

## The International Court of Justice and the Macedonian–Greek Case

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### Abstract

In the international law there is often a mention of the peaceful arrangements of international disputes. The resolution of international disputes is also part of the most important principles of international law. Given the historical development of international law, we observe that states that have been subjected to the fictitious subjects of international law have often had disputes between them on interrelated issues. For these differences between states to be provided international law different mechanisms are being considered in order to resolve disputes and diplomatic aids and in some cases also judicial means that serve to resolve these disputes. This paper presents the dispute between Macedonia and Greece regarding the issue of the name where the role of the international community has been extremely important by putting its diplomacy at its disposal with the sole aim of reaching a resolution of the parties'.

**Keywords:** International Court of Justice, dispute between the parties, negotiations, mediation, agreement.

### Introduction

The Republic of Macedonia, before 1991, was one of the six republics of the Federation of Yugoslavia. As one of these six republics, it was named the Socialist Republic of Macedonia. It exited the Yugoslav federation peacefully and without war.

On 25 January 1991, the Macedonian Parliament adopted the Declaration on the Sovereignty of the Socialist Republic of Macedonia.

On 7 June 1991, the Parliament of the Republic of Macedonia adopted a constitutional amendment that will change the name "Socialist Republic of Macedonia" to be replaced with "Republic of Macedonia", a name which it continues to carry until today.

On September 8, 1991, a referendum for an independent and sovereign state was held, where 71% of the population supported this.<sup>1</sup>

On 17 November 1991, the Macedonian Parliament adopted the Constitution of the Republic of Macedonia. Under this constitution, the country does not have any territorial claims to any neighboring country.

Macedonia's declaration of independence will also be recognized by the Badinter Commission, where Macedonia applied for recognition in December 1991.

On 22 July 1992, the Republic of Macedonia submitted a request to join the UN. The request for admission to the UN was opposed by Greece, who, as a ground for contravention emphasized the name "Republic of Macedonia". According to Greece, the name "Macedonia" refers to a geographic region in south-eastern Europe that spans a considerable part of Greece's territory and its people, overtakes a part of the Hellenic legacy and imposes interest in the northern part of Greece.

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<sup>1</sup>Explanation: The referendum was boycotted by citizens of the Albanian and Serbian communities. With an annex it was given a theoretical option for reunion in a new federation. The referendum supported, "An independent, sovereign Macedonia, with a right to joining the future alliance of sovereign states of Yugoslavia"

Macedonia's application to join the UN as a result of Greece's objection was delayed until April 8, 1993, where the GA, upon recommendation of the SC, took a decision for Macedonia's accession to the UN with the reference Former Yugoslav Republic of Macedonia.

On 18 June 1993, the SC adopts Resolution 845, where it is required by the parties to continue efforts to resolve the name dispute under the auspices of the UN Secretary General.

Due to the issue with the name of the state and the state flag of Republic of Macedonia, in 1993, Greece imposed a general trade embargo on Macedonia. The trading block was in effect until October 18, 1995, until Macedonia changed the state flag.<sup>1</sup>

On 13 September 1995, with the mediation of UN Special Envoy, Cyrus Vance and the assistance of the US Assistant Secretary of State Richard Holbrooke, Macedonia and Greece signed a Provisional Agreement, which will normalize relations between these two states.

In the Interim Agreement, the parties, Macedonia and Greece, would avoid using their names. The Interim Agreement with the Parties shall be referred to as "Part One" and "Part Two".

The Interim Agreement foresaw that the name be a case that will be resolved through bilateral talks in line with UNSC resolutions. The purpose of the talks was to put an end to the use of this temporary name (FYROM) and to find another name "accepted by both parties".<sup>2</sup>

Greece, according to the Interim Agreement, would not block Macedonia's membership in the international organizations to which it belonged, as long as in those organizations Macedonia was referred to as "the Former Yugoslav Republic of Macedonia".<sup>3</sup>

With the Interim Agreement, the Parties agreed that if one party believes that the symbols constituting part of their historical or cultural heritage are used by the other party, and then the Respondent shall take appropriate corrective action or explain why they do not find it reasonable to do so.<sup>4</sup>

