Sašo Georgievski, PhD*

The Judgment of the International Court of Justice of 5 December 2011 and the Greek-Macedonian 'Difference Over the Name': Does the ICJ's Judgment Affect the Pending Diplomatic Dispute Settlement Process?

It has been more than a year and a half since the International Court of Justice (ICJ) delivered its judgment in the case of the *Application of the Interim Accord of 13 September 1995* between the Republic of Macedonia (RM) and Greece.[1] In the judgment, the Court warranted the Applicant (RM) 'a declaration that the Respondent [Greece] violated its obligation not to object to the Applicant's admission to or membership in NATO, deriving from Article 11, paragraph 1, of the 1995 Interim Accord' [2] as regards Greek acts of blocking RM from being extended an invitation to join the Alliance at its Bucharest Summit of 3 April 2008. So far, however, despite that judgment, the Republic of Macedonia has not yet been awarded an invitation for membership in the Alliance, or a beginning of accession negotiations with the European Union, to which Greece is a member.

In an article written almost a year ago amid expressed disappointment by the Macedonian public from the repeated decline of NATO to extend an invitation for membership to RM at its Chicago Summit of 20-21 May 2012, I have attempted to explain the inherent capacity (and limits) of the 5 December 2011 ICJ judgment's potential to affect the policies of the European Union, NATO and some member states of these organizations involved as third interested parties in the name-difference political settlement process.[3] The later was examined as regards normative, civilian, civilizing or ethical aspects that underlie (to a varying degree) the foreign policy identities of each of these actors. It was concluded that, while normatively-based considerations may influence foreign policy decision-making of the latter actors toward giving a certain effect to the 2001 ICJ's Judgment, in particular, as regards clarifications offered by it on critical aspects relevant for name-negotiation process, the actual ability of that judgment to affect their policies related to the handling of the name-difference may be equally

---

* Professor at the Faculty of Law "Iustinianus Primus", University Ss. Cyril and Methodius. Skopje.

[1] *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment (December 5, 2011) 4, http://www.icj-cij.org/docket/files/142/16827.pdf (further in the text referred to as 'the Judgment").

[2] See the Judgment, 47, paragraph 168.

[3] Георгиевски, Сашо, "Пресудата на Меѓународниот суд наа правдата од 5 декември 2011 година: предизвик за нормативната, цивилната, цивилизаторската и етичката сила на Европската унија, НАТО, САД и другите држави-членки", *Годишник на Правниот факултет "Јустинијан Први" во Скопје* (во чест на 18 години од основањето на политичките студии) том 47-48 (2013), 337-361 (Georgievski, Sašo, "The Judgment of the International Court of Justice of 5 December 2011: A Challenge to the Normative, Civilian, Civilising and Ethical Power of the European Union, NATO, the US, and Other Member States?, *Annuaire de la Faculte de droit "Iustinianus Primus" de Skopje* vol.47-48 (2013), pp.337-361; in Macedonian; Abstract in English).

limited by other normatively or non-normatively grounded factors. In particular, depending on the particular circumstances and conflict dynamics, the EU, NATO and their member states (especially the US, as most directly engaged in the name-negotiations) may be occasionally tempted to let normative considerations for ensuring unimpeded negotiation process between the parties prevail over those of securing full implementation of the ICJ's judgment, both of them being valid, yet sometimes mutually conflicting normative values.[4]

In this article, we will once more address the issue of effectiveness of the ICJ's Judgment of 5 December 2011 in the political process of settlement of the Greek-Macedonian 'difference over the name.' This time, however, we will approach that issue from a different albeit related theoretical angle, drawing inspiration from valuable theoretical insights explaining the relationship between international politics and law, state compliance with international courts' and ICJ's decisions, conflict and negotiations.[5] After a brief outline of the ICJ's December 2011 judgment in the pending name-difference settlement context, in the next two sections we will discuss the potential role(s) that the ICJ and its judgments may have in an open political dispute settlement process, and identify major factors determining their capacity to influence the parties' behavior in that process. Then, the main conclusions deriving from that general discussion will be applied to the particular question of the effectiveness of the December 5, 2011 ICJ Judgment over the pending negotiation of the name-difference, following which relevant conclusions will be drawn.

Brief Summary of the ICJ's Judgment of 5 December 2011 in the Pending 'Name-Difference' Settlement Context

As it is widely known, the Greek-Macedonian 'difference over the name' resulted from the Greek objections to the RM's use of the term 'Macedonia' in its official name (and to the use by it of the 'derivatives' of that name i.e. 'Macedonian' nation, language, culture etc.), that allegedly imply territorial aspirations towards the Greek northern provinces bearing the same name.[6] Negotiations between the parties have been ongoing for twenty years under the 'good offices' (in fact mediation) by the UN General Secretary's envoy established pursuant to the Security Council Resolution 817 (1993), assisted by various third interested parties, especially, by the US.

---

[4] *Ibid.*, pp. 359-360 and Abstract.

[5] This article is largely based on another article written by the same author titled: "The International Court of Justice and Diplomatic Settlement of Disputes: Could ICJ's Judgments Play an Effective Role in Negotiation of Interstate Disputes," which will be published in *Liber Amicorum Vukas*, Koninklijke Brill N.V., Leiden (currently in print).

[6] Among the numerous studies devoted to the 'name-issue', valuable analysis of that issue could be found in the International Crisis Group Report no.122: "Macedonia's Name: Why the Dispute Matters and How to Resolve It", 10 December 2001, at: http://www.crisisgroup.org/en/regions/europe/balkans/macedonia/122-macedonias-name-why-the-dispute-matters-and-how-to-resolve-it.aspx . Also See Joseph E., "Averting the next Balkan War: How to Solve the Greek Dispute over Macedonia's Name", Spiegel Online 06/02/2008, at: http://spiegel.de/international/europe/0,1518.druck-557092,html (accessed 21 May 2010).

Unsatisfied with the way current negotiations had been progressing, especially, as of the beginning of 2007, Greece has resorted to a conflict escalating strategy by using coercive tactics of blocking the entrance of the Republic of Macedonia into the international organizations where it had been a member (NATO and the EU).[7] As part of that strategy, Greece prevented RM from being invited to join the Alliance at the NATO Bucharest Summit of the Alliance of 3 April 2008. The later caused the ICJ proceedings being filed by the Republic of Macedonia on 17 November 2008 in an obvious effort to restore the relative balance between the parties in the negotiations, which had been disrupted by the Greek acts of blocking its accession to NATO.

The ICJ's judgment in *Application of the Interim Accord of 13 September 1995*[8] dealt with only one aspect related to the overall diplomatic process of settlement of the name-difference between the Republic of Macedonia and Greece, most notably, with upholding the parties' obligations deriving from the 1995 Interim Accord. The Interim Accord[9] had been concluded by the parties for an important purpose of providing a legal framework for conducting regular negotiations on the name-issue.[10] Hence, that ICJ judgment qualifies to be regarded as a judgment aimed at facilitating an ongoing diplomatic dispute settlement process.

