



## The Macedonia Name Dispute: ICJ's Decision and its Legal Approach

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**Abstract:** *Macedonia's name issue* began after the declaration of Macedonia independence and its membership in international organizations. This problem has hindered Macedonia in the process of membership in other international organizations namely in NATO, and this has resulted due to the opposition by Greece. The aim of this paper is through analysis of the judgement of International Court of Justice to elaborate its effects in line with Macedonian future memberships in International Organisations. An Interim Accord was signed by Greece and Macedonia, whereby, among others, Greece shall not hinder Macedonian integration processes on the basis of the international agreement. Due to violation of this agreement by Greece, Macedonia was prompted to file a complaint before the ICJ. Issues dealt with relate to the review of the violation of the accord and its consequences. The main focus would be the analysis of the ICJ decision on the violation of the Interim Accord by Greece, the impacts of this opinion and Macedonian prospect in its future integration processes. A result of this accord, which generated legal consequences for both countries and allegations of its violation, led to judgement of ICJ whether there actually was a violation of the interim accord signed in 1995. The ICJ's decision may have a positive impact in Macedonia's membership in International Organizations such as: NATO and EU. Moreover, Macedonia's future membership in international organizations depends heavily on a final agreement with Greece on resolving contested issue of the name.

**Keywords:** ICJ; Greece; Macedonia; name; dispute

### 1. History of the Macedonia Name Dispute

Macedonia succeeded to declare its independence through a peaceful separation from a Yugoslavian federation in September 1991 (Dehnert, 2010, p. 2), with a constitutional name as "Republic of Macedonia". (Constitution of Macedonia, 1991) Since the declaration of independence on September 11<sup>th</sup> 1991, Macedonian relations with the neighboring countries, especially Greece deteriorated. (Demjaha,

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2013) Disagreements regarding the name of Macedonia surfaced immediately after Macedonia's separation from Former Yugoslavia in 1991. (Pop-Angelov, 2010, p. 1) This disagreement between these two countries occurred over a simple issue: that the Republic of Macedonia, a new state that was created from the dissolution of Yugoslavia in the beginnings of 90's may call itself Macedonia. (Pop-Angelov, 2010, p. 1)

Greece also opposed the articles of the new Macedonian constitution, which, according to Athens, alludes to territorial reunification. Political leaders in Athens were also worried over the fact that the new state had approved the emblem of the Macedonian Dynasty of Alexander the Great – the Sun “Vergina” (known as the Macedonian star symbol) in the new flag of Macedonia. Greece considers that the use of these symbols is a stealing of Greek history and cultural heritage. Greek anger peaked in 1994, when the US, followed by Australia, recognized the Republic of Macedonia. In addition, the World Bank and the International Monetary Fund announced the extension of the loans in order to stabilize the new state. Greece concedes that such developments weaken its diplomatic position. (Pop-Angelov, 2010, p. 4)

The conflict however turned into a confrontation between two neighboring countries. Adoption of resolution 817 (SC/RES/817, 1993) drafted by France, Spain and the United Kingdom recommending that the Republic shall be admitted in the organization with an interim name as “Former Yugoslav Republic of Macedonia” until a final decision on its name is reached. (Damyanov, 2010, p. 38) After this, UN Security Council Resolution 845. (SC/RES/845, 1993) directly acknowledged the possibility that the dispute over the name could escalate to a security conflict. In order to avoid this, UN Secretary General made efforts on finding a possible solution. (Pop-Angelov, 2010, p. 10)

FYROM (Former Yugoslav Republic of Macedonia) became a member of the United Nations on 7 April 1993, two years after declaring its independence, after two unsuccessful applications for membership in the UN, on 30 July 1992 (Kondonis, 2005, p. 72), based on the UN Security Council Resolution 817 (1993). For the first time in the history of the organization a country was being accepted with an interim name, by taking into the account the fact that all federative states of Soviet Union and Yugoslavia that became independent countries had kept the names that they used to have while being part of the federation. (Floudas, pp. 4-5) During the subsequent year, FYROM was recognized by all the EU countries (except Greece) and a number of other countries. (Damyanov, 2010, p. 38)

