(1) preserves the Respondent's "right to react" to the "conduct of an international organization, and of States in an international organization", since that conduct "can have significant effects on the crystallization of particular statuses or situations."[257]

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[255] See Counter-Memorial, paras. 3.41 and 3.48: asserting that in the Interim Accord "both parties exchange engagements or considerations, those of each party being conditioned by those of the other". Of course, if one Party were to commit a material breach of a provision, the other Party might be able to suspend or terminate its obligations under that or a different provision, provided the relevant steps are taken under the law of treaties, but in this case "Greece has never claimed any intent to suspend (let alone to terminate) in whole or in part the operation of the Interim Accord…": Counter-Memorial, para. 8.2.

[256] Counter-Memorial, para. 7.68.

[257] Counter-Memorial, para. 7.68: "The conduct of an international organisation, and of States in an international organisation, can have significant effects on the crystallisation of particular statuses or situations. Faced with conduct which suggests that the permanent name of the FYROM has been settled without regard to the bilateral settlement process, Greece's right to react is preserved. The Safeguard Clause is an essential protection, established so that Greece is not prevented from taking steps to preserve the balance of interests which it is the design of the Interim Accord as a whole to preserve".

Thus, if the Respondent is not content with the manner in which the United Nations, the Council of Europe, China, the United States, or any other State or organization or institution refers to the Applicant, it can object to the Applicant's effort to secure membership in international organizations.

4.76. There is nothing in Article 11(1) to support the Respondent's assertion that it can object to the Applicant's admission to any and all international organizations whenever it believes that the Applicant is not properly "balanc[ing] the interests"[258] of the Interim Accord. In support of its position, the Respondent principally points to the use of the words "if and to the extent" in the second clause of Article 11(1), rather than just the word "if". According to the Respondent, this language demonstrates that *after* the Applicant joins an international organization, if "there is any defection from the provisional name regime", then "the defection may be taken into account by Greece in determining whether the Safeguard Clause applies to a new membership application or request to accede" in a *different* organization.[259] The problem with this interpretation is that the second clause of Article 11(1) is exclusively focused on reserving a right to object with respect to a (singular) "membership" in an organization or institution "if and to the extent" that the provisional reference is not used in (singular) "*such* organization or institution" (emphasis added). In other words, the second clause of Article 11(1) is quite clear in reserving a right to object with respect to membership in an organization based on whether the provisional reference will be used *in that organization*, not based on whether it is being used in other organizations. Nor is the Respondent's interpretation supported by any other provision of the Interim Accord, by the Accord's negotiating history, or by the practice of the Parties in the years following the conclusion of the Interim Accord.

4.77. Given that, as of September 1995, there already existed extensive practice at the United Nations and its specialized agencies of the kind that the Respondent now claims must be "corrected" (principally the Applicant's use of its constitutional name), the Respondent is basically urging this Court to believe

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[258] Counter-Memorial, para. 7.3.

[259] Counter-Memorial, para. 7.60.

that Article 11(1) had no real content; that it was always predicated upon the Respondent's own discretion in determining whether the Applicant (or for that matter other States or international organizations) were properly "balancing the interests" at issue in the Interim Accord. This argument as to the meaning of Article 11(1)'s second clause eviscerates the obligation the Respondent undertook in the first clause. It is unreasonable and leads to an absurd result.

### C. Article 11(1) Does Not Permit the Respondent to Object Due to General Allegations of Lack of Good Neighborliness or "Irredentism"

4.78. At various places in its Counter-Memorial, the Respondent claims that the Applicant's use of its constitutional name has threatened peace and security in the region, reflects "irredentist" or territorial claims against the Respondent, and transgresses a general principle of good neighborliness. The purpose for the Respondent in making such accusations is not entirely clear, but certain statements by the Respondent's suggest a possible link to its interpretation of Article 11(1).

4.79. The Respondent appears to assert that resolution 817 was adopted because of a belief by the Security Council that the Applicant's use of its constitutional name threatened peace and security in the region.[260] From this the Respondent builds an argument that the United Nations denied the Applicant any use of its constitutional name in its relations with the United Nations. The argument has no merit, as set out in Section II of this Chapter. Yet – given the cross-reference in Article 11(1) to resolution 817 – the Respondent seems to be contending that the Respondent is entitled to object under Article 11(1) so long as the Applicant continues to use its constitutional name, because doing so threatens peace and security in the region.

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[260] See, e.g., Counter-Memorial, para. 2.15: "The Security Council, in SC res 817 (1993), understood that settlement of the difference concerning the name is necessary 'in the interest of the maintenance of peaceful and good-neighbourly relations in the region.' … The serious difficulties encountered in other parts of the former Socialist Federal Republic of Yugoslavia further drew attention to the delicacy of the situation and the potential of irredentist claims, however stated or implied, to destabilise international relations." See also Counter-Memorial, paras. 2.16-2.20.

4.80. As a factual matter, the Applicant denies that it has ever engaged in, or is engaging in, any behaviour that threatens regional peace and security, either by using its constitutional name or otherwise.[261] Further, as a legal matter, any such theory wholly distorts the meaning of resolution 817, as the text and historical and political circumstances surrounding its adoption make clear. There is no basis for the Respondent to incorporate such a distorted meaning of resolution 817 into the second clause of Article 11(1).

4.81. In the lead-up to the adoption of resolution 817, no body or entity regarded the Applicant as threatening international peace and security, as engaging in "irredentist" behaviour, or otherwise failing to act in accordance with a principle of good-neighbourliness, other than (apparently) the Respondent. To the contrary, this view was firmly rejected by the Badinter Committee, which concluded that "the Republic of Macedonia has... renounced all territorial claims of any kind in unambiguous statements binding in territorial law" and that "the use of the word *'Macedonia' cannot... imply any territorial claim against another State."*[262] The Respondent seeks to downplay the importance and significance of the Badinter Committee's findings by erroneously describing them as an "attempt at settlement",[263] yet they were nothing of the sort. Rather, they represented the official legal opinion of an arbitration commission established by the European Community to provide advice on applications for recognition made by former Yugoslav states.[264] The conclusions of the Badinter Committee remain unchallenged and undisputed by the European Community and its Member States (other than the Respondent). Indeed none of the official statements by the European Community explicitly indicate that the Applicant's constitutional name implied "irredentist", territorial, or other claims against the Respondent or its neighbours. As the International Crisis Group has indicated in its assessment of the early 1990s:

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261 See, e.g., the Applicant's *Aide Mémoire* (2005), distributed to NATO and EU member States: Reply, Annex 24.

262 Memorial, paras. 2.13-2.14, especially fn. 34 [Emphasis added].

263 Counter-Memorial, para. 2.15.

264 Memorial, paras. 2.10-2.13.

> "The EC's reasoning had nothing to do with nationality relations inside Macedonia or with its neighbours. At that time, Macedonia had the smallest potential for conflict of any successor state except Slovenia. Rather, its southern neighbour, Greece, objected to Macedonia's 'appropriation' of a name and symbols that it deemed exclusively Hellenic."[265]

4.82. The Respondent's continued claim that the Applicant's constitutional name represents a threat to peace and security in the Balkans is as unfounded and untenable today as it was in 1991. Indeed, in its entire Counter-Memorial, including in particular the section describing "the Name as a Problem of Regional Security",[266] the Respondent has not referred to a *single* source other than itself to support its unfounded claim that the Applicant's constitutional name was or is a "form of irredentist propaganda threatening to Greece and to other States in the region".[267]

4.83. Nothing in the text of resolution 817 indicates that the Applicant's constitutional name was regarded by the Security Council as a threat to peace, stability or good neighbourly relations in the region, or requires the Applicant to accept a name mandated by the Respondent. Preambular paragraph 1 indicates that the Security Council "examined" the Applicant's application for admission to the United Nations. That application was made *using* the Applicant's constitutional name and directly referenced the adoption of the Applicant's Constitution in November 1991,[268] so if the existence and use of the constitutional name was a threat to peace and good-neighbourly relations, one might have expected the

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265 International Crisis Group, "Macedonia's name: why the dispute matters and how to resolve it", *International Crisis Group Balkans Report No. 122* (10 December 2001) at p. 12: Reply, Annex 64.

266 Counter-Memorial, paras. 2.16-2.20.

267 Counter-Memorial, para. 2.18.

268 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): letter is from "the President of the Republic of Macedonia" and there is a Declaration by the 'Republic of Macedonia' declaring that it "accepts the obligations contained in the Charter of the United Nations and solemnly undertakes to fulfill them": Memorial, Annex 25.

Security Council to say as much. Yet the Council did not. Instead, preambular paragraphs 2 and 3 provide as follows:

> "*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 [...]"

4.84. Preambular paragraph 2 underscores that the Applicant *had fulfilled* the criteria for membership in the United Nations, as laid down in Article 4 of the Charter. Those criteria include that the Applicant be a "peace-loving" State and that the applicant be willing and capable of carrying out its United Nations obligations,[269] including the obligations to settle disputes peacefully and not to use force against any other State.[270] In other words, the Security Council's judgment was that the existence of the difference over the name of the Applicant was not a basis for determining that the Applicant was not a peace-loving State, nor that the Applicant was unwilling to carry out the purposes and principles of the United Nations Charter. The General Assembly concurred in this assessment, when it admitted the Applicant to the United Nations on 8 April 1993, based on a resolution co-sponsored by the Respondent.[271] Hence, preambular paragraph 2 of resolution 817 belies the Respondent's suggestion that the Applicant was perceived as anything other than a "peace loving" State, or that its constitutional name, which it retained upon admission to the United Nations, represented, or was perceived to represent, a threat to peaceful and good-neighbourly relations.

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269 United Nations Charter, Art. 4(1); see *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948* at p. 62; see also *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950, 4*, at p. 7-10.

270 United Nations Charter, Art(s). 2(3) and 2(4).

271 United Nations General Assembly, Forty-seventh session, *Admission of New Members to the United Nations*, A/47/L.54 (7 April 1993): Reply, Annex 14.

4.85. Further, the wording of resolution 817 makes clear that it was the *difference* concerning the Applicant's name that was deemed capable of undermining peaceful and good-neighbourly relations in the region, not the *constitutional name* itself. That "difference", characterized by the Respondent's opposition to the Applicant's constitutional name, for two years prior to the adoption of resolution 817, had prevented the Applicant's recognition as an independent State, its integration into the international community and its ability to join, or seek much needed financial assistance from international institutions and organizations, in circumstances of extreme unrest and political and economic crisis in the wider Balkan region. As stated by Mr Vance, Special Envoy of the United Nations Secretary General, to the Security Council on 13 November 1992: "*Macedonia, unrecognized, continues to suffer and gives cause for serious concern.*"[272] The concern on the part of the international community did not relate to an "irredentist" attitude by the Applicant; rather, the Respondent's rejection of the constitutional name was having negative and far-reaching consequences not just for the fledgling State, but also for the Balkans region as a whole. As noted by the United Nations Commission on Human Rights:

> "[L]ack of international recognition may contribute to the disintegration of the State and may cause inter-ethnic disturbances which may lead to a military conflict with far-reaching consequences for the whole region."[273]

4.86. Indeed, it was the *Applicant*'s particular vulnerability and exposure to tensions and conflict in the region that was of primary concern to the international community when resolution 817 was adopted, not any purported vulnerability of the *Respondent* in relation to non-existent territorial ambitions on the part of the Applicant. The real threat to regional peace in question at preambular paragraph 3 was the threat *to the Applicant,* arising from the political strife in the Balkans,

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[272] Cyrus Vance, *Statement to the Security Council on the Situation in the former Yugoslavia* (13 November 1992): Reply, Annex 9.

[273] United Nations Commission on Human Rights, Forty-ninth Session, *Situation of Human Rights in the Territory of the Former Yugoslavia*, UN Doc. E/CN.4/1993/50 (10 February 1993), para. 254: Reply, Annex 13.

the Applicant's own "ethnic divisions," and its growing internal instability "as a result of the economic and political consequences arising from the Republic's… unrecognized status".[274] This is made clear in numerous official reports produced and statements made in the years and months preceding resolution 817, describing "the festering situation in Macedonia [in which] economic and social conditions have deteriorated and internal unrest is growing"[275], "the fragility and menace of the [Applicant's] surrounding international environment"[276], "developments in its [the Applicant's] border areas which could undermine confidence and stability in Macedonia or threaten its territory",[277] the "tensions" which could "increase in Kosovo" with "dangerous repercussions on Macedonia",[278] the "need to take preventive measures to avoid the outbreak of violence in Macedonia and Kosovo",[279] and the "tragedy of grave consequences" that would ensue "if conflict were to break out in Macedonia".[280]

4.87. In short, the concern of the international community was not with any "irredentism" of the Applicant, but with the perceived threat *to the Applicant*, arising from the ongoing political unrest and bloodshed in the wider Balkan region.[281] Thus, the United Nations Protection Force (UNPROFOR) was deployed

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[274] Robin O' Neill, *Report to the President of the Council of Ministers* in Michalis Papakonstantinou (ed.) *A Politicians Diary: The Involvement of Skopje, Third Edition* (Estia Booksotres, Athens) (1 December 2001): Reply, Annex 63.

[275] Cyrus Vance, *Statement to the Security Council on the Situation in the former Yugoslavia* (13 November 1992): Reply, Annex 9.

[276] Conference on Security and Co-operation in Europe, *Report of the CSCE Rapporteur Mission to the Former Yugoslav Republic of Macedonia (FYROM)*, CSCE Communication No.183 (24 June 2003).

[277] United Nations Security Council, *Report of the Secretary-General on the Former Yugoslav Republic of Macedonia*, UN doc. S/24923 (9 December 1992): Reply, Annex 11.

[278] *Ibid*., note 276 *supra*.

[279] Personal Letter dated 18 September 1992 from Cyrus Vance and David Owen to the Co-Chairman of the Secretary-General of the United Nations, Dr Boutros-Ghali (18 September 1992): Reply, Annex 8.

[280] *Ibid*., note 278 *supra*.

[281] As an example of the Respondent's misleading characterization of this issue, consider paragraph 2.25 of the Respondent's Counter-Memorial, where the Respondent first notes the adoption of resolution 817, and then asserts that "Constitutional amendments were enacted to remove provisions that suggested an official State interest in the status of minority groups

in December 1992 to the territory of the Applicant, "to monitor and report any developments in its border areas which could undermine confidence and stability in… [that Republic]… and threaten its territory".[282] As the terms of its mandate make clear, UNPROFOR was deployed to address a threat perceived by the United Nations to the *Applicant's* territory.[283] The total absence in contemporaneous United Nations documents of any reference to a threat – "implied" or otherwise – on the part of the Applicant towards the Respondent or of any pressing need for the Respondent's territory to be monitored or protected against adverse action from the Applicant, belies the Respondent's remarkable assertion that the Applicant's constitutional name constituted a threat to the Respondent.

4.88. Given the severity of the situation in the Balkans in the early 1990s, which threatened the Applicant's territory in the period preceding the adoption of Security Council resolution 817, it is not credible that the Respondent should now self-servingly seek to minimize or deny the crisis in the region in order to present itself as the injured party. The Applicant's choice of its constitutional name was regarded by none of the relevant actors in 1991-1993 as suggestive of "irredentist" ambitions, or as a threat to peace, stability, and good neighbourly relations in the region. As such, the Respondent's reliance upon resolution 817 to support its view that the Applicant's continued use of its constitutional name – in 2008 – constituted a threat to peace and stability in the region, or reflected a bad faith approach in the name negotiations, is wholly unsupported. It cannot explain or justify the Respondent's violation of Article 11(1).

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and the territories they inhabit in neighbouring States." Such a characterization implies that these constitutional amendments occurred as a part of the adoption of resolution 817, yet those amendments were in fact enacted on 6 January 1992, well over a year before the adoption of resolution 817, as a part of the Badinter Committee process. Neither resolution 817 nor the Interim Accord has anything to do with those amendments.

[282] See the United Nations website: United Nations Department of Public Information, *United Nations Protection Force, Former Yugoslavia - UNPROFOR, Profile*, available at: http://www.un.org/Depts/DPKO/Missions/unpredep.htm (31 August 1996): Reply, Annex 17.

[283] United Nations Security Council, *Letter dated 23 November 1992 from the Secretary-General Addressed to the President of the Security Council*, UN doc. S/24851 (25 November 1992): Reply, Annex 10.

## Section IV. Conclusions

4.89. In light of the arguments set out above, there is no doubt that, when it objected to the Applicant's membership in NATO, the Respondent violated Article 11(1) of the Interim Accord.

4.90. The first clause of Article 11(1) provides that the Applicant will not object to the application or membership of the Applicant in international, multilateral and regional organizations and institutions. NATO is such an international organization, in relation to which the Applicant sought membership. Yet the Respondent made it known to NATO members prior to and during the Bucharest Summit in 2008 that the Respondent would not join a NATO consensus in favour of the Applicant being invited to join NATO, until such time as the difference over the name issue is settled. The Respondent boasted publicly that it had blocked or "vetoed" the Applicant's effort to join NATO. That conduct, established by extensive evidence, including statements by the highest officials of the Respondent, was an "objection" to the Applicant's membership in NATO.

4.91. The second clause of Article 11(1) allows the Respondent to object if the Applicant "is to be referred to in" NATO "differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)." The Applicant has long been referred to in NATO no differently than in paragraph 2 of resolution 817, in its PfP programme and in the MAP. It would have been referred to no differently on admission to NATO, pending resolution of the difference over its name. In these circumstances, the Respondent was not entitled to object to the Applicant's membership in NATO under this clause.

4.92. The Respondent's principal argument is that the second clause of Article 11(1) allows for an objection if the Respondent believes the Applicant would call *itself* by its constitutional name in its dealings with NATO. The text and context of the second clause of Article 11(1) do not support that interpretation, nor does the object and purpose of the Interim Accord. The established practice within the United Nations and within the United Nations specialized agencies

as of the date the Interim Accord was concluded demonstrates an approach whereby the Applicant was to be referred to in international, multilateral and regional organizations and institutions under the provisional reference, but was fully entitled to call itself by its constitutional name as a member of the organization or institution in question. The negotiators of the Interim Accord knew about that practice, and there is nothing in the text or the contemporaneous practice of the Parties indicating an effort to deviate from that practice. Indeed, the express cross-reference in Article 11(1) to the practice at the United Nations under resolution 817 confirms the intention to continue with that practice in relation to the Applicant's membership in other international, multilateral and regional organizations and institutions. Moreover, the Respondent's interpretation with respect to the second clause is wholly unreasonable because it would essentially eviscerate the objective of the first clause of Article 11(1), by providing a sweeping discretion to the Respondent to object based on its subjective perception of whether the Applicant was acting properly under the Interim Accord.

4.93. The Respondent's theory for interpreting Article 11(1) not only fails on the basis of its manifestly inadequate legal reasoning, but also on the facts. There is nothing in the record to indicate that the Respondent in 2008 objected to the Applicant's membership in NATO because the Respondent was concerned that the Applicant would call itself by its constitutional name as a NATO member. Rather, the numerous statements by the Respondent's officials at the time, confirmed by the accounts of NATO, other NATO Member Countries and third-party observers, demonstrate that the reason for the Respondent's objection was its discontent that the difference over the name had not yet been resolved. That basis for objecting was unlawful: Article 11(1) does not permit it. The Respondent violated Article 11(1).

4.94. The Respondent seeks to justify or excuse its violation of Article 11(1) by reference to two arguments: (i) that the violation is justified due to the preservation of certain rights for the Respondent in Article 22 of the Interim Accord; and (ii) that the violation is excused due to a "general principle of reciprocity according to which *non adimpleti non est adimpledum*." These arguments are addressed in the following Chapter.

## CHAPTER V

## THE RESPONDENT'S BREACH OF ARTICLE 11(1) CANNOT BE JUSTIFIED OR EXCUSED BASED ON ARTICLE 22 OF THE INTERIM ACCORD OR ON A PRINCIPLE OF *EXCEPTIO NON ADIMPLETI CONTRACTUS*

### Introduction

5.1. Chapter IV confirmed that the Respondent's conduct prior to and during the Bucharest Summit meeting in 2008 constituted an objection to the Applicant's membership of NATO in breach of Article 11(1) of the 1995 Interim Accord. This Chapter addresses the Respondent's contention that its breach may be justified or excused.

5.2. In its Memorial, the Applicant anticipated possible arguments that the Respondent might advance to excuse its breach. In particular, the Applicant refuted arguments that the Respondent's conduct could be excused on the grounds of either (i) suspension of Article 11(1) under the law of treaties in reaction to an alleged material breach of the Interim Accord by the Applicant;[284] or (ii) a lawful countermeasure to a precedent wrongful act by the Applicant.[285]

5.3. In its Counter-Memorial, the Respondent confirms that it does not seek to excuse its conduct on such grounds. The Respondent states that "Greece has never claimed any intent to suspend (let alone to terminate) in whole or in part the operation of the Interim Accord".[286] Moreover, while confirming that countermeasures are a "circumstance precluding wrongfulness", the Respondent states clearly that "[i]n the present case, Greece does not rely on such a circumstance."[287]

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284 Memorial, paras. 5.21-5.39.

285 Memorial, paras. 5.41-5.54.

286 Counter-Memorial, para. 8.2.

287 Counter-Memorial, para. 8.3.

5.4. Instead, the Respondent asserts that, if it is found to have violated its obligation under Article 11(1), there are two reasons for its having done so. First, the Respondent invokes Article 22 of the Interim Accord, which it asserts preserves a "right" or "duty" under the North Atlantic Treaty to object to the Applicant's membership in NATO. According to the Respondent, its obligation under Article 11(1) is subordinate to its "right" or "duty" under the North Atlantic Treaty, which the Respondent exercised when it objected to the Applicant being invited to become a NATO member at the Bucharest Summit. Second, the Respondent invokes a "general principle of reciprocity" according to which "*non adimpleti non est adimplendum*," alleging that, since the Applicant has purportedly failed to comply with miscellaneous obligations under the 1995 Accord, the Respondent is entitled not to comply with its obligation under Article 11(1).

5.5. This Chapter explains why neither of the two reasons set forth in Respondent's Counter-Memorial has merit. **Section I** of this Chapter explains that Article 22 does not address the rights or duties of the Respondent. Rather, Article 22 is making clear that, as a factual matter, the Interim Accord does not infringe upon any rights and duties *of third States and entities* that exist under treaties that the Applicant or Respondent had concluded with those third parties as of September 1995. The Respondent's assertion that Article 22 modifies the Respondent's obligation under Article 11(1) is inconsistent with the text and context of Article 22, with the object and purpose of Article 11(1), with the subsequent practice of the Parties, and with the negotiating history of the Interim Accord, and in any event leads to a result which is manifestly absurd and unreasonable.

5.6. **Section II** demonstrates that, even if the Respondent is correct that Article 22 speaks to *the Respondent's* rights and duties under third-party agreements, the Respondent's argument nevertheless fails. Article 22 is best understood as simply a factual recognition that the Interim Accord does not affect rights or obligations arising under third-party agreements, not as a provision that alters obligations arising under other articles of the Interim Accord. Further, even if one interprets Article 22 as generally protecting the rights and duties of the Respondent under third-party agreements, it cannot nullify Article 11(1). Even if Article 22 is read

as capable of eviscerating Article 11(1) in some circumstances, it does not do so in this instance, since the Respondent has not identified any "right" or "duty" under the North Atlantic Treaty that would require it to object to the Applicant's membership. Further, any discretion accorded to the Respondent under the North Atlantic Treaty concerning the admission of the Applicant to NATO was already exercised when the Respondent concluded the Interim Accord, in the sense that the Respondent accepted that the difference over the name alone was *not* a basis for excluding the Applicant from international, multilateral and regional organizations and institutions. In any event, the Applicant has satisfied all the requirements necessary for admission to NATO, and it is plain that the true reason for the Respondent's objection was merely its own political preference that the difference over the name be resolved on its own terms prior to the Applicant being able to join NATO.

5.7. **Section III** then turns to the Respondent's argument concerning the principle of *exceptio non adimplenti contractus* (defence in the case of an unfulfilled contract), by which the Respondent claims that it is free to suspend a treaty obligation and then, after it has acted, allege non-compliance by the Applicant with other, causally unconnected obligations under the Interim Accord. This section demonstrates that the Respondent's sudden invocation of this principle in these proceedings is poorly conceived. First, the very existence of an autonomous principle of the kind advanced by the Respondent is questionable. The principle has never been recognized by the Court as providing a basis for unsettling a treaty obligation; indeed, for it to be so recognized would undermine treaty relations. Leading academic authorities deny or doubt the existence of the principle, or at best assert that the principle merely informs relevant treaty law, as codified in Article 60 of the 1969 Vienna Convention on the Law of Treaties. Second, regardless of the principle's status under general international law, the terms and conditions of Article 60 are the exclusive source of law on this issue in the current case, given that both the Applicant and the Respondent are parties to the Vienna Convention, and there is no basis in the law of state responsibility for invoking the *exceptio*. Third, the treaty obligations of the Applicant and the Respondent in the Interim Accord are not of a nature as to give rise to the

applicability of the *exceptio*. Fourth, and importantly, the Applicant has not in fact violated other provisions of the Interim Accord that are causally connected to Article 11(1), such as to give rise to a right to invoke the *exceptio*.