In the remedial part of its judgment, as noted above, the ICJ warranted the Applicant (RM) 'a declaration that the Respondent [Greece] violated its obligation not to object to the Applicant's admission to or membership in NATO' deriving from Article 11, paragraph 1, of the 1995 Interim Accord.[11] In its deliberative part, however, the Court provided various important clarifications over substantive points of disagreement between the parties relevant for the ongoing negotiations, in particular, with respect to some key positions and arguments advanced by Greece in the diplomatic discourse as part of its 'blaming' strategy ever since the occurrence of the name-dispute and, especially, before and during the Bucharest NATO Summit. These clarifications essentially include:

a) a confirmation by the Court that RM has the right to use its constitutional name (the 'Republic of Macedonia') under SC resolution 817 of 1993, contrary to the Greek opposite claim that it had been obliged to call itself by the provisional reference 'the former Yugoslav Republic of Macedonia' provided by that resolution, as, in the version of Greece, once resolution 817 had been issued, it had already 'changed' its

[7]The label "strategy" to the post-2007 blocking policy of Greece regarding the RM's accession to NATO and the EU on the pre-text of the unsettled name issue has been attached by the highest representatives of Greece: See for instance the Speech of FM Bakoyannis at an event hosted by the Constantine Karamanlis Institute for Democracy, 16 Februrary 2009, at: http://www.mfa.gr/GoToPrintable.aspx?UICulture=en-US&GUID=%7B84013EE-F2AO-4CBC-BF16-69C7BCB44C12%7D (accessed on 21 May 2010), etc..

[8]*Supra* note no.1.

[9]*United Nations Treaty Series (UNTS)*, vol.1891, p.7.

[10]See the Judgment, 31, paragraph 97.

[11]See the Judgment, 47, paragraph 168.

name into a new 'provisional name;'[12] the later Court's finding is particularly significant in the negotiation context since it implicitly defies the Greek steady 'red line' position maintained in the negotiations until today, that the object and purpose (hence the solution) of the negotiations is to find a 'single' final name 'for all purposes' (*erga* omnes), which should replace the 'provisional' name already established by resolution 817;[13]

b) a Court's confirmation that RM (together with Greece) has been negotiating in good-faith, despite Greek constant (and still maintained) allegations that it had been 'intransigent' in the negotiations[14] and

c) ICJ's rejection of the Greek manifold allegations that RM had not been maintaining 'good-neighborliness' in its policy towards Greece by *inter alia* exercising 'hostile propaganda' against it, using antique symbols belonging exclusively to the Greek heritage, interfering in the Greek internal affairs etc., in breach of the respective provisions of the 1995 Interim Accord.[15]

At the end of the deliberative part of the Judgment, the Court reminded the Parties of their pending obligation stemming from the Interim Accord 'to negotiate in good faith under the auspices of the Secretary General of the United Nations' pursuant to the SC Resolutions 817 and 845 'with a view to reaching agreement on the difference [over the name]'.[16]

[12]See the Judgment, 30, 32, 32-33, paragraphs 93, 98, 101 and 103, and Counter-Memorial, at: http://www.icj-cij.org/docket/files/142/16356.pdf, paragraphs 2.26, 4.9 and 8.39, and Rejoynder, at: http://www.icj-cij.org/docket/files/142/16360.pdf , paragraphs 7.56, 7.53-7.54,

[13]See Rejoynder, at: http://www.icj-cij.org/docket/files/142/16360.pdf , paragraph 7.56.

[14]See the Judgment, 41,paragraph 138.

[15]See the Judgment, 42-46, paragraphs 142, 147, 153, 159-160, and 163, where the Court established a single incident of violation by RM of Article 7(2) of the Interim Accord, that 'ended in 2004' and that 'could not be regarded as a material breach within the meaning of the 1969 Vienna Convention.'

[16]The Judgment, 46, para.166

Could the International Court of Justice Judgments Affect Parties' Behavior in An Open Political Interstate Dispute Settlement Process? A Theoretical Perspective

In its decades-long practice, the International Court of Justice has often proceeded with exercising its judicial function in many cases related to wider - often sensitive - processes of political settlement of interstate disputes or conflicts.[17] Despite regular challenges to its jurisdiction by the parties involved in such disputes, claiming that its potential judgment would somehow enmesh with and cause detrimental consequences for ongoing diplomatic settlement efforts,[18] the ICJ has not been restraining itself from deciding substantively on many politically sensitive points that could potentially affect the pace, shape or outcome of ongoing diplomatic settlement of the same or larger disputes and conflicts.[19] Related to such ICJ's cases, some sixteen years ago, John Collier noted the fact that in the Court's practice *inter alia* there were judgments where the Court had exceeded the borders of its primary law-based operational limits, and where it had even 'almost abdicated its special function of judicial settlement in substance, though not in form, in favor of one or more of the other methods of settlement."[20] These occasional shifts by ICJ towards performing functions of other dispute settlement methods, according to Collier, related to those of an arbitration (in view of the Court's practice of sitting in Chambers), but

[17]Although often colliding, 'conflicts' and 'disputes' are usually treated as different albeit correlated contingencies, whereby 'conflict' is understood to amount to a more general state of hostility between the parties', and 'dispute' – to a certain disagreement with respect to rights or interests, where the parties advance claims, counter-claims etc. Collier, John and Lowe, Vaughan. *The Settlement of Disputes in International* Law. Oxford: Oxford University Press, 1999, 1. Aware of the importance of that distinction between conflicts and disputes for different (including legal) purposes, as a matter of practical expediency, in this essay, where suitable, we will occasionally use both terms interchangeably.

[18]For more See Merrills, J.G., *International Dispute Settlement*. Cambridge: Cambridge University Press, 4th edition, 2005, 21-26, 166-171; Koopmans, *Diplomatic Dispute Settlement*, 11-19.

[19]See *Aegean Sea Continental Shelf*, Judgment, ICJ Rep., (1978) 12; *United States Diplomatic and Consular Staff in Tehran*, Judgment, ICJ Rep., (1980) 19-20; *Military and Paramilitary Activities in and against Nicaragua*, Merits, Judgment, ICJ Rep., (1986) p. 14; *Application of the Interim Accord of 13 September 1995*, Judgment, *supra* note.1. 21-22, paragraphs 55-60. In the later judgment, ICJ rejected the Greek objection to its jurisdiction (founded on judicial propriety) based on the assertion that, by the exercise of its jurisdiction, the Court would *inter alia* 'interfere with the [active] diplomatic process envisaged by the Security Council in resolution 817 (1993)' (i.e. the ongoing process of negotiations between the parties over the Applicant's name under mediation by the UN Secretary General's envoy Mr. Mathew Nimetz).
the the the Applicant's name under mediation by the UN General Secretary's envoy, Mr. Mathew Nemetz).'

