

Naming a State – Disputing over Symbols of Statehood at the Example of “Macedonia”

*Michael Ioannidis**

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I. Introduction

For someone attending a session of the United Nations General Assembly, looking for the delegation of the “Republic of Macedonia” can prove much more difficult than expected. Trying under “M” will be as unfruitful as under “R” – and even if one is as familiar with the UN system as to know that the exclusive official UN reference for this country is “the former Yugoslav Republic of Macedonia” (fYROM),¹ looking under “F” will be equally disappointing: the delegation is only to be found next to that of Thailand.

The surprising choice of the article “the” before the appellation “fYROM” as the decisive word for UN protocol purposes was neither a change of the relevant practice nor an oversight of the UN nomenclature officials. It has rather been the result of a fierce diplomatic fight between the newly independent republic and another UN member, Greece. The latter strongly opposed the use of the term “Macedonia” as the classificatory word, while the applicant state rejected the remaining options as unacceptable or even derogatory.²

Peculiar as the disagreement over classification terms and a seating place might sound, it is indicative of both the importance that two states attached to state symbols and the difficulty of accommodating their competing views.³ It also gives a characteristic picture of an international dispute standing out because of its unusual subject: the two neighbouring Balkan states do not argue over an uncertain demarcation of boundaries or free trade impediments. In the centre of their dispute rather lies the use of a single word for the purposes of state denomination, namely that of “Macedonia”.

¹ In the following, the full UN reference “the former Yugoslav Republic of Macedonia” will be abbreviated to “fYROM”.

² On the role of the United Nations in the dispute, see below under III. 1. c., and on the seating issue M.C. Wood, “Participation of Former Yugoslav States in the United Nations and in Multilateral Treaties”, *Max Planck UNYB* 1 (1997), 231 et seq. (240).

³ In addition to that, the resort to transitional solutions of the “innovative”, middle-way character presented above is typical of the way the Macedonia naming dispute between Greece and the so-proclaimed “Republic of Macedonia” evolved in the last twenty years.

In short, Greece objects to the use of the appellation “Macedonia” as the denomination of its northern neighbour, which, since its independence in 1991, has used this term as its constitutional name. Greece argues instead that the interests it claims could only be taken into account with the addition of a qualifier to the word “Macedonia”.⁴

Originating from the symbolic use of this single word, the dispute soon went beyond a simple question of semantics and generated a series of important practical implications which range from a delayed recognition of the country to the imposition of a trade embargo and the recent blocking of the opening of talks for accession to the European Union (EU).⁵ But beyond its rather unusual subject and these important ramifications, the Macedonia naming dispute deserves examination from an international law perspective for an additional reason. It can be treated as a paradigmatic expression of the question whether the choice of symbols of sovereignty, and the name of a state in particular, is an issue that should be understood to be at the sole expediency of the state it is to represent. Interestingly, other cases also exist at the international level that could provide for a background to this question. State symbols, as names, flags or other insignia, have indeed occasionally been contested by states which projected their interests to their use and sought to influence their choice. These cases are better understood if one takes a closer look at the nature and function of a state name.

A term, when called to represent a state, usually carries already a variety of symbolic meanings. These can be geographic, national or of another kind. With the choice of a particular denomination a state sanctions its collective identity⁶ by connecting itself with certain “pre-state meanings”. Although this connection is usually unproblematic, there

⁴ Which would amount to the use of a compound name, like “North Macedonia” or “Vardar Macedonia”.

⁵ The efforts “to find a negotiated and mutually acceptable solution to the name issue with Greece, in the framework 817/93 and 845/93” were identified among the key priorities regarding “the former Yugoslav Republic of Macedonia’s preparations for further integration with the European Union”, article 3.1 of the Annex to the Council Decision of 18 February 2008 on the Principles, Priorities and Conditions contained in the Accession Partnership with the former Yugoslav Republic of Macedonia and Repealing Decision 2006/57/EC, 2008/212/EC, Official Journal L 080, 19 March 2008, 32 et seq. (34). See in detail under III. 1. e.