## Section I. The Respondent Incorrectly Interprets Article 22 as Addressing the Respondent's Own Rights and Duties

5.8. In its Counter-Memorial, the Respondent maintains that Article 22 of the Interim Accord excuses the Respondent's breach of Article 11(1).[288] The Respondent notes that, under Article 10 of the North Atlantic Treaty, 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." The Respondent claims that this provision of the North Atlantic Treaty imposes a "right" or a "duty" upon the Respondent to "express [its] views" with respect to the accession of new NATO members.[289] The Respondent claims that it exercised that "right" or "duty" when it objected to the Applicant's application for membership in NATO, on the basis that the Applicant failed to meet all NATO accession criteria. The accession criteria which it cites at paras 5.25 and 7.36 of its Counter-Memorial are the requirements set out in NATO's Membership Action Plan to:

> "…settle ethnic disputes or external territorial disputes including irredentist claims or internal jurisdictional disputes by peaceful means in accordance with OSCE principles and […] pursue good neighbourly relations."[290]

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[288] Counter-Memorial, paras. 3.29, 6.63 and 7.26-7.39. The Respondent also argues that Article 22 precludes this Court from exercising jurisdiction over this case: see Counter-Memorial, paras. 6.25-6.27, 6.30 and 6.52-6.63. Those arguments are addressed in Chapter III of this Reply, paras. 3.26-3.32.

[289] Counter-Memorial, para. 7.33-7.34.

[290] See also 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): "Greece would like to note that the reason why it was not possible to extend, in Bucharest, an invitation for membership to the former Yugoslav Republic of Macedonia is that the latter, judged by her overall conduct vis-à-vis the name issue and towards a member of

5.9. Hence the Respondent claims that, even if its objection violated Article 11(1), Article 22 prevents Article 11(1) from "infringing" upon the Respondent's "right" or "duty" under the North Atlantic Treaty; as such, the Respondent asserts, its conduct can be justified. Under this approach, the Respondent also maintains that it can object to the Applicant's admission to the European Union and to numerous other international multilateral and regional organizations and institutions.[291]

5.10. The Respondent's interpretation of Article 22 cannot be sustained under the rules on interpretation set out in Articles 31-32 of the Vienna Convention on the Law of Treaties. Article 22 of the Interim Accord states:

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

5.11. Article 22 is a single sentence. The first clause of the sentence signals its basic purpose: the Article seeks to make clear that the Interim Accord as a whole is not "directed against any *other State or entity*". In that context, the sentence continues, without any break, to indicate that the Interim Accord "does not infringe" upon "rights and duties", by which it means that the Interim Accord does not affect the rights and duties *of third parties*, arising from international agreements those third parties have concluded with the Parties to the Interim Accord.

5.12. In essence, Article 22 is simply a factual statement. It makes clear that while various provisions of the Interim Accord impose obligations upon the Applicant and upon the Respondent, those obligations are not intended to "infringe" on any rights and duties *of third States and entities* that exist under treaties that the Applicant and Respondent have with those third parties. Article 22 does not, as such, create or reserve rights for the Applicant or the Respondent,

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the Alliance, failed to meet the condition of the respect for the principle of peaceful and good-neighbourly relations": Memorial, Annex 43.

[291] Counter-Memorial, para. 6.58.

and does not alter the obligations of the Applicant or Respondent that appear elsewhere in the Interim Accord. By arguing otherwise, the Respondent gives Article 22 an overly broad meaning to suit its own particular purposes in this case.

5.13. A clause of this type in an international agreement is not unusual and does not seek to change the meaning of the agreement. It simply makes clear that the agreement is not directed at altering the rights and duties of third parties. For example, various governments directly sell defence articles to the Respondent, subject to international security assistance treaties which provide that the articles may not be transferred to any other State without the seller's consent.[292] If at some future point the Respondent were to declare that certain defence articles were no longer needed and therefore available for resale, and the Applicant were to seek to purchase those articles, the Respondent would be under an obligation to obtain the consent of the third-party government prior to agreeing to that purchase. If the Applicant sought to insist, on refusal of such consent, that under Article 8(1) of the Interim Accord the Respondent could not impose any impediment on the movement of goods to the Applicant's territory, the Respondent would be entitled to respond that it need not fulfil that obligation in this context because doing so would infringe upon rights arising from an agreement with a third party.

5.14. The ordinary meaning of Article 22 is clear, and the context confirms this meaning. Article 22 appears at the end of the Interim Accord in Part F, as one of three articles labelled "Final Clauses." As the placement suggests, this article is a general and even routine provision directed at declaring, as a matter of fact, the effect of the Interim Accord on third parties; it is not located in the other parts of the Interim Accord where the specific rights or obligations of the Parties are identified and, in some instances, carefully conditioned. Of particular significance to the context of Article 22 is the existence of other provisions of the Interim Accord that *expressly address the Respondent's obligations under third-*

[292] See, for example, the Defense Industrial Cooperation Agreement, (Athens, 10 November 1986), *TIAS* 12320: "Transfers to third parties of defense articles or technical data made available under this Agreement and of articles produced with such data will be subject to the prior written consent of the Party that made available the defense articles or technical data".

*party agreements*, thereby carefully conditioning the Respondent's obligations under the Interim Accord when such conditioning is intended.

5.15. For example, Article 14 of the Interim Accord requires both Parties to "promote, on a reciprocal basis, road, rail, maritime and air transport and communication links", as well as "facilitate transit of goods through their territories and ports". Cognizant that pursuing such cooperation might place the Respondent in conflict with its existing international obligations to third parties, including its obligations as a member of the European Union, Article 14(2) expressly provides:

> "To this end the Parties agree to enter forthwith into negotiations aimed at promptly implementing agreements of cooperation in the aforementioned areas, *taking into account the obligations of the Party of the First Part [i.e., the Respondent] deriving from its membership in the European Union and from other international instruments*." [emphasis added]

5.16. The language of Article 14(2), read in conjunction with Article 22, confirms that Article 22 is concerned with the rights and duties of *third parties*, not the rights and duties of the Applicant or the Respondent.[293] If Article 22 were meant to cover the rights and duties of the Applicant and Respondent under international agreements with third parties, there would be no need for the clause appearing at the end of Article 14(2). Moreover, the language of this clause demonstrates that when the Parties to the Interim Accord sought to address *their* rights or duties under third-party agreements, they did so expressly, by acknowledging "the obligations of the Party of the First Part deriving from its membership in the European Union and from other international instruments." No such language appears in Article 22.

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[293] The Court has often found it valuable to contrast two provisions of a single treaty to determine their respective meanings. See, e.g., *Border and Transborder Armed Actions (Nicaragua v. Honduras), Merits, Judgment I.C.J. Reports 1988*, p. 69, at paras. 42-45 (contrasting two provisions of the Pact of Bogotà to determine their respective meanings).

5.17. Similarly, pursuant to Article 19(2) of the Interim Accord, both Parties accepted an obligation to improve and accelerate customs and border formalities. Again, cognizant that pursuing such cooperation might place the Respondent in conflict with its existing international obligations to third parties, including its obligations as a member of the European Union, Article 19(2) qualifies the obligation imposed on the Respondent, stating:

> "*Consistent with the obligations of the [Respondent] arising from its membership in the European Union and from relevant instruments of the Union*, the Parties shall make joint efforts to improve and accelerate customs and border formalities, including simplification in the issuance of visas to each other's citizens, taking into account Article 5, paragraph 2, of this Interim Accord." [emphasis added]

5.18. As with Article 14(2), the language of Article 19(2), read in conjunction with Article 22, indicates that Article 22 is concerned with the rights and duties of *third parties*, not the rights and duties of the Applicant or the Respondent. If Article 22 were meant to cover the rights and duties of the Applicant or Respondent, there would be no need for the opening clause of Article 19(2).

5.19. Separate from Article 22, the Respondent's understanding does not comport with the practice of the Parties prior to, and in the immediate aftermath of, the conclusion of the Interim Accord. In the period preceding September 1995, the Applicant had been trying for more than two years to join various international, multilateral and regional organizations and institutions outside the United Nations system, including the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE), but its efforts were systematically thwarted by the Respondent's objection to its membership, preventing the requisite consensus from being reached.[294] The whole point of the Applicant's insistence on securing the commitment of the Respondent in Article 11(1) was to overcome such objections. When Article 11(1) entered into force on 13 October 1995 the Respondent immediately dropped its objections to the Applicant's

[294] Memorial, para. 2.38.

membership in such organizations. Objections were dropped in relation to the Council of Europe,[295] and then with respect to the Organization for Security and Co-operation in Europe, and membership in numerous other organizations became open to the Applicant in the immediate aftermath of concluding the Interim Accord.[296]

5.20. Yet, under the Respondent's understanding of Article 22, Article 11(1) of the Interim Accord imposed no meaningful obligation upon the Respondent to drop its objections. Rather, the Respondent would have been entitled, even after the conclusion of the Interim Accord, to object to the Applicant's membership in such organizations. For example, with respect to membership in the Council of Europe, the Respondent could have maintained that it had a "right" or "duty" under Article 4 of the Statute of the Council of Europe to determine whether the Applicant was able and willing to fulfil the provisions of Article 3 of that Statute. In the exercise of that "right" or "duty" (as preserved by Article 22), the Respondent could have continued to object to the Applicant's membership in the Council of Europe due to the failure to resolve the difference over the Applicant's name. The Respondent would seek to persuade the Court that the abrupt shift in its practice after the conclusion of the Interim Accord was simply a coincidental change in the Respondent's policy preferences, unconnected to the legal obligation imposed by Article 11(1). This interpretation is wholly implausible.

5.21. A further compelling reason why the Respondent's interpretation of Article 22 is not correct is that it renders Article 11(1) meaningless, undermining the object and purpose of this vital provision. Most international organizations have conditions for admission of new members, and in most circumstances it is for the existing membership to decide, by votes before the relevant organ or organs of the international organization, or by a consensus process, whether the prospective member meets those conditions. If the Respondent were correct in asserting that the type of "right" or "duty" with which Article 22 is concerned

[295] Memorial, para. 2.41.

[296] Memorial, para. 2.40.

included the Respondent's own decision-making on the admission of new members to international organizations, then it would *always* be the case, in organizations where Member States have a right to object to the admission of new members, that the Respondent *could* object to the Applicant's admission to an international organization due to (for example) the unresolved difference over the name, without violating Article 11(1). On this approach, Article 11(1) would serve no practical purpose, and could always be circumvented by unilateral decision of the Respondent.

5.22. Thus, under the Respondent's approach, if the Applicant had not already been a member of the United Nations in September 1995 (when the Interim Accord entered into force), the Respondent could have continued to object to the Applicant's membership due to the unresolved difference over the name, even where the Applicant was to be referred to no differently than in resolution 817, on the pretext that the Respondent has a "right" or "duty" under United Nations Charter Article 4 to determine whether the Applicant is a "peace loving" State and is "able and willing to carry out [United Nations] obligations." Yet, as set out in Chapter IV, Article 11(1) was crafted with the precedent of the Applicant's admission to the United Nations in mind (even expressly cross-referencing to that practice), and thus sought to build upon the method for the Applicant's admission to the United Nations as the means for solving the further problem of admission to non-United Nations organizations. Despite that, the Respondent now invites the Court to interpret Article 11(1) as having no application in precisely the situations it was intended to operate in.

5.23. The Respondent purports to be able to object to the Applicant being invited to accede to NATO, without identifying any "right" or "duty" to so object in the North Atlantic Treaty. It also purports to be able to object to the Applicant's membership in the European Union, presumably on the basis that the Respondent has a "right" or "duty" under Article 49 of the Treaty of the European Union to determine whether the Applicant respects the principles set out in Article 6(1) of that Treaty. On such reasoning, the list of international,

multilateral and regional organizations and institutions at which the Respondent might object to the Applicant's membership is extensive.

5.24. In sum, the Respondent seeks an approach to Article 22 that entirely undermines the object and purpose of Article 11(1). On its face, the Respondent's understanding as to the meaning of Article 22 is unreasonable and unjustifiable.[297]

5.25. The Respondent appears to recognize this difficulty. It therefore attempts to cloud the issue by creating a distinction between two different types of international organizations, characterizing some as *organisations à vocation universelle* and others as *organisations fermées*. The Respondent claims that Article 22 does not affect Article 11(1) with respect to *organisations à vocation universelle* because these organizations "may be called 'adhesive' international organizations, i.e., organizations in which new members are simply 'added on' by application and *pro forma* approval,"[298] with the existing members not undertaking "any significant role or new responsibility."[299] By contrast, *organisations fermées* apply "more stringent" admissions criteria, involving "collective policy judgments on the part of existing members, all of whom carry a heavy responsibility,"[300] and therefore it is for these organizations that Article 11(1) is subordinated to Article 22.

5.26. There are multiple problems with this explanation, which are not addressed by the Respondent. First, the text, context, subsequent practice and negotiating history of Articles 11(1) and 22 draw no such distinction. Second, descriptively, the distinction drawn between the two types of organizations does not hold up in practice. The United Nations, for example, is an organization open to all States, and hence apparently an *organisation à vocation universelle*

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297 See Anthony Aust, "Even if the words of the treaty are clear, if applying them would lead to a result which would be manifestly absurd or unreasonable . . . the parties must seek another interpretation": Anthony Aust, *Modern Treaty Law and Practice, Second Edition* (Cambridge: Cambridge University Press, 2007).

298 Counter-Memorial, para. 6.56.

299 Counter-Memorial, para. 6.58.

300 Counter-Memorial, para. 6.57.

under the Respondent's approach.[301] Yet, as is readily apparent to all States (but not the Respondent), the process of admission to the United Nations is hardly regarded as *pro forma*, with the existing Members taking on no significant role or responsibility in the process. Decisions on admission of new members to the United Nations have been postponed for many years due to disagreements within the existing membership. This Court itself has recognized the important role that United Nations Member States have in deciding on whether to admit new States to membership in the United Nations, both in the context of the Court's advisory opinions[302] and contentious cases.[303] It is simply not credible to view such matters as *pro forma*.

5.27. Third, this explanation of Article 22 in its relation to Article 11(1) leads to absurdity. Under the Respondent's convoluted reasoning, Article 11(1) *only* imposes an obligation on the Respondent in situations when the Applicant's membership in an international organization is "*pro forma*" and when the existing members do not have "any significant role or responsibility" in relation to the admission of new members. In other words, the Respondent appears to contend that the only time that it is obligated not to object to the Applicant's membership in an organization is in circumstances where the Respondent has no role in or responsibility over whether the Applicant becomes a member. For example, the Respondent would apparently accept that when the Applicant joined the Organization for the Prohibition of Chemical Weapons in 1997, it was obligated not to object under Article 11(1) precisely because, under Article VIII of the Chemical Weapons Convention, the Respondent had no ability to object.[304] Such an interpretation is patently absurd.

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[301] Counter-Memorial, para. 1.5 asserting that, in the context of discussing admission of States to the United Nations under Article 4 of the Charter, "[t]he criteria for admission there are relatively open" and do not require "considerable commitments on the part of acceding States".

[302] *Advisory Opinion on Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter) I.C.J. Reports 1948*, p. 57, see specifically p. 62.

[303] *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Yugoslavia v. Boznia-Herzegovina), I.C.J. Reports 2003*, p. 7, see specifically p. 31.

[304] Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Paris, 13 January 1993), *UNTS* vol. 45.

5.28. Fourth, the Respondent's approach apparently places into its box of *organisations fermées*[305] all of the key international organizations that were of crucial importance to the Applicant when negotiating and concluding Article 11(1). It is not plausible that the Applicant would negotiate Article 11(1) so as to achieve a key objective, only to have it eviscerated by Article 22.

5.29. Ultimately, the Respondent's understanding renders Article 11(1) meaningless. It also has the potential to defeat the object and purpose of the *entire* Interim Accord, since it undermines all of the Parties' obligations under the Interim Accord whenever a Party uncovers a latent "right" or "duty" that it arguably possesses with respect to any international agreement it has with third States.[306] For example, if the Respondent's understanding of Article 22 were correct, then the Respondent presumably would be in a position to argue that it has no obligation under Article 8 of the Interim Accord to refrain from imposing a unilateral economic embargo upon the Applicant as a means of pressuring the Applicant in the negotiations over the difference over the name. This is precisely what the Respondent argued in pleadings before the European Court of Justice prior to the conclusion of the Interim Accord: the Respondent argued that its unilateral embargo on trade with the Applicant, imposed in 1994 in the wake of the Applicant's admission to the United Nations, was justified because it retained a "right" under Article 224 of the Treaty of Rome to impose such an embargo.[307] If *arguendo* that were correct, and if the Respondent's understanding of Article 22 is to be believed, then Article 22 would also eviscerate Article 8 of the Interim Accord, since the obligation of the Respondent in Article 8 would be subordinate to the "right" the Respondent claims to possess under the Treaty of Rome. That cannot be the case.

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[305] Counter-Memorial, para. 6.58.

[306] Counter-Memorial, para. 6.25: "Article 22 … applies to *every* right and duty in the Interim Accord" and para. 6.54: "Article 22 applies to the *entire* Interim Accord" [emphasis supplied].

[307] See *Commission of the European Communities v. Hellenic Republic*, C-120/94 R, 29 June 1994, para. 31: "The Greek Government relies, lastly, on Article 224 of the Treaty which, in its view, constitutes a general safeguard clause empowering Member States to take unilateral measures". The European Court did not reach the merits of this issue prior to the lifting of the Respondent's embargo.

5.30. Given the clear meaning that emerges from a review of the text, context, and subsequent practice of the Parties under Article 22, when read in light of the object and purpose of Article 11(1) and the Interim Accord as a whole, there is no need to resort to the negotiating history of Article 22.[308] Nevertheless, that history also refutes the Respondent's approach to Article 22. The article that would become Article 22 was originally proposed in the Vance-Owen draft Treaty of 14 May 1993,[309] long before what became Article 11(1) was introduced into the negotiations in April 1994. As such, it is clear that the intention in crafting the Article 22 language had nothing to do with the issue of the Applicant's admission to international organizations. Further, the text of the article passed through multiple drafts virtually unchanged, demonstrating no particular interest by the negotiators in the meaning of the article, and its effects on other articles in the Interim Accord as they were drafted, though such attention would have been expected if the Respondent's interpretation were correct.

5.31. Moreover, at the point in the negotiating history where language is first introduced to deal with the Applicant's difficulty in joining international organizations, that language appears *as a part of* what would become Article 22. In the draft of 17 April 1994, bracketed language is included in what would become Article 22, stating: "The Parties will not hamper each other's participation in international organizations."[310] This initial placement of the Article 11(1)-related language in what later became Article 22 confirms an intent that the Article 11(1)-language operate *in harmony* with Article 22, not that the latter would negate the former. In other words, this draft shows that *in addition* to recognizing that the Interim Accord would not infringe upon the rights or duties of other States or entities (including international organizations), it was also intended that the Respondent would not impede the ability of the Applicant to join such entities.

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[308] See the Vienna Convention on the Law of Treaties, Article 32.

[309] Vance-Owen Treaty, Article 24, attached to 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): Memorial, Annex 33.

[310] Draft (b) (17 April 1994), Article 9: Excerpt from Draft B of the Interim Accord from the archives of the Respondent's Ministry of Foreign Affairs as printed in Annex 148 of the Respondent's Counter-Memorial (17 April 1994): Reply, Annex 60.

5.32. Finally, as the Article 11(1) concept was further developed in language tabled on 15 March 1995, that language specifically provided that the Respondent "agrees from the date of entry into force of this Accord to remove its objection to" the Applicant's "application for membership in the Organization for Security and Cooperation in Europe."[311] In other words, the OSCE was expressly identified in this draft as an international organization where the Respondent was not to object to the Applicant's membership. Yet (as discussed above), tabling such language would have made no sense if the Respondent were correct that, in the same draft, Article 22 would have eviscerated the Respondent's obligation not to object to the Applicant's membership in the OSCE. If the Respondent were correct in its interpretation, then such language would only have been proposed in conjunction with a proposal to amend or eliminate Article 22.

5.33. In sum, none of the relevant factors for engaging in a sound interpretation of Article 22 under the Vienna Convention support the Respondent's understanding that its obligation in Article 11(1) is subordinated to a right or duty of the Respondent protected by Article 22, for that article only concerns rights and duties of third parties. As such, the Respondent cannot rely upon Article 22 to justify its breach of Article 11(1).

## Section II. Even if Article 22 Addresses Rights or Duties of the Respondent, Article 22 Still Cannot Be Invoked to Justify the Respondent's Objection

5.34. Even if all the rules on interpretation of treaty text are set aside, and Article 22 is viewed as addressing the rights and duties *of the Respondent*, the Respondent cannot possibly be allowed to use Article 22 to engage in the very conduct that Article 11(1) carefully sought to proscribe, for the following four reasons.

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[311] Draft (e) (15 March 1995), at Article 11(2): Excerpt from Draft E of the Interim Accord from the archives of the Respondent's Ministry of Foreign Affairs, as printed in Annex 148 of the Respondent's Counter-Memorial (15 March 1994): Reply, Annex 62.

5.35. First, as indicated at the beginning of the prior section, Article 22 is simply a statement of fact; it asserts that nothing in the Interim Accord infringes upon the rights and duties that exist under third-party agreements in force as of September 1995. Even if such rights and duties include those of the Respondent, Article 22 merely indicates that the Accord operates consistently with those rights and duties. Article 22 cannot alter obligations of the Respondent in other parts of the Interim Accord.

5.36. Second, even assuming *arguendo* that Article 22 *generally* addresses rights or duties of the Respondent, interpreting Article 22 as preserving for the Respondent the *specific* right to object to the Applicant's admission to international organizations is not a good faith interpretation or application of Article 22, when read in conjunction with Article 11(1). Article 26 of the Vienna Convention on the Law of Treaties provides that "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." As this Court has noted,

> "One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation . . . ."[312]

5.37. The Court recently recalled this finding and directly connected it to the good faith obligation contained in Article 26 of the Vienna Convention.[313]

5.38. Even if one assumes that the Respondent's rights and duties under third party agreements are generally not infringed upon by the Interim Accord, it is not a good faith interpretation or application of Article 22 to interpret it to allow the Respondent to do what it committed not to do in Article 11(1). Use of Article 22 by the Respondent to avoid *unintended* conflicts with the Respondent's rights

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312 *Nuclear Tests (Australia v. France), I.C.J. Reports 1974*, p. 268, para. 46; *Nuclear Tests (New Zealand v. France), I.C.J. Reports 1974*, p. 105, para. 94; see also *Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility*, *I.C.J. Reports 1988*, p. 105, para. 94.

313 See *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, *I.C.J. Reports 2010* at para. 145.

or duties under agreements with third parties is one thing, and could be a good faith approach to Article 22 as a "final" clause to the Interim Accord. But using Article 22 to outright negate the Respondent's very specific obligation in Article 11(1), which was clearly understood and intended by both Parties in September 1995 to be a meaningful legal commitment by the Respondent, is not a good faith interpretation or application of Article 22, and can only undermine the trust and confidence upon which the Interim Accord must operate.

5.39. As discussed in the prior section, interpreting and applying Article 22 in the manner now advanced by the Respondent eviscerates a central obligation that the Respondent accepted in the Interim Accord. Further, the historical background on why Article 11(1) was created and on how it influenced the practice of the Parties after September 1995 demonstrates that it would radically distort the meaning of Article 22 to use it in the fashion now pursued by the Respondent. Hence, even if one interprets Article 22 generally as protecting rights and duties of the Respondent under third party agreements, it should be interpreted in light of the specific restrictions on the Respondent's conduct set forth in Article 11(1), to the effect that it does not nullify Article 11(1). As the Respondent accepts in its Counter-Memorial:

> "[t]he [second] clause [of Article 11(1)] limits a right that Greece could otherwise freely exercise; i.e., the right, subject to the terms of the constitutive instrument, to adopt whatever position it wishes with respect to the relations of another State to an international organization to which it belongs, including by objecting to application or membership."[314]

5.40. Third, for the Respondent's interpretation to work, the Respondent must identify a "right" or "duty" resulting from the North Atlantic Treaty that somehow conflicts with the obligation it undertook in Article 11(1) of the Interim Accord, but it has failed to do so. Certainly, the Respondent has put no evidence before the Court in support of its contention that NATO Member Countries have a binding obligation towards the organization to formally object to enlargement

[314] Counter-Memorial, para. 7.7.

decisions with which they do not agree. As recounted in Chapter II, Section III(A), "the silence procedure" in operation at NATO demonstrates that no such obligation exists, nor any right of other Member Countries to be informed of such an objection. Indeed, it is quite telling that only in the context of these proceedings has the Respondent attempted to present its objection as a "duty" owed to NATO. Previously, the Respondent had described the exercise of its objection to the Applicant's NATO membership as an "option",[315] "one of the tools at [its] disposal",[316] a "lever[...] of pressure",[317] and a "means to defend its interests",[318] rather than as a binding duty.