[20]Collier, G.J., "The International Court of Justice and the Peaceful Settlement of Disputes," in Lowe, Vaughan and Fitzmaurice, Malgozia, eds., *Fifty Years of the International Court of Justice*, Essays in honor of Sir Robert Jennings. Cambridge: Cambridge University Press, 1996: 364-372, 368.

also to those of 'less formal methods of settlement, especially mediation and conciliation.'[21]

In fact, in his more recent analysis of state compliance with ICJ's decisions, among others, Aloysius Llamzon equally pointed to the multiple roles that may be played by the International Court of Justice in different dispute settlement contexts, concluding that, in its actual judicial practice, the Court has been largely successful at 'striking the right tone between expositor of international law and political actor, between arbitral body encouraging negotiated settlement and impartial adjudicator of rights.'[22] Such manifold faces displayed by the Court, as implied by Yuval Shany, are a reflection of the multiple – often cumulative - goals pursued by this and other international courts, including those of ensuring primary norm compliance, dispute resolution and problem-solving, regime support, and regime legitimization,[23] that may sometimes overlap and find themselves to be in a tension with one another, prompting different responses by the Court in particular circumstances of particular cases.[24]

But, could ICJ, in view of these multifaceted goals pursued by it, affect state behavior in an often complex environment surrounding political settlement of interstate disputes? The answer to that question largely depends on the theoretical approach used for explaining the broader issue of the role of international adjudication (ICJ) in world politics, and of state compliance with international law and binding courts' decisions.

According to the proponents for 'legalization' of international relations and for 'judicialization' of dispute settlement,[25] for instance, who are largely supportive of the rule of law ensuring mission of courts in world politics,[26] the decisions of international courts and tribunals (including ICJ) are capable of having causation impact on state (i.e. conflicting parties') conduct themselves.[27] The International Court of

[21]Collier, *International Court of Justice*, 369.

[22]Llamzon, Aloysius P., "Jurisdiction and Compliance in Recent Decisions of the International Court of Justice," *European Journal of International Law* 18 no.5 (2008): 815-52, 852.

[23]Shany, Yuval , "Compliance with Decisions of International Courts as Indicative of their Effectiveness: A Goal-Based Analyses," Hebrew University of Jerusalem Faculty of Law Research Paper No. 04-10, (October 24, 2010) . Available at SSRN: http://ssrn.com/abstract=1697488 or http://dx.doi.org/10.2139/ssrn.1697488 1-17, pp.5-6

[24]Following that logic, this author proposes that the ICJ's and other international courts' performance, most notably, with respect to their judgments remedy compliance by states, should be best viewed and assessed in light of the goals pursued by international courts in particular contexts. See Yuval Shany, "Compliance with Decisions of International Courts", p.4-5.

[25]See in particular the articles published in "Legalization of World Politics," in the special issue of *International Organization* 54 no. 3 (Summer 2000).

[26]See for instance Helfer, Laurence R. and Slaughter, Anne Marie, "Towards a Theory of Effective Supranational Adjudication," *Yale Law Journal* 107 (1997): 273-397, 387, suggesting that international courts (ICJ) should be modeled on the ECJ and ECtHR.

[27]Keohane, Robert O., Moravcsik, Andrew and Slaughter, Anne-Marie, "Legalized Dispute Resolution: International and Transnational," *International Organization* 54 no.3 (2000): 457–88, 488.

Justice, however, has only 'modest' abilities to affect state behavior when compared with those of the highest ranked transnational courts (like the ECJ or ECtHR), largely because of the more heavily exercised political control ('gate-keeping') by states when it comes to its composition, access of private parties and enforcement of its judgments.[28]

Following their own basic understanding that states always act in their self-interest, in turn, rational choice theorists defy the basic claim of 'legalization' promoters about the causal effect of the international courts and tribunals' decisions on state behavior, granting these courts and ICJ a much more 'symbolic value' in the political dispute settlement process,[29] that is, a mere informative, conciliatory or mediating role. International tribunals and ICJ could (and should) merely serve as a 'problem solving devices' in dispute settlement and conflict resolution processes, provided that they are neutral and reflect the 'ex-ante interests' of the parties, and act as a 'neutral arbiter that can help overcome prisoners' dilemma problems.'[30] As states enter into bilateral and multilateral treaties 'without having a clear view of their obligations and needs decades later', these can be clarified by courts, however, enforcing these treaties by courts 'is not simply a matter of enforcing them impartially, but of enforcing them in a way that reflects the interests of states as they have developed over time.'[31]

A much broader picture of possible effects that may be produced by international law and international courts' decisions on state behavior than the one presented by the above theories is offered by scholars that prefer a norm-oriented theoretical approach when explaining the relationship between politics and law. In their own response to pro-legalization arguments, among others, Finnemore and Toope present a 'richer view on law and politics,' reminding that *inter alia* conceptualization of law and obligation should take into account alternative features of law i.e. 'legitimacy' as a source of obligation and 'compliance pull' in law.[32] Legitimate law generates obligation not just in formal sense but 'also in a felt sense', and it also includes 'adherence to legal process values, the ability of actors to participate and feel their

---

[28]Keohane et al., "Legalized Dispute Resolution," 457-58 and 469.

[29]Posner, Eric A. "The Decline of the International Court of Justice," *Chicago, John M. Olin Law & Economics Working Paper* no.233 (2nd series) (December 2004), 1-38, 1; and Posner, Eric A. and Yoo, John C. , "A Theory of International Adjudication," *Chicago, John M. Olin Law & Economics Working Paper no.206* (2nd series) (February 2004); both papers are available at: http://www.law.uchicago.edu/Lawecon/index.html .

[30]Posner, Eric A. and Yoo, John C. , "A Theory of International Adjudication," *Chicago, John M. Olin Law & Economics Working Paper no.206* (2nd series) (February 2004); both papers are available at: http://www.law.uchicago.edu/Lawecon/index.html, 5 and 14.

[31]Posner, "The Decline of the International Court of Justice," 24.

[32]Finnemore and Toope, Toope, Stephen, "Alternatives to 'Legalization': Richer Views of Law and Politics, *International Organization* 55 no.3 (2001), 743-758, pp. 743-746, especially 746. The authors refer to the well known 'legitimacy' theory of Thomas Franck: See Frank, Thomas M.. *The Power of Legitimacy Among Nations*. New York: Oxford University Press, 1990; and to Byers, Michael. *Custom, Power, and the Power of Rules: International Relations and Customary International Law*. Cambridge: Cambridge University Press, 1999.

influence, and the use of legal forms of reasoning',[33] which also applies to ICJ judgments. In a similar vein, Howse and Teitel even defy the prevalent tendency among scholars of explaining the international law's (ICJ's) performance only in terms of compliance, as the later is commonly understood as mere conformity of state behavior with a rule or judgment,[34] and point to a myriad of possible roles and effects that can be assigned to international law when one abandons using such constricted understanding of politics and law. In particular, they criticize the narrowness of the positivists' state-self-interest focused rational choice approach.[35] Since lawfulness is often an endogenous preference of individuals and sovereignty, among else, positivists (i.e. Goldsmith and Posner) themselves would have to admit 'that [even legal] rhetoric performs *some* function, otherwise states would not invest in it'.[36] In fact, international law (and courts) 'matters in all kinds of ways for *us*, here and now,' and what one needs is 'much more reflection on those properties of "law" that it possesses which make international law [and ICJ judgments] distinctive as a mode of discourse in international order, and *then* to see the effects of international law through such an understanding.'[37] Using that broader theoretical approach, these authors identified various 'real world effects' that may be produced by international law and adjudication which offer valuable insights for the research of the ICJ's potential to impact an ongoing diplomatic dispute settlement process. In particular, the ICJ's judgments' may have inherent ability to influence 'the way policy makers view international problems and conflicts', bring about a total or partial 'shift in the actors' decision-making and/or the interpretative or legitimating power from one set of elite actors to another', and affect state bargaining, as 'rather obviously, legal agents bargain in the shadow of the law,' and 'instead of simply "complying" with international rules [they] may bargain in light of them'.[38]

