

Legality of Veto to NATO Accession: Former Yugoslav Republic of Macedonia Sues Greece before the ICJ

[By Markos Karavias and Antonios Tzanakopoulos](#)

Introduction

On November 17, 2008, the ‘former Yugoslav Republic of Macedonia’ (FYR Macedonia) instituted proceedings before the International Court of Justice (ICJ), alleging that Greece’s objection to its application to join the North Atlantic Treaty Organization (NATO) breaches the 1995 Interim Accord between these two States.^[1] This is the first time that FYR Macedonia has appeared as a party before the ICJ, and the first time that Greece has appeared before the Court as a respondent.

Background to the Dispute

With the dissolution of the Socialist Federal Republic of Yugoslavia in the early 1990s, some of its constituent federal units, including the Republic of Macedonia, declared independence and sought international recognition. The FYR Macedonia declared its independence on September 17, 1991 following a referendum. The Badinter Commission, established by the Council of Ministers of the European Union (EC Council), recommended that the European Community (EC) accept the Republic of Macedonia’s request for recognition and found that FYR Macedonia had renounced any territorial claims.^[2] Greece then blocked EC recognition arguing that Macedonia’s name, flag and a number of provisions in its Constitution implied territorial claims against it.^[3] Macedonia is also the name of an administrative region in northern Greece, and a wider geographical region extending over four neighboring States.

This evolved into a dispute involving everything from Security Council resolutions, to unilateral countermeasures in the form of an economic embargo, and to proceedings before the European Court of Justice (ECJ). The Republic was admitted to membership in the United Nations in 1993 under the provisional name ‘the former Yugoslav Republic of Macedonia’,^[4] and most EC member-States considered their affirmative vote in the Security Council and/or the General Assembly to imply the recognition of the new State.

After a first escalation in 1994, which led to embargo measures by Greece and a challenge to these measures by the Commission of the European Communities before the ECJ,^[5] the two States concluded an agreement in 1995 on Greece’s recognition of FYR Macedonia, on the establishment of liaison offices and on normalization of economic relations.^[6] This ‘Interim Accord’ dealt with everything but the name of the new State, and included an undertaking to continue negotiations under the auspices of the UN Secretary-General ‘with a view to reaching

agreement on the difference' that has arisen over the name.[\[7\]](#) The dispute is still ongoing, and the Interim Accord is still in force.

FYR Macedonia's Application

FYR Macedonia expected to receive an invitation to join NATO during the 2-4 April 2008 Bucharest Summit of NATO. The Bucharest Summit Declaration provided instead that 'an invitation to the former Yugoslav Republic of Macedonia will be extended *as soon as a mutually acceptable solution to the name issue has been reached.*'[\[8\]](#) FYR Macedonia's Application to the Court[\[9\]](#) alleges that Greek actions have denied it membership in NATO. This is because an invitation to join the Organization can only be extended by unanimous agreement of all NATO Members.[\[10\]](#) The position taken by Greece in the lead-up to the Bucharest Summit made it clear that Greece opposed the extension of such an invitation. [\[11\]](#)

FYR Macedonia claims that Greece has violated Article 11(1) of the Interim Accord, which provides:

The Party of the First Part agrees not to object to the application by or the membership of the Party of the Second Part in international, multilateral, and regional organizations and institutions of which the Party of the First Part is a member; 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).

(To avoid the name issue, this provision refers to Greece and FYR Macedonia as 'the Party of the First Part' and 'the Party of the Second Part' respectively).

FYR Macedonia claims that it has complied with its obligations under the Interim Accord, but that Greece breached its obligation under Article 11(1) by blocking the invitation to FYR Macedonia to join NATO even though FYR Macedonia applied under its provisional name in accordance with Article 11(1).[\[12\]](#) FYR Macedonia requests the Court to order Greece to cease objecting to its membership to NATO or any other international organization.[\[13\]](#)

Jurisdiction of the Court

Under Article 21(2) of the Interim Accord, '[a]ny difference or dispute that arises between the Parties concerning the interpretation or implementation of [the] 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,' this being the difference concerning the name. FYR Macedonia relies on Article 21(2) to establish the Court's jurisdiction. One potential preliminary objection Greece could raise would be based on the assertion that the dispute before the Court is actually the difference over the State's name, which is specifically excluded from the Court's jurisdiction under Article 21(2) of the Interim Accord. In its Application, FYR Macedonia preemptively rebuts such an objection.[\[14\]](#)

Legal Aspects of the Dispute

The key question in this dispute is how to interpret Greece's undertaking 'not to object to the application by or the membership of' FYR Macedonia in international organizations of which Greece is a member. Greece only reserved its right to object if FYR Macedonia seeks to be identified by any name other than 'the former Yugoslav Republic of Macedonia'.

