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CONTENT:

DIPLOMATIC IMMUNITY IN THE JURISPRUDENCE OF THE ICJ.....	8
THE IMPACT OF EUROPEANIZATION OF NORMATIVE AND INSTITUTION BUILDING IN ALBANIA: THE CASE OF COMPETITION LAW.....	28
REPUBLIC OF MACEDONIA'S MEMBERSHIP IN EU AND NATO IN THE LIGHT OF THE ICJ JUDGMENT OF 5 DECEMBER 2011.....	46
ACCESS TO JUSTICE FOR CHILDREN WITH DISABILITIES.....	62
VICTIMS AND PERPETRATORS OF STALKING AND CYBER STALKING: WHAT HAS CHANGED IN THE CRIMINAL LEGISLATION OF SERBIA?.....	78

Title:

**Republic of Macedonia's
membership
in EU and NATO in the
light of the ICJ Judgment
of 5 December 2011**

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ABSTRACT

The paper makes an assessment of the Republic of Macedonia's efforts to become a member of the European Union and NATO in the context of the name issue with the neighbouring Greece. The European Union's involvement in tackling the name issue between one of its member states – Greece and the Republic of Macedonia has been highly ineffective. Although, the EU has gained numerous mechanisms for conflict prevention and conflict resolution within its Common Foreign and Security Policy and within the Enlargement Policy, the Union has been unsuccessful in the process of solving this dispute and consequently in the process of bringing the fragile Balkan country closer to its membership. Moreover, NATO's membership for R. Macedonia has been burdened with an additional criterion in 2008 – resolving the name issue, due to the opposition from one of its member states. The authors argue that in the case when the dispute involves one of the international organisations' member states, due to the lack of unity among its members, it is extremely difficult to find a fair settlement that properly weights the interest of both parties. This obstacle has been continuously present both in EU and in NATO, even after the ICJ delivered its judgment on the breach of the Interim Accord of 1995, finding the Greek opposition to the Macedonian membership in international organisations unlawful.

Key Words: European Union, NATO, Name issue, Greece, R. Macedonia, International Court of Justice, Interim Accord.

INTRODUCTION

One of the disputes that the European Union is facing since the beginning of the 1990s is the name issue between one of its member states – Greece and Republic of Macedonia – a country which emerged from the dissolution of the former Socialist Federal Republic of Yugoslavia (SFRY) (hereinafter: R. Macedonia). It is a dispute that the EU tried to tackle through several mechanisms within its enlargement policy and Common Foreign and Security Policy (CFSP), but it still hasn't led to a successful resolution. This is mainly due to the fact that one of the parties to this dispute is a Union member state, which makes the decision making process and the coordination process within the enlargement policy and the CFSP much more difficult. It has been shown on numerous occasions, that the lack of unity among member states contributes greatly towards paralysis of the EU institutions to tackle the disputes and conflicts on their borders. This has been the case in the conflicts when the Yugoslav federation was violently dissolving during the 1990s and the EU was just starting to build its new mechanisms within the CFSP. The lack of unity among the member states contributes towards the inability of the Union to tackle this particular dispute on the Balkans.

The paper covers the period from 1991 onwards, when the dissolution of the former SFRY started. It presents a short historical background to the name issue, in order to focus afterwards on how the Stabilization and Association Process (SAP) which was launched in 1999 influenced the dispute. Using its conditionality policy and the 'proverbial carrot' of the candidate status, the Union was instrumental in brokering the Ohrid Framework Agreement that ended the conflict in the Republic of Macedonia in 2001; the Belgrade Agreement in 2002 that prevented the Federal Republic of Yugoslavia from violently falling apart and having a knock-on effect on the weak balance in Kosovo; the Arbitration Agreement in 2009 providing for a mechanism for resolving of the border issues between Croatia and Slovenia and allowing Croatia to finish its accession negotiations and, finally, the landmark Brussels Agreement on normalizing the relations between Serbia and Kosovo of 2013. The latter agreement closed one of the most complicated chapters in the collapse of Yugoslavia. The prospect of concluding a Stabilization and Association Agreement, or eventual EU membership was used as a strong leverage in persuading the parties to engage in negotiations and make difficult compromises. The authors argue that due to the fact that one EU member state is engaged in the name issue, the Union proves to be extremely ineffective in using the mechanisms of its enlargement policy in dispute resolution.

The paper presents the role of the NATO as well in the name issue between R. Macedonia and Greece as one of its member states. Since its independence, R. Macedonia had NATO membership as one of its foreign policy priorities. However, what was seen as a move forward – the possibility to receive an invitation for NATO membership in 2008, soon became just a greater obstacle for R. Macedonia's membership. The Greek lobbying and strong opposition to the R. Macedonia's membership in NATO led to the change of the circumstances and change in the membership criteria. This resulted in the need for the country not only to make progress on reforms, but to find a mutually acceptable solution with Greece to the issue over its name before it would be invited to join NATO.