In general, various norm-oriented and constructivists theoretical explanations of the relationship between politics and law and state compliance strongly suggest that there is a need to focus both on the ideational and normative aspects of the behavior of actors involved in a diplomatic interstate dispute settlement exercise incited by a related ICJ judgment, rather than exclusively on instrumental or material aspects of their conduct. Under the constructivists theoretical accounts, to recall, apart from complying instrumentally, state actors also operate in part 'by figuring out, or being socialized towards, the "right thing" in a particular

[33]Finnemore and Toope, "Alternatives to 'Legalization', 749-50 and 755.
[34]Raustiala, Kal and Slaughter, Anne-Marie, "International Law, International Relations and Compliance," in Carlsnaes, Walter, Risse, Thomas and Simmons, Beth A, eds.. *Handbook of International Relations*.London: SAGE Publications Inc, 2002, 537-558, 538.
[35]Howse, Robert and Teitel, Ruti, "Beyond Compliance: Rethinking Why International Law Really Matters," *Global Policy (Online), Vol. 1, No. 2, 2010, NYU School of Law, Public Law and Legal Theory Research Paper Series.* Paper no. 10-08 (February 2010), available at SSRN: http://ssrn.com/abstract=1551923: 1-29, p. 4 and 10.
[36]Howse and Teitel, "Beyond Compliance," pp. 25-26.
[37]Howse and Teitel, "Beyond Compliance," pp. 25-28, especially 26 and 28.
[38]Howse and Teitel, "Beyond Compliance," pp.11-13 and 19-20.

general context' (i.e. negotiation context), that is, following the 'logic of appropriateness' instead of one of consequences.[39] Hence, according to Ruggie '[n]orms [including ICJ judgments] may "guide" behavior, they may "inspire" behavior, they may "rationalize" or "justify" behavior, they may express "mutual expectations" about behavior, or they may be ignored' by state actors'.[40] In order to understand properly the effectiveness of ICJ judgments in a diplomatic context, one has to take into account both the communicative dynamics going on between them, that is, how state's behavior 'is interpreted by other states, the rationales and justifications for behavior that are proffered, together with pleas for understanding or admission of guilt, as well as the responsiveness of such reasoning on the part of other states,' as 'absolutely critical component parts of any explanation involving efficacy of norms.'[41]

Factors Determining Potential Effectiveness of ICJ judgments in an Open Negotiation Context

ICJ's judgments may potentially affect the behavior or states – parties in a pending diplomatic process of dispute or conflict settlement[42] in a variety of ways. But, the probability and the extent to which these could actually cause positive changes in their conduct as directed by the ICJ's judgment would largely depend on a myriad of different factors, whose impact would have to be determined and assessed in any particular case.

One such major factor determining the effectiveness of ICJ's judgments in pending diplomatic settlement processes certainly consist of the parties' interests affected by an ICJ's judgment, as parties constantly engage with interest-based calculations when forming their positions and strategies during conflict dynamics and negotiation. The more an ICJ's judgment is 'high-cost' and touches upon the parties' vital interests as perceived by them with respect to the issues involved, the less is the possibility that the judgment would influence the respective party's conduct in negotiations.[43]

To that adds the character of the underlying conflict that may considerably affect the ICJ's judgments' potential role and effectiveness in a particular diplomatic dispute settlement context.[44] Thus, in conflicts

[39]Raustiala, Kal and Slaughter, Anne-Marie, "International Law, International Relations and Compliance," p. 538, referring to Finnemore, Martha and Sikkink, Kathryn, "International Norm Dynamics and Political Change," *International Organization* 52 no.4 (1998): 887-917, 1, and March, James G. and Olsen, Johan P., "The Institutional Dynamics of International Political Orders," *International Organization* 52 no.4 (1998): 943-969.

[40]Ruggie, John G., "Epistemology, ontology and the study of international regimes", in Ruggie, John G., ed., *Constructing the World Polity*. London and New York: Routledge, 1998, 97-98.

[41]Ruggie, "Epistemology, ontology and the study of international regimes", 97-98.

[42]For a comprehensive presentation of conflict resolution theories and methods, including in their foundational and historic development context, See Miall, Hugh, Ramsbotham, Oliver and Woodhouse, Tom, *Contemporary Conflict Resolution*. Polity Press and Blackwell Publishing Ltd, 2003.

[43]Shany, Yuval , "Compliance with Decisions of International Courts", 4-5.

[44]For the types of conflict and their relationship to negotiation See Druckman, Daniel, "Conflict Escalation and Negotiation: A Turning Points Analyses", in

involving relationship characterized by conflicts of interests, that are 'typically resolved through a bargained compromise',[45] a Court's judgment may aid reaching such compromise by authoritatively providing information, legally clarifying the framework for possible compromises, and setting the limits for the respective parties' legitimate claims in the state bargaining process.[46] Whereas, *mutatis mutandis*, in conflicts characterized by conflict of values, these are more difficult to negotiate 'as the parties attach their identities to the values in dispute,'[47] hence an ICJ judgment would presumably have less potential of producing the desired transformative effect.

The ICJ's judgments effectiveness in negotiations is equally dependable on the willingness of the disputing parties for a compromise in the related negotiations, and on existing opportunity costs associated with the negotiated settlement of the dispute, for instance, with respect to the parties' interest of maintaining good trade relations, political or other forms of cooperation etc., that may provide incentives for reaching agreement according to the ICJ's judgment.[48] Whereas, some researches of state compliance with ICJ's judgments concluded that they have had more chances to be respected in cases where the Court's proceedings had been instituted under special agreement by the disputing parties,[49] often in circumstances of otherwise good relations between them, then when filed unilaterally, others disproved such conclusion asserting that the way the Court had been seized does not have much bearing on parties' compliance with its judgments.[50]

Of course, power-relations between the conflicting parties and their assessment of their own ability to rely on coercion during negotiation and conflict despite an issued ICJ judgment have a large role to play. A shift to a legal context incited by a judgment, however, may help increase the power of the one party to the expense of the other,[51]

Zartman, William and Faure, Guy Olivier, eds. *Escalation and Negotiation in International Conflicts*. Cambridge: Cambridge University Press, 2005, 185-212, 188-94.

[45]Druckman, "Conflict Escalation and Negotiation," 188-189, and the authors quoted at that place.

[46]E.g. with respect to the dispute between Libya and Chad, where the acceptance by the parties of the ICJ's judgment (*Territorial Dispute (Libyan Arab Jamahiriya/Chad),* Judgment, ICJ Rep. (1994), 6) meant that Libya could no longer claim sovereignty over the region during negotiations. See Llamzon, "Jurisdiction and Compliance in Recent Decisions," 831.

[47]Druckman, "Conflict Escalation and Negotiation," 188-189. Also See See Miall, Hugh, Ramsbotham, Oliver and Woodhouse, Tom, *Contemporary Conflict Resolution*. Polity Press and Blackwell Publishing Ltd, 2003, 9.

[48]See, for instance, the post judgment developments related to: *Maritime Delimitation and Territorial Questions (Qatar v. Bahrain)*, Judgment, ICJ Rep. (2001) 40; *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, ICJ. Rep. (1993) 38; etc. See Schulte, Constanze, *Compliance with Decisions of the International Court of Justice*. Oxford: Oxford University Press, (2004).