⁶ The identity elements of self-ascription and the ascription by others apply, F. Barth, “Introduction”, in: F. Barth (ed.), *Ethnic groups and boundaries*, 1969, 1 et seq. (13).

might be cases where the attributes linked with a symbol drastically diverge from the characteristics of the state adopting it. An example can be a state adopting a geographical reference that clearly is an imprecise description of its territorial reach: one could imagine a single European state being named "Europe". Such cases may create tension with entities that have an interest in the prior symbolic uses of the word that is now elevated to state denomination. This is all the more so, when symbols are used to reinforce political aims ranging from territorial interests to national affiliations and taking into account the potential of the state-connected use to absorb other meanings. When a state uses a symbol for its international representation, all other meanings lose, to a significant extent, their independence and are frequently understood as attributes of the particular state. Issues of this nature have largely escaped the attention of international law or have been subsumed to other facets of international disputes, in particular minority or territorial questions. Most of these dimensions of symbol contestation are present in the dispute over the term "Macedonia". Because of this reason, the Macedonian naming dispute will be addressed here as the most prominent example of disputing over symbols of statehood.

This investigation will start with an overview of the possible meanings of the term "Macedonia", and a distinction between its two non-state meanings, geographical and historical-cultural, and its use as state symbol (under II.). Although no claim needs to be made for historical or ethnographical completeness, some general references will be made that are necessary to approach the symbolic content over which the parties argue.⁷ The next part is dedicated to the development of the naming dispute over the period of the last twenty years (III. 1.) and the presentation of other cases that also have involved the contestation of state symbols, namely that of Ireland and Austria (III. 2.). The focus of this part will be the controversy over the name, leaving aside other related questions like territorial or minority issues. A general approach to the problem of contesting the use of state symbols under international law will follow in Part IV. and some concluding remarks will be made under V. The thesis that will be developed from this practical and theoretical analysis is that the choice of a state name can have, under some conditions, an importance that exceeds the boundaries of the named entity. In such cases, the question of naming a state should not be ad-

⁷ As it is clear that, what the two countries are disputing over is their connection with some particular meaning ascribed to the term "Macedonia".

dressed as a solely domestic matter, but rather from an international perspective.

II. Terminological Demarcations and their Background

For controversies having at their centre the use of a word, terminological clarifications are indispensable: it is exactly the existence of overlapping or competing meanings of the words used as state symbols that fuel the investigated disputes. Therefore in the following, the three main different meanings of the word “Macedonia” as used in the contemporary discourse will be presented as an example of the dimensions a term used as state name might have.

1. The Geographic Reference

Macedonia is firstly used to identify the broad geographical region in the central part of the South Balkans, which is comprised by parts of Greece, Bulgaria, Serbia,⁸ Albania and the state here referred to as the “fY Republic of Macedonia”.⁹

Identifying by a single name broad geographical areas, as Scandinavia, the Balkans or even Europe, cannot be of course decisive. Such references are rather a product of historical developments and contextual usage, lacking therefore any accuracy.¹⁰ Nevertheless, today’s usage of the geographical term “Macedonia”, originating from the descriptions of middle of the 19th and early 20th century authors and cartographers,¹¹ seems to converge to an area reaching from the Široka, Skopska Crna Gora and Šar mountains (north) to the Aegean coast and Mount

⁸ The “fY Republic of Macedonia” recognised Kosovo as a state and demarcated its boundaries with the latter entity in October 2009.

⁹ This form is based on the terminology adopted by the UN, it serves presentation purposes only and does not imply as such any opinion for the positions of the disputing parties. For this reason quotation marks will be used.

¹⁰ For the case of Macedonia in particular see H.R. Wilkinson, *Maps and Politics: Review of the Ethnographic Cartography of Macedonia*, 1951, 1-2.

¹¹ See among them V. Mantegazza, *Macedonia*, 1903, 2; Encyclopaedia Britannica, *Macedonia*, 1911, 11th edition, and the maps of F. Bianconi, *Carte commerciale de la province do Macedoine*, 1885; V. Kanchov, *Carte Ethnographique de la Macedoine: Point de vue bulgare*, 1900.