5.41. Certainly Article 10 of the North Atlantic Treaty grants the Respondent a right to participate in decisions on accession, but Article 11(1) of the Interim Accord does not conflict with that right. Certainly Article 10 of the North Atlantic Treaty indicates what kind of States "may" accede to the Treaty – States that are "European" or that "are in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area …" – but Article 10 says nothing about a "right" or "duty" of the Respondent in assessing such criteria, nor a "right" or "duty" to vote in favour of such States if the criteria are met or against such States if the criteria are not met. Certainly Article 10 expressly imposes neither a "right" nor a "duty" to object to the Applicant's membership.

5.42. Even under the Respondent's own reasoning, the decision on whether to object to the Applicant's admission to NATO is left to the *discretion* of the Respondent under the North Atlantic Treaty.[319] The Respondent itself asserts:

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

316 Respondent's Ministry of Foreign Affairs, *Interview of Alternate FM Droutsas in the "Real News" daily (22.11.09)* (22 November 2009): Reply, Annex 194.

317 "Greek Prime Minister Denies Negotiations on Macedonia 'Dropped'", *NET Television Network* (7 September 2007): Reply Memorial, Annex 166.

318 Embassy of the Respondent in Washington, DC, *Prime Minister on FYROM: 'No solution means no invitation'* (29 February 2008): Reply, Annex 97.

319 See Reply, Chapter II, Section III.

"As the text of Article 10 of the Treaty makes clear, *the Member States retain the discretion to invite, or not to invite*, any other State meeting these criteria – they 'may' do so, but they are not obliged to invite any given State…"[320] The Respondent goes on to claim that "Member States are… at will to decline an invitation to an aspirant State which does not satisfy the criteria specified,"[321] but still identifies no "right" or "duty" of the Respondent to object in Article 10 or otherwise. As such, Article 11(1)'s requirement not to object cannot be said to infringe upon any "right" or "duty" imposed by the North Atlantic Treaty.

5.43. Fourth, even if *arguendo* the Respondent's understanding of Article 22 is correct, and even if the North Atlantic Treaty is regarded as imposing a "right" or "duty" upon the Respondent to object if it believes the Applicant is not "in a position to further the principles" of the North Atlantic Treaty or "to contribute to the security of the North Atlantic area,"[322] the Respondent made that assessment *as it relates to the difference over the name* when the Respondent agreed to the Interim Accord. By concluding the Accord, the Respondent agreed that *the outstanding and unresolved difference over the name* was *not* an issue that barred the Applicant from being able to join any international, multilateral or regional organization or institution, so long as it was to be referred to in the organization or institution no differently than in resolution 817.

5.44. Moreover, by concluding the Interim Accord, the Respondent recognized that notwithstanding the unresolved difference over the name, the Applicant satisfied all the core principles of international law,[323] the very same principles that

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320 See Counter-Memorial, para. 5.17 [emphasis added].

321 *Ibid.*

322 Article 10 of the North Atlantic Treaty

323 See Interim Accord, Preamble and Art. 9, confirming that, despite the outstanding difference over the name, the Parties were capable and willing to act in accordance with the United Nations Charter, the Helsinki Final Act, the Charter of Paris, and human rights instruments: Interim Accord between the Applicant and the Respondent (New York, 13 September 1995): Memorial, Annex 1. See also Articles 2-4 of the Interim Accord, confirming the Parties' respect for the existing frontier, and undertaking to refrain from threats or uses of force, and to respect the sovereignty, territorial integrity and political independence of the other, notwithstanding the difference over the name: Interim Accord between the Applicant and the Respondent (New York, 13 September 1995): Memorial, Annex 1.

animate the North Atlantic Treaty,[324] and that the difference over the name was *not* an issue that precluded the Applicant from pursuing "the maintenance of peace and security, especially in the region."[325] A similar assessment was made when the Respondent co-sponsored and voted in favour of the General Assembly's resolution admitting the Applicant to the United Nations in 1993;[326] even though the difference over the Applicant's name was unresolved, the Respondent accepted that the Applicant was nevertheless a "peaceloving" State that was "able and willing to carry out" its United Nations obligations,[327] including the principle of "liv[ing] together in peace with one another as good neighbours."[328] Having made such assessments, the Respondent was perfectly capable of restricting the exercise of its sovereign rights, as it did in Article 11(1) of the Interim Accord. As the Permanent Court found in the *Wimbledon* case:

> "The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty."[329]

5.45. In other words, the Respondent agreed in 1995 that the ongoing and unresolved difference over the name did not prevent the Applicant from acting in accordance with the key principles of international law, including those

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[324] See North Atlantic Treaty, Preamble and Articles 1-2.

[325] Interim Accord, Preamble: Interim Accord between the Applicant and the Respondent (New York, 13 September 1995): Memorial, Annex 1. Similarly, for the Membership Action Plan criteria, the Respondent and the Applicant did pursue "good neighbourly relations" by means of the Interim Accord, with the Respondent accepting that the difference over the name would be resolved in due course.

[326] United Nations General Assembly, Forty-seventh session, *Admission of New Members to the United Nations*, A/47/L.54 (7 April 1993): Reply, Annex 14.

[327] See United Nations Charter, Article 4.

[328] See United Nations Charter, Preamble.

[329] *Case of the S.S. "Wimbledon", Judgment, 1923, P.C.I.J., Series. A, No. 1*, at p. 25.

relating to territorial integrity, peace and security, and as such was no bar to the Applicant joining international organizations and institutions. Moreover, the Respondent accepted that Article 11(1) would operate as a part of an agreement that was temporally open-ended: the Interim Accord, under Article 23, is to "remain in force until superseded by a definitive agreement" or until one of the Parties withdraws from the agreement, neither of which has happened. As such, even under the Respondent's understanding of the meaning of Article 22 and its understanding of the meaning of the North Atlantic Treaty (neither of which is correct), the Respondent's objection in 2008 to the Applicant's NATO membership could not lawfully have been based on the fact that the difference over the name remained outstanding.

## Section III: The Respondent Cannot Excuse Its Breach of Article 11(1) on the Basis of a Principle of *Exceptio Non Adimpleti Contractus*

### A. The Respondent Cannot Rely on the *Exceptio*

5.46. The Respondent also seeks to justify its breach of Article 11(1) of the Interim Accord on the basis of an argument that has never as such been recognized or given effect by the Court: the Respondent raises a claim based on the asserted *exceptio non adimpleti contractus*,[330] which it describes as an "exception of non-performance" that derives from a "general principle of reciprocity".[331] According to the Respondent, the argument is "a defence which can be invoked at any time in response to a claim by another State" of "non-performance of a conventional obligation".[332] It is also a defence that has one great advantage for the Respondent, namely that it is supposedly available on a unilateral basis and without limits being imposed by the prior fulfillment of procedural requirements or conditions.

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330 Counter-Memorial, paras. 8.8-8.62.

331 Counter-Memorial, para. 8.3.

332 Counter-Memorial, paras. 8.3 and 8.6.

5.47. The Applicant was surprised to read this new argument. The claimed "exception of non-performance" did not feature in any correspondence or statement made by the Respondent before it acted in April 2008. It appears to have been concocted in the course of the litigation, in response to the obvious difficulties faced by the Respondent in making arguments based on the 1969 Vienna Convention on the Law of Treaties, to which it is a party, or the law of State responsibility, by which it is also bound.

5.48. That is not the only difficulty faced by the Respondent's claim, or the most problematic. The Respondent is confronted with the reality that the *exceptio* is not to be found in the 1969 Vienna Convention (other than in the form reflected in Article 60) or in the 2001 ILC Articles on State Responsibility. The *exceptio* has never been recognized by the International Court of Justice.[333] Indeed, in modern times it has *never* been relied upon by any leading judicial or arbitral authority applying public international law. Leading academic authorities have denied or doubted its existence as a principle or rule of international law, or asserted that if the principle has relevance in treaty law or practice it is exclusively in the form in which it has been incorporated into Article 60 of the 1969 Vienna Convention.

5.49. More than four decades have passed since the adoption of the 1969 Vienna Convention. Notwithstanding the fact that the ILC's Articles on State Responsibility make no reference to the *exceptio* principle, the Respondent claims that it is available as a defence that entitles it to suspend the performance of its obligations under Article 11(1), without notice or the need to fulfil any other procedural or objective conditions. The Respondent claims that it is free to suspend certain of its treaty obligations and then, after it has acted, formally allege non-compliance by the Applicant with other, causally unconnected obligations under the Interim Accord.

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[333] In the *Case concerning Oil Platforms (Islamic Republic of Iran v. United States of America*) the United States invoked the *exceptio*, arguing that Iran violated obligations identical to those that were the basis for its application (see CR 2003/11, 25 February 2003, at pp. 26-9); the Court gave no effect to the argument.

5.50. In order to make its far-reaching assertion the Respondent seeks to persuade the Court that:

(1) the *exceptio non adimpleti contractus* is a general principle of law applicable to treaty relations between states;

(2) the non-performance of one treaty obligation that is not connected to the performance of another obligation in the same treaty can give rise to the applicability of the *exceptio*; and

(3) the Applicant has violated other provisions of the Interim Accord such as to give rise to a right to invoke the *exceptio* with respect to Article 11(1).

5.51. Against this background it is plain that the Respondent has manifestly failed to raise a credible defence. Specifically, and as described in the sections that follow, the Respondent:

- has not demonstrated that the *exceptio non adimpleti contractus* is available as a general principle of international law such as to serve as a defence justifying its breach of Article 11(1);

- has failed to establish that the 1969 Vienna Convention allows recourse to the *exceptio* in response to an alleged breach of treaty generally outside of the conditions expressly provided by Article 60, and has not shown that Article 60 of the 1969 Vienna Convention (and related procedures) provides anything other than a complete set of rules and procedures governing responses to a material breach by one party to a treaty under the strict conditions established thereunder;[334]

- has failed to establish that the *exceptio* is recognized in any form as a principle justifying non-performance of treaty obligations under the law of State responsibility;[335]

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[334] See Memorial, paras. 5.20-5.40.

[335] See Memorial, paras. 5.41-5.54.

- further or in the alternative, even if the *exceptio non adimpleti contractus* was available under general international law or the law of treaties or the law of State responsibility, which is denied, has failed to prove that it excuses breach of a treaty obligation as a response to a wholly different and causally unrelated treaty obligation; and

- has failed to prove facts that would justify the invocation of any such principle in defence to its violation of Article 11(1) of the Interim Accord.

5.52. The Respondent fails on each of these points. As described in Chapter 1 of this Reply,[336] and addressed in further detail below, the Respondent has not provided an accurate account of the authorities on which it relies or the commentary. As described below, the *exceptio non adimpleti contractus* is not a principle or rule of law that has any application to this case, either as a matter of treaty law within Article 60 of the 1969 Vienna Convention or the law of State responsibility, or general international law. Even if it were, the treaty obligations under the Interim Accord that are in issue are unconnected to each other and/or not of a nature to permit of any applicability of any *exceptio* principle to the facts of this case. In these circumstances the litany of alleged violations of the Interim Accord by the Applicant, which are without basis and which are strongly denied,[337] are entirely irrelevant to the dispute currently before the Court and need not be addressed by it. And it cannot be said that firm rejection of the argument would leave the Respondent without a remedy. As described in the Memorial and in Chapter II, at no point before it objected in April 2008 did the Respondent formally assert in writing to the Applicant that it was in breach of the Interim Accord. If the Respondent had had any serious concerns about alleged violations of the Interim Accord, it could have formally raised those allegations with the Applicant – in a manner consistent with the requirements of the 1969 Vienna Convention – before it objected to the Applicant's NATO membership; it never did so. Under Article 21 of the Interim Accord the Respondent could have

336 See Reply, Chapter 1, para. 1.15.

337 See Memorial, paras 5.55-5.68.

brought a claim to this Court: it did not do so. These failures to act are telling, and they undermine the newly embraced argument based on the *exceptio*.

5.53. What the Respondent is not entitled to do – against the background of the various options that were available to it under the Interim Accord, the 1969 Vienna Convention and the law of State responsibility – is to ignore established procedures and conjure up a novel legal argument that, if accepted as being even arguable, would introduce new uncertainties into treaty relations between States. The Respondent's argument has broad implications, justifying unilateral non-performance of treaty obligations without any procedural safeguards, precisely what the drafters of the 1969 Vienna Convention sought to avoid. If accepted, the Respondent's argument would set aside the balance carefully drawn in the law of treaties as to responses to material breach and in the law of State responsibility as to lawful countermeasures. The implications have been recognized by leading authorities, who have reasonably concluded that there are powerful reasons against adding "another general excuse" for non-performance of international obligations beyond those set out in the ILC Articles.[338]

### B. The *Exceptio* Is Not Applicable as a General Principle of Law

5.54. The Respondent asserts that the *exceptio* argument derives from a principle of reciprocity that allows a State to defend itself against a claim by another State that the first State has failed to perform a treaty obligation, where it can be shown that the second State has itself failed to perform an obligation arising under the same treaty.[339] Yet no international court or tribunal has recognized that the exception of non-performance exists as a principle or rule of general international law applicable in the modern system of treaty relations.

5.55. On what authorities, then, does the Respondent rely in support of its claim that the *exceptio* is "a defence against a claim of non-performance of a

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[338] J. Crawford and S. Olleson: "The Exception of Non-Performance: Links between the Law of Treaties and the Law of State Responsibility", (2001) 21 *Australian Yearbook of International Law* 55, at p. 74.

[339] Counter-Memorial, paras. 8.3 and 8.6.

conventional obligation"?[340] A review of its argument demonstrates that it rests on limited and old authorities that predate the adoption of the modern rules of international law on treaties and on State responsibility.

5.56. The Respondent invokes a dissenting opinion of 1937 of Judge Anzilotti in the *Diversion of Water from the Meuse* case. In that case, Belgium had claimed that, by contracting works that were alleged to be contrary to a treaty, the Netherlands had forfeited its right to invoke that treaty against Belgium. The Permanent Court did not accept the argument, said nothing about the *exceptio*, and decided that neither the Netherlands nor Belgium had violated their treaty obligations. Some seven decades after Judge Anzilotti wrote that the principle *inadimplenti non est adimplendum* "is one of these 'general principles of law recognized by civilized nations' which the Court applies in virtue of Article 38 of its Statute",[341] his view has yet to find favour with any international court or leading commentator. The principle was not included in the 1969 Vienna Convention on the Law of Treaties, outside of Article 60. To the extent that the *exceptio* principle might be said to have an independent existence as a principle of international law, it has been incorporated into Article 60 of the 1969 Vienna Convention, as described below. The drafters of the Vienna Convention seem to have kept in mind the prudent approach articulated by Judge Hudson, in an Individual Opinion also in the *Meuse* case.[342]

5.57. The Respondent relies on a 1983 award of an ICSID arbitral tribunal in the *Klöckner* case, but it is easily distinguishable: the ICSID tribunal in that case applied the *exceptio* in relation to a claim made under a contract (not a treaty) and only as a principle of French law (not international law), the Tribunal having decided that "only that part of Cameroonian law that is based on French law should be applied in the dispute.[343] But in any event, even this limited finding

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340 Counter-Memorial, para 8.6.

341 *Diversion of Water from the Meuse (Netherlands v Belgium), Judgment of 28 June 1937, P.C.I.J. Series A/B No. 70 (28 June 1937),* Dissenting Opinion of M. Anzilotti at pp. 45 and 50.

342 *Ibid.,* Individual Opinion of Judge Hudson, at pp. 73 and 77.

343 *Klöckner Industrie-Anlagen v United Republic of Cameroon and Société Camerounaise des Engrais*, ICSID Case No. ARB/81/2, Award, 21 October 1983, 2 ICSID Rep 9 (1994), Decision

does not assist the Respondent as the decision was subsequently annulled by an Ad Hoc Committee.[344]

5.58. The 2000 ILC's Articles on the Responsibility of States for Internationally Wrongful Acts also do not incorporate any reference to the *exceptio*. It is of little surprise, then that leading commentators concluded, at the time of the adoption of the ILC Articles on State Responsibility, that "uncertainty remains as to the status of the exception of non-performance in international law".[345] These commentators went even further, writing that on the basis of a comparative review that:

> '[o]ne can hardly avoid the conclusion that the exception of non-performance is under-theorised and that *it has not established an independent place as a rule or principle of international law'*.[346] [emphasis added]

5.59. An analysis of comparative law does not assist the Respondent. It reveals no consistent understanding of the status, availability and effect of the *exceptio* in domestic legal systems, making it impossible to support the Respondent's far-reaching conclusion that it has achieved the status of a general principle of law recognized by civilized nations. Having reviewed comparative practice, leading commentators have concluded that the teachings of comparative law on the *exceptio,*

> "hardly justify categorising the exception as general principle of law in the sense of Article 38(2)(c) of the Statute of the International Court of Justice."[347]

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of the Ad Hoc Committee on Annulment, 3 May 1985, 1 ICSID Review-Foreign Investment Law Journal 89 (1986) (English translation of French original) at p.105.

344 *Ibid.,* at p. 141, para. 170.

345 J. Crawford and S. Olleson: "The Exception of Non-Performance: Links between the Law of Treaties and the Law of State Responsibility", (2001) 21 *Australian Yearbook of International Law* 55, at p. 56.

346 *Ibid.,* at p. 73.

347 J. Crawford and S. Olleson, "The Exception of Non-Performance: Links between the Law of Treaties and the Law of State Responsibility", (2001) 21 *Australian Yearbook of International Law*

5.60. An even more recent article, published in 2009, concludes that whilst it may be said that the *exceptio* is a maxim of long-standing and general acceptance in the civil law world,

> "claims of the universality of the principle embodied by the *exceptio* are overblown. No common law legal system states a general right of creditors to suspend performance and, even within the civil law world, there is not agreement".[348]

5.61. This commentator adds that:

> "[a]n international consensus therefore cannot be said to exist that creditors have a general right to suspend performance."[349]

5.62. Against this background, the Applicant invites the Court to conclude that the Respondent has not come even close to establishing that the exception of non-performance has an independent existence as a freestanding principle outside of the law of treaties or the law of State responsibility or rules of general international law that is in any way applicable or relevant to these proceedings.

## C. The *Exceptio* Does Not Assist the Respondent under the Law of Treaties

5.63. The Respondent asserts that the *exceptio* shares something with the principle embodied in Article 60 of the Vienna Convention on the Law of Treaties.[350] Yet it also notes that during consideration of the law of treaties by the International Law Commission, circumstances justifying non-performance of treaty obligations, on the basis of reciprocity, were considered by the Special

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55, at p. 73. The authors refer to Professor Treitel's work on Remedies for Breach of Contract, in which he observes that a comparative discussion of the remedy of the *exceptio* poses 'unusually intractable difficulties'.

348 J. Karton, "Contract Law in International Commercial Arbitration: The Case of Suspension of Performance" (2009) 58 *International and Comparative Law Quarterly* 863, at p. 866.

349 Note 348 *supra*, at p. 866.

350 Counter-Memorial, para. 8.13.

Rapporteur, Sir Gerald Fitzmaurice.[351] In the end, the only provision of the 1969 Vienna Convention which relates to the *exceptio* is Article 60, the conditions of which the Respondent recognizes it cannot meet.

5.64. The Applicant and Respondent are parties to the 1969 Vienna Convention, the relevant rules of which reflect customary international law. Article 60 of the 1969 Vienna Convention on the Law of Treaties sets out the circumstances in which a State party to a treaty might suspend or terminate that treaty in response to a material breach by another party, subject to the procedural requirements set out in Articles 65 to 68. These provisions are binding on both Parties as treaty law and customary law, recognising that in 1971 the Court confirmed that the rules reflected in Article 60 "may in many respects be considered as a codification of existing customary international law".[352] This conclusion has been confirmed more recently by the Court's judgment in the case concerning the Gabcikovo-Nagymaros Project, noting the "limitative" scope of the conditions of Article 60.[353] The 1969 Convention does not otherwise address consequences of non-performance of treaty obligations. Article 42(2) provides that:

> "The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty."

5.65. This indicates that any suspension of a treaty or a part of it – such as the obligation in Article 11(1) of the Interim Accord not to object to the Applicant's membership of international organizations if the requisite conditions are met – is to be assessed exclusively by reference to the conditions set out in Article 60 of the 1969 Convention.[354]

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[351] International Law Commission, *Fourth Report on the Law of Treaties* by Mr G.G. Fitzmaurice, Special Rapporteur, A/CN.4/120, at p. 46.

[352] *Namibia (South West Africa), Advisory Opinion, I.C.J. Reports 1971*, p. 16 at para. 95.

[353] *Case concerning the Gabcikovo-Nagymaros Project*, *I.C.J. Reports 1997*, p. 7 at para. 47.

[354] As regards retaliatory suspension of performance of treaty obligations, as distinct from abrogation of the treaty, Lord McNair noted that while '[i]n practice, at any rate in regard to minor

5.66. The rationale of Article 60, its relationship to the *exceptio*, and its purposely limited scope within the law of treaties, has been clearly recognized by leading authorities:

> "The underlying idea of Article 60 is the principle *inadimplenti non est adimplendum*, according to which a party may not be held to respect treaty obligations if the other party refuses to honour its obligations and if the two obligations have a synallagmatic relationship. […] The drafters of the Vienna Convention sought to balance two opposing interests: whilst they wanted to promote the stability of treaty relations, they equally wanted to take into account the interest of States to liberate themselves, temporarily or permanently, from treaty obligations which would have lost their effectiveness by reason of a prior violation by a defaulting State. Article 60 constitutes the result of this conciliation of competing interests, establishing an extremely complex regime … The main characteristics of this regime … include its limitation to material breaches as the only ones susceptible to allow a right to suspend [a treaty] …."[355]

5.67. Despite the clear rule set forth in Article 60, and its underlying rationale, the Respondent argues that the 1969 Convention does not address the subject

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breaches of treaty, it is not uncommon for the injured State, by way of sanction, to suspend the operation of a provision corresponding to, or analogous with, the provision broken. *The precise juridical status of this practice is not clear, and little authority exists.* The practice seems to fall into the category of non-forcible reprisals, and it does not evince an intention to abrogate either the whole treaty or the portion of it which has been broken.' Lord McNair: *The Law of Treaties*, Oxford, Oxford University Press, 1961, at p. 573 [emphasis added].

[355] B. Simma and C. Tams, 'Article 60', in Olivier Corten and Pierre Klein (eds.), *Les Conventions de Vienne sur le droit des traités: Commentaire article par article*, 2006, volume [x], p. 2134-5 (informal translation from French): "L'idée sous-jacente à l'article 60 est le principe *inadimplenti non est adimplendum*, selon lequel une partie ne peut être tenue de respecter les obligations prévues dans un traité si l'autre partie refuse d'honorer les siennes et si les deux obligations forment un rapport synallagmatique. […] Les rédacteurs de la Convention de Vienne ont eu à établir un équilibre entre deux intérêts opposés: alors qu'en général ils entendaient promouvoir la stabilité des relations conventionnelles, ils n'en devaient pas moins prendre en compte l'intérêt des Etats à se libérer, de manière temporaire ou permanente, des obligations d'un traité qui auraient perdu leur efficacité en raison d'une violation antérieure par un Etat défaillant. L'article 60 constitue le résultat de cette conciliation d'intérêts opposés, en instaurant un régime extrêmement complexe … Au titre des caractéristiques principales de ce régime … l'on peut mentionner la limitation aux violations substantielles, seules retenues comme susceptibles d'ouvrir le droit de suspendre…".

of the *exceptio* in the law of treaties in an exhaustive manner and leaves open a different *exceptio* principle to govern the consequences of other, non-material breaches. The argument is obviously contradicted by Article 42 of the 1969 Convention, as noted above.

