

**KEY POINTS**  
**THE REPUBLIC OF MACEDONIA V. GREECE**  
**INTERNATIONAL COURT OF JUSTICE JUDGMENT OF DECEMBER 5, 2011**

**The Court has ruled:**

- **Greece violated the 1995 Interim Accord by objecting the Republic of Macedonia's accession to NATO in the lead-up to 2008 Bucharest Summit**
- **Greece is expected not to repeat the violation of international law (by default "good faith" is presumed)**
- **Macedonia can continue to use its constitutional name in its relations with Greece and within international organizations**
- **Greece's allegations of the Republic of Macedonia breaching Interim Accord were all rejected**

## **I. Background**

Since the Declaration of independence of the Republic of Macedonia in 1991, Greece has persistently **objected** to the name of the State and its membership into international organizations. The **Interim Accord** (IA) concluded between the Republic of Macedonia and Greece on 13 September 1995 is the **key legal framework** to normalize bilateral relations.

IA sets an explicit **obligation** for Greece, contained in Article 11, **not to object** to the application by or the membership of the Republic of Macedonia in international organizations **under the provisional reference** "the former Yugoslav Republic of Macedonia" as stipulated by the United Nations Security Council Resolution 817 (1993).

In the process of acquiring invitation for NATO membership, the Republic of Macedonia respected this provision, agreeing that the process of accession to NATO proceed **under the reference** contained in paragraph 2 of the United Nations Security Council Resolution 817 (1993).

In spite of this in April 2008 at the **NATO Summit in Bucharest**, Greece **objected** to the admission of the Republic of Macedonia in NATO. It objects as well in relation to the country's EU accession process.

The Republic of Macedonia **on 17 November 2008 initiated proceedings** before the **International Court of Justice** (ICJ) requesting the Court **to adjudge and declare** that Greece **objected** to Macedonia's invitation to NATO and thus **violated its obligations** under the IA.

The Judgment of the Court of December 5, 2011 is **binding on the parties** and no legal remedies are allowed.

**II. The Court REJECTED all arguments and submissions put forward by Greece in the course of the proceedings namely that:**

- the ICJ **dispute was related** to the **name difference**, and therefore is **outside** the **Court's jurisdiction**;
- the ICJ **dispute was related to conduct by NATO** or NATO member states, and therefore is **outside** the **Court's jurisdiction**;
- the Court should **decline to decide** the case because it would **interfere** with the **name negotiations**;

- should **admitted**, it would have been **referred to in** NATO as “**the Republic of Macedonia**”;
- “**referred to in**” prohibits Macedonia’s **own use of its constitutional name** in its dealings with NATO;
- under **Article 22** of the IA Greece was **allowed** to exercise a “**duty**” to NATO under the NATO Charter with respect to **accession decisions**, and,
- its **objection** was **permitted** as the response to Macedonia’s **unlawful conduct** prior to the Bucharest Summit.

### III. The Court based on Macedonia’s arguments and submissions **RULED** that:

- the **only thing excluded** from its jurisdiction was deciding on the difference over the **name** of the Republic of Macedonia;
- the Republic of Macedonia’s **complaint** was **solely with Greece’s conduct**, which is **within the Court’s jurisdiction**;
- the fact that the **negotiations** have been **actively pursued** during the proceedings is **not legally any obstacle** for the Court to exercise its judicial functions;
- while Article 11(1) allows an objection if the Republic of Macedonia would have been referred to in NATO as “the Republic of Macedonia,” in fact Macedonia **would not have been so referred to in NATO**, and in any event **that is not why Greece objected**;
- **Greece’s interpretation** that the phrase “referred to in” NATO prohibits Macedonia’s own use of its constitutional name in its dealings with NATO **is not consistent** with the wording of Article 11(1), the practice of the parties under the IA and associated agreements and the practice of the Republic of Macedonia at the United Nations, where it has consistently used its constitutional name;
- Greece **failed to demonstrate** that any **provision** of the **NATO Charter required it to object** to Macedonia’s accession; and
- while reviewing various allegations of unlawful conduct by the Republic of Macedonia as put forward by Greece, it has found **no such unlawful conduct except for a single instance, dating to 2004**, where a non-material violation of the Interim Accord occurred and that after Greece raised the matter in 2004, the use of the symbol was discontinued during that same year.

### IV. The Court ruled that Macedonia can continue to use its constitutional name in its relations with Greece and within international organizations

The Court **explicitly held** that Macedonia **is entitled to refer to itself as the Republic of Macedonia** in its dealings with Greece; and that

Greece **is precluded from objecting** to Macedonia’s application to or membership in NATO or other international organizations on the basis **of Macedonia’s “intention to refer to itself in an international organization by its constitutional name”** (para. 103).

### V. Greece’s various allegations of the Republic of Macedonia breaching Interim Accord were rejected

The Court has **found** that:

- Macedonia has **engaged in good faith negotiations** concerning the name. The Court emphasizes the duty of the Parties under the IA to negotiate in good faith under the auspices of the UN Secretary-General;
- Macedonia has not failed to prohibit “hostile activities of propaganda” against Greece, and therefore it has not violated Art 7 (1) of the IA;
- the use of symbols described in Article 7(3) of the IA is not prohibited, except the use by the Republic of Macedonia of the one described in art. 7 (2) of the IA (symbol displayed on its national flag prior of the entry into force of the IA); rather they are exposed to a procedure in which after the expressed concern of one of the parties, the other party is obligated to take corrective action or to explain why it is not doing so; arguably, so long as that procedure is followed, there can be no violation of Article 7(3) of the IA;
- Republic of Macedonia **has not** breached its obligations under Article 7(3) of the IA by **renaming the Airport Petrovec into “Alexander the Great”**;
- Greece has presented **no convincing evidence** to suggest that Macedonia has interpreted its Constitution as providing a right to interfere in Greece’s internal affairs on behalf of persons not citizens of Macedonia; The Court therefore found that Macedonia has not breached Article 6(2).

## VI. Remedies

- The Court found that **Greece had violated Interim Accord** (Article 11(1)).
- The **Court did not issue a form of relief** requested by the Republic of Macedonia that would order Greece to **“cease and desist”** in the future because the Court **did not consider it necessary to order Greece to refrain** from any future conduct that violates its obligation under Article 11, paragraph 1, of the Interim Accord because **“[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”** (para. 168).

Moreover, the **Court found** that:

- this **obligation** is a **“continuing one,”** and that the Court’s judgment has a **“continuing applicability”** for future application of the IA (para. 51);
- **it is assumed** that, given the Court’s judgment, **Greece will not repeat** such an objection in the future (para. 168).

## VII. Conclusion

While the **Court’s Judgment does not directly apply** to third states or to NATO or EU themselves, the Court has found that **Greece’s objection** before and at the Bucharest Summit **violated the international law.**

As it is commonly accepted that **Greece’s objection** was the **sole reason that blocked consensus** on the issue and Macedonia was not invited to join NATO, it is **appropriate** for the **NATO member states** and NATO itself **to revisit** its **Bucharest** and all subsequent **decisions**, this time evaluating Macedonia’s accession **without** the influence of an **act declared wrongful** by the Court. Doing so would **rectify the consequences** of this illegal act and would **uphold the Interim Accord**, the main aim of which was to normalize relations and to create a climate of legal certainty between the two countries which indeed existed until 2008.

**Greece** is expected **not to repeat** the violation in the future since its repetition would run contrary to the international law and would mean disrespect of the rule of the International Court of Justice.