Greece has refused to recognize the Republic of Macedonia even after its formal recognition by the UN, in some sense this moment can be considered as collective recognition. Regardless of this, in February 1994, Greece imposed an embargo to Macedonia that had a devastating impact on Macedonian development and economy, being aware that the Thessaloniki port had an impact on Macedonian trade of goods. The main reason for such a decision was that as a national flag Macedonia adopted the symbol of the Sun with 16 – rays “Vergina” associated with Alexander the Great (Demjaha, 2013, pp. 16-17), such an embargo was criticized by the European Commission. (Craven, 1995, p. 207)

The Greek embargo seized when the provisional agreement was signed on September 13<sup>th</sup> 1995, under the mediation of Cyrus R. Vance, UN Special Representative. This agreement normalized the bilateral relations between the two countries at every level and according to Cyrus Vance it ended all aspects of the Greek Macedonian dispute over the name issue. In broader terms, Greece has the citizenship and sovereignty of Macedonia, although under the interim accord pending the permanent name dispute and both parties state that the existing borders are permanent and inevitable and agreed to establish diplomatic relations. (Bajalski, 2009, p. 16)

## **2. The Intrim Accord**

After six years of efforts to establish relation between FYROM and Greece, an “Interim Agreement” (Koukoudaki, 2007, p. 9) 1995 was reached in New York (Interim Accord, 1995) whereby they committed to continue the negotiations, though clearly reserving their positions. This was intended to “mitigate” the conflict (Damyanov, 2010, pp. 38-39) it was the first effort of both countries to adjust their complex relations through international law. (Ioannidis, 2010, p. 526)

This way, Greece had agreed to seize the economic embargo imposed against Macedonia and Macedonia gave up on Sun with 16 rays (the symbol of independent Macedonia over which Greece claims to have historic rights) and amended three Articles of the Constitution stating that “Macedonia has no territorial claims to neighboring states”. Based on article 11 of the Interim Accord “Greece had agreed not to object Macedonian membership in international organizations of which Greece was a member i.e. the obligation of Greece of not objecting Macedonian membership in the EU and NATO. (Azizi, 2012, p. 5)

Each Party undertakes to respect the sovereignty, the territorial integrity and political independence of the other Party (Article 3). Each party undertakes not to use the elements of constitutional symbols of cultural and historic heritage of the other party (Article 7). To Macedonia, the main outcome of the accord was ability to participate in international activities and application in NATO and the EU (Damyanov, 2010, pp. 38-39), (Article 11)<sup>1</sup>. The end of the accord did not solve the name issue of the new country. However, both parties undertook that they will continue negotiations over this issue under the auspices of the UN. (Damyanov, 2010, pp. 38-39) Subsequently, the FYROM was integrated in “Phare” programme, (programme assisting the countries to reconstruct their economies), shortly after signing the Interim Accord (Kondonis, 2005, p. 74) opportunities appeared for Macedonia to join a wide variety of international organizations and initiatives, including the Council of Europe, the Organization for Security and Co-operation in Europe (OSCE), and to establish contractual relations with NATO (Partnership for Peace, and later the Membership Action Plan) and the EU (Stabilization and Association Agreement) and later as a Candidate member state of Country for EU. (Demjaha, 2013, pp. 16-17)

Nevertheless, Greece did the opposite of what was agreed. During the NATO Bucharest Summit of 2008 whereupon it was expected to join the Adriatic Card Countries (Albania, Croatia and Macedonia), Greece opposed that Macedonia is sent an invitation for membership. After that, it became obvious that Greece will always oppose Macedonia’s integration in international organizations, whereas Macedonia would accept a solution for the name dispute. (Azizi, 2012, p. 5)

### **3. NATO- Bucharest Summit**

In April 2008, Greece threatened to veto the invitation of membership of FYROM to NATO in its summit in Bucharest, Romania. Greek government argued that the use of name “Macedonia” by Skopje may still have territorial claims for the Macedonian part in Greece. This regardless of the fact that based on the Interim

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<sup>1</sup> Interim Accord, Greece and Former Yugoslavia Republic of Macedonia, New York 1995, Article 11.

With the entry into force of this Interim Accord, the first party undertakes not to obstruct the membership of the second party into multilateral international organisations, regional organisations and institutions in which the first party is a member of; nevertheless, the first party reserves the right to object any afore mentioned memberships if and to the extent that the first party refers to organizations or institutions other than 2 UN Security Council Resolution 817 (1993).