5.68. Accordingly, the argument must be firmly rejected by the Court. Its acceptance would lead to the unhappy result that the procedural safeguards put in place by the drafters of the 1969 Convention could be circumvented by the simple expedience of a State characterizing a breach as non-material. This would be a recipe for disaster in the law of treaties, opening the door to unilateral decisions and suspensions. The point has been powerfully put by leading commentators, who succinctly and clearly explain the rationale for the limited approach to the *exceptio* set forth in Article 60:

> "Doctrine establishes that the non-respect of a treaty by one party can lead to its … suspension until the cessation of the violation; case-law confirms the rule addressed by Article 60 of the Vienna Convention on the Law of Treaties.
>
> This principle, which may be [connected to] the traditional rule of reciprocity and the legality of non-military reprisals, applied in response to acts that are contrary to international law, … must nevertheless be applied with caution. Experience proves in effect that one party frequently invokes an imaginary or anodyne violation to denounce unilaterally a treaty that is inconvenient or to suspend its application. That is why Article 60 limits the possibility of applying the principle of *non adimpleti contractus* exclusively to material breaches."[356]

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[356] Patrick Daillet & Alain Pellet, *Droit International Public*, 8th edition (2009), No. 199 (informal translation of French original) : "La doctrine admet que le non-respect d'un traité par une partie peut entrainer … sa suspension jusqu'a la cessation de la violation; la jurisprudence confirme cette règle que consacre l'article 60 de la Convention de Vienne sur le droit des traités. Ce principe qui peut être rapproché de la règle traditionnelle de la réciprocité et de la licéité des représailles pacifiques, exercées en riposte a des actes contraires au droit international … doit cependant être appliqué avec prudence. L'expérience prouve en effet qu'une partie invoque souvent une violation imaginaire ou anodine pour dénoncer unilatéralement un traité qui la gène ou en suspendre l'application. C'est pourquoi l'article 60 limite la possibilité d'appliquer le principe *non adimpleti contractus* au seul cas de violation substantielle", at p. 10.

5.69. The Respondent's argument faces another difficulty: it asserts throughout its Counter-Memorial that the Applicant has acted in material breach of the Interim Accord, and it was these acts that led the Respondent to object to the Applicant's membership of NATO.[357] The Applicant cannot have it both ways: either the alleged breach or breaches were material, or they were not. If the allegations relate to material breaches, then they are governed by Article 60 of the Vienna Convention, and the Respondent should therefore have followed the steps available to it under that Article and Articles 65 to 68. It did not do so. If the allegations are not so related, then the Respondent is faced with the absence of any rule in the 1969 Vienna Convention – or anywhere else in the law of treaties – that could allow it to suspend unilaterally its obligation under Article 11(1) of the Interim Accord.

5.70. All that is left to the Respondent is the possibility of invoking Article 73 of the 1969 Vienna Convention, which provides that the provisions of the 1969 Convention "shall not prejudge any question that may arise in regard to a treaty … from the international responsibility of a State". The interrelationship between Article 60 of the Vienna Convention and the circumstances precluding wrongfulness under the law of State responsibility was addressed by the International Court in the *Case concerning the Gabcikovo Nagymaros Project*, where it recognized that the doctrine of necessity (arising under the law of State responsibility) could preclude wrongfulness in relation to the non-performance of a treaty obligation. The Court ruled that:

> "an evaluation of the extent to which the suspension or denunciation of a convention, seen as incompatible with the law of treaties, involves the responsibility of the State which proceeded to it, is to be made under the law of State responsibility."[358]

5.71. The difficulty for the Respondent is that that the part of the law of State responsibility on which Hungary relied in the *Gabcikovo-Nagymaros* case – the

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357 Counter-Memorial, Chapter 8.

358 *Case concerning the Gabcikovo-Nagymaros Project*, *I.C.J. Reports 1997*, p. 7 at para. 47.

doctrine of necessity – was already well established and defined in the ILC's draft articles. By contrast, in the present case there is nothing in the law of State responsibility on which the Respondent can rely in relation to the *exceptio* that is remotely analogous to the well-developed doctrine of necessity, as discussed in the following sub-section. Put simply, the law of State responsibility does not support the Respondent's reliance on the *exceptio* to justify its wrongful actions, and therefore cannot support invocation of Article 73 of the 1969 Vienna Convention.[359]

## D. The *Exceptio* Does Not Assist the Respondent under the Law of State Responsibility

5.72. Recognising that its version of the *exceptio* is not part of the law of treaties, the Respondent asserts that its approach is rooted in the law of State responsibility.[360] This claim suffers from an immediate flaw: the ILC Articles on State responsibility do not contain any principle of *exceptio*, whether as characterized by the Respondent or otherwise. As described below, the *exceptio* was the subject of extensive attention by the members of the ILC in the elaboration of the Articles, but a 'narrow' (or 'limited') version of the *exceptio* for which a draft text was prepared was ultimately dropped, and a broader version for which the Respondent now argues never even got to the stage of a draft text, due to the absence of support for such a version. Ultimately, both the narrow and broad versions were rejected by the members of the ILC as having no place in the law of State responsibility. In short, there is nothing in the ILC Articles as adopted to support the Respondent's argument.

5.73. According to the Respondent, an injured party that faces the "non-execution of a conventional agreement" may "forthwith have recourse to the exceptio", on the basis that the treaty will remain in force but the injured party "will be able to withhold the execution of its own obligations, which are synallagmatic to the

[359] Article 73: "The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States."

[360] Counter-Memorial, para. 8.13.

ones not performed by the other Party".[361] If reliance on the *exceptio* does not cause the non-performing party to resume compliance with its treaty obligations then the injured party can have recourse to its rights under the principles reflected in Article 60 of the 1969 Vienna Convention.[362] In this way, according to the Respondent, the law of State responsibility introduces a whole new set of prior rights and procedures into the 1969 Vienna Convention.

5.74. The Respondent has considerable difficulty in citing any provision of the ILC Articles on which it might rely. It refers to a set of draft articles dealing with the suspension of reciprocal obligations, as distinct from reprisals, that was proposed by Special Rapporteur W. Riphagen in 1985.[363] Unfortunately for the Respondent, that draft garnered little support and was abandoned.[364] However, the Respondent asserts that "the distinction drawn by Riphagen was firmly endorsed by the last Special Rapporteur of the ILC on the topic, J. Crawford".[365] Whether or not that be the case – and it is a curious reading of the numerous and careful writings of the "last Special Rapporteur" – the fact is that the approach did not find support with the membership of the ILC.

5.75. As noted, and summarizing generally, the *exceptio* was considered in two distinct versions in the work of the ILC on State responsibility: a narrow (or limited) version and a broad version. The narrow version posited the idea that the *exceptio* principle is available where one State has, by its unlawful act, actually prevented the other from complying with its treaty or other obligations, that is to say from complying with the same or a related obligation in the context of a direct, causal link.[366] This narrow version was the subject of a drafting effort by the ILC Special Rapporteur in [1999], which provided that:

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361 Counter-Memorial, para. 8.15.

362 *Ibid.*

363 Counter-Memorial, para 8.14.

364 International Law Commission, Second Report on State Responsibility, Mr James Crawford, Special Rapporteur, A/CN.4/498/Add.2, *Yearbook of the International Law Commission* 192, vol II, Part Two, p. 23, para. 151.

365 *Ibid*., note 363 *supra*.

366 *Ibid*., note 364 *supra*, at para. 326.

> "The wrongfulness of an act of a State not in conformity with an international obligation of that State is precluded if the State has been prevented from acting in conformity with the obligation as a direct result of a prior breach of the same or a related international obligation by another State."[367]

5.76. It is immediately apparent that this narrow version would not have assisted the Respondent, even if it had been adopted, since it cannot be argued that the Respondent was "prevented" from meeting its obligation under Article 11(1) of the Interim Accord as a "direct result" of an alleged prior breach of the Applicant. The Respondent may not have wanted to meet its Article 11(1) obligation, but there was nothing to stop it from doing so. In any event, the draft did not find favour with the ILC, which rejected even this narrow version of the *exceptio*.[368]

5.77. Against this background the Respondent's effort to rely on a broader and more far-reaching version of the *exceptio* is hopeless. On the broader version there is no direct causal link between the two obligations, so that the non-performance of one obligation would not have the effect of preventing the performance of the other obligation. This appears to be the version expressed by Judge Hudson in *Diversion of Waters from the Meuse* case.[369] This broader version was not the subject of any drafting exercise by the ILC Special Rapporteur as the ILC's work on State responsibility was brought to a conclusion in the late 1990's. The Special Rapporteur recognized the same difficulties as his fellow members of the ILC that were referred to above.[370] He recommended that the issues raised by the broad application of an *exceptio* should be dealt with by other means:

> "The underlying problem is that a broad view of the *exceptio* may produce escalating non-compliance, negating for practical purposes the continuing

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367 *Ibid*., note 364 *supra*, Article 30*bis*, at pp. 57-58.

368 In his 2000 Report, the International Law Commission's Special Rapporteur described the "narrow" *exceptio* as "but an application of the general principle that a party should not be allowed to rely on the consequences of its own unlawful conduct": International Law Commission, *Third Report on State Responsibility: Addendum*, UN Doc A/CN.4/507/Add.1 (15 June 2000), at para. 366.

369 *Diversion of Water from the Meuse (Netherlands v Belgium), Judgment of 28 June 1937, P.C.I.J. Series A/B No. 70 (28 June 1937),* Individual Opinion of Judge Hudson, at pp. 73 - 77.

370 Patrick Daillet & Alain Pellet, Droit International Public, 8th edition (2009), No. 199 at p. 310.

effect of the obligation. For these reasons the Special Rapporteur is firmly of the view that the justification for non-compliance with synallagmatic obligations should be resolved (a) by the law relating to the suspension or termination of those obligations (which is sufficient to deal with most problems of treaty obligations), and (b) by the law of countermeasures."[371]

5.78. The Special Rapporteur also suggested that this matter might be addressed by means of treaty interpretation.[372]

5.79. The ILC accepted the Special Rapporteur's recommendation and, having rejected the narrow version reflected in Article 30*bis*, decided against including in the law of State responsibility the broad version of the *exceptio* on which the Respondent relies. Lest there be any doubt, the ILC Commentary prepared in 2001 makes the point clearly and without any hint of ambiguity:

> "Chapter V sets out the circumstances precluding wrongfulness presently recognized under general international law. Certain other candidates have been excluded. For example, the exception of non-performance (*exceptio inadimpleti contractus*) is best seen as a specific feature of certain mutual or synallagmatic obligations and not a circumstance precluding wrongfulness."[373]

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[371] International Law Commission, *Second Report on State Responsibility, Mr James Crawford, Special Rapporteur*, UN Doc A/CN.4/498/Add.2, at para. 329. In his Third Report the Special Rapporteur concluded that "There seems little doubt that in its broader form [i.e. not the 1999 Article 30 bis formulation] the exception of non-performance should be regarded as based upon treaty or contract interpretation, performance of the same or related obligations being treated as conditional": International Law Commission, *Third Report on State Responsibility: Addendum*, UN Doc A/CN.4/507/Add.1 (15 June 2000), at paras. 363-366. The Respondent has not sought to argue – and cannot argue – that its obligation under Article 11(1) of the Interim Accord is conditional upon any of the other obligations being met.

[372] International Law Commission, *Third Report on State Responsibility: Addendum*, UN Doc A/CN.4/507/Add.1 (15 June 2000), at para. 366: "There seems little doubt that in its broader form the exception of non-performance should be regarded as based upon treaty or contract interpretation, performance of the same or related obligations being treated as conditional".

[373] Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001), at p. 72.

5.80. The record of the ILC's efforts is fatal to the Respondent's reliance on the *exceptio*. Following the recommendation of the Special Rapporteur and the decision of the ILC, the Respondent's argument therefore falls to be addressed by reference to the law set forth in Article 60 of the 1969 Vienna Convention or the law of countermeasures. As noted above, the Respondent recognizes that it cannot meet either set of conditions, and therefore has not sought to invoke Article 60 or the law on countermeasures. That is the end of the matter.

## E. The Obligations at Issue in the Respondent's Defence Are Not 'Synallagmatic' or Directly Connected as a *Quid pro Quo*

5.81. Given the absence of any support in international law for an independent *exceptio* principle, there is no need for the Court to address in any detail the Respondent's assertions to the effect that the Applicant has breached various obligations under the Interim Accord, assertions that the Applicant firmly rejects. However, it is important to underscore, for the sake of completeness, even if the *exceptio* principle existed and were applied in this case, it would fail to assist the Respondent since the obligations at issue are not directly connected to each other. Contrary to the Respondent's claim, the commitments undertaken by the Parties in the Interim Accord set out by the Respondent in Chapter 8, Section III of its Counter-Memorial, are in no way "synallagmatic" or directly linked as a "*quid pro quo*". Therefore, the alleged breach of one commitment by one Party could not, on any view, justify the breach by the other Party of another commitment.

5.82. The Respondent asserts that its commitment under Article 11(1) not to object to its membership in international, multilateral and regional organizations and institutions was given "in exchange" for three reciprocal commitments by the Applicant, namely: (i) "to cease its irredentist and otherwise antagonizing behavior", (ii) "to be referred to as the FYROM in international organizations, and (iii) "to negotiate [a resolution of the difference over the name] in good faith".[374] This assertion, which is the foundation for the Respondent's entire defence based on the *exceptio* is unsustainable. Contrary to the Respondent's

[374] Counter-Memorial, para. 8.31(i).

assertion, the "conditions" on which it relies as "triggering recourse to the *exceptio*"[375] are unsubstantiated. In particular, the Respondent has:

- failed to provide any support whatsoever for its assertion that its commitment under Article 11(1) was given "in exchange" for the three matters it lists as commitments undertaken by Applicant, or that the four commitments it asserts as being "synallagmatically" linked were ever intended by the Parties to be so.[376]

- failed to provide any support for its claim that the Applicant made *three* distinct commitments under the Interim Accord "in exchange" for a *single* commitment on its part.

- ignored the fact that the commitments to negotiate in good faith (Article 5) and to refrain from hostile activities (Articles 7(1) and 7(3)) are incumbent on *both* Parties, not just on the Applicant: these were not undertakings given by the Applicant to the Respondent, but obligations assumed by *both* Parties: they could not thus have been given by the Applicant alone "in exchange" for an obligation incumbent solely on the Respondent.

- sought to imply into Article 11(1) an undertaking by the Applicant to be referred to as, and to call itself, 'the former Yugoslav Republic of Macedonia': as the detailed analysis of Article 11(1) in Chapter IV has demonstrated, the Applicant made no such undertaking.

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375 Counter-Memorial, p. 179.

376 In so doing, the Respondent has ignored the evidence it submitted to the Court which suggests that, if any undertaking by the Applicant *was* ever deemed by the Parties to be directly linked to the Respondent's Article 11(1) obligation, it was the undertaking by the Applicant to change its national flag: see Counter-Memorial, Annex 148, draft c), reproduced at Reply, Annex 61. The Applicant legislated to change its national flag on 6 October 1995, and duly changed its flag on the coming into force of the Interim Accord: Memorial, para. 2.39. The Respondent could therefore not assert that the Applicant is in breach of that obligation. See further, "Ruth Wedgwood, "Macedonia: a Victory for Quiet Diplomacy", *Christian Science Monitor* (19 October 1995): Reply, Annex 88.

5.83. Given that the treaty obligations at issue are not synallagmatic or reciprocal, the Respondent's entire basis for its purported recourse to the *exceptio* is simply unsustainable.

## F. The Respondent's Allegations of Violations of the Interim Accord by the Applicant Are Unfounded

5.84. The Respondent's factual assertions are equally unsupported. The Respondent asserts that the Applicant is in breach of Articles 5, 6(2), 7(1), 7(2), 7(3) and 11, which it claims were commitments given by the Applicant as a "*quid pro quo*" for a commitment by the Respondent under Article 11(1). This is strongly denied. The Applicant is not in breach of any article of the Interim Accord. The allegations made by the Respondent in its Counter-Memorial are simply not capable of amounting to breaches of the Interim Accord, much less material breaches warranting the Respondent's objection to the Applicant's NATO membership, in breach of Article 11(1). This is so for a number of reasons.

- The Applicant has also had cause to raise serious complaints with the Respondent over the course of the past 15 years since the signing of the Interim Accord, concerning breaches of the Interim Accord,[377] and repeated attacks and threats against its diplomatic premises[378] and citizens.[379] This belies the Respondent's presentation of such

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[377] See, e.g., *Note verbale* dated 26 August 2009 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Reply, Annex 37; *Note verbale* dated 22 March 2010 from the Applicant's Office for Consular, Economic and Commercial Affairs to the Respondent's Ministry of Foreign Affairs: Reply, Annex 54; and *Note verbale* dated 31 March 2010 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Reply, Annex 55. See also the Respondent's reply: Verbal note dated 30 April 2010 from the Respondent's Ministry of Foreign Affairs to the Applicant's Liaison Office in Athens: Reply, Annex 56.

[378] See, e.g., *Note verbale* dated 25 December 2003 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Reply, Annex 23; *Note verbale* dated 6 November 2007 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Reply, Annex 25; and *Note verbale* dated 10 February 2009 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Reply, Annex 34.

[379] See, for example, *Note verbale* dated 12 May 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 30; *Note verbale* dated 15 May 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison

issues and incidents as being entirely one-sided or demonstrative of a unilateral breach of the Interim Accord by the Applicant. They are simply irrelevant to the dispute before the Court.

- A significant proportion of the Respondent's allegations *postdate* the Bucharest Summit.[380] They are incapable, as a matter of fact, of having impacted on the Respondent's breach of Article 11(1), which crystallized on 3 April 2008. As a matter of law, they are necessarily of no consequence in assessing the legality of the Respondent's prior objection.[381] They are therefore irrelevant to the claim before the Court. Further, where the matters in question have been communicated formally to the Applicant, the latter has provided the Respondent with detailed responses, and taken action where appropriate.[382] For example, the symbol complained of by the Respondent at paragraph

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Office in Skopje: Reply, Annex 31, and *Note verbale* dated 6 March 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 35.

[380] See, e.g., Counter-Memorial, paras 4.7, 4.17 to 4.22, 4.25 to 4.26, 4.34, 4.53 to 4.55, 4.59 and 4.63. Many of the allegations made by the Respondent in its Counter-Memorial have been raised with the Applicant in a steady flow of diplomatic notes which the Respondent has sent to the Applicant since the initiation of the current proceedings: see paras. 2.68 and 5.57-5.60 of the Memorial. See also, e.g., Memorial annexes 51, 52, 59, 60 and 64, and more recently: Verbal note dated 9 November 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Reply, Annex 44; Verbal note dated 12 November 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs: Reply, Annex 46.

[381] Memorial, para. 1.10.

[382] See, e.g., Annexes 54-57 and 61-63 of the Memorial. See also, more recently, *Note verbale* dated 26 August 2009 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Reply, Annex 38; *Note verbale* dated 8 October 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply Annex 41; *Note verbale* dated 15 February 2010 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 51; *Note verbale* dated 15 February 2010 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 52; Where the Respondent has raised allegations of breach of the Interim Accord with the Secretary General of the United Nations (see, e.g. Letter dated 25 September 2009 from the Respondent's Permanent Representative to the United Nations, Anastassis Mitsialis, to the President of the General Assembly, UN doc. A/64/468 (2 October 2009): Reply Annex 21), the Applicant has responded in correspondence to the United Nations: see, e.g., letters dated 17 November 2008 (Reply, Annex 19), 23 July 2009 (Reply, Annex 20) and 20 October 2009 (Reply, Annex: 22) from the Applicant's Permanent Representative to the United Nations, Slobodan Tašovski, to the United Nations Secretary-General.

4.59 of its Counter-Memorial no longer features in the square of the municipality in question.[383]

- Conversely, a number of the other allegations made by the Respondent relate to matters that *predate* the Bucharest Summit by a considerable period of time and had long terminated by 3 April 2008.[384] For example, the postage stamps of which the Respondent complains at paragraph 4.61 of its Counter-Memorial ceased to be issued in 2002. As such, even if they were capable of amounting to a breach of the Interim Accord, which is strongly denied, they were not ongoing in 2008, such as to be capable of justifying the Respondent's breach of Article 11(1), nor are they current disputes with which the Court could now, on any view, be properly seized.

- The subject matter of the issues raised by the Respondent is also incapable of constituting a breach of the Interim Accord, much less capable of justifying the Respondent's actions in objecting to the Applicant's NATO membership. For example, the Respondent's contention that an incident involving primary-school-age children throwing a number of small pebbles from their school yard into the neighbouring garden of the Respondent's Ambassador[385] was part of a "systematic campaign to intimidate and terrorise the Greek diplomatic staff in Skopje",[386] is patently absurd. It is even more absurd for the Respondent to suggest that this incident, taken alone or in conjunction with other incidents, demonstrates that the Applicant "failed to take the necessary measures of protection required both by diplomatic law and by the obligation set forth in Article 7 of

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383 *Note verbale* dated 26 August 2009 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Reply, Annex 38.

384 See, for example, Counter-Memorial, paras. 4.61 and 4.76.

385 Counter-Memorial, para. 4.54 and Verbal Note of the Respondent's Liaison Office in Skopje, No F. 010.GS/23/AS 720, dated 1 June 2009 and Verbal Note No 93-1741/4 of the Applicant's Ministry of Foreign Affairs of the Applicant dated 10 July 2009 in reply: Counter-Memorial, Annex 73.

386 Counter-Memorial, para.4.56.

the Interim Accord".[387] To the contrary: the fact that the Applicant arranged for juvenile delinquency officers to visit the primary school to prevent the recurrence of any such incidents, that it enhanced security at the Respondent's Ambassador's house (by increasing police patrols in the neighbourhood), and that it offered to undertake a full scenes of crime investigation[388] into the incident testifies to the utmost seriousness with which the Applicant deals with complaints by the Respondent, however minor.

5.85. More particularly, and contrary to the Respondent's assertions, the Applicant is not in breach of Articles 5, 6, 7 or 11 of the Interim Accord. It has *not* negotiated in bad faith. It has *not* engaged in "irredentist" or "antagonizing"[389] behaviour in breach of Articles 6 or 7. It *is* referred to in international, multilateral and regional organizations and institutions of which the Respondent was a prior member no differently than in resolution 817 (albeit that it undertook no commitment to be so referred[390]). It *has* negotiated – and continues to negotiate – in good faith to resolve the difference over the Applicant's name.

*1. Alleged Breach of Article 5(1)*

5.86. Pursuant to Article 5(1), both Parties agreed to continue negotiations under the auspices of the United Nations, "with a view to reaching agreement on the difference" over the Applicant's name. The Respondent's claim that the Applicant has failed to negotiate in good faith, in breach of that article, has no merit. It is telling that the Respondent has not been able to rely on a single statement by the United Nations Special Envoy to the name negotiations, Mr Nimetz, or by any other independent authority, in support of its contentions. To the contrary, Mr Nimetz has repeatedly

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387 *Ibid.,* note 386, *supra.*

388 Verbal Note No 93-1741/4 of the Ministry of Foreign Affairs of the Applicant dated 10 July 2009 in reply: Counter-Memorial, Annex 73.

389 Counter-Memorial, para 8.31(i).

390 See further, Chapter IV, Section II, *supra*.

described the "serious"[391] and "constructive"[392] stance taken by both Parties in the name negotiations, underscoring that "both sides have a very strong desire to resolve this issue"[393] and that "both governments are showing good faith".[394] Indeed, in March 2008, just a month prior to the Bucharest Summit, Mr Nimetz commended the Applicant for its "serious efforts" in seeking to resolve the difference over the name.[395]

5.87. The Respondent's portrayal of the name negotiations is partial and inaccurate. It fails to mention the proposals by Mr Nimetz *accepted* by the Applicant as a basis for a solution,[396] including the proposal of March 2008 of "Republic of Macedonia (Skopje)", which was rejected outright by the Respondent.[397] It fails to mention the fact that the acceptance of those proposals represented a departure by the Applicant from its preferred position[398] and a

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391 "Nimetz to intensify name talks", *Kathimerini* (24 August 2008): Reply, Annex 183.

392 "Mathew Nimitz: The Ohrid meeting one of the best thus far, yet no proposal for a new name", *Macedonian Information Agency* (21 January 2008), accessed 25 May 2010: Reply, Annex 170; see more recently: Sinisa-Jakov Marusic: "Creativity Urged From Greece, Macedonia", *BalkanInsight.com* (25 September 2009): Reply, Annex 192.

393 Embassy of the Respondent in Washington, DC, *UN mediator Nimetz's complete statement following Monday's meeting* (27 March 2008): Reply, Annex 175.

394 Embassy of the Respondent, Washington, DC, *UN Envoy Matthew Nimetz holds talks with Greek, FYROM representatives* (13 June 2008): Reply, Annex 184.

395 "UN mediator Nimetz has not brought new name proposal, leaves Skopje to Athens" *Macedonian Information Agency* (5 March 2008): Reply, Annex 172. See also the press statement by the Respondent's Ambassador Mr Vassilakis in November 2007 in which he acknowledged, following talks with the Applicant's Ambassador to the name negotiations, Mr Nikola Dimitrov, that "both want to find a solution": Embassy of the Respondent, Washington, DC, *Greece, FYROM talks resume; UN's Nimetz to visit Athens and Skopje* (2 November 2007): Reply, Annex 168.

396 See, for example, "Another FYROM name proposal is shunned", *Kathimerini* (10 October 2005): Reply, Annex 162. See also: Stavros Tzimas: "Seeking a balance on the FYROM name issue", *Kathimerini* (25 January 2007): Reply, Annex 165.