Olympus (south) and from the lower Nestos river (east) to Pindus and Korab ranges and the lakes of Ohrid and Prespa (west).¹² This region covers roughly 67,000 square kilometres¹³ and its population, irrespective of ethnicity or nationality, can be estimated at 5 million.

This area today is administered by five countries.¹⁴ In terms of territorial proportions, roughly 50 per cent are held by Greece, 40 per cent by the “fY Republic of Macedonia” and 10 per cent by Bulgaria.¹⁵ In the Greek part live around 2,500,000 people¹⁶ and the population of the “fY Republic of Macedonia” is around 2,066,000 people.¹⁷ The multi-ethnic character of the area (comprising Greeks, Slav-Macedonians, Bulgarians, Albanians and Roma), is effectively displayed in the French word “*macédoine*”.¹⁸ What is of utmost importance in this context is that the broad area described above is solely defined by geographic criteria and does not coincide with any single administrative division, neither state nor local. In this respect, it is a denominator similar to those of “Scandinavia” or “Iberia”. For these reasons the term “Macedonia” was, and still is, widely used in social and economic life, irrespective of the ethnical group of the user, amounting to a super-ethnic feature of regional and cultural identity.¹⁹

¹² Encyclopaedia Britannica, *Macedonia*, 2005, 15th edition, 620; E. Barker, “The origin of the Macedonian dispute”, in: J. Pettifer, *The New Macedonian Question*, 1999, 4; L. Danforth, *The Macedonian Conflict*, 1995, 44; G. Zotiades, *The Macedonian Controversy*, 1961, 2nd edition, 28.

¹³ Barker, see note 12, 4.

¹⁴ And these subdivisions are usually referred to respectively as Greek Macedonia (or Aegean Macedonia), Bulgarian Macedonia (or Pirin Macedonia), Vardar Macedonia (administered by the “fY Republic of Macedonia”), Mala Prespa and Golo Bardo (administered by Albania) and Goro and Prohor Pchinski (administered by Serbia – Goro region is now under the administration of Kosovo authorities).

¹⁵ Encyclopaedia Britannica, see note 12. The absolute numbers for Greece and the “fY Republic of Macedonia” being 34, 200 and 25, 713, *ibid.* Cf also Zotiades, see note 12, 29 at fn. 73.

¹⁶ See <<http://www.statistics.gr/portal/page/ESYE/PAGE-database>>.

¹⁷ <<https://www.cia.gov/library/publications/the-world-factbook/geos/mk.html>>, July 2009 estimate, CIA, The World Fact book.

¹⁸ Also used describing a type of mixed salad, E. Borza, “Macedonia Redux”, in: F.B. Tichener/ R.F. Moorton (eds), *The Eye Expanded: life and the arts in Greco-Roman Antiquity*, 1999, 249 et seq. (253).

¹⁹ See the documentation of these uses of the unqualified term “Macedonia” for commercial, associational, athletic and cultural purposes in: Museum of

2. The Historical Reference

Another common meaning of the term “Macedonia” refers to a particular period of its historical-cultural past, namely the ancient kingdom of Philip II of Macedon located in the southern part of this area. Because of the importance this kingdom gradually acquired, in particular during the reign of king Alexander III (known as Alexander the Great, the son of Philip II), it is commonly referred to as “Macedonia” without any further temporal or geographical qualification.²⁰

Any further elaboration on the ethnical character of this entity and its positioning in the ancient Greek world are beyond the scope of this article.²¹ Suffice to mention that this symbolic meaning also, along with the geographical one, exceeds current administrative boundaries. Macedonia, in this historic, cultural meaning, has been traditionally connected, by a significant part of the Greek population, with its cultural and historical self-perception. The reasons for this self-perception, which is very prominent among the inhabitants of the Greek part of “Macedonia”, seem to include the location of the original kingdom being in the Greek part of the region and its connection with the subsequent Hellenistic period, and other ethnographic characteristics (e.g. language).²²

the Macedonian Struggle Foundation, *Μακεδονία: A Greek Term in Modern Usage*, 2005.

²⁰ See N.G. Hammond, *The Macedonian State: the Origins, Institutions and History*, 1992.

