INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands
Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928
Website: www.icj-cij.org

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The Court finds that Greece, by objecting to the admission of the former Yugoslav Republic of Macedonia to NATO, has breached its obligation under Article 11, paragraph 1, of the Interim Accord of 13 September 1995

THE HAGUE, 5 December 2011. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, today delivered its Judgment in the case concerning Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece).

In its Judgment, which is final, without appeal and binding on the Parties, the Court

(1) finds, by fourteen votes to two, that it has jurisdiction to entertain the Application filed by the former Yugoslav Republic of Macedonia on 17 November 2008 and that this Application is admissible;

(2) finds, by fifteen votes to one, that the Hellenic Republic, by objecting to the admission of the former Yugoslav Republic of Macedonia to NATO, has breached its obligation under Article 11, paragraph 1, of the Interim Accord of 13 September 1995;

(3) rejects, by fifteen votes to one, all other submissions made by the former Yugoslav Republic of Macedonia.

I. Factual background of the case

The Court recalls that, on 17 November 2008, the former Yugoslav Republic of Macedonia (hereinafter the "Applicant") filed in the Registry of the Court an Application instituting proceedings against the Hellenic Republic (hereinafter the "Respondent") in respect of a dispute concerning the interpretation and implementation of the Interim Accord of 13 September 1995 (hereinafter the "Interim Accord"). It further recalls that the Applicant invoked as a basis for the Court's jurisdiction Article 21, paragraph 2, of the Interim Accord, which states that the Parties may submit to the Court any dispute which arises between them concerning the interpretation or implementation of that Accord, except for the difference referred to in Article 5, paragraph 1, of that instrument.

The Court observes that the Applicant's NATO candidacy was considered at the Bucharest Summit on 2 and 3 April 2008, but that the Applicant was not invited to begin talks on accession to the organization. It notes that the Applicant is seeking, in particular, to establish that the Respondent objected to its admission to NATO and therefore violated Article 11, paragraph 1, of

the Interim Accord. The Court states that it is clear from the text of the first clause of that provision that the Respondent agrees not to object to the Applicant's admission to international or regional organizations of which the Respondent is a member. It further observes that, under the second clause of that provision, the Respondent nevertheless reserves the right to object to such admission if and to the extent the Applicant is to be referred to in those organizations differently than in paragraph 2 of United Nations Security Council resolution 817 (1993). That paragraph recommends that the Applicant be admitted to membership in the United Nations, 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".

II. Jurisdiction of the Court and admissibility of the Application

The Court notes that the Respondent claims that the Court has no jurisdiction to entertain the dispute and that the Application is inadmissible for several reasons. Firstly, the Respondent submits that the dispute concerns the difference over the name of the Applicant. Secondly, it alleges that the dispute concerns conduct attributable to NATO and its member States, which is not subject to the Court's jurisdiction. Thirdly, it claims that the Court's Judgment in the present case would be incapable of effective application because it could not effect the Applicant's admission to NATO. Fourthly, it submits that the exercise of jurisdiction by the Court would interfere with ongoing diplomatic negotiations concerning the difference over the name.

The Court decides not to uphold the objections raised by the Respondent; it finds that it has jurisdiction over the dispute and that the Application is admissible.

III. Whether the Respondent failed to comply with the obligation under Article 11, paragraph 1, of the Interim Accord

In the view of the Court, the evidence submitted to it demonstrates that, at the Bucharest Summit, in contravention of Article 11, paragraph 1, of the Interim Accord, the Respondent manifested its objection to the Applicant's admission to NATO, citing the fact that the difference regarding the Applicant's name remained unresolved. The Court finds that the Respondent's objection does not fall within the exception contained in the second clause of Article 11, paragraph 1, of the Interim Accord, because that clause does not permit the Respondent to object to the Applicant's admission to an organization based on the prospect that the Applicant is to refer to itself in such organization with its constitutional name.

IV. Additional justifications invoked by the Respondent

The Court notes that, as an alternative to its main argument, the Respondent claims that any objection to the Applicant's admission to NATO could be justified (1) under the doctrine of exceptio non adimpleti contractus, (2) as a response to a breach of a treaty, or (3) as a countermeasure under the law of State responsibility. The Court observes that the Respondent advances certain minimum conditions common to its arguments relating to these three justifications, namely that the Applicant breached provisions of the Interim Accord and that the Respondent's objection to the Applicant's admission to NATO was made in response to those breaches. In the light of the evidence before it, the Court concludes that the Respondent has established only one such breach, namely the use by the Applicant in 2004 of the symbol prohibited by Article 7, paragraph 2, which it discontinued during that same year. The Court considers that the Respondent has failed to establish that it objected to the Applicant's admission to NATO in response to a violation of that provision. Accordingly, it concludes that the justifications submitted by the Respondent fail.

V. Remedies

In the light of the above, the Court determines that its finding that the Respondent has violated its obligation to the Applicant under Article 11, paragraph 1, of the Interim Accord constitutes appropriate satisfaction.

Composition of the Court

The Court was composed as follows: President Owada; Vice-President Tomka; Judges Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; Judges ad hoc Roucounas, Vukas; Registrar Couvreur.

Judge Simma appends a separate opinion to the Judgment of the Court; Judge Bennouna appends a declaration to the Judgment of the Court; Judge Xue appends a dissenting opinion to the Judgment of the Court; Judge ad hoc Roucounas appends a dissenting opinion to the Judgment of the Court; Judge ad hoc Vukas appends a declaration to the Judgment of the Court.

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A summary of the Judgment appears in the document "Summary No. 2011/6". This press release, the summary, and the full text of the Judgment can be found on the Court's website (www.icj-cij.org), under the heading "Cases".

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)
Mr. Boris Heim, Information Officer (+31 (0)70 302 2337)
Ms Joanne Moore, Associate Information Officer (+31 (0)70 302 2394)
Ms Genoveva Madurga, Administrative Assistant (+31 (0)70 302 2396)