397 "PM raps 'falsity' of name proposal", *Kathimerini* (28 March 2008): Reply, Annex 177; "Greece irked by Nimetz's new proposal" *Kathimerini* (27 March 2008): Reply, Annex 176; "Greece dissatisfied with UN proposal on Macedonia name", *Saudi Press Agency* (26 March 2008): Reply, Annex 173; "Athens holds its ground in name dispute" *Kathimerini* (31 March 2008): Reply, Annex 118; Embassy of the Respondent in Washington, DC, *PM Karamanlis briefed on new Nimetz proposal on FYROM name* (27 March 2008): Reply, Annex 174.

398 See, e.g., Letter dated 11 October 2005 from the Applicant's Ambassador, Nikola Dimitrov, to Ambassador Matthew Nimetz (11 October 2005): Reply, Annex 67; and "Athens has few options left on name", *Kathimerini* (29 March 2008): Reply, Annex 178.

"compromise"[399], as confirmed by Mr Nimetz.[400] As such the allegation by the Respondent that "FYROM's position on the name issue has undergone no modification whatsoever"[401] is patently wrong. The Respondent also fails to highlight its own intransigence in the name negotiations, involving a "national red line" position that it seeks to impose on the Applicant as the only solution to the difference over the name.[402] It fails to mention its rejection of several proposals put forward by Mr Nimetz, and its criticism of the negotiator for presenting compromise positions that do not match its own "red line" position.[403] As the text of Article 5 makes clear, the provision is binding on *both* Parties, not just on the Applicant. As such, the Respondent is also under an obligation to negotiate in good faith, and not to insist "upon its own position without contemplating any modification of it".[404]

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399 See Embassy of the Respondent in Washington, DC, *UN mediator Nimetz's complete statement following Monday's meeting* (27 March 2008): Reply, Annex 175.

400 "Greece irked by Nimetz's new proposal" *Kathimerini* (27 March 2008): Reply, Annex 176; "No progress in row over name of former Yugoslav Republic of Macedonia – UN envoy", *UN News Centre* (25 March 2008): Reply, Annex 112.

401 Counter-Memorial, para. 4.9.

402 See Reply, Appendix III setting out articles in which the Respondent articulates its "red line" in the name negotiations.

403 See, e.g., "PASOK spokesman on FYROM name issue" *Athens News Agency* (22 April 2008); "Greece's thin red line", *Kathimerini* (13 September 2008): Reply, Annex 181; "Another FYROM name proposal is shunned", *Kathimerini* (10 October 2005): Reply, Annex 162; "Greece irked by Nimetz's new proposal" *Kathimerini* (27 March 2008): Reply, Annex 176; and, "Last toss of FYROM dice", *Kathimerini* (13 October 2005): Reply, Annex 163.

404 *North Sea Continental Shelf*, as cited at para 3.18 of the Counter-Memorial. The Respondent misrepresents its negotiating position in claiming to have undertaken a substantive change of direction in 2007-2008, which it claims demonstrates its good faith by expressing a willingness to accept a composite name that would include 'Macedonia' (Counter-Memorial, paras. 4.10-11 and Annex 54). In reality, this was not a "major change of the Greek position" (Counter-Memorial, para. 4.1), since (i) the provisional reference accepted by the Respondent in 1993 already included the term 'Macedonia', and (ii) the Respondent had in fact expressed a willingness to accept a composite name including the term 'Macedonia' in the negotiations that followed the signing of the Interim Accord as early as 1996 (Stephen Weeks: "Greece ready to compromise in Balkan name dispute", *Reuters News* (10 April 1996): Reply, Annex 161: "Greece, which in the past has rejected any name with the word Macedonia, is now willing to compromise on a combined name such as New Macedonia or Nova Makedonija, diplomats said".). See also International Crisis Group, "Macedonia's name: why the dispute matters and how to resolve it", *International Crisis Group Balkans Report No. 122* (10 December 2001) at p. 18: Reply, Annex 64: "Athens has dropped its demand that Skopje not use the name 'Macedonia' in any form, in favour of a

5.88. The Applicant rejects in particular any assertion by the Respondent that its own use of its constitutional name in international organizations or in official correspondence, and/or its recognition by third States under its constitutional name, demonstrated or were capable of demonstrating "intransigence" in the name negotiations, in breach of Article 5(1).[405] As set out in Chapters II and IV of this Reply, the Applicant gave no undertaking under resolution 817, the Interim Accord or otherwise to call *itself* by the provisional reference. The fact of this matter is supported unequivocally by Mr Nimetz[406] and Sir Jeremy Greenstock.[407] That the Respondent should seek to make such an assertion in relation to Article 5 is puzzling, given the terms of Article 5(2) which reserves the rights of the Parties, consistent with "the specific obligations undertaken in this Interim Accord" in relation to their "respective positions as to the name" of the Applicant. There can be no doubt that the Applicant's 'position as to the name' was that it would call itself by its constitutional name.[408] The final words of Article 5(2), referring to "third parties"[409] belies any suggestion by the Respondent that this reservation of rights applied only to the Parties' bilateral dealings.[410]

*2. Alleged Breach of Article 6(2)*

5.89. The Respondent's allegations against the Applicant of breach of Article 6(2) are also entirely unfounded. Pursuant to Article 6(2), the Applicant "solemnly declare[d] that nothing in its Constitution, and in particular in Article 49 as amended, can or should be interpreted as constituting or will ever constitute the basis for the Party of the Second Part to interfere in the internal affairs of another State in order to protect the status and rights of any persons in other States who

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compound name like 'Upper Macedonia'....). The evidence before the Court does not establish a "major change" in the Respondent's policy in 2007-2008.

405 Counter-Memorial, para. 4.12.

406 See Chapter IV, para. 4.56.

407 See Chapter IV, para. 4.43.

408 Memorial, para. 2.35.

409 Interim Accord, Article 5(2), as set out in the Memorial, para. 2.35.

410 As claimed by the Respondent in its Counter-Memorial, para. 3.36.

are not citizens" of the Applicant. The concern by the Applicant for the human rights of minority groups – as referred to in amended Article 49 of its Constitution, and in relation to which it has undertaken firm commitments pursuant to Article 6(2) – cannot reasonably be treated as constituting an interference in the Respondent's internal affairs.[411] The Applicant is no more guilty of "interfere[ing] in the sovereign rights or internal affairs" of the Respondent than the Commissioner for Human Rights of the Council of Europe, the United Nations Independent Expert on Minority Issues or the European Commission against Racism and Intolerance, who have all voiced concern regarding the situation of minority groups, including those identifying themselves as 'Macedonian' in the territory of the Respondent.[412]

5.90. The Respondent's further allegation that the Applicant's championing of the human rights of the Applicant's *own* citizens – whether through financing domestic non governmental organizations (including those representing the rights of refugees)[413], or through supporting citizens in their claims to the European Court of Human Rights[414] – constitutes "meddling in Greece's internal politics"[415] is also patently absurd.

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411 See further Article 9(1) of the Interim Accord, whereunder the Parties undertook to "be guided by the spirit and principles of democracy, fundamental freedoms, respect for human rights and dignity, and the rule of law, in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Rights of the Child, the Helsinki Final Act, the document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe": Interim Accord between the Applicant and the Respondent (New York, 13 September 1995): Memorial, Annex 1. See also, *Note Verbale* dated 19 March 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Memorial, Annex 57.

412 All of the aforementioned bodies have had cause to voice serious concern regarding the status and circumstances of the minority group identifying itself as 'Macedonian' within the Respondent's territory. See, for example, reports and cases listed at footnote 24 of the Memorial. See also, Council of Europe: European Commission against Racism and Intolerance, *ECRI Report on Greece (Fourth Monitoring Cycle*), Adopted 2 April 2009, 15 September 2009, CRI(2009)31, available at: http://www.unhcr.org/refworld/docid/4ab0ed6e0.html, accessed 27 May 2010.

413 Counter-Memorial, para. 4.16. The organizations mentioned are domestic to the Applicant, not organizations in the Respondent's territory.

414 Counter-Memorial, para. 4.23.

415 Counter-Memorial, para. 4.15.

*3. Alleged Breach of Article 7(1)*

5.91. Article 7(1) provides that the Parties must "promptly take effective measures to prohibit hostile activities or propaganda by State-controlled agencies and to discourage acts by private entities likely to incite violence, hatred or hostility against each other". The Respondent alleges that the Applicant has breached Article 7(1) by "failing to protect" the Respondent's diplomatic offices, and the houses and vehicles, belonging to its consular staff and personnel, and by either positively engaging in or refusing to condemn "propaganda" activities. Again, these allegations are simply unfounded.

5.92. The Respondent's complaints about the purported failure by the Applicant to protect its diplomatic staff and property are incapable of evidencing a failure to "discourage acts by private entities likely to incite violence, hatred or hostility against each other", in breach of Article 7(1). The Applicant denies that it has failed to provide adequate protection to the Respondent's diplomatic staff and premises.[416] Further, it has investigated the incidents referred to it by the Respondent; where perpetrators have been identified, they have been sanctioned accordingly;[417] where it has transpired that the incidents alleged by the Respondent did not in fact take place, this has been brought to the attention of the Respondent.[418] As stated above, the subject matter of these complaints, such

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[416] Measures taken include the stationing of a permanent guard outside the premises of the Respondent's Liaison Office in Skopje, and the enhancing of security measures when required. See, e.g., the Applicant's Ministry of the Interior: Official Note dated 21 February 2008 from Applicant's Interior Ministry to the Applicant's Head of Unit for External Security of Objects, (21 February 2008): Reply, Annex 71. See also, *Note verbale* dated 27 February 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 26.

[417] See, e.g., *Note verbale* dated 14 April 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 27; *Note verbale* dated 15 April 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 28; *Note verbale* dated 21 April 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 29; *Note verbale* dated 21 May 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 32 *Note verbale* dated 6 March 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 35. See also: Charge sheet issued by the Applicant's Interior Ministry, (21 February 2008): Reply, Annex 72.

[418] See: Verbal note of the Hellenic Republic Liaison Office in Skopje, No F. 010.GS/24/AS 758, dated 2 June 2009 and Verbal Note No 93-1740/4 of the Applicant's Ministry of Foreign Affairs

as the scratching of small letters into the paintwork of cars,[419] or the throwing of pebbles by schoolchildren,[420] although regrettable, is simply not capable of constituting a breach of Article 7(1), much less one justifying the Respondent's objection to the Applicant's NATO membership. Indeed, it is noteworthy in this regard that, prior to 3 April 2008, the Respondent had never sought to characterize the subject matter of these complaints as breaches of Article 7(1). In circumstances where the Applicant's diplomatic premises in Athens have been the object of repeated threats and attacks, and where, despite repeated requests by the Applicant, no continuous permanent security protection has been provided by the Respondent to protect the premises,[421] it is extraordinary that the Respondent should now seek to persuade the Court that this type of activity constitutes a unilateral breach of Article 7(1) by the Applicant.

5.93. The Respondent's assertions that the Applicant has encouraged or "refus[ed] to intervene" in relation to "acts by private parties likely to incite violence, hatred or hostility"[422] are also simply wrong. As an example, contrary to the Respondent's claim that the Applicant refused to intervene in relation to billboards insulting to the Respondent erected in Skopje by private individuals,

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dated 10 July 2009 in reply: Counter-Memorial, Annex 74; see further *Note verbale* dated 10 July 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 36. The Respondent's repeated complaints of the permanent guard stationed at the Liaison Office being absent from his post have proven unfounded: see, e.g. *Official request* dated 22 February 2008 from the Applicant's Interior Ministry to the Applicant's Central Police Service (22 February 2008): Reply, Annex 73.

[419] See Verbal note of the Respondent's Liaison Office in Skopje, No F. 640/5/AS 579, dated 10 April 2008: Counter-Memorial, Annex 53; and the Applicant's reply: *Note verbale* dated 15 April 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 28.

[420] Verbal note of the Respondent's Liaison Office in Skopje, No F. 010.GS/23/AS 720, dated 1 June 2009, and *Note verbale* No 93-1741/4 of the Applicant's Ministry of Foreign Affairs dated 10 July 2009 in reply: Counter-Memorial, Annex 73.

[421] See, e.g., the following *notes verbales* from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs, dated 25 December 2003 (Reply, Annex 23), 6 November 2007 (Reply, Annex 25), and 10 February 2009 (Reply, Annex 34).

[422] Counter-Memorial, para. 8.48.

the Applicant ensured that they were all removed immediately.[423] Other allegations under this heading are equally baseless.[424]

5.94. The Respondent alleges that the Applicant is "promot[ing] irredentist propaganda",[425] including by reference to concerns about certain textbooks and maps. The allegations are entirely unfounded. The Respondent's complaints relate to differences concerning the history of the region. However, whatever disagreement the Parties may have with certain maps and texts, these cannot possibly provide any basis for a breach of Article 7(1).[426] The Applicant has suggested that the Parties establish a joint committee on education and history to seek to devise

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[423] "Macedonia Explains 'Offensive' Greek Flag", *BalkanInsight.com* (31 March 2008): Reply, Annex 203. Harry de Quetteville: "Macedonia row overshadows NATO summit", *The Telegraph* (2 April 2008): Reply, Annex 130.

[424] For example, the constitutional name of the Applicant is the 'Republic of Macedonia' and not 'Macedonia' as erroneously suggested by the Respondent (see Counter-Memorial, para. 2.19). Contrary to the Respondent's unsubstantiated assertions, made repeatedly by the Respondent in numerous international *fora*, including the United Nations and NATO (see, e.g., Memorial, Annexes 26 and 131, and Counter-Memorial, Annex 146), the Applicant has never claimed exclusivity over the use of the name 'Macedonia' and it has never raised any issue with the name of the Respondent's northern province of 'Macedonia' (see, e.g., Edward P. Joseph: "Averting the Next Balkan War: How to Solve the Greek Dispute Over Macedonia's Name", *Spiegel Online* (2 June 2008): Reply Memorial, Annex 204; see also the Applicant's, *Aide Mémoire* (March 2005): Reply, Annex 24. The Respondent's repeated assertions that the Applicant has in some unspecified way "appropriated" the name 'Macedonia' (e.g., Counter-Memorial, para. 2.1) are equally unfounded. The local population of the territory of the Applicant engaged in an organized liberation movement for an autonomous 'Macedonia' against the Ottoman rule (see Andrew Rossos, "Macedonia and the Macedonians: A History," Hoover Institutions Press, Stanford University, Stanford, 2008, Chapter 7), and fought a 'People's Liberation War of Macedonia' against the occupying Axis powers during the Second World War, leading to self-determination in 1945 for the Applicant's inhabitants with the establishment of the 'People's Republic of Macedonia'. Thereafter the name of the Republic has always included the term 'Macedonia'. The Respondent signed treaties with the 'People's Republic of Macedonia', without objection to the name of that Republic; see also further paragraph 2.3 of the Memorial and corresponding footnotes and Annexes.

[425] Counter-Memorial, para. 4.28.

[426] The Respondent's contention that the use of "maps of Greek Macedonia using outdated Slav or Turkish names for Greek locations" is demonstrative of "irredentism" or of "a nationalist ideology which the UN Charter, the Helsinki Final Act, and the modern system of international law in general should have put to rest" (Counter-Memorial, para. 2.20) is particularly unfounded. This is all the more so when the Respondent itself uses outdated Greek names for locations in the territory of the Applicant in its school text books and governmental cartography (see, e.g., the Respondent's Parliament, *Historical Map of Greece*, Issue IV (2003): Reply, Annex 83). The Applicant does not consider the use of such terms by the Respondent to provide any evidence of irredentism on its part.

and teach "a joint and multi-perspective history of the Balkan region" in order to foster reconciliation and to avoid the potential for "historical events to feed future misunderstandings",[427] but that suggestion has been rejected by the Respondent.[428]

*4. Alleged Breach of Article 7(2)*

5.95. Article 7(2) concerns the use by the Applicant of the "symbol in all its forms" previously "displayed on its national flag". The Applicant denies that it is in breach of this article. In response to the Respondent's assertion that it "continues to use" the symbol of the sixteen pointed sun, *inter alia* as "the emblem of the Technical Regiment of the Army",[429] the Applicant points out that the regiment was disbanded in 2004, and the symbol of which the Respondent complains is no longer in use. Further, as the text of Article 7(2) makes clear, the commitment provided in the Article is binding only on the Applicant, not on the Applicant's citizens. As such, the use of the symbol by private individuals or entities, such as the Special Hospital for surgical diseases (a private hospital), is not capable of amounting to a breach of the Accord.[430] The Applicant, like any State, is not in a position to exercise absolute control and pre-empt every action taken by every public body in the State. However, where complaints have

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[427] This initiative is referred to in a letter dated 13 March 2009 from the Applicant's Minister for Foreign Affairs, Antonio Milošoski, to the Respondent's Minister for Foreign Affairs, Dora Bakoyannis: Memorial, Annex 55 and in a *Note verbale* dated 15 February 2010 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 52. It is further mentioned in the Letter dated 20 October 2009 from the Applicant's Permanent Representative to the United Nations, Slobodan Tašovski, to the President of the General Assembly, UN doc. A/64/500 (30 October 2009): Reply, Annex 22.

[428] Letter from the Respondent's Minister of Foreign Affairs to the Applicant's Minister of Foreign Affairs, dated 24 March 2009 under Reference 1024, forwarded through Verbal Note F.141.1/24/AS 378, dated 27 March 2009 of the Liaison Office of the Hellenic Republic in Skopje: Counter-Memorial, Annex 70 and 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: Memorial, Annex 59.

[429] Counter-Memorial, paras. 4.58, 4.76 and 8.54.

[430] As such, the Respondent's complaint regarding the World Intellectual Property Organization (Counter-Memorial, paras. 4.57-58) is misplaced. If the symbol were to be registered as a State emblem exclusive to the Respondent, that would impact on the use of the symbol by private individuals and entities in the Applicant State, which is not prohibited pursuant to the terms of the Interim Accord.

been raised directly with the Applicant by the Respondent, as in the case of the main square in the Applicant's municipality of Gazi Baba,[431] or the website of a government agency,[432] the Applicant has acted accordingly: as the Respondent is aware, the symbol is no longer displayed in the aforementioned square[433] or on the above website[434]. As such, it is somewhat surprising that the Respondent should seek to attempt to rely on these matters in its Counter-Memorial.

*5. Alleged Breach of Article 7(3)*

5.96. Article 7(3) concerns the use by one Party of "*symbols* constituting part of the historic or cultural patrimony"[435] of the other Party. It does not concern the use of names or any other "elements of the historical and cultural patrimony"[436] of either Party. This is made abundantly clear by a review of the different drafts of the Interim Accord, as introduced by the Respondent: whereas earlier drafts covered the use of "symbols, names, flags, monuments or emblems", this was not agreed by the Parties and does not form part of the final text of the Interim Accord. *All* of the allegations of breach of Article 7(3) made by the Respondent in its Counter-Memorial[437] concern *names* and *statues* rather than symbols. As such, they are not capable of falling under the remit of that article. The Respondent's allegations are therefore entirely unfounded.

5.97. Further, while early drafts of the Interim Accord impose an *obligation* on both Parties to refrain from the use of such symbols,[438] the final text of the

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431 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: Memorial, Annex 60.

432 *Ibid.*

433 *Note verbale* dated 26 August 2009 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs: Reply, Annex 38.

434 *Ibid.*

435 Emphasis added.

436 Counter-Memorial, para. 4.61.

437 Counter-Memorial paras. 4.61 to 4.64, and 8.59.

438 Draft (e) (15 March 1995), at Article 7(2): Excerpt from Draft E of the Interim Accord from the archives of the Respondent's Ministry of Foreign Affairs, as printed in Annex 148 of the

Interim Accord merely establishes a mechanism for the Parties to deal with complaints concerning such usage. Where the Respondent has brought these matters to the attention of the Applicant, the Applicant has responded in detail and taken action where appropriate.

### *6. Alleged Breach of Article 11(1)*

5.98. Article 11(1) is one of the few articles of the Interim Accord which is directed to just one of the Parties. As such, Article 11(1) imposes an obligation solely upon the Respondent: despite the Respondent's efforts to establish the contrary, the Applicant cannot be in breach of Article 11(1), given that the Article imposes no obligation upon it. As set out in detail at Chapter IV of this Reply, rather than imposing any obligation on the Applicant, the second clause of Article 11(1) sets out a single condition in which the Respondent may object to the Applicant joining organizations and institutions. If the Applicant is not to be referred to within an organization or institution differently than in resolution 817, the Respondent is entitled to object to its membership, but the Applicant is not forasmuch in breach of the Interim Accord. The examples provided by the Respondent of purported breaches by the Applicant of Article 11(1) (as set out in paragraph 8.60 of its Counter-Memorial and corresponding footnotes) are incapable of amounting to breaches of the Interim Accord. As set out in detail in Chapter IV of this Reply, the Applicant's use of its constitutional name in the United Nations and in other organizations and institutions of which it is a member, does not constitute a breach of Article 11 (1), material or otherwise. The matters raised cannot on any understanding give rise to a situation justifying a *quid pro quo* breach of the Respondent of its obligation under Article 11(1), based on an ill-founded rationale of "synallagmatic" obligations arising under the Article.

5.99. As demonstrated in the above paragraphs, the conditions relied upon by the Respondent as "triggering" its purported recourse to the *exceptio* are simply incapable of reasonably constituting a breach of the Interim Accord, much less

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Respondent's Counter-Memorial (15 March 1994): Reply, Annex 62.

one warranting the Respondent's objection to the Applicant's NATO membership in circumstances where the Applicant was to be referred to no differently than in resolution 817. The Respondent's *exceptio* theory is as unfounded in fact as it is in law.

## G. The Respondent Has Failed to Follow Procedural Requirements

5.100. Only after the current dispute between the Parties crystallized in late March / early April 2008 at the Bucharest Summit did the Respondent seek to make to the Applicant formal, written allegations of breach of the Interim Accord, in response to the Applicant's formal claim that the Respondent was itself in material breach of the Interim Accord. The Respondent's new and late allegations are reflected in a steady stream of diplomatic *notes verbales*, post-dating the Bucharest Summit, and often relating to matters that arose long before April 2008. These *ex post facto* démarches do not assist the Respondent: if the Respondent really believed that any or all of the allegations it has sought to raise since May 2008 were breaches of the Interim Accord, as it now asserts, it could have followed the clear and established procedure set out in Article 65 of the 1969 Vienna Convention;[439] it did not do so. It also could have brought proceedings to the Court, pursuant to Article 21 of the Interim Accord; it did not do so either.

5.101. The Respondent's purported reliance on statements made by its representatives to the press and in Parliament to substantiate its claim that it *did* notify the Applicant[440] is interesting, given its contradictory assertion that such statements are "unilateral acts" which do not express an "intention to be bound on the international plane".[441] However, such statements manifestly fail to meet the standard set by Article 65 of the Vienna Convention, and do not amount to the formal notification required by international law such that they could serve to justify the Respondent's breach. There is no existing *exceptio* regime under

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439 See further Memorial, para. 5.27 *et seq.*

440 Counter-Memorial, para. 8.27.

441 Counter-Memorial, para. 5.54.

international law that trumps the requirement of prior notification under Articles 60 and 65 of the Vienna Convention. It follows that the lack of formal notification and the failure to follow established process is fatal to the Respondent's case.

## Section IV. Conclusions

5.102. Contrary to the Respondent's assertions, the Respondent's breach of Article 11(1) cannot be excused based on Article 22 of the Interim Accord or a principle of *exceptio non adimpleti contractus.*

5.103. The Respondent's obligation in Article 11(1) is not subordinated to any pre-existing right or duty of the Respondent preserved by Article 22. This is because Article 22 is exclusively concerned with the rights and duties of third parties, not of the Parties to the Interim Accord. This is clear from the text and context of Article 22, and from the practice of the Parties after the conclusion of the Interim Accord. Further, were the Respondent's interpretation to be correct, it would eviscerate the object and purpose of Article 11(1), rendering it essentially meaningless. Even if Article 22 *were* regarded as concerning the rights and duties of the Parties, and even if it *were* capable of eviscerating Article 11(1) in some circumstances where the Respondent had a right or duty at an organization in relation to the admission of new members, the Respondent has not identified any "right" or "duty" under the North Atlantic Treaty that would require the Respondent to object to the Applicant's membership. Insofar as the Respondent has a *discretion* pursuant to the North Atlantic Treaty to object to the admission of new members to NATO, it accepted – pursuant to its commitment under Article 11(1) – that it would not use that discretion in objecting to the Applicant's membership on the sole basis of the non-resolution of the difference over the Applicant's name. However, this is precisely what the Respondent did in objecting to the Applicant being invited to accede to NATO membership at the Bucharest Summit. Were the Court to accept the Respondent's interpretation of Article 22 in the current case, it would effectively give the Respondent *carte blanche* to object to the Applicant's membership in all organizations and institutions in

which the Respondent is in a position to so object, and deny to the Applicant one of the key protections that the Interim Accord was intended to provide.