[49]Posner and Yoo, "A Theory of International Adjudication," 33, referring to statistics presented by Ginsburg and Mc Adams..

[50]See Llamzon, "Jurisdiction and Compliance in Recent Decisions," 845, in response to Posner and Yoo.

[51]Collier and Lowe, *Settlement of Disputes in International* Law, 4-5.

which could sometimes bring about a change in existing power asymmetries between the conflicting parties as a prerequisite for the beginning and further pursuit of constructive negotiations. An ICJ judgment, in turn, may potentially contribute to the occurrence of a 'ripe moment' for negotiation during conflict escalating dynamics.[52] Since, the later is 'a perceptual event based on the values and preferences of the political leaders making the assessments',[53] an ICJ's judgment (together with other factors) may occasionally cause a positive perceptional change among the respective actors' leadership (and that of the intermediaries) for the 'ripeness' for negotiation, and ease up their decision to start or resume negotiations. A Court's judgment may produce such effect, especially, by facilitating the respective government's gaining of domestic legitimacy for the later decision, and through inserting an objective and credible element in the domestic political process, it may help the creation of domestic public consensus and building up of 'coalitions for peace,' which are often necessary for the party leadership's turn to constructive negotiation 'without taking the risk of being called a traitor who is selling out national interests'.[54]

Domestic linkages may have considerable impact on the ICJ judgments' effectiveness in negotiations, as shifts in the preferences of domestic societal actors around an issued ICJ judgment may result with 'shifts of compliance preferences of governments'[55] of the respective parties. Equally significant, however, are external factors. Both lawyers and political scientists have long ago recognized the importance to a party internationally of reputation costs that may incur upon it for reneging from its obligations imposed by an ICJ judgment.[56] 'States normally want to look good in the community of nations,' they want 'to be seen as law abiding'[57] including during active negotiations.

---

[52]The so-called 'ripeness theory' has been advanced by Zartman. See Zartman, William I., *Ripe for Resolution*. New York, NY, USA: Oxford University Press, 1989. Also See Aggestam, Karin, "Enhancing Ripeness: Transition from Conflict to Negotiation, in Zartman and Faure, eds., *Escalation and Negotiation*, 271-92, and the authors referred to at these pages.

[53]Aggestam, "Enhancing Ripeness," 273-74, and the authors quoted at that place.

[54]Aggestam, "Enhancing Ripeness," 275-76. The above effect of the ICJ judgments, however, may be less likely in circumstances of sharply politically divided societies, where it is particularly difficult to gain unequivocal legitimacy and public support for a turn to constructive negotiation.

[55]Raustiala and Slaughter, "International Law, International Relations and Compliance," 545. Also See Simmons, Beth A., "Capacity, Commitment and Compliance. International Institutions and Territorial Disputes," *Journal of Conflict Resolution* 46 no.6 (2002): 829-56.

[56]Mitchell, McLaughlin Sara and Hensel, Paul R., "International Institutions and Compliance," *American Journal of Political Science* 51 no.4 (2007): 721-37, 734.

[57]Warioba, Sinde Joseph, "Monitoring Compliance with and Enforcement of Binding Decisions of International Courts," *Max Plank Yearbook of United Nations Law* 5 (2001), 41-52, 51. See, for instance, post-judgment developments on: *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras, Nicaragua intervening)*, Judgment, ICJ Rep. (1992) 351; *Territorial Dispute*, *supra* note 36. See Schulte, *Compliance with Decisions*, 215-220 and 229-34; Llamzon, "Jurisdiction and Compliance in Recent Decisions," 825-29 and 829-

Chances that an ICJ judgment would effectively affect the conflicting parties' conduct during negotiations increase considerably in the presence of third parties interested in the dispute or conflict settlement, in particular, when more powerful third states, and international organizations, are involved.[58] An ICJ judgment may *inter alia* provide additional leverage for 'mediators with muscle' when they try 'to influence the parties' preferences and perceptions of de-escalation [of conflict] and negotiation' by exercising power and hence to alter the structure and distribution of power through coercive bargaining.[59]

With respect to the particular involvement of international organizations, as noted earlier, Mitchel and Hensell demonstrated in their study the importance of both active and passive presence of international organizations for the settlement of territorial, river and maritime contentious cases,[60] equally applicable to the settlement of other types of contentious issues. Disputes like the one between Cameroon and Nigeria, for instance, would probably not have been successfully resolved diplomatically following the issued ICJ's judgment without an active assistance by an IO, in that case, by the UN.[61] IOs can produce positive effects on dispute settlement both by its passive involvement, since the disputing parties' joint membership in an IO (e.g. in the UN, OAS or the EU) often exerts additional pressure on them to settle their disagreements peacefully.[62]

To all above factors, many (especially norm-oriented) scholars add the possibility that the quality of an ICJ judgment may be a major determinant for its potential effectiveness (including) in a negotiation context, in particular, with respect to the level of determinacy of the judgment.[63] Another judgment's quality related factor attaches to the character of the remedial part of the judgment. Since ICJ exercises considerable discretion as to how to formulate its judgments, and what remedies to issue in a particular negotiation context, it 'may arguably

---

32; Paulson, Colter, "Compliance with Final Judgments of the International Court of Justice since 1987*," American Journal of International Law* 98 no. 3 (2004): 434-61, at 437-39 and 439-43.

[58]See, for instance, the post-judgment developments with respect to: *Land and Maritime Boundary between Cameroon and Nigeria* (ICJ Rep. (2002) 303), and Llamzon, "Jurisdiction and Compliance in Recent Decisions," 836-838, espec. 838.

[59]Aggestam, "Enhansing Ripeness," 280. On the role and forms of third party intervention in conflict and achieving conflict structural transformation See Miall et al., *Contemporary Conflict Resolution*, 9-10 and 156-62.

[60]Mitchell and Hensel, "International Institutions and Compliance," 723-27 and 734-35.

[61]See *Land and Maritime Boundary between Cameroon and* Nigeria (ICJ Rep. (2002) 303), and Llamzon, "Jurisdiction and Compliance in Recent Decisions," 836-838, espec. 838..

[62]Mitchell and Hensel, "International Institutions and Compliance," 723 and 734.

[63]See Franck, Thomas. *Fairness in International Law and Institutions.* Claredon Press, 1995. The Court's judgment in *Gabčíkovo-Nagymaros Project*, Judgment, ICJ Rep. (1997) 5, for instance, has been often pointed as a perfect example of how an ambiguous ICJ judgment may not serve the purpose of leading the parties towards a successful negotiated outcome. See Liamzon, "Jurisdiction and Compliance in Recent Decisions," 835-36.

impact through aiming "high" or "low" (by facilitating different levels of state resistance), the degree of compliance pull that [its] decisions would generate'.[64] Furthermore, the ICJ could equally adjust to political realities of particular cases by including 'legitimate statements' in the judgment,[65] suitable for meeting the particular parties' interests in pending negotiations in a more balanced way.