²¹ The main question here is whether ancient Macedonia was one of the independent states into which ancient Greece was divided, or an originally non-Greek, but later Hellenized kingdom. The special literature on the issue is overwhelming, focusing on elements like the language, the political institutions, religion and the perception of the Macedonians by the (other) Greeks, see among many others J. Hall, “Contested Ethnicities: Perceptions of Macedonia within Evolving Definitions of Greek Ethnicity”, in: I. Malkin (ed.), *Ancient Perceptions of Greek Ethnicity*, 2001, 159 et seq.; Hammond, see note 20 and the exhaustive references made there.

²² See e.g. Museum of the Macedonian Struggle Foundation, see note 19, 5; E. Kofos, “The Current Macedonian Issue Between Athens and Skopje: Is there an option for a Breakthrough?”, *ELIAMEP Thesis 3* (2009), 3; K. Drezov, “Macedonian identity: an overview of the major claims”, in: J. Petzifer (ed.), *The New Macedonian Question*, 2001, 47 et seq. (48) (critical to the merits of this connection).

Since 1991, however, this perception of “Macedonia” has also been a point of reference for the new Republic, where significant efforts have been made to accommodate this part of the history of the region with the predominantly Slavic character of its population.²³ Such efforts have formed an increasingly significant part of the process of designating the developing, separate national identity of the Slavic population inhabiting the “FY Republic of Macedonia” as simply “Macedonian”.

3. The Administrative Reference

Coming now to what is most interesting from a legal perspective, the designation “Macedonia”, is also being used to describe administrative divisions both at local and state level.

a. The Reference to a Regional Administrative Division

The first time since antiquity that the description “Macedonia” was used to identify an administrative structure, was in 1914, one year after the First Balkan War, which ended the Ottoman rule in this area. The modern Greek state used the term to name the northern part of the territories that it had incorporated after the Balkan Wars. Since this area covered the major part of geographical “Macedonia”²⁴ and coincided to a significant extent with what is believed to be the original territory of the homonymous ancient kingdom, Greek authorities named this administrative division “General Government of Macedonia”.²⁵ “Macedonia” was since then repeatedly used by Greek law as a term describ-

²³ See the choice of the flag referring to the royal insignia of the Macedonian dynasty, the renaming of the Skopje main airport and the Corridor X highway to “Alexander the Great”, and the references in post-1990 historiography, U. Brunnbauer, “Serving the Nation: Historiography in the Republic of Macedonia (FYROM) after Socialism”, *Historien* 4 (2003), 161 et seq. (167); Drezov, see note 22, 54 (denying the existence of such a connection).

²⁴ See above under II. 2. Since then the boundaries of Greek Macedonia have remained unchanged.

²⁵ In Greek the title was “Geniki Dioikisi Makedonias”, article 1 of Law 524/14, Official Gazette of the Greek Kingdom, 31 December 1914, Issue A, 404.

ing a number of different administrative entities,²⁶ and can be found today in the appellation of three districts²⁷ and a General Secretariat.²⁸

Post World War II Yugoslav authorities were next in employing the term “Macedonia” for the administrative purposes of structuring the Federal People’s Republic of Yugoslavia. Article 2 of the 1946 Yugoslav constitution, declared “the People’s Republic of Macedonia” as one of the six republics comprising the Federal People’s Republic of Yugoslavia.²⁹ This reference replaced the denomination “*Vardarska Banovina* (Vardar Region)”, under which the province covering the Macedonian part of the Kingdom of Yugoslavia was known from 1929 to 1941,³⁰ and was itself changed to “Socialist Republic of Macedonia” in 1963.³¹ The dissolution of Yugoslavia in 1991 marked the end of the use of “Macedonia” within the federal structures of Yugoslavia and the term was used for the first time since antiquity to refer to a sovereign entity.

²⁶ E.g. “District of Central and Western Macedonia” and “District of Eastern Macedonia and Thrace” established with article 1 of the Presidential Decree 268, Official Gazette of the Greek Republic, 4 October 1973, Issue A, 268; “Ministry of Macedonia and Thrace”, named with the Y 704/13.8.1988 Decision of the Prime Minister, Official Gazette of the Greek Republic, 19 August 1988, Issue B, 575.