Finally, the arguments of the International Court of Justice (ICJ) in the name issue are presented and the paper focuses on the outcome in terms of how the judgment can be used by both EU and NATO to reassess their enlargement strategies. When it comes to the EU, the Lisbon Treaty has provided that the Union is obliged towards the "strict observance and the development of international law, including respect for the principles of the United Nations Charter"³. In that context, the use of the Interim Accord after the ICJ judgment was delivered in the case of the Macedonian accession process will be assessed.

³ Article 3, Consolidated version of the Treaty on European Union.

1. Setting the Scene: The Name Issue

After the Yugoslav Federation disintegrated violently in the 1990 ties, alongside other changes on the political map of the region, conditions emerged for the Republic of Macedonia to become independent state, as one of the six constituent members of the above said Federation. R. Macedonia declared independence on the referendum held on September 8, 1991. The referendum and the enactment of the new constitution in November 1991 formally completed the process of establishment of the newly-independent country, but it was only the beginning of the long and painful process of building an internationally recognized and secured state. After the enactment of the new constitution, R. Macedonia was faced with the challenge of the international recognition of its independence. It was undoubtedly exposed to a longest and burdensome procedure of international recognition from all the new countries in the Central and Eastern Europe. One of the main obstacles in that process was the fact that its neighbour Greece would not accept the existence of an independent Macedonian state on its border. Especially problematic for Greece was the fact that a distinct Macedonian national identity would start to exist in an independent state, instead as a Federation's member state. Greece believed that the name "Macedonia" was part of its own historic heritage, and that it possessed exclusive rights on it, and therefore it could not be used for the identification of another nation, although it acknowledged that the Region of Macedonia was spread in other countries too, including R. Macedonia. With the R. Macedonia's independence, the Macedonian national identity, based on the separate Macedonian (Slavic) language and culture, would continue to exist and develop in an independent Macedonian state, and not any more as part of the Yugoslav Federation. Such environment for existence of the Macedonian identity was looked upon as a threat to Greek national security.

Back in 1991, EC attempted to handle the process of breaking up of the Yugoslav Federation by conveying a Peace Conference on Yugoslavia,⁴ which represented an opportunity to test the new emerging Common Foreign and Security Policy. The Peace Conference enabled Greece to articulate its security concerns against R. Macedonia's independence in a very early stage, practically in the dawn of the process of obtaining of international recognition of R. Macedonia's independence. It was achieved through the EC Council of Foreign Ministers, where the Declaration on Yugoslavia and the Declaration on the Guidelines on the Recognition of New States in Eastern Europe and Soviet Union (hereinafter: The Guidelines) were adopted on 17 December 1991. It was upon insistence of the then Greek Foreign Minister - Antonis Samaras, that the three additional conditions for recognition were added to the Declaration for Yugoslavia⁵. The first one referred to the need of the Yugoslav Republics "prior to recognition to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring Community State". Afterwards, it was requested that: "they would conduct no hostile propaganda activity versus a neighbouring Community State". The third condition was not to use "a denomination which implies territorial claims". According to Kofos, "the wording confirms that the Greek position was focused specifically on security concerns, in particular that their northern neighbour should not constitute a base for interests hostile to Greece; that any possibility of stirring up and promoting irredentist demands and visions should be nipped in the bud; and that specific commitment should be given not to engage in 'hostile propaganda'."⁶ All of the Greek demands were transposed in the Declaration for Yugoslavia.

4 The Peace Conference brought together the Federal Presidency and the Federal Government of Yugoslavia, the presidents of the six Yugoslav republics, the President of the EC Council, and representatives of EC Commission and EC Member States.

5 See P. Pazartzis, *La reconnaissance d'un république yougoslave: la question de l'ancienne République yougoslave de Macédoine (ARYM)*, 41 *Annuaire français de droit international*, 1995, pp.281-297; M. Wood, Participation of Former Yugoslav States in the United Nations and in Multilateral Treaties, 1 *Max Planck Yearbook of United Nations Law*, 1997, pp.231-257.

6 E. Kofos, 'The Unresolved 'Difference over the Name', A Greek Perspective', in E. Kofos and V. Vlasidis (eds.), *Athens - Skopje: An Uneasy Symbiosis (1995-2002)*, ELIAMEP, Athens, 2005, pp.125-223.

Within the Peace Conference an Arbitration Commission was established, that was expected to enhance the rule of law in the settlement of differences relating to the Yugoslav crisis.⁷ The Arbitration Commission was consisted of the presidents of the Constitutional courts of Belgium, France, Germany, Italy, and Spain. It was presided by the President of the French Constitutional Court, Mr. Robert Badinter. In the period from 1991 -1993 the Commission adopted 15 legal opinions including opinions regarding the recognition of the Yugoslav Republics.