Accord of 1995, FYROM agreed on some measures in the areas for which Greece considers that the new state appropriated the Hellenic heritage, including the amendments on its constitution to specifically undertake that it did not aspire to appropriate any part of Greek territory. Therefore, in a joint statement at the end of NATO Bucharest Summit, stated that no offer for membership shall be made to FYROM until the dispute of the name is resolved. (NATO Press Release, (2008) 049, Issued 03. par. 20) NATO unanimously voted to not offer an invitation to Macedonia. (Messineo, 2012, p. 177)

Greece also threatened that if Macedonia fails to reach a decision on its name issue, Greece would block its entry into the EU. Macedonia reacted by addressing this announcement to the International Court of Justice, arguing that Greece has violated the 1995 accord by objecting the FYROM's admission to international organizations. As a revenge in 2009, when the European Commission recommended the initiation of negotiations with Macedonia, Greece blocked the decision on the date of the initiation of this dialogue. (Karadzowski & Adamczyk, 2014, pp. 220-221)

#### **4. The ICJ decision on the Macedonia Name Dispute**

On 17 November 2008, the former Yugoslav Republic of Macedonia initiated proceedings against Greece for what it described as “a flagrant violation of Greece's obligations under Article 11” of the Interim Accord signed by the parties on 13 September 1995 (ICJ Report, General Assembly, A/67/4, 2012), alleging that Greece was violating (Article 11) the 1995 Interim Accord, and according to this provision, Macedonia would not be blocked by Greece on membership in international organizations until a solution is found. (I.C.J. Reports, 2011) ICJ set deadlines for petitions and responses to be submitted by both parties.<sup>1</sup> (ICJ Report, General Assembly, A/67/4, 2012) Macedonia requested from the court to: order the respondent to immediately take all necessary actions to comply with its obligations

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<sup>1</sup> Report of the International Court of Justice, 1 August 2011-31 July 2012 General Assembly Official Records Sixty-seventh Session Supplement No. 4, A/67/4, United Nations New York, 2012: By order of 20 January 2009, the Court appointed 20 July 2009 as the deadline for submitting a petition by the former Yugoslav Republic of Macedonia and 20 January 2010 as the deadline for filing a counter-petition from Greece. These submissions are filed within the set time limits. By an order of 12 March 2010, the Court authorized the submission of a response by the Former Yugoslav Republic of Macedonia and a response from Greece. Dates June 9, 2010, and October 27, 2010 set as the relevant deadlines for submitting these requests. The response of the Former Yugoslav Republic of Macedonia and Greece's were filed within the set deadline.

under Article 11, paragraph 1, of the Interim Accord and to seize and terminate all positions, be it directly or indirectly, on applicant's membership in the North Atlantic Treaty Organization (NATO) and/or any "international, multilateral, regional and institutional organization" and other organizations which the respondent is a member of, in occasions when the applicant applies to these organizations or institutions as provided by paragraph 2 of United Nations Security Council Resolution 817. (Application of the interim accord, (ICJ, No. 58-01-7, 2008)

Based on the afore mentioned evidence and legal arguments, Greece – the respondent/Hellenic republic, requested from the court to try and declare that: (I) the issue brought in front of the Court by FYROM is not under the jurisdiction of this Court and the allegations submitted are inadmissible; (II) in the event that the Court finds that it has jurisdiction and that the claims are admissible, that the FYROM's claims are unfounded". (I.C.J. Reports, 2011, par. 13)

In its decision, the Court concludes that the issue of dispute submitted by the applicant is under its jurisdiction. There is no reason for the Court to refuse the right in exercising its jurisdiction. The court admitted the application. (I.C.J. Reports 2011) The argument of Greece is that if the Court exercised its jurisdiction, it would interfere in the diplomatic process envisaged by the UN Security Council Resolution 817 (1993). With regards to this objection, the Court concluded that "the fact that the negotiations are actively ongoing throughout the current proceedings, it does not pose any legal hinderance for the Court to exercise its judicial function. (I.C.J. Reports, 2011, par. 55-57) Additionally, Greece challenged the decision of the ICJ on this matter with the reasoning that the dispute related to opposite stances over the name Macedonia, and that this matter created a concern for NATO and its members and therefore this is not under the jurisdiction of the ICJ. The ICJ dismissed this argument. (Damyanov, 2010, p. 41) The case brought in front of the court is not to establish whether the decision of NATO should be attributed to the respondent, rather it is to establish whether the respondent has violated the interim accord with its actions. No item in the application submitted to the court could be interpreted that it is requested from the court to establish whether NATO acted lawfully when postponing the applicant's membership to NATO. Therefore, the dispute is not a concern as alleged by the respondent that the actions of NATO or other member states with NATO, rather it only concerns the actions of the respondent (Messineo, 2012, p. 190), the court

upheld with Macedonia that this was a misinterpretation of the case on dispute. (Messineo, 2012, p. 190)