²⁷ “District of Western Macedonia”, “District of Central Macedonia” and “District of Eastern Macedonia and Thrace”, article 61 of Law 1622/86 and Presidential Decree 51/1987, Official Gazette of the Greek Republic 14 July 1986, Issue A, 92 and 6 March 1987, Issue A, 26.

²⁸ “General Secretariat of Macedonia and Thrace” as a subdivision within the Ministry of Interior, article 3 of the Presidential Decree 185/09, Official Gazette of the Greek Republic, 7 October 2009, Issue A, 213.

²⁹ Giving in this way effect to the 1943 Declaration of the Anti-Fascist Council of National Liberation of Yugoslavia (AVNOJ) laying down the basic principles for the future organisation of Yugoslavia and the proclamation of the Republic on 2 August 1944 by the Anti-Fascist Assembly of the National Liberation of Macedonia (ASNOM), E. Barker, *Macedonia: Its Place in Balkan Power Politics*, 1950, 94-96. For the one year period 1944-1945, the denomination “Democratic Macedonia” was used.

³⁰ Article 83 of the Constitution of the Kingdom of Yugoslavia, proclaimed on 3 September 1931.

³¹ Following the renaming of the Federal People’s Republic of Yugoslavia to Socialist Republic of Yugoslavia, article 2 of the Constitution of the Socialist Federal Republic of Yugoslavia, proclaimed on 7 April 1963.

b. The Reference to a State Entity

The constitution of 1991 declared the independence of a new state using the appellation “Republic of Macedonia”.³² The independence of this country was a comparatively peaceful step in the process of the disintegration of the former Yugoslavia.³³ Nevertheless, the emergence of a state in such a tumultuous area could not have been uncontroversial. Especially for a country with a limited degree of national homogeneity. In 2002, 64.17 per cent of the population identified themselves as “Macedonians” (of Slav origin), 25 per cent as “Albanian” and 10.66 per cent as of other national affiliation.³⁴ Bulgaria thus, e.g. although it was amongst the first to recognise the new state, denied the existence of a separate “Macedonian language”, as it considered the Slavic tongue spoken there as Bulgarian dialect.³⁵ The Albanian element of the country, on the other hand, proved keen in challenging its renewed³⁶ subordination to a Slav-speaking majority. This ethnic tension escalated in an armed conflict in 2001 and led to the rearrangement of the inter-community relations with the signing of the so-called Ohrid Agreement.³⁷

Greece from the very first moment was concerned about the name and the flag chosen by its new neighbour. For these reasons, it raised vigorous objections to its international recognition, which proved to substantially contribute to the already economically and politically unstable situation of the country.

³² The preamble declared the “establishment of the Republic of Macedonia as a sovereign and independent state”, Constitution of the Republic of Macedonia, proclaimed on 17 November 1991.

³³ For succession questions arising from the disintegration of Yugoslavia, see A. Zimmermann, *Staatenachfolge in völkerrechtliche Verträge*, 2000, 303 et seq.

³⁴ State Statistical Office of the Republic of Macedonia, Census of Population, Households and Dwellings, Final Data 2002, 62 et seq.

³⁵ Drezov, see note 22, 51. The “language dispute” arisen thereof had practical implications at the level of bilateral agreements and was finally settled in 1999 with the adoption of the formula “the official language in the Republic of Macedonia and the official language in Bulgaria”, M.C. Wood, “Macedonia”, in: *Max Plank Encyclopedia of Public International Law*, para. 31.

³⁶ After the Federal Yugoslav.

³⁷ See, International Crisis Group, *Macedonia: War on Hold*, Europe Briefing No. 21, 2001.

III. Disputing over Symbols: A Peculiar Category of International Controversy

Disputes over the use of symbols of statehood are neither common, nor do they usually escalate to international disputes of importance. This is probably due to the states normally abstaining from choosing symbols that could cause confusion or are inadequate in conveying a picture of their authority.³⁸ Nevertheless, there have been cases where the competing meanings of symbols caused controversies between countries claiming an interest in their use. Among them, the controversy over the use of the word “Macedonia” is a particular one.