After the signing of the Interim Agreement, the negotiations on resolving the name issue continued. In 1999, Mathew Nimitz will be the new UN mediator for this dispute. Since then, the negotiations have continued, sometimes more intensively and sometimes less, during which, sometimes Greece and sometimes Macedonia, have shown more flexibility than the other.<sup>5</sup>

Nimitz has made a number of proposals, but has never managed to merge both sides on the same platform. In March 2005, Nimitz suggested to the parties that the name for use in the UN be "Republic of Macedonia - Skopje" in Macedonian and not to be translated into any other language.<sup>6</sup> This proposal was acceptable for the Greek side, but was rejected by the Macedonian side.

The Macedonian side saw the solution of this issue through a so-called "double formula", according to which Macedonia should have a conciliatory name for Greece in bilateral relations, but in international relations to retain the constitutional name "Republic of Macedonia".<sup>7</sup> This proposal was an official proposal by the Macedonian side, but was rejected by Greece.

Nimitz's mediator's efforts to resolve the dispute between the parties continued. He made another proposal in October 2005 for solving the name issue. His proposal foresaw that Macedonia, in its relations with Greece, to carry the name "Republic of Macedonia-Skopje", while in relations with the other states that have recognized Macedonia under the

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<sup>1</sup>МИА 04.11.2004. Дел од фактите за македонско-грчки геодносни .

<sup>2</sup>Макфакс 21.01.2008. Како се појавија „разлимите околу името“.

<sup>3</sup>Article 11 of the Interim Agreement between Greece and the former Yugoslav Republic of Macedonia. September 13, 1995.

<sup>4</sup>Also there, Article 7, paragraph 3.

<sup>5</sup>Macedonia's Name: Solution of the Node. International Crisis Group. Briefing for Europe No. 52.. Prishtinë / Brussels 12 January 2009.

<sup>6</sup>This proposal was broadcast on Greek media, shown in Greek in "Macedonian Heritage" [www.macedonian-heritage.gr/OfficialDocuments/Nimitz.html](http://www.macedonian-heritage.gr/OfficialDocuments/Nimitz.html).

<sup>7</sup>Zoran Nikoloski. Southeast European Times. Propozimi Nimitz përemrin e

Maqedinisë. [www.setimes.com/cooon/setimes/xhtml/sq/features/setimes/features/2005/04/14/feature-02](http://www.setimes.com/cooon/setimes/xhtml/sq/features/setimes/features/2005/04/14/feature-02).

constitutional name, to keep the name "Republic of Macedonia" and within the framework of UN, to be known as "Republic of Macedonia".<sup>1</sup>

Since 2006, efforts to find solutions to the name issue continued, but the negotiations that have taken place during this period have developed in an uneasy atmosphere.

Part of the responsibility for creating such an atmosphere is the Macedonian side, whose government in July 2007 appointed the Skopje Airport with the name of Alexander the Great. This action by the Macedonian side will encourage the Greek side to react. According to the Greek side, this act of the Macedonian side constituted a violation of the Interim Agreement. It was reported that Nimetz had warned the Macedonian side that as a result of this action, Greece would be able to withdraw from the Interim Agreement, but this cautionary advice was not taken into account.<sup>2</sup>

Although Macedonia was advised to stop these activities, which for the Greek side were really a provocation, Macedonia did not stop that; it set some classical statues in front of its government building.

These provocations, which came from the Macedonian side, contributed to raising the issue of Macedonia's name in the preparations for the parliamentary elections in Greece in September 2007. Greek Prime Minister Costas Karamanlis responded, promising that "Skopje will not join any international organization, including NATO and the EU, unless there is a solution to the name that is pleasing to both sides".<sup>3</sup>

The Greek side continued with the warnings that if a name solution can not be found, Greece will be ready to impose its veto on Macedonia's entry into NATO. According to the Greek side, this was the right time for them to put pressure not to prolong this issue. Given the fear that Greece may use veto, the mediator Nimetz will try to solve the dispute before the Bucharest Summit, expected to be held in April 2008, but these efforts didn't give any results.