As elaborated above, the Court found that there were violations of the obligations by the respondent based on Article 1, Paragraph 1 of the Interim Accord. As an evidence that the Court relied upon for establishing such a violation of its obligation for not opposing the membership applications of applicant or membership in NATO was a statement made by the respondent. “Moreover, the Court does not consider it necessary to order the Respondent, as the Applicant requests, to refrain from any future conduct that violates its obligation under Article 11, paragraph 1, of the Interim Accord”. (I.C.J. Reports, 2011, par. 168) As elaborated by the Court “as a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed”. Consequently, the Court established that finding the respondent guilty for violation of the obligations towards the applicant as per Article 11, Paragraph 1 of the Interim Accord, constitutes an appropriate satisfaction. (I.C.J. Reports, 2011, par. 168) The court maintains that the Interim Agreement 1995 binds the parties to negotiate in good faith under the auspices of the UN Secretary General with relevant resolutions of the Security Council with a view to reaching the amended agreement described in those resolutions. (I.C.J. Reports, 2011, par. 166)

FYROM is satisfied with ICJ’s decision, that Greece should adhere to Article 11 paragraph 1 of the Interim Accord which allows Macedonia to apply to international organizations (Damyanov, 2010, p. 42) on the other hand Greece reiterates that the ICJ’s decision does not say that FYROM can automatically become a NATO or EU member unless it meets the required criteria, the ICJ simply indicates that Greece has violated the Interim Accord. The ICJ ruling has not resolved the name issue, this remains under the auspices of the United Nations. The decision of the IJC did not resolve the issue of the name, it still remained under the auspices of the United Nations. (Damyanov, 2010, p. 42)

#### **4.1. Effects of the ICJ Decision**

The Court’s decision brought a decision without a legal or binding effect on the parties in this dispute. The ICJ’s ruling has no effect on the decision-making rules of NATO and the EU. The expansion policy of these organizations is based on consensus, and Greece as part of these organizations, acting from the inside, is in a position to block Macedonia’s entry by using the veto as an instrument. In fact,

these circumstances make the integration path of Macedonia unprecedented and if it wants to join NATO and the EU the dispute shall be resolved, regardless if it will remain satisfied with the outcome of the settlement. The ICJ's ruling will have no effect on the rules of NATO and EU expansion since the ICJ had rejected Macedonia's request to oblige Greece not to oppose its membership in NATO and the EU. (Azizi, 2012)

The court, however, did not support the request of Macedonia to order Greece to refrain from any opposition to Macedonia's application for membership in NATO. The Court held that, such an order was not necessary as there is an Interim Accord. (Demjaha, 213, p. 220) The effectiveness of the ICJ's decision in the negotiations is as reliable as the will of the conflicting parties for a compromise in the negotiations on this matter and in the existing opportunistic expenses associated with negotiated settlement of the dispute, for example, in relation to the interests of the parties to maintain good commercial and political relations or other forms of cooperation which may produce incentives to reach agreement on the basis of the ICJ ruling. (Georgievski, 2013, p. 10)

Ultimately, the ICJ ruling is unlikely to have much effect on the prospect of Macedonian EU and NATO membership, as a satisfactory sufficient consensus, it will remain on both bodies to block this until the name issue is resolved. Meanwhile, temporary solutions are needed in order to maintain Euro-Atlantic integration attractive in Skopje. As a candidate country, Macedonia has full access to EU pre-accession funds. (Europe Report N. 212, 2011)

## **5. Recent Developments and the Future of Macedonia in the Process of Integration in NATO and EU**

The collective future of Macedonia and Greece is in the capacity of partners in the European Union and in NATO, rather than opposing parties in a never-ending conflict over the name of Macedonia. While there is no doubt that there is a serious dispute on issues affecting the identity of both countries, it is as clear that there is no time for such disputes. (Messineo, 2012, p. 189) An acceptable solution can be achieved if both countries believe in a joint European future. The EU should therefore play an important role in this regard. (Koukoudakis, 2007, p. 15)



After all these years spent in an attempt to resolve the issue of the name, there is no final agreement reached yet. Both countries are making efforts on reaching a final agreement.