1. The Case of Macedonia: Character and Evolution of the Dispute

a. The Introduction of the Term in the International Context

Although “Macedonia” was a term in use even before the independence of the now homogenous Republic, the turning point for the naming dispute was the emergence of a state bearing this, as already explained, very rich, in symbolic meanings, name. Confusions before this point were rather avoided by the construct of combining “Macedonia” with the relevant national term. Greek authorities also referred to the inhabitants of the geographic region of Macedonia by the terms “Greek Macedonians”, “Bulgarian Macedonians” and “Slav Macedonians”³⁹ or used the initials “SRM” or the compound “Yugoslav Macedonia” to indicate the Federal Yugoslav Socialist Republic of Macedonia.⁴⁰ Al-

³⁸ M. Froomkin, “When we Say US™, we Mean it!”, *Houston Law Review* 4 (2004), 839 et seq. (850).

³⁹ The extent to which a separate nation in the Yugoslav part of Macedonia actually existed is still contentious. Important political reasons however existed for this decision, the adoption of which ultimately resulted in the creation of a separate national identity within the Slavic population of Macedonia. The main purpose of fostering the development of such an identity seems to be the replacement of the Bulgarian national consciousness shared by a significant part of Slav-Macedonian population, Danforth, see note 12, 65-66.

⁴⁰ E. Kofos, “Greek State and Macedonian Identities (1950-2005)”, in: I. Stefanides/ V. Vlassides/ E. Kofos (eds), *Macedonian Identities in Time: interdisciplinary approaches*, 2008, 354 et seq. (378) [in Greek].

though rather indifferent to the gradual process of ethnogenesis taking place in the Slavic, non-Bulgarian part of Macedonia,⁴¹ Greece was inventive in using terms that would diversify the language spoken in this part⁴² from the meaning given to the term “Macedonia” by Greece and Bulgaria.⁴³ On the eve of the collapse of Yugoslavia, Greece elevated the frequent recourse by the Yugoslav authorities to the undistinguished term “Macedonia”, employed there to express and support the emergence or cultivation of a national identity of Macedonian Slavs,⁴⁴ even to an issue of human rights.⁴⁵

⁴¹ If there was a new nationality in the stage of formation within the borders of Yugoslavia, it should be referred to with an appellation that cannot be confused with the other ethnicities inhabiting broader Macedonia. This perception was sometimes nevertheless presented as a negation of the existence of a separate national identity as a whole. To this misperception Greek statements and policies seem to have contributed significantly.

⁴² In the case of language, Greece did not accept the characterisation of the Slavic language spoken in the SRM as “Macedonian”. Typically evasion in this context of the practical problems resulting from this stance is the one adopted for the purposes of a ten km free-contact zone created at the Greek-Yugoslavian borders. Greek objections to the Yugoslavian insistence that travel documents be written in both Greek and “Macedonian” resulted in the relevant instrument referring to the Greek and “one of the official languages of the Socialist Federal Republic of Yugoslavia”, among which there was of course a Macedonian one, Kofos, see note 40, 372. On the characteristics of the Macedonian language and its role in the Macedonian ethnogenesis, see also Danforth, see note 12, 67.

⁴³ Kofos, see note 40, 379. For the strategic reasons that prompted the modest response of Greece to the internal structuring and ethnogenetic process of the SFRY, see E. Kofos, “Greek policy considerations over FYROM”, in: J. Pettifer (ed.), *The New Macedonian Question*, 2001, 226 et seq. (232).

⁴⁴ In this process, the term “Macedonia” was increasingly reserved to identify the Slavic element inhabiting the federal Socialist Republic of Macedonia. For the other parts of the broader Macedonia, the denominations “Aegeatic Macedonia (Egejska Makedonija)” and “Pirin Macedonia (Pirinska Makedonija)” were commonly used. Both references were in some contexts implying not only a geographical but also an ethnic unity of broader Macedonia and were thus utilised as to promote Yugoslav policy considerations. Clearer in the last direction has been the appellation “Macedonia under Greece.”