When the Arbitration Commission decided that R. Macedonia and Slovenia are the only two republics that fulfil the criteria for independence, it was a triumph of law. One would have expected Greece not to have issues with the Badinter Arbitration Commission's opinion after the transposition of all Greek demands in the Declaration for Yugoslavia.⁸ In the Opinion No.6 of 14 January 1992⁹, the Arbitration Commission determined that R. Macedonia had fulfilled all the conditions for recognition as determined by the EC, emphasizing explicitly that "the use of the name 'Macedonia' cannot imply any territorial claim against another State".¹⁰ Greece resolutely refused to accept it and directly caused the EC member states to decline to grant recognition to R. Macedonia. The two amendments to the Constitution of the R. Macedonia which were adopted on 6th January 1992¹¹ explicitly provided that R. Macedonia had no territorial claims against neighbouring countries, confirmed the inviolability of the state borders and declared that R. Macedonia would not interfere in the sovereign rights of other states or their internal affairs. Although, these amendments were evaluated by the Commission as sufficient and positive development according to the Greek demands, they were insufficient for Greece. From the Greek reaction to the Arbitration Commission's Opinion, it can be concluded that the Greek concerns of that time were not connected to the issues of security and stability of the region, but rather at preserving the geopolitical balance. The EC member states showed solidarity with Greece, by adopting a position that they would be ready to recognize R. Macedonia "under a name which does not include term Macedonia".¹² In that way, Greece achieved its goal and managed to block EC to recognize R. Macedonia, although it could not completely prevent the recognition of the newly independent state by the other states of the world.

At the time when the war raged in former Yugoslavia, and the EC was incapable to give reassurance to the newly formed state, during in 1993, three of the EC member states that were at that time also members to the UN Security Council – United Kingdom, France and Spain, took the lead in preparing a package that would enable R. Macedonia to become an UN member. After lengthy negotiations, with strong opposition from Greece,¹³ the Security Council adopted Resolution 817 (1993) on 7th April 1993, which recommended the UN General Assembly to admit the state to the UN membership. Unlike any Security Council Resolution so far, the Resolution 817 did not contain the name of the state, but it identified it as "the state whose application is contained in document S/25147" or simply "the State". It recommended that admission should be granted to "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." The General Assembly Resolution 225 adopted on 8th April 1993 was completely in line with the Security Council's recommendation and used the same language as the Security Council.¹⁴

7 European Community, Declaration on Yugoslavia adopted at the EPC Extraordinary Ministerial Meeting, The Hague, 27 August 1991 (EC Press Release P.82/91).

8 More in: T. Deskoski, 'Macedonian-Greek Relations and the ICJ Judgment of 5 December 2011', in R. Wolfrum, M. Seršić and T.M. Šošić (eds.), *Contemporary Developments in International Law, Essays in Honour of Budislav Vukas*, Brill Nijhoff, Netherlands, 2015, pp.26-46.

9 Arbitration Commission of the Conference on Yugoslavia, *Opinion No.6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States* (14 January 1992) annexed at Annex III to the letter dated 26th May 1993 from the United Nations Secretary – General to the President of the Security Council, UN Doc. S/25855 (28 May 1993).

10 Arbitration Commission Opinion No.6 of 14 January 1992, paragraph 5.

11 Amendments I and II to the Constitution of the Republic of Macedonia, *Official Gazette of the Republic of Macedonia*, No.1/1992.

12 See: "European Council Declaration on Former Yugoslavia" of 26-27 June 1992 – available at: http://www.europarl.europa.eu/summits/lisbon/default_en.htm?textMode=on. [Accessed 10 April 2017].

13 See: 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), Memorial, Vol. I, p. 26.

14 More in T. Deskoski, 'Macedonian-Greek Relations and the ICJ Judgement of 5 December 2011', in R. Wolfrum, M. Seršić and T.M. Šošić (eds.), *Contemporary Developments in International Law, Essays in Honour of Budislav Vukas*, Brill Nijhoff, Netherlands, 2015, pp.26-46.

The admission of Republic of Macedonia to the UN membership, led to a number of recognitions from other states around the world, as well as from the EC member states, such as the recognition that came from UK and Spain in 1993. This was done despite the Lisbon declaration of 1992 that obliged the EC member states not to recognize the newly-formed country under a name that includes the term 'Macedonia' in it. In any case, it did not lead to normalization of the relations with Greece. Instead, Greece imposed an economic embargo on 16th February 1994 and continuously undermined R. Macedonia's effort to integrate in the international community, especially concerning its membership in OSCE and Council of Europe.

In those turbulent times for the countries emerging from the former Yugoslav federation, thanks to the US shuttle diplomacy, the agreement¹⁵ that will end the dispute between the two countries was presented by the US Assistant Secretary of State – Richard Holbrooke. As a result of the pragmatic effort to avoid the obstacle posed by the name issue, the parties of the Interim Accord are referred as 'the Party of the First Part' – Greece and 'the Party of the Second Part' – R. Macedonia. This manner of naming the parties of the Accord gave the impression of equality between the parties, something that was more than necessary at this stage. The Interim Accord of 1995 settled many bilateral issues, while permitting the postponement of any final resolution to the name dispute, since the positions of the parties were irreconcilable. Greece adopted an intransigent position, insisting on renaming of the R. Macedonia in a manner that would exclude the term 'Macedonia'.¹⁶ On the other hand, R. Macedonia proposed the so called "double formula", which means having one name for the country that would be used by Greece and the constitutional name that will be used by R. Macedonia in its communication with the rest of the world – in the international organisations, multilateral forums as well as in bilateral relations.