5.104. There is also no general defence of *exceptio non inadimpleti contractus* in international law that would justify the Respondent's breach of Article 11(1) of the Interim Accord, even if (which is denied) the Applicant had failed to comply with any of its obligations under the Accord. The *exceptio* is not part of the law of treaties, save in the form articulated in Article 60 of the 1969 Vienna Convention. The ILC rejected the broader version of the *exceptio* for which the Respondent contends, deciding that it does not form part of the law of State responsibility. The narrow version of the *exceptio* cannot assist the Respondent, but in any event that too was excluded from the law of State responsibility by the ILC. The Respondent has not sought to justify its actions by reference to Article 60 of the 1969 Vienna Convention or to the law on countermeasures, as reflected in the ILC Articles on State Responsibility, and cannot do so. If the Court gives any credence to the Respondent's argument it will undermine the stability and certainty of treaty relations between States. Moreover, in circumstances in which the Interim Accord provided for clear enforcement mechanisms, the Respondent's argument should be firmly and categorically rejected. This is all the more so where the factual basis advanced by the Respondent for its purported recourse to the *exceptio* is entirely unfounded.

5.105. Finally, the Applicant notes that the Respondent has referred in passing to "other possible defences", including counter-measures and the clean hands doctrine (to the effect that the Applicant has no *locus standi* to bring its claim, an argument that, in the absence of any supporting judgment or award by international judicial or arbitral authority is plainly unarguable).[442] These claims are not elaborated in any way by the Respondent, which has stated in terms that there is no need for them to be expressly invoked since all the conditions for the *exceptio* are met. Accordingly, the Applicant does not address them further.[443]

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[442] Counter-Memorial, para. 8.29-8.30.

[443] As noted above the issues of Article 60 (law of treaties) and countermeasures (law of State responsibility) were fully addressed in the Memorial, paras 5.21-5.40 and 5.41-5.54 and

# CHAPTER VI

# THE RELIEF SOUGHT WOULD REMEDY THE SITUATION CONSISTENTLY WITH THE COURT'S PRACTICE

## Introduction

6.1. As set out in the Applicant's Memorial and in the preceding Chapters to this Reply, the Respondent has violated Article 11(1) of the Interim Accord without lawful justification. That breach constitutes a clear violation of international law for which the Respondent is internationally responsible and in respect of which the Applicant is entitled to relief. As set out in the Memorial, the relief sought from the Court is in two forms:

(i) a declaration that the Respondent has violated its obligations under Article 11(1) of the Interim Accord; and

(ii) an order that the Respondent take all necessary steps to comply with its obligations under Article 11(1) of the Interim Accord, so as to restore the Applicant to the *status quo ante*, and to refrain from any further action that violates those obligations.

6.2. The Applicant has also reserved for itself the right to modify and/or extend the grounds invoked and/or the relief sought, in the event of other breaches of Article 11(1) of the Interim Accord by the Respondent.

6.3. The Court is referred to Chapter VI of the Applicant's Memorial which formulates in detail the relief sought by the Applicant. None of the arguments advanced by the Respondent in its Counter-Memorial have caused the Applicant to seek to modify or revisit its prior submissions in any way. The Applicant responds to those arguments in the following paragraphs.

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accompanying text. The argument as to the "clean hands doctrine" is closely related to the argument on *exceptio* and adds nothing to the Respondent's case.

## Section I: The First Request

6.4. The Applicant's first request is for declaratory relief, namely that the Court "adjudge and declare that *the Respondent, through its State organs and agents*" has acted illegally; no more and no less.

6.5. It is well recognized that declaratory relief is "[o]ne of the most common modalities of satisfaction provided in the case of moral or non-material injury to the state",[444] and the "most common form of remedy in litigation before the PCIJ and ICJ".[445] The Court has granted declaratory relief in many cases, including: the *Avena*,[446] *LaGrand*,[447] *Certain Questions of Mutual Assistance in Criminal Matters*[448], *Arrest Warrant of 11 April 2000*,[449] *Fisheries Jurisdiction*[450] and *Right of Passage over Indian Territory*[451] cases.

6.6. The Respondent argues against the grant of declaratory relief, on the grounds that the Court has no jurisdiction to decide on the merits of the case,

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444 International Law Commission, *Responsibility of States for Internationally Wrongful Acts 2001*, Article 37 and corresponding commentary in *Yearbook of the International Law Commission*, 2001, vol. II (Part Two) at p. 105. See also: International Law Commission, Fifty-second Session, *Third report on State Responsibility by Mr. James Crawford, Special Rapporteur, Addendum*, UN Doc A/CN.4/507/Add.1 (15 June 2000) at para. 184; and Ian Brownlie, *System of the Law of Nations: State Responsibility Part I* (1983) at p. 201.

445 Brown: *Remedies in International Adjudication* (Oxford: Oxford University Press, 2007) at p. 209. See also: Christine Gray: *Judicial Remedies in International Law* (Oxford: Oxford University Press, 1990) at p. 96.

446 *Case concerning Avena and other Mexican Nationals (Mexico v United States), Merits, Judgment I.C.J. Reports 2004*, paras. 47-8 and 50-3.

447 *LaGrand (Germany v. United States of America), Merits, Judgment, I.C.J. Reports 2001*, paras. 77, 91, 99, 109, 115, 116, and 127-8.

448 *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), Merits, Judgment I.C.J. Reports 2008*, paras. 152, 201-5.

449 *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Merits, Judgment, I.C.J. Reports 2002*, p. 3, at para. 557.

450 *Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment, I.C.J. Reports 1974*, p. 175, at pp. 205-6.

451 *Right of Passage over Indian Territory (Portugal v. India), Merits, Judgment, I.C.J. Reports 1960*, p. 6, at pp. 45-6.

that the Respondent has not breached its obligation under Article 11(1) of the Interim Accord, and that even if the Respondent had breached that obligation, it was "entitled" to do so, "given the numerous material breaches of the Accord attributable to the FYROM"[452]. As demonstrated in Chapters II, III, IV and V of this Reply, each and every one of the Respondent's challenges to the grant of declaratory relief is without merit: the Court *has* jurisdiction to decide the merits of the current case,[453] the Respondent *did* breach its obligation under Article 11(1),[454] and there was *no legal justification* for that breach.[455] In particular, at no stage prior to its objection to the Applicant being invited to join NATO at the Bucharest Summit, did the Respondent formally allege in writing to the Applicant that it was in material breach of the Interim Accord, and in any event the Applicant was not and is not in material breach of that agreement.

6.7. The Respondent asserts in the alternative that, even if the Court *has* jurisdiction, a declaration by the Court as sought by the Applicant "could have no effect and would be incompatible with the Court's exclusively judicial function"[456] for two reasons: (i) the relief would necessarily be directed at NATO, and (ii) the Court would be constrained to addressing the Respondent's breaches of the Interim Accord without adjudging the purported violations of the Interim Accord by the Applicant (which the Respondent belatedly and erroneously alleges against the Applicant).

6.8. In response to the first argument put forward by the Respondent, the Applicant underscores the point it has consistently made, namely that the relief sought is directed at *the Respondent* and not any other party; it is not directed at NATO, nor any other State or body. Moreover, contrary to the Respondent's assertion, the declaratory relief granted against the Respondent could not imply any direct or indirect responsibility of any entity other than the

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452 Counter-Memorial, para. 9.3.

453 See Chapter III *supra*.

454 See Chapters II and IV *supra*.

455 See Chapter V *supra*.

456 Counter-Memorial, para. 9.4.

Respondent. The "internationally wrongful act entailing the responsibility of the Hellenic Republic"[457] is the Respondent's *own* objection to the Applicant's NATO membership on or around the occasion of the Bucharest Summit in April 2008, in circumstances where the Applicant was not to be referred to in NATO "differently than in paragraph 2 of Security Council resolution 817 (1993)".[458] The Respondent's objection in direct breach of Article 11(1) is an internationally wrongful act of the Respondent, acting independently and autonomously, and retaining "complete sovereignty and responsibility for its own decisions"[459] and actions. It is an act that is distinct juridically from the Bucharest Summit decision, or any acts taken by NATO. The Respondent's efforts to conflate the two are unjustifiable.

6.9. The second reason advanced by the Respondent is that "it would be unjust for the Court to make the declaration requested by" the Applicant "without, at the same time, taking account" of the Applicant's own conduct.[460] This is wholly without merit. Prior to the Respondent's objection to the Applicant's admission to NATO, the Respondent could have formally asserted in writing to the Applicant – in accordance with established procedures – that the Applicant was in material breach of the Interim Accord; it did not do so. The Respondent could have brought proceedings before the Court in respect of those assertions; it did not do so. At no point prior to April 2008 did the Respondent make any such formal, written allegation to the Applicant, as its Counter-Memorial now confirms, and it brought no proceedings before this Court, or engaged in any other means of settlement available to it. It did not invoke any rights or procedures available under the 1969 Vienna Convention (including Articles 60 and 65) or invoke the right to bring lawful counter-measures under the law of state responsibility. Rather, the Respondent has chosen to set out in its Counter-Memorial a "brief summary" – running to 35 pages – in which it now belatedly and erroneously

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457 *Ibid.*

458 Article 11(1) of the Interim Accord.

459 *NATO Handbook*, Public Diplomacy Division, 2006, pp. 33-41,183-190: Counter-Memorial, Annex 22, page 35. See further Chapter II, Section III *supra*.

460 Counter-Memorial, para. 9.6.

alleges breaches by the Applicant of its obligations under the Interim Accord.[461] As set out at Chapter V above, the matters raised do not constitute breaches (whether material or otherwise) of the Interim Accord, and they cannot justify any of the actions of the Respondent. Moreover, on the Respondent's own case, the bulk of the purported breaches occurred *after* April 2008, or ended long before April 2008. As such, they can have no bearing upon the Respondent's objection to the Applicant's NATO membership at the Bucharest Summit. In view of its own failure to act in a timely or proper manner, the Respondent is not entitled to complain now that the remedy sought by the Applicant is "unjust".

6.10. The circumstances of the case before the Court belie the Respondent's underlying assertion that a declaration by the Court as requested by the Applicant would be "hypothetical" and "could have no effect", such as to be "incompatible with the Court's judicial function".[462] To the contrary, the declaration sought from the Court would serve two essential functions. First, it would provide an authoritative interpretation of an obligation set forth in the Interim Accord, the meaning of which is disputed by the Parties; the interpretation would be binding and, as such, would provide an authoritative point of departure for avoiding future violations. Second, such a declaration would provide satisfaction to the Applicant for the injury sustained by it as a result of the Respondent's unlawful objection.

6.11. As noted, the declaration sought by the Applicant would clarify that the Respondent's objection to the Applicant's membership in an international organization, in circumstances in which the Applicant is to be referred to no differently than in resolution 817, constituted an internationally wrongful act, in breach of Article 11(1). The Interim Accord remains in force in its entirety, and constitutes the most comprehensive and far-reaching agreement between the Parties, regulating their bilateral dealings. The declaratory relief sought would have a clear "practical consequence", "affect[ing] existing legal rights or

461 Counter-Memorial, Chapter 4.

462 Counter-Memorial, paras. 9.4 and 9.5.

obligations of the parties, thus removing uncertainty from their legal relations",[463] by providing an authoritative interpretation of Article 11(1). This is of particular importance in circumstances in which the Applicant is seeking to join other international organizations and institutions, including the European Union.[464]

6.12. As underscored in Chapter VI of the Applicant's Memorial, the first request has a dual function: it is retrospective, relating to the legality of past conduct of the Respondent leading up to and at the Bucharest Summit; and it is prospective, recognizing that a declaration by the Court concerning the interpretation of Article 11(1) of the Interim Accord will have "forward reach[ing]" applicability and effects (see the *Chorzow Factory (Interpretation)* and the *Northern Cameroons* cases),[465] where Article 11(1) is in play in the future. As such, in circumstances where the Applicant is still seeking membership in "international, multilateral and regional organizations and institutions" of which the Respondent is a member, the declaration sought by the Applicant will have an important and continuing effect.

6.13. Second, the declaratory relief sought provides reparation for the moral damage caused to the Applicant by the Respondent's wrongful objection to the Applicant's NATO candidacy at the Bucharest Summit. Paragraph (7) of the ILC Commentary to Article 31 of the ILC Articles on State Responsibility – which establishes that damage for which relief may be granted by the Court can be both "moral" and "material"[466] – cites the agreement between the parties in the *Rainbow Warrior* arbitration that:

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463 *Legality of Use of Force (Serbia and Montenegro v. Belgium), Preliminary Objections, Judgment, I.C.J. Reports 2004,* pp. 295-296, para. 38*,* as cited by the Respondent at para. 9.5 of its Counter-Memorial.

464 See: Letter dated 16 November 2009 from the President of the Applicant's Assembly, Trajko Veljanoski, to the President of the Respondent's Parliament, Philippos Petsalnikos: Reply, Annex 47; and Letter dated 11 November 2009 from the Applicant's Minister of Foreign Affairs, Antonio Milošoski, to the Respondent's Prime Minister, George A. Papandreou: Reply, Annex 45.

465 Memorial, paras. 6.16 and 6.17.

466 Memorial, para. 6.9.

> "[u]nlawful action against non-material interests, such as acts affecting the honor, dignity or prestige of a State, entitle the victim State to receive adequate reparation, even if those acts have not resulted in a pecuniary or material loss for the claimant State."[467]

6.14. The Arbitral Tribunal held that France's breach of its international obligations had:

> "…provoked indignation and public outrage in New Zealand and caused... non-material damage … of a moral, political and legal nature, resulting from the affront to the dignity and prestige not only of New Zealand as such, but of its highest judicial and executive authorities as well."[468]

6.15. In the present case, the Respondent's objection to the Applicant's NATO membership at the Bucharest Summit, in contravention of its obligations under Article 11(1), constituted an "unlawful action… affecting the dignity" of the Applicant, in circumstances where the Applicant was to be referred to no differently than in resolution 817, and had agreed to be so referred. Given the ongoing denial by the Respondent in its Counter-Memorial of any violation by it of international law, coupled with the indication by the Respondent that it will continue to act in a manner that violates Article 11(1) until the ongoing difference concerning the Applicant's name is resolved to the Respondent's satisfaction,[469] a pronouncement by the Court on the wrongfulness of the conduct of the Respondent is a vital first step in restoring the Applicant's rights under the Interim Accord and safeguarding them for the future. The declaration sought would avoid further impunity.

6.16. Against this background, it is surprising that the Respondent should assert that a declaration by the Court would be "hypothetical" and "could have no effect", such as to be "incompatible with the Court's judicial function".[470]

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467 *Rainbow Warrior (New Zealand/France), UNRIAA, vol. XX, p. 217 (1990)*, at p. 267, para. 109.

468 *Ibid.,* at para. 110.

469 See Appendices I and II.

470 Counter-Memorial, paras. 9.4 and 9.5.

6.17. For these reasons, read in conjunction with paragraphs 6.12 to 6.17 of the Applicant's Memorial, the Applicant requests the Court to grant the declaratory relief sought. It is entirely consistent with the longstanding practice of the Court and would be entirely appropriate in these circumstances, reflecting a minimum but necessary first step in bringing the Respondent back onto a path of compliance with the Interim Accord.

## Section II: The Second Request

6.18. The Applicant's second request is that the Court should "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." The Respondent advances three objections to this request; first, that the requested order "does not correspond to the meaning"[471] of Article 11(1); second, that the Court "would act beyond its judicial function"[472] in granting it, because it is necessarily directed against NATO and/or does no more than "state the obvious, i.e., that the Interim Accord… must be complied with"[473] and/or would have no effect as the status of the Applicant pre- and post the NATO Bucharest summit is the same; and third, that the grant of the order "would amount to the Court's endorsement, in advance, of the types of violations which the FYROM has been committing and would continue to commit in the future" [474]. These three challenges to the grant of the requested order, dealt with in turn below, lack any factual or legal basis.

6.19. First, it is surprising that the Respondent should claim that an order requiring the Respondent to comply with its obligations under Article 11(1) "does not correspond to the meaning of" the second clause of Article 11(1).[475] In

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471 Counter-Memorial, para. 9.10.

472 Counter-Memorial, para. 9.16.

473 Counter-Memorial, para. 9.16(b).

474 Counter-Memorial, para. 9.10.

475 *Ibid.*

fact, such an order would simply serve to restate and re-emphasise the obligation undertaken by the Respondent under Article 11(1), and to set out the manner through which the Respondent is to make reparation for its breach.[476]

6.20. Second, in circumstances where the Respondent has failed to comply with its clear obligation under Article 11(1), and where it has asserted that it will continue not to comply in the future, it is remarkable that the Respondent should dismiss the second head of relief sought by the Applicant as unnecessary on the grounds that it does no more than "state the obvious, i.e. that the Interim Accord… must be complied with". In the present case, the Respondent has demonstrated its continuing refusal to comply *sua sponte* with its obligations under Article 11(1). It has also adopted a similar position in relation to other organizations and institutions, most notably the European Union.[477] This confirms why an order from the Court in the terms requested is absolutely necessary to safeguard the Applicant's rights under the Interim Accord.

6.21. Moreover, the Applicant reiterates that the order it seeks from the Court is *not* directed at NATO or any other organization or institution, whether directly or indirectly: as paragraph 6.19 of the Applicant's Memorial made crystal clear, "the effect of the Order should be to require that *the Respondent* 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 no differently than in paragraph 2 of resolution 817. The order is directed only at *the Respondent*, which retains full responsibility for its objection in the NATO context. The Respondent alone is "in a position to take some retroactive or prospective action or avoidance of action, which would constitute a compliance with the Court's judgment".[478] The order sought does *not* require NATO to take

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[476] The meaning of Article 11(1) is set out above in detail in Chapter IV, and not rehearsed here, save to emphasise that the Respondent's analysis of the meaning of Article 11(1) set out at para. 9.10 of its Counter-Memorial, on which its objection to the second request is based, is unsound.

[477] See further note 489 below, and Appendix III to this Reply.

[478] *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963,* p. 38*,* as cited by the Respondent at para. 9.12 of its Counter-Memorial.

or refrain from any action. As such, the order sought is in line with the Court's jurisprudence and the Court's inherent judicial function.[479]

6.22. For the avoidance of doubt, and responding to the Respondent's assertions, the order sought *is* only to be applied "by the Respondent vis-à-vis its own authorities".[480] Contrary to the Respondent's claim at paragraph 9.14 of its Counter Memorial, the Respondent is *not* required to possess or to exercise "some sort of authority within NATO which would compel that Organisation to change its opinion about [the Applicant's] admission". Rather the Respondent would be required to inform its *own* authorities to act in a manner that is consistent with the Interim Accord. Such action by the Respondent would restore the Applicant to the *status quo ante* of a NATO aspirant State, the accession of which to NATO was not blocked by an unlawful objection by the Respondent, on grounds impermissible under Article 11(1) of the Interim Accord, in circumstances where the consent or acquiescence of all NATO Member States is required in order for consensus on NATO enlargement matters to be reached.

6.23. Third, as noted in detail in Chapter V of this Reply, and contrary to the Respondent's erroneous and unsupported assertions, the Applicant is not in breach of Article 5 of the Interim Accord. Contrary to the Respondent's claim, the order sought by the Applicant would not amount to an "endorsement, in advance" of any such breach by the Applicant. The relief sought seeks to ensure that the Respondent adheres to its obligations under Article 11(1), no more and no less.

6.24. For the reasons set out above, read in conjunction with paragraphs 6.18 to 6.25 of its Memorial, the Applicant reiterates its request that the Court grant the order sought under the second head of relief.

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479 Memorial, paras. 6.23 to 6.25.

480 Counter-Memorial, para. 9.14.

## Section III: The Reservation of Rights

6.25. The Applicant's Memorial included a short paragraph setting out its reservation of rights.[481] The Respondent has made a lengthy challenge to this short paragraph, variously describing the approach as "sibylline and inconsistent"[482], "sweeping and essentially vacuous"[483] and "serv[ing] no obvious purpose".[484] The Respondent's arguments demonstrate a misunderstanding of the function of such clauses.

6.26. Reservations of rights form an ordinary and usual part of submissions to the International Court of Justice, and their inclusion in memorials and applications to the Court is now routine.[485] Contrary to the Respondent's assertion, they do not require the Court "to anticipate hypothetical situations and to decide on them before they have arisen".[486] Rather, as stated in terms in the Application and Memorial, they "reserve the right" "to modify and extend" the terms of the Application, the grounds invoked and the relief sought "in the event that further acts of the Respondent" require it. The inclusion of a reservation of rights clause is particularly pertinent in the present case, in circumstances where the dispute before the Court, concerning "the application of Article 11(1) of the Interim Accord of 13 September 1995",[487] arises not only in relation to the

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481 Memorial, para. 6.26.

482 Counter-Memorial, para. 9.2.

483 Counter-Memorial, para. 9.19.

484 Counter-Memorial, para. 9.20.

485 Examples include: Mémoire de la République Argentine for *Pulp Mills on the River Uruguay (Argentina v. Uruguay), 15 January 2007* at para. 9.2: "La République argentine se réserve la possibilité de compléter et amender le cas échéant les présentes conclusions, notamment en fonction de l'évolution de la situation"; Memorial of Mexico for the *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America),* 20 June 2003 at para. 408*:* "Mexico reserves the right to modify or extend the terms of its requested judgment, as well as the grounds invoked in this Memorial"; the Application instituting proceedings in the *Fisheries Jurisdiction (Spain v. Canada)* case, filed in the Registry of the Court on 28 March 1995, at Section 7: "The Kingdom of Spain reserves the right to modify and extend the terms of this Application, as well as the grounds invoked".

486 Counter-Memorial, para. 9.20(iii).

487 Title of proceedings.

Applicant's membership in NATO, but also in other "international, multilateral and regional organizations and institutions" of which the Respondent is a member. Of particular concern to the Applicant is the Respondent's stance in relation to the Applicant's membership of the European Union.[488] The Applicant's concerns are not "hypothetical", as recent pronouncements by the Respondent in relation to the European Union make clear.[489]

6.27. The Respondent asserts that the Applicant's reservation of rights serves no purpose and merely restates the obvious. However, this assertion is based on the Respondent's own reformulation of the reservation of rights sought by the Applicant.[490]

6.28. The Respondent also asserts that the Applicant's "threat to implement its "reservation of rights" would materially modify and extend the scope of the dispute as clearly defined in the Memorial."[491] This assertion is untenable: the Applicant's concerns as expressed in its reservation of rights relate to the very same subject matter of the dispute that is before the Court, namely the "application of Article 11(1) of the Interim Accord of 13 September 1995". This is reflected *inter alia* in the title of the case. As such, the reservation of rights does *not* to transform "the subject of the dispute originally before the Court".

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[488] See, e.g., *Note verbale* dated 22 September 2009 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje: Reply, Annex 39; and the Respondent's *Aide Memoire* (30 September 2009): Reply, Annex 40; see further the Applicant's *Aide Memoire* (1 March 2010): Reply, Annex 53; and Verbal note dated 18 December 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs, with attached Letter dated 14 December 2009 from the Respondent's President, Karolos Papoulias to the Applicant's President, Gjorge Ivanov: Reply, Annex 49. See also George Gilson, "Fyrom name a priority", *Athens News* (15 March 2010): Reply, Annex 198; "Hope for deal on Macedonia name row: UN official", *Agence France Presse* (24 February 2010): Reply, Annex 196; and "EU/FYROM: EP changes stance on Macedonia name dispute" *European Report* (25 April 2008): Reply, Annex 154.

[489] See Appendix III to this Reply. For the avoidance of doubt, such statements and actions are without doubt capable of establishing a "dispute" for the purposes of establishing the Court's jurisdiction, given that they undoubtedly constitute "a disagreement on a point of law or fact, a conflict of legal views or of interests between" the Parties, as formulated by the Permanent Court in the *Mavrommatis Palestine Concessions, P.C.I.J., Series A, No. 2*, p. 11 (1924).

[490] Counter-Memorial, paras. 9.17-9.26; the reformulation is presented at para. 9.20.

[491] Counter-Memorial, para. 9.23.

The *Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* cited in the Counter Memorial[492] does not assist the Respondent. The paragraphs that immediately follow those cited by the Respondent make this clear:

> "However, the mere fact that a claim is new is not in itself decisive for the issue of admissibility. In order to determine whether a new claim introduced during the course of the proceedings is admissible the Court will need to consider whether, "although formally a new claim, *the claim in question can be considered as included in the original claim in substance*" (Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, pp. 265-266, para. 65). For this purpose, to find that the new claim, as a matter of substance, has been included in the original claim, it is not sufficient that there should be links between them of a general nature. Moreover,
>
> "[a]n additional claim must have been implicit in the application (Temple of Preah Vihear, Merits, Judgment, I.C.J. Reports 1962, p. 36) or must arise '*directly out of the question which is the subject-matter of that Application*' (Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, I.C.J. Reports 1974, p. 203, para. 72)" (Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 266, para. 67)."[493] [emphasis added]

6.29. In the present case, were the Applicant to exercise its rights under the reservation of rights, any additional claim would arise "directly out of the question which is the subject matter of [the] Application", namely "the application of Article 11, paragraph 1 of the Interim Accord of 13 September 1995".