⁴⁵ The Greek delegation in the Commission on Security and Cooperation in Europe (CSCE) presented its position in this rather uncommon moment of tension in the Greek-Yugoslav relations as follows: “Any attempt to usurp their [the Greek Macedonians’] name and to tamper with their heritage is

It was however only after the declaration of independence of the “fY Republic of Macedonia” and the emergence of an international actor claiming the use of the multifaceted Macedonian symbols that the controversy over the name “Macedonia” escalated to its current dimensions and character.

The dispute was now transformed to an issue referring to the symbolic representation of a state entity, and as such involved a multitude of international actors, from third countries to international organisations. Most importantly in this context, the use of the term as state name presented now for the first time the possibility of its *de facto* monopolisation by one party. Furthermore the security aspects of the controversy were gradually marginalised⁴⁶ and substituted by the role of state symbols in the representation of mutually exclusive identities.⁴⁷ Although the presentation of the issue through the prism of security will continue for a great part of the dispute, this will be mostly because of the respective concerns sounding more understandable to third parties⁴⁸ than obscure and complicated issues of identity and symbolic representation.⁴⁹ Thus, the international dispute over the term “Macedonia” progressively led to arguments over the sovereignty of choosing state symbols and the question of what constitutes a potentially unacceptable misnomer in international relations. The most important field in raising these arguments was its international recognition and the admission of the new republic to international organisations.

viewed as a gross violation of their rights as human beings”, Statement by the Head of the Greek Delegation in Reply to the Yugoslav Intervention at the Plenary Session of 22 June 1990 in the CSCE Conference on Human Dimension held in Copenhagen from 5-29 June 1990. Full Text in ELIAMEP, *The Southeastern Europe Yearbook*, 1990, 253-260.

⁴⁶ The latter, closely connected with minority issues, have been brought forward by Yugoslavia and the “fY Republic of Macedonia” on occasions after 1980, reviving claims going back to the Greek-Yugoslavian and mainly Greek-Bulgarian relations of the 1920s. Indicative of the eventual establishment of the dispute as one regarding the symbolic representation of the newly proclaimed Republic, is that even issues as controversial and important as the minority ones have been drastically utilised as means of pressure and negotiation.

⁴⁷ See, Kofos, see note 40, 381 and this collective band in general.

⁴⁸ See for example the submissions of Greece in the case brought against it by the European Commission as a result of the imposition of the embargo (application for interim measures) ECJ, Case C-120/94 R, *Commission v. Greece* [1994], ECR I-03037, para. 8.

⁴⁹ Kofos, see note 40, 398 and 401.

b. Recognition from the European Communities

Greek reaction resulted firstly in the differentiated approach of the European Communities (EC) to the recognition of the “FY Republic of Macedonia” compared to that of other former Yugoslav Republics. Already the Declaration on Yugoslavia⁵⁰ called “for constitutional and political guarantees ensuring that [the applicant state] has no territorial claims towards a neighboring Community State and that it will conduct no hostile propaganda activities towards a neighboring Community State.”⁵¹ Adopting the Greek position to a very significant extent, the 1991 EC Declaration is particularly interesting as, in the discussion over the meaning and potential of state symbols, it classifies the constitutional name of a sovereign country as a means of propaganda, that potentially precludes its international recognition.⁵² Although the so-called *Badinter* Arbitration Commission⁵³ opined a few months later that “the use of the name ‘Macedonia’ cannot imply any territorial claims against another state”,⁵⁴ the EC Presidency announced on 15 January 1992 that, although Slovenia and Croatia were to be recognised, “as regards [FYROM] a number of important problems remain to be resolved before the Community and its Member States may reach a similar decision.” In May of the same year, the EC Council stated that the Community and its Member States were “prepared to recognize FYROM as a sovereign and independent State, within its present bor-

⁵⁰ Declaration on Yugoslavia adopted by the Council of the European Communities on 16 December 1991, reproduced in D. Türk, “Recognition of States: A Comment”, *EJIL* 3 (2004), 66 et seq. (73).

⁵¹ Id.

⁵² See under IV. 1. a.