Greece agreed in Article 8 of the Interim Accord to put an end to the painful economic embargo and in Article 11, para.1 committed itself not to hinder R. Macedonia's efforts to obtain membership in international organisations and institutions. From her side, R. Macedonia agreed in Article 7, para.2 to change its national flag and abandon the use of the 'Sixteen Rayed Sun', making numerous clarifications and interpretations to the provisions of its constitution which were deemed satisfactory for the Greek side according to Article 6 of the Accord. Both parties agreed to continue the negotiations over the name difference under the auspices of the Secretary General of the United Nations (Article 5, para.1).

After the Interim Accord was signed, it seemed that the sensitive name issue was gradually drifting towards the political margins, especially in Greece.¹⁷ Up until the start of the EU Stabilization and Association Process, in which R. Macedonia was included, there were no major developments when it comes to the name issue. The SAP gave new perspectives to R. Macedonia, but once again put the name issue in the forefront. It also emphasized the internal differences of the EU member states. It took additional nine years since the start of the SAP for the R. Macedonia's membership to be placed on the NATO agenda and to have the NATO member states deal with the name issue.

15 The Interim Accord was formulated and presented in the first week of September 1995.

16 The compromise proposed by the then Greek Prime Minister Kostantinos Mitsotakis was the name "Slavomakedonija" – see <http://www.ekathimerini.com/135814/article/ekathimerini/news/nimetz-regrets-lost-opportunities-for-agreement>, [Accessed 25 April 2017].

17 According to A. Tziampiris, *The Name Dispute in the Former Yugoslav Republic of Macedonia after the Signing of the Interim Accord*, in E.Kofos and V.Vlasidis (eds.), 'Athens – Skopje: An Uneasy Symbiosis (1995-2002)', ELIAMEP, 2005, pp.225 – 252.

2. The EU and NATO Mechanisms in Dealing with the Name Issue

Since the Western Balkans region is characterized by legacies of war and a political climate that enabled flourishing of organized crime, corruption and illegal migration, the EU first had to stabilize the region after the dissolution of SFRY and then associate the newly emerged countries. The Stabilization and Association Process was launched in 1999 and provided the countries from the Western Balkans with the status of potential candidate countries. Furthermore, the Thessaloniki Agenda promoted the political dialogue and cooperation in the area of the CFSP, the strengthening of parliamentary cooperation and institution building.¹⁸ After the SAP process started in 1999, Republic of Macedonia was the first country to conclude Stabilization and Association Agreement in 2001 and the third republic of the former SFRY to achieve candidate status.¹⁹ The Union used its conditionality policy in brokering the Ohrid Framework Agreement that ended the conflict in the Republic of Macedonia in 2001. Afterwards, the 'proverbial carrot' of granting the candidate status to the country in 2005 was seen as recognition of an important progress, particularly regarding the inter-ethnic situation. In October 2009 the Commission has recommended opening of accession negotiations, but the negotiations still have not commenced nor was a time framework created. The major reason why the negotiations have not started is the name issue with neighbouring Greece, which has been put as an additional condition for the start of the negotiations with the Union. Therefore, due to the fact that one of its members is party of the name dispute, the Union could not use the prospect of EU membership as a strong leverage in persuading the parties to engage in negotiations.

In the meanwhile, the number of countries that have recognized the country under the constitutional name "Republic of Macedonia" was growing and included the recognition by the US in 2004²⁰. By the end of January 2011, the number of countries that recognized R. Macedonia under the constitutional name reached 131.

As a consequence of these developments, and especially after the US recognition of R. Macedonia under its constitutional name, the Greek foreign policy made a sharp shift in its policy towards the name issue.²¹ The Greek shift went in two directions. First, already in 2005, Greece made a brave step forward in the negotiations on the name issue, by departing from its initial position that it insisted that the name of its northern neighbour does not include name "Macedonia". Being aware that such a position is without any support from anyone in the EU and facing the recognition of the country's name for bilateral relations by the US in November 2004, Greece proposed a solution that would be based on "a composite name that includes the geographical designation of Macedonia but attaches an adjective to it to distinguish it from the Greek province with the same name."²² In other words, the new international name of the country that would be acceptable to Greece would be "Republic Northern Macedonia" or "Republic Upper Macedonia". According to the Greek side, the purpose of adding of such an adjective would be to distinguish R. Macedonia from the northern Greek

18 Council of the European Union (2003) 'Thessaloniki Agenda for the Western Balkans: moving towards European integration', Thessaloniki, General Affairs and External Relations Council (GAERC) Conclusions, 16 June.

19 Slovenia was first and became a member state in 2004. Croatia was second and became a member state in 2013.

20 The United States formally recognized R. Macedonia in 1994, and the countries established full diplomatic relations in 1995. In November 2004, the United States recognized the country under its constitutional name: the Republic of Macedonia, lasting until a mutually acceptable solution is reached with Greece.