The Macedonian side agreed that Macedonia's NATO membership at the Bucharest Summit would be under the name of "Republic of Macedonia (Skopje)", a solution that Greece almost admitted in 2005. Looking at itself in a stronger position, Greece refused this offer, specifically insisting that the agreed name be applied in all international, multilateral and bilateral relations of Macedonia.<sup>4</sup>

NATO General Secretary Japp de Hoop Scheffer made efforts to discourage the Greeks and warn them of the consequences on the regional stability if no agreement is reached.<sup>5</sup>

Prior to the Bucharest Summit, a number of diplomats tried to motivate the parties to reach an agreement on name dispute.

At the Bucharest Summit, Macedonia was not invited to join NATO. But it was made clear that the invitation would be handed over to Macedonia after an agreement on the name issue between the parties will be reached.

On October 8, 2008, in the continuation of the efforts to deliver a solution to the parties, the mediator Nimetz made other proposals for name resolution. "The North Republic of Macedonia" would be a variant to resolve this dispute. However, this proposal would be opposed by Macedonia. The Macedonian side will maintain that it can not accept a name solution that does not guarantee the Macedonian identity, language and culture.<sup>6</sup>

Following the Bucharest Summit, on November 17, 2008, Macedonia filed a request to the ICJ Register, to file a lawsuit against Greece for the dispute over the interpretation and implementation of the Interim Agreement.

According to the official position of the Macedonian side, the purpose of this request filed to the Court was to order Greece to comply with its legal obligations set forth in the Interim Agreement, signed on 13 September 1995, which creates obligations for both parties.<sup>7</sup>

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<sup>1</sup>MIA 02.06.2008. Maqedonia dhe Greqianë Nju Jork i vazhdojnë negociatat për emrin .

<sup>2</sup>Emri i Maqedonisë: Zgjidhja e nyjes. Grupi Ndërkombëtar i Krizave. Briefing për Evropë Nr.52. . Prishtinë/Bruksel 12 janar 2009.

<sup>3</sup>Also there.

<sup>4</sup>Also there.

<sup>5</sup>Also there.

<sup>6</sup>Bota Sot. 29.10.2008. Macedonian position presented to the Nimetz proposal.

<sup>7</sup>MIA. 17.11.2008. Maqedonia filed a lawsuit against Greece before the International Court of Justice.

The Macedonian party reminded that in accordance with Article 11 of the Interim Agreement, Greece is obliged not to appeal against the entry for membership of the Republic of Macedonia in NATO. According to the Macedonian side, Greece had unjustly prevented the Bucharest Summit, preventing the sending of Macedonia's NATO membership invitation, thereby flagrantly violating its obligations under the Interim Agreement.<sup>1</sup>

The request stated that the ICJ had to certify and declare that Greece had violated its obligations under Article 11, paragraph 1 of the Interim Agreement and should immediately order the taking of all necessary steps to respect the duties, to refrain from any direct or indirect objection to Macedonia's membership into NATO and/or any other international, multilateral, and regional and institutional organizations in which it is a member, if in such organizations or institutions, Macedonia is called in accordance with paragraph 2 foreseen by UNSC Resolution 817 of 1993.<sup>2</sup>

The ICJ, having accepted the request of the Macedonian side, will notify the Greek side of the lawsuit the Macedonian side has filed against her.

The ICJ will officially initiate proceedings to review the case concerning the lawsuit filed by Macedonia, and will set deadlines for submission of documentation by the parties.