The parties will have to accept and learn valuable lessons from almost twenty-five years of negotiation whereby most of the areas have been covered, whereupon alternatives and discussions are either accepted or rejected. The Interim Accord of September 1995 has contributed to a gradual rapprochement and normalization in the relations of both countries, but within the limits. Yet, the issue of the name is left without resolution. However, it should be considered as a useful tool to facilitate the daily lives of citizens and economic conditions. (SEESOX Report, 2017, pp. 3-4)

Nevertheless, the international efforts on agreement of parties over the issue of the name are not indeed stopped. At the invitation of the governments of the Greek Republic and the Former Yugoslav Republic of Macedonia, Mr. Matthew Nimetz, the Special Envoy of the Secretary General, will travel to Athens and Skopje from 29 January to 1 February 2018. The visit is part of United Nations efforts to assist the parties in finding a solution acceptable to both sides on the “name” issue<sup>1</sup>. Negotiations on the name dispute began in 1993 and have been led since 1999 under the auspices of the Special Envoy Matthew Nimetz. While no solution has been reached so far, both sides have cooperated in this process and have sought to continue the efforts of the Secretary-General and his Special Envoy<sup>2</sup>. Various proposals have been presented to a final agreement whereby such efforts give hope for a final agreement on the issue of the name.

Internal politics. If in general a solution is to be found, it is essential that both governments seek consensus among the political parties in each country; engage in a public campaign for serious and systematic information on the merits of the case; strive to as much as possible to challenge the views of those unfamiliar with the case or are reluctant to resolve it; work constantly to consolidate the climate of trust, not only at the government level but also at the social level; and work to reduce the risk of a serious reaction, which may be triggered by one or two referendums. (SEESOX Report, 2017, p. 4) The context is of great importance for substantial solutions and name options for such a delicate and sensitive issue. Settlement of the name dispute is only credible if combined with a meaningful

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<sup>1</sup> <https://www.un.org/sg/en/content/sg/note-correspondents/2018-01-24/note-correspondents-travel-personal-envoy-secretary> (Accessed on: 02.02.2018).

<sup>2</sup> <http://www.un.org/undpa/en/europe/greece-fyrom> (Accessed on: 02.02.2018).

change in policy and political conduct of both sides and when it is presented as part of a broader package that establishes bilateral relations between the two countries and their population in one mutually respectful attitude. (SEESOX Report, 2017, p. 6)

## 6. Conclusion

The problem of Macedonian name claimed by Greece has started since the declaration of independence of Macedonia after the dissolution of Yugoslavia. In 1993, Macedonia was admitted UN with the provisional name “The Former Yugoslav Republic of Macedonia” until a different agreement is reached. During subsequent years, Macedonia faced obstructions by Greece in the integration processes. The situation seemed to be improved after the Interim Agreement was signed between these two countries in 1995 in New York whereby Macedonia was recognized by Greece with this name as well and pledged that Macedonia should not be prevented, *inter alia*, in the integration into international organizations.

Despite this, in 2008 Macedonia failed to become a member of NATO precisely due to the blockade by Greece. Subsequent to this, Macedonia filed the case with the ICJ, that Greece has violated the Interim Accord claiming that it has prevented it from joining NATO. Regarding this case, ICJ issued that Greece has violated the Interim Accord for it has barred Macedonia from joining NATO. The Court refused to order Greece to refrain from preventing Macedonia to join International Organizations, since it cannot be assumed that Macedonia may be blocked for membership in the future as well.

The ICJ’s decision is not of the compulsory character. This implies that the ruling does not oblige the party to refrain from such actions in future. The ruling however has its significance on the path to membership in international organizations, where Greece is present. Even though Greece is not obliged to prevent Macedonia from joining regional and world organizations and initiatives, a reverse action will bring about further deterioration of the relations between the two parties.

It appears that both Macedonia and Greece are interested in resolving the issue of Macedonian name. The best solution for the two neighboring countries is a compromise of both parties that would satisfy the interests of the two sides, which could only be achieved through the political willingness of the two states in order to concluding a very old chapter over the conflict for the name. Reaching a final agreement over the issue of name of Macedonia would create a more sustainable

and robust neighborly future and open the prospect of Macedonia's membership to EU, NATO.

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