21 See more in Diplomatic cable of the US Embassy in Athens to the State Department of 08/08/2007, available at: https://wikileaks.org/plusd/cables/07ATHENS1594_a.html [Accessed 25 April 2017].

22 Dora Bakoyannis, "The view from Athens", *International Herald Tribune* (31 March 2008), available at: <http://www.nytimes.com/2008/03/31/opinion/31iht-edbakoy.1.11552267.html>, [Accessed 25 April 2017].

province "Macedonia", in a sensible, reasonable and fair to both sides manner.²³ The second line of direction of the Greek diplomacy was to depart from its commitment of Article 11 para 1 of the 1995 Interim Accord, and to start objecting to R. Macedonia's membership in international organisations, as leverage in the negotiations on the name issue. It was manifested at the NATO Bucharest Summit in 2008, where a decision on enlargement was to be made. NATO enlargement with Albania, Croatia and R. Macedonia was strongly supported by the US and was placed very high on the President Bush's agenda. In that direction, one day before the summit US President Bush announced that a "historic decision for the NATO enlargement with three new countries – R. Macedonia, Albania and Croatia - will be adopted at the NATO Summit in Bucharest".²⁴ At the Bucharest summit, the members of NATO acknowledged the hard work and the commitment demonstrated by R. Macedonia to values and operations of the Alliance. However, NATO member countries emphasized 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."²⁵

Greek officials left no space for any doubt that the failure to extend an invitation to R. Macedonia was a direct result of a firm Greek opposition at the Summit. For example, Greek Prime Minister Mr Kostas Karamanlis made an explicit statement on 3 April 2008 that: "Due to Greece's veto, FYROM is not joining NATO."²⁶ A great number of statements made after the Bucharest Summit confirmed that the Greece did object to the R. Macedonia's membership of NATO at the Bucharest Summit. Greece also asserted that it would object to the R. Macedonia's application to join another regional institution, namely the European Union. Greek breach of its commitments was not made without knowledge and support of the NATO Allies. Greek diplomacy gained support by persuading the Allies that its own proposal for resolution of the name issue was fair for both sides. However, this violation of the 1995 Interim Accord completely disrupted the balance of power in the negotiations on the name issue and boosted the mistrust between the parties. It did not by any case lead to a speedy settlement of the name issue. Macedonian side rejected the proposal of renaming the country into "Republic Northern Macedonia" or "Republic Upper Macedonia", because that move would severely damage the identity of the Macedonian nation, and it could further lead to a disintegration of the state. As previously pointed out in this article, the main pillar of the Macedonian nation is the name Macedonia. For that reason, however fair and reasonable these proposals might seem to third parties, they are regarded as hostile from the Macedonian side and undermine the credibility of a third party that intends to facilitate acceptance of such a proposal by R. Macedonia. It is worth to mention that Greece has always declared its position that it considers the Macedonian nation as an artificial one and cultivated by the former Yugoslav leader Tito,²⁷ and therefore it is not even trying to hide that the main purpose of its opposition to the name of the neighbouring country is to prevent the existence of a non-Greek Macedonian identity.

23 Ibid.

24 <http://www.balkaninsight.com/en/article/us-president-nato-expansion-historic>. [Accessed 14 October 2016].

25 NATO Bucharest Summit Declaration [online]. Available from: http://www.nato.int/cps/en/natolive/official_texts_8443.htm. [Accessed 14 October 2016].

26 Message of Prime Minister Mr. Kostas Karamanlis, available at the web site: <http://www.mfa.gr/www.mfa.gr/GoToPrintable.aspx?UICulture=en-US&GUID={AE7CCBFE-5D97-4F2B-974F-B38897A50D83}>. [Accessed 10 October 2008].

27 See: "Macedonian naming dispute" on the web page of the Greek Foreign Ministry - <http://www.mfa.gr/en/>. [Accessed 7 June 2017].

3. The ICJ Judgment: Is there a Potential for Dispute Resolution?

As an aftermath of the decision taken on the 2008 NATO summit, on 17th November 2008, R. Macedonia unilaterally took to the Court the case concerning the violation of the 1995 Interim Accord.²⁸ R. Macedonia's Application narrowed the case brought before the ICJ to the breach of Article 11, para. 1 of the Interim Accord, which was in violation of the *pacta sunt servanda* principle.²⁹

The Macedonian side submitted two main claims to the ICJ. Primary, it requested the Court to adjudge that Greece has violated Article 11, paragraph 1, of the 1995 Interim Accord.³⁰ In its second request, R. Macedonia, asked the Court to order to Greece to take all necessary steps to immediately comply with its obligations under the Interim Accord. Furthermore, the request referred to the need for the Court to order Greece to cease and abstain from further objections to R. Macedonia's membership of the NATO or any other international organisation where Greece is member. This request was made for all circumstances where R. Macedonia was to be referred by the designation provided in the UNSC resolution 817.³¹ During the procedure in front of the Court, both sides agreed that the obligation not to object to the Macedonian application for membership in international organisations does not require Greece to support actively Macedonian membership to international organisations. The requirement not to object is not an obligation of a result, but an obligation of a conduct, as confirmed by the Court.³²

According to the International Court of Justice, through the formal diplomatic correspondence and statements of the officials, Greece made it clear to the NATO member states that the "decisive criterion" for the Macedonian admission to NATO is the resolution of the difference over the name. This was done before, during and after the Bucharest Summit. Moreover, the Court did not accept the Greek position that all the statements presented above were not objections to the admission, but rather observations that were aimed to the attention of the NATO member states. According to the Court, Greece went beyond such observations and clearly opposed Macedonian admission to NATO.