One possible interpretation of this provision would be that it obligates Greece 'not to object' to any application for membership to an international organization that FYR Macedonia submits irrespective of any (other) admission criteria, and that Greece *only* reserved the right to object if FYR Macedonia 'is to be referred to in such organization' differently from the name 'Former Yugoslav Republic of Macedonia'. If such an interpretation were to be adopted, then Greece would appear to have breached Article 11(1). If a member of an international organization can unilaterally waive its discretion to determine whether a candidate State fulfills the organization's admission criteria, then Greece would appear to have done so, and to have agreed to support any Macedonian application under the agreed name.

It could be argued, however, that as a matter of the law of international organizations, evaluation of a prospective member's conformity with admission criteria is a duty to the other members or to the organization itself which an individual member cannot unilaterally waive. This principle is a corollary to the established principle that members are obligated not to condition admission to an organization on criteria other than those in the organization's constitution.^[15]

Another possibility would be to interpret Article 11(1) as meaning that as long as FYR Macedonia uses the agreed name, Greece cannot object solely on the basis of the name—but that Greece can still block the application if the applicant does not fulfill an organization's membership or admission criteria, in this case the admission criteria in Article 10 of the North Atlantic Treaty.

Greece objected to FYR Macedonia's invitation to join NATO not because Macedonia did not apply under its provisional name—which it did—but for other reasons. These are widely perceived to concern the lack of a final resolution of the dispute about the State's name. But how would this fact mesh with the North Atlantic Treaty's admission criteria? Article 10 of the Treaty provides that '[t]he 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.'^[16] FYR Macedonia is quite self-evidently a European State. Greece may argue that FYR Macedonia is not 'in a position to further the principles' of the Treaty—these including, under Article 2, the contribution 'toward the further development of peaceful and friendly international relations by [...] *promoting conditions of stability* [...]'^[17] — and therefore cannot join NATO.

The Court cannot determine 'the reasons which, in the mind of a Member, may prompt its vote' on admission of another State to membership in an organization;^[18] rather, 'the question can only relate to *the statements made by a Member concerning the vote it proposes to give*.'^[19] Greece's statements point toward the conclusion that it was the name issue that led to its veto in Bucharest.^[20] But Greece's Ministry of Foreign Affairs has stated that Greece connects the

name dispute with the instability that this is causing in the region.[21] Greece can cite such an alleged failure of FYR Macedonia to ‘promote conditions of stability’ as required by the North Atlantic Treaty as a justification for the veto.[22]

One final important issue in the dispute could concern the permissibility of countermeasures by Greece in response to alleged previous breaches of the Interim Accord by FYR Macedonia. Greece has accused the Macedonian side of violating the Accord a number of times in the past.[23] It remains to be seen whether Greece will claim the NATO veto—if found in breach of Article 11(1) of the Interim Accord—to have been a countermeasure justified under general international law.[24] Such a claim could lead the Court to explore whether such countermeasures were justified or proportional.[25]

Conclusion

FYR Macedonia’s application to the International Court of Justice is the latest step in a long-standing dispute with Greece. Perhaps it is the best way for some progress to be made in a difficult situation that has been stagnating for far too long. The Court will be called upon, in any case, to tackle difficult questions of treaty interpretation, the rights and obligations of member-States to international organizations—in particular rights with respect to the admission of new members—and, quite possibly, the admissibility and limits of countermeasures.

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Endnotes

[1] ICJ Press Release No 2008/40, 17 November 2008, *available* on the Court’s website: <http://www.icj-cij.org> (last visited 16 December 2008).

[2] Conference on Yugoslavia, Arbitration Commission, Opinion No 6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member-States (11 January 1992) 31 I.L.M. 1507.

[3] *See* the Greek Memorandum annexed to UN Doc. S/25541 (1993).

[4] *See* Security Council Resolution 817 (1993) at para. 2. The said provision contains the following unique expression: ‘*Recommends* to the General Assembly that *the State whose application is contained in Document S/25147* be admitted to membership in the United Nations, this State being provisionally referred to for all purposes within the United Nations as “the former Yugoslav Republic of Macedonia” pending settlement of the difference that has arisen over the name of the State’ [emphasis added].