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The case would be judged by judges of various states such as: President Owada, Deputy President Tomka, Judges: Koroma, Al Khasawneh, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Donoghue, ad hoc Vucias judges for the Macedonian side and Roucounas for the Greek party.<sup>3</sup>

After these actions of both governments of Macedonia and Greece were completed, on March 21, 2011, public hearings began on this case. Antonio Milososki presented the position of the Macedonian side. In the discussion before the Court, he presented a chronological view of the Macedonian-Greek relations and the origin of the dispute, thus disclosing some of the arguments of the Macedonian party that Article 11 of the Interim Agreement of 13 September 1995, of blocking Macedonia's NATO membership with the former Yugoslav federation of Macedonia, was indeed violated by Greece. In their discussions, the lawyers engaged by the Macedonian side will focus on the fact that the arguments of the Greek side for blocking Macedonia's NATO membership are unsupported and unsustainable. Professor Pjer Klain, stated that Macedonia's membership in NATO was unjustly impeded, and shortly before the Bucharest summit, the official Greek officials boasted that the veto will occur, with which Article 11 of the Interim Agreement has been violated.<sup>4</sup>

He also stated: "We demand that the violation of Article 11 of the Interim Agreement, which will have an impact, and the Applicant, in this case, Macedonia will again be granted candidate status for NATO membership, without having needs to face the opposition of its demand, and Macedonia's candidacy for NATO membership to be considered without the Greek party's involvement".<sup>5</sup>

In the discussion to show the arguments of the Macedonian side, Shon Mari also appeared, who emphasized that Greece has systematically, in a very openly manner, tried to hinder Macedonia's NATO membership and that this can be proven with an analysis of the behavior of Greece during 2007-2008, when through an open multilateral campaign, Greece has tried to convince other NATO member countries about its position.<sup>6</sup>

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<sup>1</sup>Also there.

<sup>2</sup>Also there.

<sup>3</sup>See in the Official Journal of the ICJ, Implementation of the Interim Agreement of 13 September 1995 (Former Yugoslav Republic of Macedonia v. Greece).

<sup>4</sup>About the discussion of Professor Klain see in the official statement of ICJ. In the case concerning Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece).

<sup>5</sup>Also there.

<sup>6</sup>Also there.

He would further state: "Senior Greek officials have boasted they have vetoed, indicating that the defendant, in this case Greece has banned NATO consensus in order to counter Macedonia. However, the behavior of Greece, as detailed in our arguments, shows that it is exactly Greece who has made this violation of the Interim Agreement".<sup>1</sup>

In arguing the case before the Court, the Macedonian side did not defocus from the view that the actions of the Greek party constituted a violation of the Interim Agreement, namely the violation of the recognized principle of the international law, *pactasuntservanda*.

On 24 and 25 March 2011, the Greek side will present its arguments before the Court. It is Maria Talalian, in the role of the agent who will present the arguments of the Greek side. In her discussion, she pointed out that it is Macedonia the one that has violated the Interim Agreement. The decision of the NATO Summit in Bucharest in 2008, according to her, was unanimously approved by the Alliance in 2008 and, therefore, NATO is not a part of this process, the Court has no jurisdiction to review the case and should be declared incompetent for the case. According to her, at the Bucharest Summit Macedonia had been given the chance to enter this organization, but only after it had settled the dispute over the name. Furthermore, she pointed out that in relation to the resolution of the name issue, the Greek side has been very flexible, accepting in September 2007 a composite name where the term "Macedonia" was supposed to be added to a geographical prefix. On the other hand, the Macedonian side has tried to get the talks to a "dead point" and this was justified by her insistence not to move from the so-called "double formula", i.e. the use of the constitutional name Republic of Macedonia in international relations, international organizations and the bilateral relations with all states, and to find a compromise with the Greek side and the relations with it.<sup>2</sup>

In her discussion, she also tried to argue that Republic of Macedonia is the one that has violated the Interim Agreement. In this regard, she would point out that the purpose of the Interim Agreement was to prevent the Macedonian irredentism from embracing the term "Macedonia" and to discontinue Macedonia's actions towards the detriment of the Greek history and culture.<sup>3</sup>

With a discussion in front of the Court, from the Greek side, appeared George Savvaides, who in his presentation, amongst other things, emphasized that at the Bucharest Summit the decision to extend the invitation for Macedonia's accession was a NATO collective decision. He also explained to the Court, a Greek agent, the procedures and criteria for NATO membership that need to be followed and how they applied in the case with Macedonia.