According to the Greek side, it is the alleged general principle of the international law - *exceptio non adimpleti contractus* that allows it "to withhold the execution of its own obligations which are reciprocal to those not performed by the FYROM"³³. The *exceptio*, according to Greece, applied in the case of NATO because the Macedonian side breached the obligations provided within Articles 5, 6, 7 and 11 of the Interim Accord. Therefore, since Greek obligation not to object to Macedonian membership in international organisations is connected closely with the obligations R. Macedonia has under the Interim Accord, the breaches of those obligations preclude the wrongfulness of any non-performance by Greece of its obligation not to

28 Under Article 36, para. 1 of the Statute of the Court.

29 See the Application instituting proceedings filed in the Registry of the Court on 17 November 2008, paragraph 23. Available from: <http://www.icj-cij.org/docket/files/142/14879.pdf>. [Assessed 15 November 2016].

30 Article 11 paragraph 1 of the Interim Accord provides the following: "Upon entry into force of this Interim Accord, 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 organisations 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 organisation or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)." United Nations Treaty Series (UNTS), Vol. 1891, p. 7, available from <http://treaties.un.org/doc/Publication/UNTS/Volume%201891/v1891.pdf>. [Accessed on 23 October 2016].

31 Application instituting proceedings filed in the Registry of the Court on 17 November 2008, available from: <http://www.icj-cij.org/docket/files/142/14879.pdf>. [Assessed 15 November 2016].

32 ICJ Judgment, Application of the Interim Accord of 13 September 1995, The Former Yugoslav Republic of Macedonia v. Greece, 05.12.2011 available from: <http://www.icj-cij.org/docket/files/142/16827.pdf>. [Assessed 15 November 2016].

33 Rejoinder of Greece, 27.10.2010, available from <http://www.icj-cij.org/docket/files/142/16360.pdf>. [Accessed on 22 November 2016].

object.³⁴ The Court found all of these Greek claims of R. Macedonia's breaches of the Interim Accord to be unmeritorious, and it did not enter into deliberation whether *exceptio non adimpleti contractus* is a general principle of the international law, and whether Greece could rely on it at all. In other words, Greek case failed on the facts, and there wasn't even a need for the Court to evaluate on its legal grounds.

Furthermore, the ICJ elaborated in details whether the Greek objection felt within the exception contained in the second clause of Article 11, paragraph 1 of the Interim Accord.³⁵ After concluding that the resolution 817 recommends that R. Macedonia should 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"³⁶, the Court further elaborated the situation in regard to the Macedonian application for NATO membership. The practice of the R. Macedonia becoming member to international organisations in the period between the conclusion of the Interim Accord and the Bucharest Summit was examined by the Court. The conclusion reached is that it joined at least 15 international organisations³⁷ of which Greece was member as well. And in each case, R. Macedonia was referred in the international organisation with the prescribed designation while R. Macedonia was referring to itself by its constitutional name when dealing with those international organisations. The Court found such practice as consistent with art. 11 para 2 of the Interim Accord. This act did not provoke any objections from the Greek side when R. Macedonia was becoming a member to the international organisations. In the case of the Council of Europe (CoE), Greece raised its concerns in 2004, nine years after R. Macedonia became member of the CoE. The issue of the Macedonian identity and language was raised in the CoE Parliamentary Assembly once again in 2007.

According to the Court, both parties agreed that Greece may object Macedonian membership at international organisations only in one circumstance – if R. Macedonia is admitted to an international organisation and referred to by the other member states and the organisation itself other than by the provisional designation. However, the Court also found that the said provision of the Interim Accord did not include an obligation for the R. Macedonia to refer to itself within the organisation under the provisional designation "the former Yugoslav Republic of Macedonia".³⁸ In other words, when admitted into membership of an international organisation under the provisional designation, the second clause of article 11, paragraph 1 of the Interim Accord provides that in such organisation the country would be referred to by the other member states and the organisation itself as "the former Yugoslav Republic of Macedonia", while the country will use its constitutional name.³⁹ The Court clarified that Greece erroneously claimed that "the former Yugoslav Republic of Macedonia" is a provisional international name of the country under the UN Security Council Resolution 817/1992, and in that way it removed an important obstacle for the resolution of the name dispute. Furthermore, when reviewing the practice of the Macedonian relations with NATO (as well with the international organisations that R. Macedonia joined after entering into the Interim Accord), the Court found that for several years prior to the Bucharest Summit, R. Macedonia constantly used its constitutional name. This was done while participating in the NATO Partnership for Peace and the NATO Membership Action Plan. Despite this kind of practice, Greece did not expressed concerns about it. Furthermore, it did not indicate that it would object to the R. Macedonia's admission to NATO based on the past or future use of its constitutional name.⁴⁰

34 Ibid.

35 Within the second clause of Article 11, paragraph 1, the Parties agree that Greece "reserves the right to object to any membership" in international, multilateral or regional organisation or institution of which Greece is member "if and to the extent the Second Part is to be referred to in such organisation or institution differently than in paragraph 2 of United Nations Security Council resolution 817 (1993)". United Nations Treaty Series (UNTS), Vol. 1891, p. 7, available from <http://treaties.un.org/doc/Publication/UNTS/Volume%201891/v1891.pdf>. [Accessed on 23 October 2016].