[5] *See* the rejection of interim measures requested by the Commission against Greece: Case C-120/94 R, *Commission of the European Communities v the Hellenic Republic*, [1994] E.C.R. I-03037. Note the subtle irony of the fact that Greece’s official constitutional name is ‘the Hellenic Republic’. It has become a member of the UN as ‘Greece’.

[6] Interim Accord (with related letters and translations of the Interim Accord in the Languages of the Contracting Parties), Greece—the former Yugoslav Republic of Macedonia (signed in New York 13 September 1995; entered into force 13 October 1995) 1891 U.N.T.S. I-32193; 34 I.L.M. 1461 [hereinafter: Interim Accord].

[7] Interim Accord, Article 5(1), referring directly to S.C.R. 817 (1993).

[8] Bucharest Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008, Press Release (2008)049 at para. 20, *available at* <http://www.nato.int/docu/pr/2008/p08-049e.html> (last visited 16 December 2008).

[9] Republic of Macedonia, Application to the International Court of Justice, Dispute Concerning the Implementation of Article 11, Paragraph 1 of the Interim Accord of 13 September 1995 (13 November 2008) at para. 5, *available* on the Court's website: <http://www.icj-cij.org> (last visited 16 December 2008).

[10] North Atlantic Treaty (signed 4 April 1949, entered into force 24 August 1949) 34 U.N.T.S. 243, Article 10.

[11] *See* Dora Bakoyiannis, 'Macedonia and NATO: The View from Athens', International Herald Tribune, 31 March 2008, *available at* <http://www.ihf.com/articles/2008/03/31/opinion/edbakoy.php> (last visited 16 December 2008).

[12] *Id.* at paras. 6 and 21-22.

[13] *Id.* at para. 23.

[14] *Id.* at para. 10.

[15] *Cf. Conditions of Admission of a State to Membership in the United Nations*, Advisory Opinion, [1948] I.C.J. Rep. 57 at 62-63 and 64-65, which of course refers specifically to the interpretation of Article 4 of the UN Charter. However, this approach to admission criteria could be seen as applying to all international organizations whose constituent instruments provide for general admission conditions: see HENRY G. SCHERMERS & NIELS M. BLOKKER, *INTERNATIONAL INSTITUTIONAL LAW* (4th ed. 2003) 75-77; CHITTHARANJAN F. AMERASINGHE, *PRINCIPLES OF THE INSTITUTIONAL LAW OF INTERNATIONAL ORGANIZATIONS* (2d ed. 2005) 108.

[16] [emphasis added].

[17] [emphasis added].

[18] *Conditions of Admission* (n15) at 7.

[19] *Id.* [emphasis added].

[20] *See* Bakoyannis (n10); Ministry of Foreign Affairs of Greece, 'The FYROM Name Issue' *available at* <http://www2.mfa.gr/www.mfa.gr/en-US/Policy/Geographic+Regions/South-Eastern+Europe/Balkans/Bilateral+Relations/FYROM/FYROM++THE+NAME+ISSUE.htm> (last visited 16 December 2008); 'Text of Foreign Minister Ms Bakoyannis Speech to the Parliamentary Standing Committee on National Defense and Foreign Affairs' (20 February 2007) *available at* http://www.mfa.gr/www.mfa.gr/Articles/en-US/21022007_McC_KL1651.htm (last visited 16 December 2008).

[21] *See* Dora Bakoyannis, 'In the Name of a Common Future', Washington Times, 29 April 2008, *available at* <http://www.washingtontimes.com/news/2008>

[/apr/29/in-the-name-of-a-common-future/](http://www.washingtontimes.com/news/2008/apr/29/in-the-name-of-a-common-future/) (last visited 16 December 2008); 'Interview of Foreign Minister Ms Bakoyannis with the Romanian daily Romania Libera' (23 November 2007) *available at*

http://www.mfa.gr/www.mfa.gr/Articles/en-US/271107_McC1135.htm (last visited 16 December 2008). *Cf.* also the Greek Memorandum (n3).

[22] *See* Bakoyannis (n21); 'The FYROM Name Issue' (n20); 'Excerpts from Prime Minister Mr Kostas Karamanlis' Speech on Foreign Policy before the Governing Party's Parliamentary Group' (27 March 2008) *available at* http://www.ypex.gov.gr/www.mfa.gr/Articles/en-US/27032008_SB1741.htm (last visited on 16 December 2008).

[23] 'Text of FM Bakoyannis Speech' (n20); 'The FYROM Name Issue' (n20).

[24] International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/10 (2001), Articles 22 and 49.

[25] *Id.*, Articles 51-52.