Reactions of the Parties involved in the Ongoing 'Name-Negotiations' to the ICJ's Judgment of 5 December 2011

The ICJ's judgment of 5 December 2011, which essentials have been briefly outlined in the first section of this text, seems to satisfy the quality requirements for potential effectiveness of ICJ's judgments identified above. It is clearly determinable and formulated with due consideration (to the extent possible) for the political sensitivities underlying the diplomatic process of the settlement of the 'difference over the name.' The later is particularly visible by the Court's choosing to issue a mere declaration of violation of the 1995 Interim Accord by the Respondent (Greece) in the remedial part of the Judgment, calling upon it's 'good faith' obligation to give the judgment proper effect, instead of further ordering Greece to undertake specific acts of performance as it had been requested by the Applicant (RM).[66] Or, by the Court's clear reminder addressed to both parties of their obligation to continue negotiating on the name-difference in good faith, though, as noted above in the first section, there are also some key politically relevant points on the name-difference which the Court had to address in the deliberative part of the judgment under invitation by Greece (especially as regards it's steadily maintained policy towards the name-issue and RM), which the Court could not have answered positively according to that party's expectations, obviously due to the latter's weak legal position on these.[67]

Yet, as it could have been expected, the disputing parties reacted differently to the ICJ's judgment of 5 December 2011. Initially, the RM's representatives welcomed the judgment and called the other party to comply with its terms in hope that the country's unimpeded access to NATO would thus be ensured, as they also unequivocally supported the

[64]Shany, "Compliance with Decisions of International Courts," 4-5.

[65]See Treves, Tullio., "Aspects of Legitimacy of Decisions of International Courts and Tribunals", in Wolfrum, Rüdiger, Röben, Volker, eds. *Legitimacy in International Law*. Springer, 2008, 169-188.

[66]*Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment (December 5, 2011) 4, paras. 167-168. In fact, the above ICJ's practice of issuing only a declaration on violations committed by the respective parties is a standard practice of the Court applied by it in many of its judgments, e.g. in: *Interpretation of Judgments Nos. 7 and 8(factory at Chorzow)*, Judgment no.11, PCIJ Series A, no.13 (1927), 20; *North Cameroons (Cameroon v. United Kingdom),* Preliminary Objections, Judgment, ICJ Reports (1963), 37-38; or, from its later practice, in: *Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports (2009), 267, para.150; *Jurisdictional Immunities of the State (Germany v. Italy)*, Judgment of 3 February 2012, para.138; etc.

[67]See in the first section above.

continuation of the negotiation process under the auspices of the UN.[68] Whereas RM has repeatedly appealed to the other parties involved in the name-issue dispute settlement process to give due effect to the judgment, especially, in the first months following its issuance up to the May 2012 Chicago NATO Summit, it has maintained an openly supportive and constructive stance towards the overall efforts of the mediator Mr. Nimetz and of other interested partners to provide a break-through in the reinvigorated name-negotiation process. However, it has been also pointing to the rigidness and lack of genuine commitment on the part of the other disputing party in that process despite the latter's otherwise declared intentions.

As for Greece, while it did not reject outright the ICJ judgment because of reputational costs that it might have incurred by an opposite move, it tried to downplay its significance (and that of the 1995 Interim Accord[69]) in the name-negotiation process, giving importance only to the general negotiations-in-good-faith reminder contained in the judgment.[70] Overall, however, despite the judgment, and sticking steadily to its self-perceived interests and values, Greece has not given up on its coercive strategy of preventing RM from progressing towards entering NATO and the EU (though it might have resorted to somewhat more subtle methods for achieving that end), or on its 'read line' insistence for a single (*erga* omnes) negotiated name and its rhetoric of constant accusations directed toward the other side.[71] Such Greek coercive tactics eventually

---

[68]Macedonia wins major ruling against Greece at the Hague Court, 05. 12. 2012, http://vlada.mk/node/991?language=en-gb (accessed on 28 March 2013).

[69]Witness of that tactics, among else, is the Greek proposal to RM of a draft for a non-binding Memorandum of understanding of 03 October 2012, available at: http://balkanstory.wordpress.com/2012/11/09/2012-10-05-greece-draft-memorandum-of-understanding/ (accessed on 30 March 2013) Though merely restating in it the well-known Greek negotiating positions without any mention of the ICJ judgment and the 1995 Interim Accord (except for the obligation to negotiate in good faith of IA Article 5), the Greek side tried to present the MoU as an instrument aimed at speeding-up the name-negotiations. It's obvious aim was, however, to put aside the 1995 binding accord as clarified by the ICJ's judgment. See the reply of the RM's Minister for Foreign Affairs Mr. Nikola Popovski in a letter addressed to the Foreign Minister of Greece Mr. Dimitris Avramopoulos of 5 November 2012, available at: his the http://www.mfa.gov.mk/sites/default/files/Dokumenti/Letter-Grcija-en.pdf (accessed on 30 March 2013).

[70]See Statement by Foreign Minister Dimas regarding the recent developments following the ICJ judgment of 7 December 2011, http://www.mfa.gr/en/current-affairs/statements-speeches/statement-by-foreign-minister-dimas-regarding-the-recent-developments-following-the-icj-judgement.html (accessed on 28 March 2013).

[71]See for example the briefings of diplomatic correspondents by the Greek Foreign Ministry spokesman Gregory Delavekouras of 19 January 2012, available at: http://www.mfa.gr/en/current-affairs/press-briefings/briefing-of-diplomatic-correspondents-by-foreign-ministry-spokesman-gregory-delavekouras-18.html, and of 23 February 2012, available at:

materialized at the NATO Summit in Chicago of 20-21 May 2012, where RM was not extended an invitation to join the Alliance once again, and later at the Brussels' meeting of the European Council of 13-14 December 2012, where, despite many intensive efforts by third parties to ensure a start of RM's accession negotiations with the EU, the Council's decision on the later had to be once more postponed for June 2013. Just days before the meetings of these EU institutions scheduled for June 25 and 29 (respectively), in view of the latest repeated opposition signals sent by Greece (and some other neighboring countries which allied with Greece i.e. Bulgaria) to its EU partners, it is highly unlikely that the Council and the EC would adopt any positive conclusion at those meetings on opening accession negotiations with RM (See below).

The reactions of the third interested parties engaged in the name-negotiation process to the ICJ's judgment, in turn, have been mixed and varying over time. While the mediator Mr. Mathew Nimetz welcomed the judgment and proceeded immediately with intensifying the negotiations, initially, the representatives of NATO and some MSs, including the US, forwarded rather discouraging messages as regards the possibility of RM's accession to the Alliance without a final negotiated solution of the name issue,[72] stressing the importance of the consensus-driven decision-making process in NATO, that also included Greece. Such initial warning by the representatives of NATO and the US and some other member states, that effectively materialized at its 2012 Chicago Summit, could probably be partly explained by their uncomfortable feeling about the fact that the Court's judgment implicitly (though not formally) encroached upon the internal affairs of that organization, but also by their awareness of its inner decision-making limitations to ensure full respect for the ICJ judgment in presence of the one directly affected member - Greece. In particular, such reactions may have been motivated by their possible concern that the later might have triggered adverse conflict-escalating responses from Greece (and presumably RM's lessened motivation to proceed constructively in the negotiations) with detrimental consequences on the name-issue diplomatic settlement process. In a press-conference statement made at the closing of the NATO Chicago Summit, however, the (then) US Secretary of State Mrs. Hillary Clinton stressed that that Summit 'should be the last summit that is not and enlargement summit', and that, while

http://www.mfa.gr/en/current-affairs/press-briefings/briefing-of-diplomatic-correspondents-by-foreign-ministry-spokesman-gregory-delavekouras-1250.html (both accessed on 30 March 2013), where *inter alia* he said that the ICJ ruling 'has nothing whatsoever to do with the negotiating process.'