36 UN Security Council Resolution 817/93.

37 OSCE, Council of Europe, World Trade Organisation, and International Labour Organisations can be used as most noticeable examples.

38 ICJ Judgment, Application of the Interim Accord of 13 September 1995, The Former Yugoslav Republic of Macedonia v. Greece, 05.12.2011 available from: <http://www.icj-cij.org/docket/files/142/16827.pdf>. [Assessed 15 November 2016].

39 It is strange that Greece still maintains on its own interpretation of the second clause of article 11 paragraph 1 of the Interim Accord, although the ICJ's Judgment clearly rejected such interpretation. See: "Macedonia naming dispute", on the web site of the Greek Foreign Ministry - <http://www.mfa.gr/en/>. [Accessed 7 June 2017].

40 ICJ Judgment, Application of the Interim Accord of 13 September 1995, The Former Yugoslav Republic of Macedonia v. Greece, 05.12.2011 available from: <http://www.icj-cij.org/docket/files/142/16827.pdf>. [Assessed 15 November 2016].

Finally, the Court emphasized the duty to negotiate in good faith provided with the 1995 Interim Accord and to the need to reach the agreement on the difference described in the UNSC resolutions under the auspices of the Secretary-General of the United Nations.

The Court concluded that according to the evidence submitted to it, it is clear that Greece objected Macedonian admission to NATO because of the failure to reach a final agreement of the difference over the name. Furthermore, the conclusion of the Court is that Greece failed to comply with its obligation under the Article 11, paragraph 1 of the Interim Accord. According to the ICJ, the view that Republic of Macedonia will use its constitutional name in NATO, did not make the Greek objection lawful under the exception contained in the second clause of Article 11, paragraph 1.⁴¹

However, the Court rejected Macedonian requests to issue declaration that Greece has acted illegally, and to order it to refrain from any future action that will violate its obligations under Article 11, paragraph 1, of the Interim Accord. This was done because: "its finding that [Greece] has violated its obligation to the [Republic of Macedonia] under Article 11, paragraph 1, of the Interim Accord, constitutes appropriate satisfaction."⁴² Moreover, the Court referred to its previous case law and stated that "[a]s 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".⁴³

The ICJ Judgment was delivered on 5th December 2011. Although, the ICJ's rulings are final and there is no higher instance to appeal the judgment, the Court does not have an instrument to force the countries to comply. Besides the Court findings that Greece has violated its obligations under Article 11, paragraph 1, of the Interim Accord of 1995, it did not find it necessary to order it to refrain from any future action.

4. The Aftermath

Even though the ICJ Judgment was seen by the Macedonian side as a turning point in the resolution of the name issue and a stimulus for the EU and NATO integration process of the country, it was not perceived in the same manner by these organisations. In the evening of the 5th December 2011, the Council of EU reached a decision to postpone the accession negotiations with R. Macedonia, until a mutually acceptable solution to the name issue is reached. Both the Union and its member states representatives continued to appeal for the name issue resolution in order to start the negotiations in the future.⁴⁴ NATO Secretary General also made a statement that the ruling does not affect the decision taken by NATO Allies at the Bucharest summit in 2008 and an invitation would be extended to the R. Macedonia as soon as a mutually acceptable solution to the name issue has been reached.⁴⁵

It is understandable that both organisations where Greece is already a member will give their support to their ally rather than to the country that is outside their alliance. According

41 Ibid, para. 113.

42 Ibid, para. 169.

43 Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009, p. 267, para. 150.

44 See for example the statement of the German Chancellor, Ms. Merkel given on 14.02.2012 in Berlin <http://www.time.mk/read/4ad1772a64/b5f9850c2b/index.html>, [Accessed on 1 March 2016].

45 NATO Secretary General statement on the ICJ Judgment of 5th December 2011, available from http://www.nato.int/cps/en/natolive/news_81678.htm [Accessed on 15 October 2016].

to Maleski "[t]he lesson that we should have learned by now is that alliances, including NATO and the EU, are created to defend the interests of their own members and not to distribute justice".⁴⁶ But the fact that the process of the EU and NATO integration of R. Macedonia has been stalled for the past years has contributed towards deepening the crisis of democratic deficit in the country.