6.30. For the reasons set out above, and in circumstances where the Respondent persists in denying its breach of Article 11(1), and continues to threaten to further

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[492] Counter-Memorial, para. 9.24 and fn. 559: International Court of Justice, Judgment of 8 October 2007, *Case concerning territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, at para. 104.

[493] *Ibid*., at para. 105.

object to the Applicant's membership in international, multilateral and regional institutions and organizations in which the Applicant is to be referred to no "differently than in paragraph 2 of Security Council resolution 817 (1993)", the Applicant's reservation of right is entirely appropriate.

## SUBMISSIONS

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

Requests the Court:

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

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

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

8 June 2010

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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.

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Nikola Dimitrov
Co-Agent of the Republic of Macedonia

# APPENDICES

## APPENDIX 1

## SELECTION OF INTERNATIONAL PRESS ARTICLES REPORTING THE RESPONDENT'S OBJECTION TO THE APPLICANT'S MEMBERSHIP OF NATO

### Articles Reported on the Official Websites of the Respondent

1. Embassy of the Respondent in Washington, DC, "Speech of FM Ms. Bakoyannis before the governing party's Parliamentary Group" (27 March 2008), accessed 21 May 2010: Memorial, Annex 89:

> "…In this way, our government gradually built – step by step, in a methodical and well-organised 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*."[494]

2. Embassy of the Respondent in Washington, DC, *PM Karamanlis briefed on new Nimetz proposal on FYROM name* (27 March 2008), accessed 21 May 2010: Reply, Annex 174:

> "Asked by reporters whether the prospect of Greece vetoing FYROM membership in NATO continued to stand, Bakoyannis replied: 'Greece's position is clear, and I don't need to repeat it. However, I will say it again: *If there is no mutually acceptable solution on the name, Greece cannot consent to allied relations with Skopje'*."

[494] Italics here and in the subsequent quoted extracts denote an emphasis added by the Applicant.

3. Consulate Office of the Respondent in Los Angeles, CA, *Prime Minister addresses off-the-agenda discussion on FYROM issue* (11 April 2008), accessed 21 May 2010: Reply, Annex 147:

> "The premier [Prime Minister Costas Karamanlis] also underlined, in his reply to the other party leaders later the same session that *Greece will not budge from its proclaimed position as long the name issue remains unsolved. 'Only a solution will lead to an invitation to join NATO.* Only a solution will lead to establishing a date for the start of accession negotiations into the EU', he stressed…"

4. Embassy of the Respondent in Washington, DC, *Greece steadfast on 'no FYROM name solution means no NATO invitation', just hours ahead of crucial Alliance summit* (3 April 2008), accessed 21 May 2010: Reply, Annex 137:

> "Greece reiterated its steadfast position that *no mutually acceptable solution to the FYROM name issue would mean no NATO membership invitation* to the neighboring country. This statement was made on Wednesday just hours before a crucial North Atlantic Treaty Organization summit opened in Bucharest, with the enlargement of the Alliance being a top item on the agenda.
>
> Foreign Minister Dora Bakoyannis reiterated that 'no solution of the name issue means no invitation', speaking to reporters after a final meeting with Prime Minister Costas Karamanlis and Defense Minister Evangelos Meimarakis at the government headquarters ahead of the Summit…
>
> In response to a question on whether a 'trilateral' meeting between US, Greek and FYROM officials would be held on the sidelines of the summit, Bakoyannis said that there was no information to that effect, adding that the *Greek position was 'crystal-clear' even though it possibly did not coincide with the positions of other NATO member countries*."

5. Ministry of Foreign Affairs of the Respondent, *Message of Prime Minister Mr. Kostas Karamanlis* (3 April 2008), accessed 21 May 2010: Memorial, Annex 99:

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

**Articles from the Respondent's Press**

6. "Athens won't back FYROM's EU and NATO entry without mutually agreed solution, gov't says", *Athens News Agency* (5 November 2004): Reply, Annex 91:

> "The spokesman was responding to questions on whether Greece would veto FYROM's future NATO and EU entry, in the wake of a recently announced U.S. decision to recognize the republic with its constitutional name 'Republic of Macedonia' that is disputed by Greece as historically inaccurate and concealing designs on a northern Greek province of the same name. Noting that the accession of a European country into the EU and NATO required the unanimous agreement of existing members, he stressed that *Greece would not go along with such a decision unless a solution was found*."

7. Dora Antoniou: "FYROM solution lies in compound name", *Kathimerini* (15 October 2007), accessed 21 May 2010: Reply, Annex 167:

> "*Is Greece ready to do everything in its power to achieve that, in view of Skopje's prospects of joining NATO?*
> *The answer is yes.* Greece believes that good-neighborly relations and the resolution of problems is a condition for participation in an alliance. [Minister Dora Bakoyannis]"

8. "Premier dangles FYROM veto", *Kathimerini* (23 February 2008), accessed 21 May 2010: Memorial, Annex 80:

> "Prime Minister Costas Karamanlis for the first time yesterday made known his views on the proposals by UN mediator Matthew Nimetz on the Macedonia name dispute and *warned that Greece would block the Former Yugoslav Republic of Macedonia's bid to join NATO unless a mutually acceptable solution is found*."

9. "Name dispute hampers NATO's Balkan plans", *Kathimerini* (7 March 2008), accessed 21 May 2010: Reply, Annex 107:

> "The three Balkan nations are hoping to be invited to join NATO at an alliance summit early next month in Bucharest, Romania. *But Greece has threatened to veto FYROM's entry because of a dispute over the country's name*…
> 'As long as there is no solution (on the name) there will be an insurmountable obstacle,' to FYROM joining NATO or the European Union, said Foreign Minister Dora Bakoyannis."

10. "Athens talks tough on FYROM", *Kathimerini* (15 March 2008), accessed 21 May 2010: Reply, Annex 109:

> "Athens upped the stakes yesterday in its name dispute with the Former Yugoslav Republic of Macedonia (FYROM) when Prime Minister Costas Karamanlis suggested that any solution would rest on a composite name with a geographical qualifier.
> *Karamanlis insisted yesterday that Greece would stick to its line of vetoing FYROM's bid unless the name dispute is resolved*."

11. "FYROM veto seems likely", *Kathimerini* (1 April 2008), accessed 21 May 2010: Reply, Annex 122:

> "Athens yesterday dug its heels in further on the Macedonia name dispute, saying it *would veto Skopje's bid to join NATO at an alliance*

*summit this week unless a compromise is reached on the Balkan country's name*.

'We have stated our position repeatedly - I will say it again: No solution means no invitation,' Foreign Minister Dora Bakoyannis said yesterday in the face of growing pressure from Washington for a last-ditch settlement."

12. "Greek diplomats brace for pressure at NATO summit", *Kathimerini* (2 April 2008), accessed 21 May 2010: Reply, Annex 128:

"*Greece's top diplomats have the whole country behind them in barring Skopje's bid to join NATO for as long as the Macedonia name dispute remains unresolved*, Foreign Minister Dora Bakoyannis said yesterday as she prepared to travel to Bucharest for a crucial alliance summit. 'We have the country's full political backing,' Bakoyannis said yesterday after briefing the Inner Cabinet on diplomatic preparations for the summit, which is to extend membership invitations to Albania, Croatia and the Former Yugoslav Republic of Macedonia (FYROM)…

Bakoyannis, due in Bucharest today along with Prime Minister Costas Karamanlis, explained Greece's stance in an opinion piece published in the International Herald Tribune yesterday. '*As long as this problem persists we cannot and will not endorse FYROM joining NATO or the European Union. No Greek government will ever agree to it,*' she wrote.

Karamanlis also tried to muster some international backing, reportedly telephoning German Chancellor Angela Merkel and other foreign leaders.

According to sources, Karamanlis and Bakoyannis analyzed the possible scenarios that would follow a Greek veto of FYROM's bid to join the Atlantic alliance.

Meanwhile opposition leaders were unanimous in their calls for a veto."

13. "FYROM remains out of NATO because of Greek veto over name dispute", *Phantis* (3 April 2008), accessed 21 May 2010: Reply, Annex 138:

> "During its ongoing Summit in Bucharest NATO decided not to extend a membership invitation to the Former Yugoslav Republic of Macedonia (FYROM) for the time being *because Greece vetoed the move after the dispute over the name of the former Yugoslav republic remained unresolved*."

14. "Greece blocks FYROM but still wants to talk", *Kathimerini* (4 April 2008), accessed 21 May 2010: Reply, Annex 142:

> "Karamanlis and the Greek delegation had come under pressure, mainly from Washington, to accept a deal that would allow FYROM to begin the process of joining NATO, albeit as FYROM rather than its constitutional name of Republic of Macedonia. *But the prime minister underlined that Greece was not willing to budge from its position that the name dispute must be settled before FYROM's membership bid can proceed*."

15. George Gilson: "Fyrom name a priority", *Athens News* (15 March 2010), accessed 21 May 2010: Reply, Annex 198:

> "Washington is eager to admit Fyrom into the Nato military alliance, *a move Greece blocked at the April 2008 Bucharest summit*."

**Article reported on NATO's Official Website**

16. "Rice Backs Speedy Accession of Macedonia into NATO", *NATO Off the Wire* (8 May 2008), accessed 21 May 2010: Reply, Annex 152:

> "Secretary of State Condoleezza Rice reiterated Wednesday that the United States supports full NATO membership for Macedonia as soon as possible. *Greece last month blocked Macedonia's entry into the alliance because of the dispute over Macedonia's name*."

**Articles from the North American Press**

*United States of America*

17. "Greece May Block Macedonia's NATO, EU Bids Over Name Issue", *Dow Jones International News* (5 November 2004), accessed 21 May 2010: Memorial, Annex 67:

> "The *Greek government said Friday that it would block neighboring Macedonia from joining the North Atlantic Treaty Organization* or the European Union unless a name dispute with the Balkan republic is resolved first."

18. Anthee Carassava: "NATO Could Block Macedonia Over Name", *The New York Times* (4 March 2008), accessed 21 May 2010: Reply, Annex 99:

> "Macedonia, a former Yugoslav republic hopes to win NATO's invitation to join the 26-member military alliance at a meeting of leaders in Bucharest, Romania, in April. But *Greece has threatened to veto those plans if its northern neighbor does not relinquish its name, which Greece contends is its exclusively.* Greece says that using the name implies a claim to the northern Greek province of the same name."

19. "The Republic Formerly Known As…", *The New York Times* (30 March 2008), accessed 21 May 2010: Reply, Annex 116:

> "NATO is holding its summit meeting next week, and wants to bring in three Balkan states — Albania, Croatia and Macedonia. *But Greece, a NATO member since 1952, is threatening to veto Macedonia's membership over its name*."

20. David Brunnstrom and Justyna Pawlak: "Greece stands by NATO veto threat for Macedonia", *Reuters* (2 April 2008), accessed 21 May 2010: Reply, Annex 131:

"*Greece stood by its threat on Wednesday to veto NATO membership for Macedonia* despite pressure from U.S. President George W. Bush to resolve a name dispute that could fuel instability in the Balkans.

Bush urged Greece not to use its veto as an alliance member to prevent NATO inviting the ethnically mixed ex-Yugoslav republic's to join during a summit this week in Bucharest.

*Athens has said it will prevent Skopje joining unless it changes its constitutional name,* which is the same as Greece's northernmost province, birthplace of Alexander the Great.

'We have said that no solution (to the name dispute) means no invitation (for Macedonia),' Greek Foreign Minister Dora Bakoyanni told reporters after meeting Prime Minister Costas Karamanlis shortly before leaving for Bucharest."

21. Peter Baker: "For Macedonia, NATO Summit a Disappointment", *The Washington Post* (4 April 2008), accessed 21 May 2010: Reply, Annex 143:

"For 17 years, Greece has quarreled with its northern neighbor about the name it chose after winning independence from the collapsing Yugoslavia. But now this obscure, seemingly trivial dispute has erupted into an international incident as *Greece single-handedly blocked NATO membership for the country it refuses to call Macedonia*….

The impasse disrupted the alliance's carefully laid plans to expand deeper into the once-troubled Balkans by admitting Albania, Croatia and Macedonia during the summit that ended here Friday. *Because it operates on consensus, embarrassed NATO leaders had no choice but to bow to Greek objections and cross Macedonia off the list…*

Every NATO member agreed that Macedonia had met all the criteria for membership, but the name issue was a deal-killer for Greece."

22. Metodija A. Koloski: "A name to reckon with", *The Washington Times* (4 May 2008), accessed 21 May 2010: Reply, Annex 151:

"*The recent Greek veto of the Republic of Macedonia's NATO membership during the NATO Bucharest Summit* earlier this month was unfounded and contrary to the principles of NATO and its member states.
*Macedonia fulfilled all of the membership criteria set forth by NATO and all other NATO members supported its admission into the alliance*."

23. Dragana Ignjatović: "Progress Remains Elusive in FYR Macedonia-Greece name talks" *Global Insight* (26 March 2010): Reply, Annex 199:

"*Greece has remained stringent on its position of vetoing further Euro-Atlantic integration for FRY Macedonia until the name dispute is resolved*. To date, *Greece has vetoed FYR Macedonia's NATO accession as well as prevented the EU from giving the Balkan country a start date for accession negotiations*."

*Canada*

24. "Name dispute drags on; Greece holds veto in scrap with NATO hopeful Macedonia", *Windsor Star* (29 March 2008): Reply, Annex 115:

"Macedonia's government is ready to ask parliament to consider a new name for the country to end a dispute with Greece that is blocking its NATO membership bid…
*Greece threatens to veto Macedonia's bid unless it changes its name*…"

25. "Greece may veto Macedonia", *Calgary Sun* (2 April 2008): Reply, Annex 125:

"*Greece has threatened to veto Macedonia's invitation to join NATO if the former Yugoslav republic does not change its constitutional name*, which is the same as Greece's northernmost province, birthplace of Alexander the Great."

26. "Bush to push for Ukraine and Georgia", *Winnipeg Free Press* (2 April 2008): Reply, Annex 124:

> "*Greece… is threatening to block Macedonia's membership application because of a dispute over Macedonia's name*."

27. "Greece may veto Macedonia", *Calgary Sun* (2 April 2008): Reply, Annex 125:

> "*Greece has threatened to veto Macedonia's invitation to join NATO* if the former Yugoslav republic does not change its constitutional name…"

28. Antonio Milošoski (the Applicant's Foreign Minister):"Why was NATO's door slammed in our face?; Greece used its veto against a country that dares speak its name", *The Globe and Mail* (29 April 2008): Reply, Annex 150:

> "*Greece has blocked NATO membership for the Republic of Macedonia*. It has done it by abusing the right of veto, with incredible ease."

**Articles from the European Press**

29. "Karamanlis: Greece to veto Macedonia's EU, NATO bids if name issue not resolved", *Southeast European Times* (7 September 2007), accessed 21 May 2010: Memorial, Annex 71:

> "Prime Minister Costas Karamanlis said Thursday (September 6th) evening that *Greece will veto Macedonia's accession to NATO and the EU if the longstanding name dispute between the two countries is not resolved*."

30. "Greece, FYROM to meet over name dispute", *European Report* (7 December 2007): Reply, Annex 169:

> "*Athens has threatened to veto the FYROM's bid to enter both NATO and the EU unless Skopje agrees on a compromise*."

31. "Greece threatens to veto Macedonia's NATO bid", *European Voice* (27 March 2008), accessed 21 May 2010: Reply, Annex 113:

> "Seizing the *leverage offered by Macedonia's NATO membership bid, Greece is therefore determined to impose a veto unless and until an agreed solution is found*. Macedonia has been recognised by some 120 countries but has to use 'Former Yugoslav Republic of Macedonia' in multilateral settings."

32. Aleksandar Matovski: "Macedonia after Bucharest: Avoiding another European Failure in the Balkans", *ISS Opinion* (13 June 2008), accessed 21 May 2010: Reply, Annex 205:

> "At the Summit, however, Macedonia's membership bid was blocked by its first neighbour Greece – the sole NATO member opposing the invitation of membership to Macedonia."

*The Applicant*

33. "Canadian Defense Minister asks for change in NATO consensus on admitting new members", *Macedonian Information Agency* (8 March 2009), accessed 21 May 2010: Reply, Annex 153:

> "At a meeting with his US counterpart Robert Gates in Washington, McCay [Canadian Defense Minister] asked NATO to revise the article for consensus in order to avoid any possible failures due to bilateral issues, such as those between Greece and Macedonia and Slovenia and Croatia, *which result in blocking the Alliance* while admitting new members."

*The Balkans*

34. "NATO Urges Macedonia solution", *BalkanInsight.com* (3 March 2008), accessed 21 May 2010: Reply, Annex 98:

"*Athens is threatening to block Skopje's NATO bid if the country does not change its constitutional name 'Republic of Macedonia'*…
Senior NATO officials have said over the past few months that the name of Macedonia is not a precondition for NATO accession but they remain concerned over a possible Greek veto."

35. Sinisa-Jakov Marusic: "Greece uncertain on Macedonia's EU Progress", *BalkanInsight.com* (22 September 2009), accessed 21 May 2010: Reply, Annex 156:

"Last year, *Athens blocked Skopje's NATO entry over the row* and threatened to impose a second veto on Macedonia's EU accession bid."

*United Kingdom*

36. Marcin Grajewski: "Greece threatens Macedonia NATO veto", *Reuters UK* (6 March 2008), accessed 21 May 2010: Reply, Annex 103:

"Greek Foreign Minister Dora Bakoyanni [sic] said she told NATO foreign ministers at a meeting in Brussels that Macedonia's attitude could leave Athens no alternative but to use its veto at an alliance summit in Bucharest next month…
*Athens has said it will block Macedonia's NATO and European Union accession until the two agree on a name for Greece's northern neighbour*, which broke away from Yugoslavia in 1991."

37. "Greece rejects Macedonia Nato bid", *BBC News* (6 March 2008), accessed 21 May 2010: Reply, Annex 104:

"*Greece has said it cannot support Macedonia's bid to join Nato, because of an unresolved dispute over its Balkan neighbour's name*.
Greek Foreign Minister Dora Bakoyannis told reporters in Brussels that Athens backed inviting Albania and Croatia but could not consent to asking Macedonia."

38. "Greece pressed over Macedonia", *The Independent* (7 March 2008): Reply, Annex 108:

> "Nato nations cranked up pressure on Greece yesterday to allow Macedonia to join the Alliance, warning that leaving the Balkan nation isolated could add to regional instability… *Greece has threatened to veto Macedonia's entry because of a dispute over the country's name*."

39. Spencer P. Boyer and James D. Lamond: "NATO: Expansion and Division", *The Henry Jackson Society* (22 March 2008), accessed 21 May 2010: Reply, Annex 76:

> "Macedonia has met the necessary criteria to obtain an invitation for NATO membership, and expanding membership to the Balkans will help create and maintain stability in this volatile region. Macedonia has also been helpful to NATO in Kosovo and elsewhere in the world. It shouldn't be held hostage to the insecurities of Greece.
> … NATO should push Greece to moderate its unreasonable stance and reach compromise with Macedonia."

40. "Germany advocates NATO membership for Macedonia", *BBC Monitoring Europe* (2 April 2008): Reply, Annex 127:

> "Skopje and Athens have been disputing the name Macedonia since 1991. For this reason, until now *the accession of the former Yugoslav republic to NATO has threatened to fail because of a veto by Greece*."

41. "NATO to admit Croatia and Albania but delays Macedonia", *Reuters* (2 April 2008), accessed 21 May 2010: Reply, Annex 132:

> "'For the moment, *Greece is not in a position to agree to the entry of Macedonia* and it will be Croatia and Albania first,' Moratinos told Spanish reporters after the leaders discussed NATO enlargement at a summit dinner in Bucharest.

*Greece had said it would veto the former Yugoslav republic's entry until a dispute over the use of the name Macedonia*, shared with the most northerly Greek province, *is resolved*…"

42. Anne Penketh: "US and Ukraine challenge Russia on NATO expansion", *The Independent* (2 April 2008), accessed 21 May 2010: Reply, Annex 134:

> "A third invitation had been expected for Macedonia. However, *Greece repeated yesterday that it would veto Macedonia joining unless there was an agreement with Athens on the country's name*."

43. Harry de Quetteville: "Macedonia row overshadows NATO summit", *The Telegraph* (2 April 2008), accessed 21 May 2010: Reply, Annex 130:

> "…Greece has repeatedly warned that however trivial the issue may appear to outsiders, *it is willing to veto FYROM's candidacy for Nato* unless its neighbour backs down over claims to the name Macedonia."

44. 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), accessed 21 May 2010: Memorial, Annex 100:

> "The summit was split on whether to offer membership prospects to Georgia or Ukraine, while *Greece was able to block Macedonian membership single-handed*.
> *Greece was bitterly opposed to the accession of Macedonia, favoured by the rest of the alliance, because of the former Yugoslav republic's name, which Athens argues implies a territorial claim on the northern Greek province of Macedonia*. 'For the moment, *Greece is not in a position to agree to the entry of Macedonia* and it will be Croatia and Albania first,' Spain's foreign minister, Miguel Ángel Moratinos told reporters late last night."

45. Oana Lungescu: "Nato Macedonia veto stokes tension", *BBC News* (4 April 2008), accessed 21 May 2010: Reply, Annex 140:

> "*Macedonia's bid was blocked by Greece because of a 17-year row over the country's name*."

46. Michael Evans, Francis Elliot: "Summit setback for Nato expansion plan", *The Times* (4 April 2008): Reply, Annex 141:

> "The hitch over Fyrom also spoilt what was supposed to be a celebration of three new Balkan countries joining the alliance — Albania, Croatia and Fyrom itself. *All three had passed the tests for membership, but Greece vetoed Macedonia on the ground that it had the same name as its northern province*. After failing to reach a compromise, Nato leaders were forced to put the invitation to Fyrom on hold until the clashing names could be resolved."

*Denmark*

47. Ministry of Foreign Affairs of Denmark, *Brussels says NATO membership would help EU hopefuls* (2 April 2008), accessed 21 May 2010: Reply, Annex 133:

> "*…Macedonia's future hinges on Greek demands that it change its name*. Greece signalled Wednesday that, barring a last-minute compromise, *it would veto a formal invitation to Macedonia to join NATO*, as the transatlantic alliance opened a three-day summit."

*France*

48. "Greece to veto Macedonia's EU, NATO accession if no deal on name: reports", *Agence France Presse* (5 November 2004), accessed 21 May 2010: Memorial, Annex 66:

> "EU and NATO member *Greece will veto Macedonia's possible entry into both organisations if the two countries reach no deal on the name*

*by which Macedonia is internationally recognized*, the press quoted Friday Greek Prime Minister Costas Karamanlis as saying."

49. "Greece rejects Macedonia's NATO entry in name row", *Agence France Presse* (6 March 2008): Reply, Annex 102:

> "*Greece stood firm Thursday and refused to allow Macedonia to join the NATO military alliance* until a row over its name, that has festered for more than 17 years, has been resolved…
> As NATO foreign ministers considered whether to hand membership invitations to Macedonia, Albania and Croatia next month, *Greek Foreign Minister Dora Bakoyannis said her country could only back two of the candidates*.
> 'Greece supports the candidacy of Albania and Croatia,' she said, but added that *'issues which are intertwined do not allow us to take the same position' for Macedonia*.
> According to NATO officials and diplomats, the so-called Adriatic Three have all *largely met the technical criteria to join the 26-national transatlantic alliance*.
> But *Greece is blocking Macedonia because its name* is the same as a northern Greek province.
> NATO Secretary General Jaap de Hoop Scheffer underscored that the military alliance is a consensus organisation that works on unanimity, and that Greece had the upper hand as a member nation."

50. "Greece says it will block NATO invite to Macedonia", *Agence France Presse* (2 April 2008): Reply, Annex 126:

> "Greece signalled Wednesday that, barring a last-minute compromise, it *would veto a formal invitation to Macedonia to join NATO*, as the transatlantic alliance opened a three-day summit.
> *'As long as this important problem persists, Greece cannot give its consent for the invitation,'* a Greek foreign ministry spokesman said.

'I am afraid that we are running out of time dramatically regarding this summit.'

Macedonia -- the southernmost of the former Yugoslav republics -- is keen to join the North Atlantic Treaty Organization, but its *ambitions have been challenged by neighbour Greece in a dispute over its official name*."