[72]See, for example, Statement by the NATO Secretary General on ICJ Ruling of December 5th 2012, available at: http://www.nato.int/cps/en/natolive/news_81678.htm, and the "Interview with the U.S. Ambassador Paul Wohlers with Kapital weekly magazine of 21 December 2011, available at: http://macedonia.usembassy.gov/interviews2/interviews-2012/int12212011.html (both accessed on 30 March 2013).

urging both parties to reach an agreement on the name-dispute, 'Macedonia should join the Alliance as soon as possible.'[73]

On the other hand, more positive responses following the ICJ's judgment came from the EU and from many of its member states, and, especially, from its non-governmental institutions (the European Commission and the European Parliament).[74] Though, unable to grant RM a beginning of accession negotiations at the time of the issuance of the judgment, shortly thereafter the EU (through its Commission) opened a 'High-Level Accession Dialogue' with RM (HLAD), as an interim substitute for accession negotiations.[75] Further on, the European Commission recommended a start of accession negotiations with RM 'for a fourth time', expressing its readiness 'to present without delay a proposal for a negotiating framework, which also takes into account the need to solve the name issue at an early stage of accession negotiations'.[76] But, the General Affairs Council of the EU, and the European Council that endorsed its conclusions, unable to reach a decision on the start of accession negotiations with RM at their 2012 December meetings due to expressed disagreement by Greece and some other EU members that had allied with it (Bulgaria), chose to postpone their decision on that issue until the next EC meeting scheduled for June 2013. This time, however, the Council and the EC framed the deliverance of their delayed decision with a timely and more structured procedure. Under that procedure, the GA Council and the European Council would decide on the matter 'on the basis of a report to be presented by the Commission in Spring 2013,' in view *inter alia* of the '*steps taken* [by both parties *sic!*] to promote good neighborly relations and to reach a negotiated and mutually accepted solution to the name issue under the auspices of the UN'.[77]

---

[73]'Hillary Clinton Says NATO Membership should Grow at the Next Summit, available at: http://wn.com/hillary_clinton_on_macedonia_in_nato_summit_2012 (accessed on 28 March 2013).

[74]See, for example, European Parliament Resolution of 14 March 2012 on the 2011 progress report on the former Yugoslav Republic of Macedonia (2011/2887 (RSP), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0083+0+DOC+XML+V0//EN&language=EN, paragraphs 12 and 14, and the Commission's *The Former Yugoslav Republic of Macedonia 2012 Progress* Report, Commission Staff Working Document {COM (2012) 600 final}, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134234.pdf, 19.

[75]See "Start of the High Level Accession Dialogue with the government of the former Yugoslav Republic of Macedonia" http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2012/03/20120315_en.htm.

[76]*Enlargement Strategy and main Challenges 2012-2013*, Communication from the Commission to the European Parliament and the Council (COM(2012) 600 final), http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/strategy_paper_2012_en.pdf, 25 paragraph 19.

[77]Council Conclusions on Enlargement and Stabilisation and Association Process, 22th General Affairs Council meeting, Brussels, 11 December 2012,

In its Report issued pursuant to that procedure on 16 April 2013, apart from noting the RM's progress made in the areas related to the HLAD agenda (despite current political crisis in the country caused by an incident in the Parliament of 24 December 2012, that was eventually resolved by an Agreement between the opposing political parties of 1 March 2013), the Commission concluded positively *inter alia* that '[r]elations with neighbours remained good and steps have been taken in relation to bilateral relations with Bulgaria and Greece', and that 'formal talks on the 'name issue' took on new momentum during the reporting period'.[78] In fact, in the reporting period, there were intensive rounds of negotiations going on between the parties lead by the mediator Mr. Nimetz, during his visit to Athens and Skopje in early January and at direct meetings of the authorized negotiators in New York later that month and on 8-9 April, following which Mr. Nimetz presented a new proposal to the parties in a hope that it would 'pave the way for serious discussions and hopefully a solution' of the name issue.[79] So far, however, neither party has publicly pronounced on that mediator's new proposal, although there were some writings in relevant Greek newspapers reporting an alleged dissatisfaction by it on the part of the Greek side.[80]

Yet, in its own commentary to the Commission's Report of 16 April 2013 Greece forwarded a clear message to its EU partners as to its unwillingness to go along with an eventual decision by the EU's Council and the EC for opening accession negotiations with RM at their upcoming 25th and 29th June meetings, on a pre-text of an alleged 'democratic deficit' existent in the country and 'continued and worsened problems' regarding good-neighborly relations,[81] contrary to the positive

---

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/134234.pdf, 10 paragraph 42; and European Council Conclusions 13/14 December 2012 (EUCO 205/12), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/134353.pdf, 11 paragraph 27. Emphasis are added.

[78]Report from the Commission to the European Parliament and the Council: *The Former Yugoslav Republic of Macedonia: Implementation of Reforms Within the Framework of the High Level Accession Dialogue and Promotion of Good Neighbourly Relations*, 16.04.2013, COM(2013) 205 final, at http://ec.europa.eu/enlargement/pdf/key_documents/2013/mk_spring_report_2013_en.pdf , especially p.13. Also See "Press points by Commissioner Štefan Füle on the Spring Reports on the former Yugoslav Republic of Macedonia, Serbia, and Kosovo", at http://europa.eu/rapid/press-release_MEMO-13-340_en.htm (accessed 12 June 2013).

[79]*Ibid.*, p.12. The content of that new proposal by Mr. Nimetz has not been made known to the public.

[80]E.G. See the report in Kathimerini, "New FYROM Name Proposal Dissatisfies Greece," at: http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_10/04/2013_492911 (accessed 22 June 2013).

[81]See, for instance, Greek Foreign Minister Avramopoulos's statement on the European Commission report on FYROM (Luxembourg, 22 April 2013), at: http://www.mfa.gr/en/current-affairs/top-story/foreign-minister-avramopoulos-

findings on these issues contained in the Commission's Report. In view of such discouraging signals coming from Athens and from other relevant sources, it is highly unlikely that the Council and the EC would adopt any positive conclusion at those meetings on opening accession negotiations with RM,[82] leaving the issue of the beginning of accession negotiations with RM open for yet another time.

Conclusion

From a theoretical aspect, ICJ's judgments are capable of serving constructive functions in ongoing political dispute-settlement processes in a variety of ways, which, depending on the role assigned to the Court by particular theories studying the relationship between politics and law and state compliance, may range between mere 'facilitative' or 'informational' to more causational and normative-guiding forms as regards parties' conduct in ongoing negotiations. Their actual effectiveness in such processes, however, may be rather limited, as it is dictated by the interplay of various often interrelated factors, including the parties' self-perceived interests affected by the judgment, the nature of the underlying conflict, the existent power relations between the parties, their genuine willingness for a compromise in view of the opportunity costs involved, and their reputational concerns, as well as by the presence and intensity of involvement of third interested parties in the process, including IOs.