So far, in the dispute over the international name of the Republic of Macedonia, both NATO and EU member states have taken solidary stance with Greece. This is mainly due to the fact they consider that Greece has offered a reasonable and fair compromise to rename R. Macedonia, a composite name that includes the geographical designation of Macedonia but attaches an adjective to distinguish it from the Greek province with the same name - "Republic Northern Macedonia" or "Republic of Upper Macedonia". However, in that way, NATO and EU member states have harmed negotiations process because of two reasons. Primarily, renaming Republic of Macedonia into "Republic of Northern Macedonia" or "Republic of Upper Macedonia" tackles directly the Macedonian national identity, since it concerns the primary factor of such identity - the name, and with that it endangers the stability and integrity of R. Macedonia and the region. The second reason lies in the fact that Greek actions are jeopardizing of the good neighbourly relations with R. Macedonia, and the support given to Greece is a support to Greek breach of the Interim Accord and to the false Greek allegations that R. Macedonia is continuously in breach of the Interim Accord. The Judgment of the ICJ clearly revealed that Greece is the party which has breached the Interim Accord and disrupted the balance in the negotiations over the name issue, while in the same time Greece is also the country that falsely alleges that R. Macedonia is in continuously in breach of its obligations under the Interim Accord. In our view, it is an obvious indication for absence of good faith in the negotiations on the Greek side

Greece's bad faith in the negotiations on the name issue is manifested in one more way. Namely, Greece declares that its main goal in the negotiations is to achieve a distinction between R. Macedonia and the Greek part of the Region of Macedonia. If such distinction was the primary goal of the negotiations, Greece would have no problem to accept the proposals that would enable such goal. The first one is the clear commitment by R. Macedonia not to use solely the term "Macedonia" for its designation in international relations, but always its full constitutional name "Republic of Macedonia" or abbreviation "R. Macedonia". The second one is the mediator's Niemetz proposal of 2008 "Republic of Macedonia (Skopje)". It is worth to mention that this proposal was previously suggested by the Macedonian side back in 1992 to Robin O'Neill, acting as European Community Envoy.⁴⁷ Also, Greece cannot be unaware that the Badinter commission in 1992 found that that "the use of the name 'Macedonia' cannot imply any territorial claim against another State". However, Greece maintains its intransigent position, that the only solution it would accept is the renaming of its northern neighbour into Republic of Northern Macedonia or Republic of Upper Macedonia, although it is aware of the disastrous consequences if such renaming is accepted. One has to reach a conclusion that Greece is obviously not acting in a good faith in the negotiations on the name issue, and that it is pursuing a hidden agenda by opposing to the R. Macedonia's accession in the NATO and the EU. Both EU and NATO member states should use the major contributions that the ICJ's judgment gives towards normalization of relations between the two countries - and those are the Court's findings that the Interim Accord should be kept alive and that the alleged Macedonian breaches of the Interim Accord are simply unmeritorious.

⁴⁶ Denko Maleski, *Law, Politics and History in International Relations: Macedonia and Greece, New Balkan Politics, 2010*, available from <http://www.newbalkanpolitics.org.mk/documents/pdf/NBP,%20MaleskiD.pdf> [Accessed on 15 October 2016].

⁴⁷ Robin O'Neill, *Relations between the European Community and its Member States - and the former Yugoslav Republic of Macedonia, Report to the President of the Council of Ministers*, 01.12.1992.

CONCLUSIONS

The lack of unity among member states on how to define a strategy to tackle and resolve the name issue between R. Macedonia and Greece has been hindering the R. Macedonia's membership in EU and NATO from the very beginnings of the country's independent existence on the international stage. It is very hard to have a united strategy for dispute resolution when the EU and NATO member states are divided. When the organisations' member states have vested interest on a certain issue, like in the case of Greece, those organisations can achieve little. The lack of unity among member states contributes towards paralysis of the organisations' institutions to tackle the name issue within its enlargement policy.

This paralysis of the EU and NATO enlargement strategies towards R. Macedonia, together with the Greek blockade that continues even despite the ICJ ruling in 2011, have opened the way for the authoritarianism in R. Macedonia and contributed towards building the phenomenon of captured state⁴⁸. The best way to move forward in order to facilitate the settlement of the name issue for the EU and NATO members would be to return support for the full implementation of the 1995 Interim Accord, since it provides sustainable framework for long lasting good neighbourly relations between Greece and R. Macedonia, notwithstanding whether the name dispute has been settled or not. Restoring of the balance of negotiations on the name issue, as established by the Interim Accord and preventing the endangering of the good neighbourly relations by Greece, by breaching of the Interim Accord may bring R. Macedonia closer to EU and NATO membership. The membership in those organisations is essential for R. Macedonia, since it gives a boost to the new government's efforts to stabilize the country's democratic institutions. Moreover, the EU and NATO membership is seen as a way of preserving the country's security.

The history of the name issue shows that the only points of progress have been made when the EU and NATO member states have abandoned the Greek unreasonable positions. This has been done back in the 1990s, when the war was raging through the territory of the former SFRY republics. This needs to be done again in order to preserve the regions' stability.

⁴⁸ A description of the country in a Progress Report by the European Commission, meant to designate a state where there had been a long-lasting bifurcation of state and the party