51. Despic-Popovic: "La fragile Macédoine déstabilisée par l'intransigeance d'Athènes" *Libération* (14 April 2008): Reply, Annex 149:

"*La Macédoine a fait l'objet d'un veto de la Grèce* qui lui reproche d'usurper un nom qui n'appartient qu'au patrimoine hellénique. Admise à l'ONU sous le nom d'ancienne République yougoslave de Macédoine (Arym ou, plus utilisé, Fyrom, en anglais), *la Macédoine, indépendante depuis 1991, s'était dite prête à un ultime compromis en prenant le nom de République de Macédoine (Skopje). Mais cela n'a pas été suffisant pour calmer Athènes*…. Le veto grec a relancé les frustrations nationalistes de la majorité macédonienne qui pourrait se détourner de l'Europe et de tout compromis avec la minorité albanaise. Car rien ne dit qu'Athènes ne mettra pas son veto à l'entrée de Skopje dans l'Union européenne."

*Germany*

52. "Greece Blocking NATO Expansion – Which Macedonia Was Alexander the Great From?", *Spiegel Online* (29 March 2008), accessed 21 May 2010: Reply, Annex 114:

"To outsiders, the dispute seems absurd: *Athens is blocking Macedonia's NATO membership because Greece wants its neighbor to the north to change its name*…

[T]he Name Game has thrown a wrench in the NATO expansion works. Greece, a member of the alliance, says that *it will only agree to accept Macedonia if it changes its name*. The controversy will

not only overshadow the NATO summit in Bucharest, Romania next week. *It could seriously jeopardize the planned expansion of the alliance and plunge Macedonia into a domestic political crisis*."

53. "Croatia: invitation to join NATO", *Wieninternational.at* (9 April 2008), accessed 21 May 2010: Reply, Annex 144:

> "There was some criticism of *Greece's veto of membership by Macedonia*. Greece is obstructing NATO enlargement because it claims the name Macedonia for itself."

54. "NATO Wannabe Macedonia Demands 'Freedom and Justice'", *Spiegel Online* (7 March 2008), accessed 21 May 2010: Reply, Annex 105:

> "…Greece on Thursday once again *threatened to veto the country's membership in NATO if it doesn't change its name*…
> Athens is concerned that were Macedonia the country to share a name with Macedonia the province, then Skopje might lay claim to a big chunk of northern Greece. Following Macedonia's secession from Yugoslavia in 1991, Greece agreed to allow the fledgling republic into the UN and other international organizations only under the provisional name of the Former Yugoslav Republic of Macedonia -- or FYROM for short. *Now, the Greeks are saying they won't even allow Macedonia into NATO under the acronym, saying that the long-standing dispute has to be solved first*."

*Ireland*

55. "Greece may veto Macedonia's bid to join Nato", *The Irish Times* (1 April 2008): Reply, Annex 123:

> "On the eve of Nato's summit in Romania, Macedonia is still unsure whether Greece will veto its invitation to join the bloc…
> …*Greece is the only Nato member to oppose membership for any of the Balkan trio – and only until the name dispute is settled*…"

*Romania*

56. "Greek opposition postpones Macedonia's accession to NATO", *BBC Worldwide Monitoring and Rompres* (3 April 2008), accessed 27 May 2010: Reply, Annex 136:

> "Bucharest, April 3 (Rompres) – The NATO leaders expressed their hope that Macedonia will be invited as soon as possible to join the Alliance, as *Greece announced that as long as a compromise is not [in] reach on the name issue*, *the Athens administration is against accepting the northern neighbour*, the press agencies inform.
> NATO spokesman *James Appathurai said on Wednesday evening that the Greek delegation clearly explained that Macedonia's accession is impossible before the dispute on the name is solve*d."

*Russia*

57. "Greece rebuffs Macedonia's NATO membership over name change" *Ria Novosti* (31 March 2008), accessed 28 May 2010: Reply, Annex 119:

> "Dora Bakoyannis told journalists: '*Our position is known: no solution to the problem - no invitation.' An invitation to join NATO can only be given if all alliance member countries agree*.
> Macedonia, which hopes to receive an invitation to join NATO at a NATO summit in Bucharest in April, is holding talks with Greece to try and resolve the issue."

*Serbia*

58. "Greece will veto Macedonia's NATO bid", *B92* (8 September 2007), accessed 21 May 2010: Reply, Annex 93:

> "Unless there is a compromise over its name, *Macedonia's southern neighbor Greece will veto Skopje's effort to join NATO*… The

statement came Friday, from the Greek prime minister, Kostas Karamanlis.

'It is out of the question for Skopje to become a member of any organization, be it NATO or the EU, unless that country opts for adopting a name acceptable to all," he said during a televised debate in Athens.' Karamanlis went on to say that *his country will use veto to block Macedonia's membership in both organizations*."

*Slovakia*

59. "Slovakia supports Macedonia's effort to join NATO, EU", *People's Daily Online* (12 March 2008), accessed 21 May 2010: Memorial, Annex 86:

> "Crvenkovski said that Macedonia has not yet solved its long-lasting dispute with Greece over its name, which has *threatened to block Macedonia's entry to NATO and the European Union*."

60. Hristo Ivanovski: "Interview: Janez Jansa, Former Slovenian Prime Minister - Macedonia was a Victim in Bucharest", *Dnevnik* (21 March 2009), accessed 21 May 2010: Memorial, Annex 105:

> "*In Bucharest Greece vetoed Macedonia's NATO membership*. This was the *sole obstacle to the country's accession to membership of the Alliance, since everybody agreed that Macedonia had fulfilled all the membership criteria*..."

61. 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), accessed 21 May 2010: Memorial, Annex 106:

> "If one country does not give its consent then there can be no invitation to membership. So no consensus was reached regarding their position. Instead, all those of us who were in agreement that Macedonia should be invited to membership, *did not have the agreement of one lone country, and that country was Greece*."

*Turkey*

62. "NATO consider Balkan membership as Greeks threaten veto", *TurkishPress.com* (6 March 2008), accessed 21 May 2010: Reply, Annex 101:

> "NATO foreign ministers debated Thursday whether to invite three Balkans countries to join the military alliance, as *Greece threatened to veto the entry of Macedonia*.
> … *[I]n an organisation where every nation holds a veto, Greece will have the final word on tiny Macedonia*, which is striving to join less than seven years after NATO helped end an ethnic Albanian uprising there."

**Articles from the Australasian Press**

*Australia*

63. "Greece opposes NATO bid – Macedonia Dispute", *Sydney MX* (7 March 2008): Reply, Annex 106:

> "Greece has said it cannot support Macedonia's bid to join NATO, because of an unresolved dispute over its Balkan neighbour's name."

**Articles from the Asian Press**

*China*

64. "U.S. vows to support Macedonia's NATO bid", *Xinhua* (17 March 2008): Reply, Annex 111:

> "*Greece has threatened to use its NATO-member status to veto Macedonia's accession efforts* at the NATO's April 2-4 submit in Bucharest, Romania, if there is no agreement on the name issue by then."

65. "NATO leaders agree to invite Croatia, Albania to join alliance", *Xinhua* (3 April 2008), accessed 21 May 2010: Reply, Annex 135:

> "For the third aspirant country, Macedonia, the leaders hoped that it can be invited as soon as possible given the fact that *Greece, a NATO ally, has made clear that it will veto the invitation unless Macedonia changes its official name*.
>
> He [NATO spokesman James Appathurai] said the Greek delegation made very clear on Tuesday night that Macedonia's accession to NATO would be impossible before the settlement of the name dispute."

*Lebanon*

66. Uffe Ellemann-Jensen: "Two dangerous signals from the Bucharest NATO summit", *The Daily Star* (10 April 2008): Reply, Annex 146:

> "…*Greece successfully vetoed membership for Macedonia*, a move that reflected the two countries' unresolved conflict over Macedonia's name…"

*Saudi Arabia*

67. "Greece dissatisfied with UN proposal on Macedonia name", *Saudi Press Agency* (26 March 2008), accessed 21 May 2010: Reply, Annex 173:

> "…*Greece has threatened to veto Macedonia's upcoming bid to join NATO over the use of the name*, which it has objected to since Macedonia gained independence in 1991…"

## APPENDIX II

## SELECTION OF STATEMENTS MADE BY THE RESPONDENT'S REPRESENTATIVES VOICING ITS OPPOSITION TO THE APPLICANT'S MEMBERSHIP OF THE EUROPEAN UNION UNTIL SUCH TIME AS THE NAME DIFFERENCE IS RESOLVED TO ITS SATISFACTION

1. Respondent's Ministry of Foreign Affairs, *Alternate FM Droutsas' speech at the joint session of the Parliamentary Standing Committees on Defense and Foreign Affairs and on European Affairs* (22 January 2009), accessed 21 May 2010: Reply, Annex 190:

> "'The condition for further progress is crystal clear. *In order for the Former Yugoslav Republic of Macedonia to start accession negotiations with the EU, there must be a mutually acceptable solution on the name issue*: a solution *in line with our national red line*.'"

2. Respondent's Ministry of Foreign Affairs, *Statements of Foreign Minister Bakoyannis following the EU General Affairs and External Relations Council* (27 July 2009), accessed 21 May 2010: Reply, Annex 155:

> "Journalist: Are you worried about the possibility of the European Commission proposing the start of accession negotiations with FYROM in the fall?
>
> Ms. Bakoyannis: The Greek position is well known. *Greece cannot consent to the start of negotiations without prior resolution of the name issue*... There are various levels on which *counterparts, partners and allies have been briefed*. We have been following a specific policy for a very long time, *we have briefed NATO, we have been briefing the European Union and the countries with which Greece has bilateral relations*, as well as our partners and allies.

*This time we thought it was necessary to do that at the level of the Council*, and so we did."

3. Respondent's Ministry of Foreign Affairs, *Alternate Foreign Minister Droutsas' presentation of the basic parameters of Greece's foreign policy to diplomatic correspondents* (22 October 2009), accessed 21 May 2010: Reply, Annex 157:

> "Within this framework, we will also work for Skopje's accession course, but I stress once again, *prior resolution of the name issue is a prerequisite*, and let me make the reminder once more – to avoid any misunderstandings – that *the matter of the opening of accession negotiations is exclusively up to the member states, and thus it is up to Greece*."

4. Respondent's Ministry of Foreign Affairs, *Interview of Alternate FM Droutsas on 'Thema 98.9' radio, with journalists B. Koutras & R. Bizogli* (29 October 2009), accessed 21 May 2010: Reply, Annex 158:

> "Mr. B. Koutras: So Mr. Droutsas, if the name issue is not resolved at the December summit, Greece will veto the start of accession negotiations for Skopje. Isn't that right?
> Mr. D. Droutsas: I would prefer the wording that I've repeatedly used …
> Mr. B. Koutras: Go ahead.
> Mr. D. Droutsas: *The start of accession negotiations is within the exclusive competency of the European Union's member states, so it is also up to Greece, whose precondition for the opening of accession negotiations with Skopje is the prior resolution of the name issue*. And the Greek position on this issue – our national red line as we've called it – is clear and well known to everyone.

5. Respondent's Ministry of Foreign Affairs, *Alternate Foreign Minister Droutsas' interview on NET radio with journalist S. Trilikis* (4 November 2009), accessed 21 May 2010: Reply, Annex 159:

> "Mr. Droutsas: We have said that on this course there are prerequisites. Each country has to meet criteria and prerequisites. And I stress once again – so that we can be clear on this – what we have said repeatedly. *For Skopje, this means that if it wants to begin accession negotiations with the European Union, it first needs to resolve the name issue. This is a prerequisite for us*.
> And on the name issue, there is the well known national red line, from which Greece will not make any deviation."

6. Respondent's Ministry of Foreign Affairs, *Interview of Alternate FM Droutsas in the "Real News" daily (22.11.09)* (22 November 2009), accessed 21 May 2010: Reply, Annex 194:

> "*The veto is one of the tools at our disposal, just like any other NATO and EU member state*. FYROM's leadership has to prove to every EU member state that it has complied with all the criteria and prerequisites; that it respects the rules on good neighbourly relations, abandons intransigence and nationalism and comes to the negotiations under the auspices of the UN with a constructive mindset in order to find a definitive solution on the name issue. *There cannot be a start of accession negotiations without this issue's resolution. It's plain and simple.*"

7. Respondent's Ministry of Foreign Affairs, *Briefing of diplomatic correspondents by Alternate FM Droutsas and Deputy FM Kouvelis – presentation of the basic axes of Greek foreign policy* (11 January 2009), accessed 21 May 2010: Reply, Annex 187:

> "Remember that just 10 days after the elections – on 14 October – the European Commission issued its progress reports on Turkey and the Former Yugoslav Republic of Macedonia. These reports were a poor

point of departure for our interests. *They contained positions and recommendations that created a false pictures [sic] and contained views that I would call dangerous, like that on bilateral disputes that should not impact the accession courses of candidate countries*.

In this environment, *we began to work ahead of the December Council*, and I believe that fast and decisive moves were made immediately, during our first weeks in office. Moves that set the tone of the foreign policy that the government will exercise, *sending the necessary messages to our neighbours and partners*. In short, the inert and timid Greece of the Karamanlis government is a thing of the past...

In the European Union's December Conclusions, we put things back into their real perspective, *despite the efforts of the Swedish Presidency and certain member states. We made it clear that a solution on the name issue is a precondition for the opening of accession negotiations*... ."

8. Respondent's Ministry of Foreign Affairs, *Alternate FM Droutsas' speech at the joint session of the Parliamentary Standing Committees on Defense and Foreign Affairs and on European Affairs* (22 January 2009), accessed 21 May 2010: Reply, Annex 190.

"And finally I come to Skopje. Our country supported the Former Yugoslav Republic of Macedonia through difficult times in its history. We actively supported its European perspective. But there must not be any misinterpretations. *The condition for further progress is crystal clear. In order for the Former Yugoslav Republic of Macedonia to start accession negotiations with the EU, there must be a mutually acceptable solution on the name issue, a solution in line with our national red line*. An *erga omnes* name with a geographical qualifier."

9. Respondent's Ministry of Foreign Affairs, *Alternate FM Droutsas' statements following the GAC and FAC (Brussels)* (22 February 2010), accessed 21 May 2010: Reply, Annex 160.

> "Journalist: I see various EU and U.S. officials saying that they see a window of opportunity in the coming months. Do you agree with that outlook? And if there isn't any progress in June, what will happen at the Summit Meeting?
> Mr. Droutsas: I'll start with your second question. The Greek position has been clear and well known and consistent from the very outset. *Without prior resolution of the name issue, there is no question of opening accession negotiations with the former Yugoslav Republic of Macedonia.* That is clear, and everyone knows it. Moreover, it was set down in the Conclusions of the December European Council."

## APPENDIX III

## THE RESPONDENT'S 'RED LINE' POSITION IN THE NEGOTIATIONS OVER THE NAME

1. "Name talks are under way; Karamanlis says Greece will not accept dual solution to FYROM dispute" *Kathimerini* (1 March 2008), accessed 21 May 2010: Reply, Annex 171.

> "…Prime Minister Costas Karamanlis made it clear that Athens would not accept a dual name as solution to the dispute…
>
> Karamanlis confirmed this in Parliament yesterday when he said that Greece would not accept any name that refers to the type of polity in FYROM, such as Constitutional Republic of Macedonia."

2. "Greece's thin red line" *Kathimerini* (13 September 2008), accessed 21 May 2010: Reply, Annex 191.

> "The mediator's new suggestion regarding the recognition of a 'Macedonian minority' alone indicates that his proposal has *crossed one of the red lines* set by Greece's foreign policy makers…
>
> However, *the United Nations mediator also has to realize that there are some red lines that are non-negotiable for Greece*."

3. Respondent's Ministry of Foreign Affairs, *Statements of Alternate FM Droutsas and Bulgarian Deputy FM Raykov following their meeting, 11 January 2009* (11 January 2009), accessed 21 May 2010: Reply, Annex 186.

> "Within this framework, I [Alternate FM Droutsas] had the opportunity to brief Mr. Raykov – once again – on Greece's position on the FYROM name issue: our well *known national 'red line' for a name with a geographical qualifier, for all uses – erga omnes*."

4. Respondent's Ministry of Foreign Affairs, *Briefing of diplomatic correspondents by Alternate FM Droutsas and Deputy FM Kouvelis – presentation of the basic axes of Greek foreign policy* (11 January 2009), accessed 21 May 2010: Reply, Annex 187.

> "In this way, we wanted to show the whole world that Greece is coming to the negotiations on this issue with an open mind and constructive stance – but also with a crystal clear position, *our national red line: a name with a geographical qualifier for use in all instances, 'erga omnes'*."

5. Respondent's Ministry of Foreign Affairs, *Alternate FM Droutsas' speech at the joint session of the Parliamentary Standing Committees on Defense and Foreign Affairs and on European Affairs* (22 January 2009), accessed 21 May 2010: Reply, Annex 190.

> "In order for the Former Yugoslav Republic of Macedonia to start accession negotiations with the EU, *there must be a mutually acceptable solution on the name issue. a [sic] solution in line with our national red line. An erga omnes name with a geographical qualifier*."

6. Respondent's Ministry of Foreign Affairs, *Alternate Foreign Minister Droutsas' presentation of the basic parameters of Greece's foreign policy to diplomatic correspondents* (22 October 2009), accessed 21 May 2010: Reply, Annex 157.

> "Greece's position on this issue is well known and clear; everyone knows it. It is our *national red line: a name with a geographical qualifier, for use by everyone and in all instances*."

7. Sinisa-Jakov Marusic: "Greece Reiterates 'Red Line' For Macedonia", *BalkaIinsight.com* (10 November 2009), accessed 21 May 2010: Reply, Annex 193.

"The Greek prime minister made it absolutely clear that a precondition for FYROM's [Macedonia's UN provisional reference] accession course is the *solving of the neighbouring country's name, in accordance with 'national red lines' that have been set on the part of Greece*", ANA-MPA said.

8. Respondent's Ministry of Foreign Affairs, *Interview of Alternate FM Droutsas in the "Real News" daily (22.11.09)* (22 November 2009), accessed 21 May 2010: Reply, Annex 194.

"Mr. Droutsas: *Greece has a national red line today*, which is supported by the majority of the country's political forces. *We are only discussing an erga omnes compound name with a geographical qualifier*. This is the position we also supported as the main opposition party and we imposed it. It consolidates national interests, provides a solution without winners and losers. This solution will strengthen regional security and release our neighbouring country's Euro-Atlantic perspective."

9. "Droutsas: Greece Not Afraid of Direct Contact with FYROM", *GreekNews* (25 January 2010), accessed 21 May 2010: Reply, Annex 195.

" '*We have laid down the national 'red line', which is a solution based on a geographical qualification and a single name for all purposes*,' the minister emphasised. '*There is only one solution, as this is laid out by our national red line: A definitive composite name with geographical qualification of the term Macedonia, for all purposes (erga omnes) and for all uses*,' Droutsas underlined.

'So long as Greece's neighbour did not abandon its intransigent and obstructive stance at the UN, the further it would distance itself from its European future, the minister said, adding that Greece was now waiting to see how Gruevski would read Athens clear and *non-negotiable message'*."

10. Respondent's Ministry of Foreign Affairs, *Text of Alternate Foreign Minister Droutsas' reply to a current question in Parliament* (1 March 2010), accessed 21 May 2010: Reply, Annex 197.

> "Equally given and clear is Greece's position within this framework, *the national red line*, with which a large majority of the parties here in parliament agrees: A name with a geographical qualifier, for use in relation to everyone, erga omnes."

11. Respondent's Ministry of Foreign Affairs, *Alternate FM Droutsas' Interview in the Athens daily "Real News", with journalist Katia Makri (3 April 2010)* (5 April 2010), accessed 21 May 2010: Reply, Annex 200.

> "Mr. Droutsas: Throughout these years, successive leaderships in Skopje have avoided the negotiations and played hide-and-seek behind Mr. Nimetz's proposals. Playtime is over. We are talking clearly and we are taking the steps we need to take. And we are saying to everyone that Greece wants a solution. And we want a solution soon. *We can arrive at a solution, but it will require political will on the part of Skopje, as well. We are very clear: A name with a geographical qualifier, for use in relation to everyone. A geographical qualifier that makes clear the reality of the situation, and for use in relation to everyone so that the hide-and-seek can stop and a definitive solution can be found*."

12. Respondent's Ministry of Foreign Affairs, *Briefing of diplomatic correspondents by Foreign Ministry spokesman Gregory Delavekouras* (29 April 2010), accessed 21 May 2010: Reply, Annex 202.

> "…And I must say that Greece's position is clear. We are talking about a name with a geographical qualifier that will be used in relation to everyone, *erga omnes*.
>
> *These two components I am referring to are absolute prerequisites for our being able to reach a solution. We have to have a geographical*

*qualifier that will describe the reality of the situation: that the part cannot represent the whole. And it has to be used in relation to everyone – erga omnes* – so that we don't have a continuation of the current situation, in which we essentially have evasion and perpetual violations of UN resolutions and of the Interim Accord that has been concluded between the two countries.

So that is why we are talking about *a name with a geographical qualifier for use in relation to everyone, erga omnes*. 'Republic of Northern Macedonia"' provided it is used in relation to everyone, obviously satisfies these prerequisites.

Ms. Ristovska: Again on the name issue. I would like to ask about 'erga omnes': Is that for bilateral relations with Greece, international organisations *and domestic use, i.e., inside the country*?

Mr. Delavekouras: *Erga omnes means "toward all", I do not need to analyse it*."

## LIST OF ANNEXES

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### NATO DOCUMENTS, CORRESPONDENCE, OFFICIAL STATEMENTS AND PRESS RELEASES



### UNITED NATIONS DOCUMENTS AND CORRESPONDENCE

**Annex 10** Letter dated 23 November 1992 from the United Nations Secretary-General Addressed to the President of the Security Council, UN doc. S/24851 (25 November 1992)

**Annex 11** United Nations Security Council, *Report of the Secretary-General on the Former Yugoslav Republic of Macedonia*, UN doc. S/24923 (9 December 1992)

**Annex 12** The Kingdom of Morocco, *Non Paper* (6 February 1993)

**Annex 13** United Nations Commission on Human Rights, Forty-ninth Session, *Situation of Human Rights in the Territory of the Former Yugoslavia,* UN Doc. E/CN.4/1993/50 (10 February 1993) [excerpt]

**Annex 14** United Nations General Assembly, Forty-seventh session, *Admission of New Members to the United Nations*, A/47/L.54 (7 April 1993)

**Annex 15** Letter dated 17 February 1994 from the Applicant's Permanent Representative to the United Nations to the President of the Security Council, UN Doc. S/1994/194 (18 February 1994)

**Annex 16** Letter dated 5 April 1995 from the Applicant's Permanent Representative to the United Nations to the Secretary-General, UN Doc. S/1995/260 (6 April 1995)

**Annex 17** United Nations Department of Public Information, *United Nations Protection Force, Former Yugoslavia - UNPROFOR, Profile* (31 August 1996), accessed 28 May 2010

**Annex 18** Eighth United Nations Conference on the Standardization of Geographical Names, 27 August - 5 September 2002, *Report on the current status of the United Nations romanization systems for geographical names*, E/CONF.94/CRP.81 (18 June 2002)

**Annex 19** Letter dated 17 November 2008 from the Applicant's Permanent Representative to the United Nations to the Secretary-General, with Annexes, UN Doc. A/63/552-S/2008/718 (19 November 2008)

**Annex 20** Letter dated 23 July 2009 from the Applicant's Permanent Representative to the United Nations, Slobodan Tašovski, to the United Nations Secretary-General, UN doc. A/63/934-S/2009/381 (24 July 2009)

**Annex 21** Letter dated 25 September 2009 from the Respondent's Permanent Representative to the United Nations, Anastassis Mitsialis, to the President of the General Assembly, UN doc. A/64/468 (2 October 2009)

**Annex 22** Letter dated 20 October 2009 from the Applicant's Permanent Representative to the United Nations, Slobodan Tašovski, to the President of the General Assembly, UN doc. A/64/500 (30 October 2009)

## DIPLOMATIC CORRESPONDENCE AND DOCUMENTS

**Annex 23** *Note verbale* dated 25 December 2003 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs, No. 02-01-1342/03

**Annex 24** The Applicant, *Aide Memoire* (March 2005)

**Annex 25** *Note verbale* dated 6 November 2007 from the Applicant's Liaison Office in Athens to the Respondent's Ministry of Foreign Affairs, No. 01-777/07

**Annex 26** *Note verbale* dated 27 February 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, No. 117-543/3

**Annex 27** *Note verbale* dated 14 April 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, No. 117-1007/2

**Annex 28** *Note verbale* dated 15 April 2008 from the Applicant's Ministry of Foreign Affairs to the Respondent's Liaison Office in Skopje, No. 117-1016/2

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**Annex 44** Verbal note dated 9 November 2009 from the Respondent's Liaison Office in Skopje to the Applicant's Ministry of Foreign Affairs, No. F. 141.1/139/ AS 1491

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