When assessed in light of the above theoretical premises, it is possible to conclude that, after a year and a half of its issuance, the ICJ's judgment in the case of the *Application of the Interim Accord of 13 September 1995* between the Republic of Macedonia and Greece has not yet achieved full effectiveness in the ongoing negotiation of the Greek-Macedonian 'difference over the name'. In particular, it has not managed to cause a change in the attitude of the one disputing party mostly affected by the judgment (Greece), which coercive policy of preventing the entrance of the other party (RM) in international organizations to which it seeks to accede (NATO and the EU), that has been steadily practiced by it in order to influence the outcome of ongoing name-negotiations according to its own rigid 'read line' position for a single (*erga omnes*) name, largely remained intact, despite the opposite

---

statement-on-the-european-commission-report-on-fyrom-luxembourg-22-april-2013.html. Also See the reaction of the Macedonian Foreign Minister Mr. Nikola Popovski of June, 6 2013, reported by the Macedonian Information Center (MIC) (referring to the newspaper 'Nova Makedonija') in: "Date for Launching Accesion Talks Should No Longer be Top News, at: http://www.micnews.com.mk/ (accessed on 9 June 2013), who said that 'a positive outcome from the June summit was unlikely, stressing thereby that Macedonia had long deserved to open accession talks yet it was just as certain that Greece was not ready to give its support without which the opening of talks was impossible'.

[82]See, for instance, the report issued by Macedonian Information Agency (MIA) "Neither conclusion, nor date for Macedonia at the upcoming meeting", at: http://www.mia.mk/en/Inside/RenderSingleNews/79/107078576# (accessed 22 June 2013), referring to a statement made by the Irish Presidency following the June 19th COREPER's meeting.

findings of the judgment. Overall, it may be fairly said that, apart from adopting some more subtle methods in meeting its own reputational concerns, Greece has so far failed to comply with the terms and the spirit of the ICJ's December 2011 judgment. The later is due to various factors, including: (a) the importance attached by Greece to its self-perceived interests affected by the judgment;[83] quite possibly – (b) a lack of genuine willingness on its part for a compromise, in view of the 'asymmetrical' substantive nature of the underlying conflict,[84] and low opportunity costs associated with the negotiated settlement of the name-difference (good trade relations and other forms of cooperation between the disputing parties have never been significantly affected by the existence of the unresolved 'difference over the name'); and – above all – (c) its self-assessed ability to continue relying on coercion towards the other disputing party during the name-negotiations irrespective of the ICJ's judgment. Greece continues to exploit its stronger position in the existent power asymmetries between the parties, augmented by the additional leverage provided for it by its membership in the IOs to which the other disputing party desperately tries to join.

The 'shadow effects' of the ICJ's December 2011 Judgment, however, cannot be ignored. It has triggered a reinvigorated process of name-negotiations between the parties under active involvement of the mediator Mr. Nimetz (supported by the UN Secretary-General Mr. Ban Ki-moon), who seized the momentum created by the judgment to proceed with intensifying negotiation. And, it has caused normatively-based responses from many third states interested in that process (members of NATO and the EU), and, in particular, from the EU's non-governmental institutions (the European Commission and EP), which has actively engaged themselves in finding ways aimed at circumventing the Greek opposition to RM's advancement towards full membership in NATO and the EU. As to the latter, however, in view of the Council's and European Council's inability to deliver positive decision on that issue due to their inner structural and decision-making constraints, the well-known division between the EU's non-governmental and governmental institutions has been once more revealed.

With respect to the Republic of Macedonia, the December 2011 ICJ's judgment provided for it some additional leverage and improved position in the otherwise heavily asymmetrical name-negotiation process, which had been sharply diminished after the Greek blockage of its membership at the NATO's 2008 Bucharest Summit. The Republic of Macedonia has wisely chosen to be actively supportive for the reinvigorated name-negotiations. In view of a lack of any detailed RM's publicly announced official position on the substantive aspects of the negotiated name-difference (except for its principled position that any final solution should not encroach upon the national and cultural identity of its people, and that it would be verified at a national referendum), and - more generally - a lack of information on the concrete positions

[83]Especially in light of the 'conflict of values' i.e. 'identity' character of the name-difference, which is normally less amenable to easy bargaining and achievement of desired conflict transformative effects)

[84]It has been commonly submitted that 'Greece does not have anything to lose' as regards the substance of the name-difference, as pressure for change is completely on the other party – RM.

advanced by the parties at the negotiation table in the understandably non-transparent format of negotiations, it is impossible to make any fair assessment of the extent to which RM has taken the full benefit of the substantive clarifications offered by the judgment relevant for reaching an optimal compromised solution of the name-issue.

Historically, there were many open interstate disputes and conflicts in which a judgment of the International Court of Justice dealing with these disputes had been issued, for which years and years were needed following the judgment for their successful resolution. So far, it has been over a year and a half since the issuance of the ICJ's judgment in the case of Macedonia v. Greece, but the solution for the Greek-Macedonian 'difference over the name' has not yet been found. For the moment, one is left to hope that the later will occur in the nearest future. Of course, it would not be a product uniquely of the ICJ's judgment. Far from that, there are a myriad of other different (some of them - core) factors that would determine such a positive outcome. But, the Judgment itself could certainly contribute towards reaching that mostly desired end.

The Judgment of the International Court of Justice of 5 December 2011 and the Greek-Macedonian 'Difference Over the Name': Does the ICJ's Judgment Affect the Pending Political

Abstract

The article addresses the issue of the effectiveness of the ICJ's Judgment in the case of the Application of the Interim Accord of 13 September 1995 between the Republic of Macedonia and Greece of 5 December 2011 in the pending political process of settlement of the Greek-Macedonian 'difference over the name.' As a consequence of many factors limiting the effectiveness of ICJ's judgments identified by relevant theories, also present in this case, after more than a year and a half of its issuance, the ICJ's December 2011 judgment has not yet materialized its full potential to affect the ongoing negotiation of the 'difference over the name.' In particular, it has not managed to cause change in the attitude of the one disputing party mostly affected by the judgment (Greece), which coercive policy of preventing the entrance of the other party (RM) in international organizations to which the later seeks to accede (NATO and the EU), in order to influence the ongoing name-negotiations according to its own preferences, has largely remained intact. The 'shadow effects' of the judgment in the pending political settlement of the name-difference, however, cannot be ignored. It has created momentum for a reinvigorated process of name-negotiations between the parties under active involvement of the UN mediator, provided for RM some additional leverage in the otherwise heavily asymmetrical name-negotiation process, and caused (among other factors) normatively-based responses from many third actors interested in that process (in particular, from the EU's non-governmental institutions), which have invested considerable effort in finding ways to circumvent Greek opposition to RM's advancement towards membership in NATO (and the EU). For the moment, these efforts have not resulted with a positive outcome, largely due to the inherent inability of the governmental decision-making bodies of these

organizations to deliver a positive decision on the issue of RM's accession in presence of a disputing party which is a member-state represented in these institutions (Greece). Whether the December 2011 ICJ's judgment would achieve full effectiveness and thus contribute itself (to the extent of its reach) to the much desired final negotiated settlement of the name-difference, remains yet to be seen.