Also among the speakers by the Greek side in front of the Court were: Georges Abi-Saab, who focused on his discussion mainly on the basic features of the Interim Agreement, Michael Resman, who clarified the issue of Court's jurisdiction regarding this case, Alain Topth who presented the Greek party's objections regarding the admissibility of Macedonia's application and the judicial function of the Court and James Crawford who presented Greece's position regarding the interpretation of paragraph 1 of Article 11 of the Interim Agreement.

So, during 24 and 25 March 2011, the Greek side tried to argue before the Court that Macedonia is in breach of the provisions of the Interim Agreement and specifically Article 6, paragraph 2, which states that "The Macedonian Constitution could not serve as a basis for intervention in the domestic affairs of states to protect the status and interests of national minorities. The Greek side complained of the support the Macedonian government had given to refugees or members of the Macedonian minority who were living in Greece, who had been expelled or removed from Greece during the Greek Civil War in 1940. She also complained of the support the Macedonian government provided to the Macedonian minority living in Greece."<sup>4</sup>

It is important to emphasize that both sides engaged a very professional team in this litigation to argue the case.

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<sup>1</sup>About the discussion of Professor Klain see in the official statement of ICJ. In the case concerning the application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece).

<sup>2</sup>About the discussion of the Greek agent Maria Talalian see the official statement of the ICJ. In the case concerning Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece).

<sup>3</sup>Also there.

<sup>4</sup>See the ICJ ruling, December 5, 2011 in the official website of the Court. Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece).

On 30 March 2011, the Greek side once again asked the Court to declare that the case filed by Macedonia before the Court is not under its jurisdiction and that Macedonia's claims are inadmissible. It also required that, if the Court finds that it has jurisdiction over the case, to express it in Greece's favor, rejecting Macedonia's claims and considering them as unfounded.

On 5 December 2011, the Court will announce its decision on this case. The Court first ruled that the matter was in its competence, which was requested by the Macedonian side earlier, but was rejected by the Greek side. This part of the decision was adopted with 14 votes in favor and 2 in opposition.

Regarding the request submitted by the Macedonian side to prove to the Court that Greece has violated its obligations under Article 11, paragraph 1 of the Interim Agreement, the Court stated that Greece had indeed violated Article 11, paragraph 1 of this Agreement when Macedonia had asked to join NATO. Regarding this issue, the decision was voted with 15 votes in favor and 2 in opposition.

The third request of the Macedonian side, that the Court orders Greece not to repeat such actions in the future was rejected. According to the Court, such an order was invalid because: "As a general rule, it can not be assumed that a State which, by virtue of a judgment of the Court has acted in error or inadmissible before the international law, will repeat an act or conduct in the future in a similar manner, as any state is presumed to behave in good faith."<sup>1</sup>

The Court also stated that before the Bucharest Summit there had been no violation of Article 6, paragraph 2 of the Interim Agreement and would therefore reject the Greek party's claim. On the other hand, the Court found that the Macedonian side had violated, in one case, Article 7, paragraph 2 of the Interim Agreement, which prohibited hostile acts or propaganda between the parties when a military unit had used a banned symbol on her flag.<sup>2</sup>

Following the ICJ's decision of December 2011, as a result of the political climate in both countries, it seemed that the parties still had time to negotiate. Macedonia continued with its positions that had emerged during the negotiations that took place prior to the Bucharest Summit. Greece, on the other hand, saw itself in a very favorable position, while insisting on her positions. This climate lasted for several years as a result of the political climate in which Macedonia entered immediately after the 2014 parliamentary elections.

In these situations, besides Nimetz's intermediary commitments, it was evident that the parties were not moving from their positions.

In 2017, the efforts by the international community to end a dispute between the parties were intensified, this also with the very fact that the political climate in both states seemed favorable. In this, the high representatives of the two states intensified their meetings to negotiate a possible solution. From these meetings the parties managed to offer their positions and on June 17, 2018, after 27 years, managed to reach an agreement. The agreement was signed by the Greek Foreign Minister Nikos Kocias and Macedonian Foreign Minister Nikola Dimitrov.

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<sup>1</sup>See the ICJ ruling. December 5. 2011 at the official location of the Court. Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece).

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