⁵³ Officially referred to as “the Arbitration Commission on the Conference on Yugoslavia” and set up to provide advice to legal questions arisen from the disintegration of the SFRY, the Commission was also asked to deliver opinions on whether the “Socialist Republic of Bosnia-Herzegovina”, the “Republic of Croatia”, the “Socialist Republic of Macedonia” and the “Republic of Slovenia” had satisfied the conditions for recognition laid down by the Council of Ministers of the European Community on 16 December 1991, see A. Pellet, “The Opinions of the Badinter Arbitration Committee: A Second Breath for the Determination of Peoples”, *EJIL* 3 (1992), 178 et seq. (178).

⁵⁴ After the rejection of any territorial claims being included in the constitution of the country, Opinion No. 6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States, reproduced in Türk, see note 50, 80.

ders, under a name which is acceptable to all the parties concerned.”⁵⁵ A stance that became even more strict in June when the European Council at Lisbon declared that the Community would recognise the country under a denomination which “does not include the term Macedonia.”⁵⁶ By effectively granting Greece a veto in respect of the name of the new country,⁵⁷ the European Council elevated thus the use of “Macedonia” to a factor *per se* precluding the recognition of the country using it. Recognition by other states was also substantially delayed because of the Greek objections. Although a few states did assume bilateral relations with Skopje using the referral “Republic of Macedonia”;⁵⁸ most of them awaited the further development of the controversy.

c. Admission to the United Nations

The admission to the United Nations was the next decisive stage of the dispute. As suggested by Security Council Resolution 817 (1993),⁵⁹ this admission was a rather unusual one⁶⁰ for three reasons. Firstly, the admitted country was not identified with a name, but rather “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.”⁶¹

This provisional referral was already a compromise for both parties as the application was submitted on behalf of the “Republic of Mace-

⁵⁵ Declaration on the Former Yugoslav Republic of Macedonia, informal Meeting of Ministers of Foreign Affairs, Guimaraes 1-2 May 1992, reproduced in C. Hill/ K.E. Smith (eds), *European Foreign Policy: Key Documents*, 2000, 376.

⁵⁶ European Council Declaration on Yugoslavia, European Council in Lisbon, 26-27 June 1992, Annex II to the Conclusions of the Presidency, 43, <http://www.europarl.europa.eu/summits/lisbon/default_en.htm>.

⁵⁷ Kofos, see note 40, 239.

⁵⁸ These were Croatia, Bulgaria, Belarus, Lithuania, Slovenia and Turkey.

⁵⁹ S/RES/817 (1993) of 7 April 1993. To which suggestion the General Assembly agreed, using the same language as the Security Council, A/RES/47/225 of 8 April 1993.

⁶⁰ Wood, see note 2, 238.

⁶¹ It is important to note that the notion “the former Yugoslav Republic of Macedonia” was not used as the name of a state – even a provisional one – but only as a reference, see Wood, see note 2, 239.

donia”⁶² and Greece took the position that admission “prior to meeting the necessary prerequisites, and in particular abandoning the use of the denomination ‘Republic of Macedonia’, would perpetuate and increase friction and tension and would not be conducive to peace and stability in an already troubled region.”⁶³

To allay some of the concerns resulting from the unprecedented use of a former constitutional status in the denomination of an independent country, the President of the Security Council clarified in a separate statement, that the reference “the former Yugoslav Republic of Macedonia” carried “no implication whatsoever that the State concerned had any connection with the Federal Republic of Yugoslavia (Serbia and Montenegro)” and that “it merely reflected the historic fact that it had been in the past a republic of the former Socialist Federal Republic of Yugoslavia.”⁶⁴

Secondly, the new flag, being contested by Greece because it depicted at the time the insignia of the royal house of ancient Macedonia, would not be among the ones hoisted outside the UN Headquarters, neither at the admission ceremony nor later.⁶⁵ This was understood to be among the steps that had to be avoided in order not to escalate the conflict any further. The Security Council offered a proposal to “all parties concerned,”⁶⁶ that was also sent to the UN Secretariat, responsible for such matters of protocol.⁶⁷ It would ultimately take until Oc-

⁶² Repertoire of the Practice of the Security Council 12th Suppl. 1993-1995, Chapter VII: Practice Relative to Recommendations to the General Assembly Regarding Membership in the United Nations 1993-1995, 3.

⁶³ By a subsequent letter to the President of the Security Council, however, Greece considered the denomination “former Yugoslav Republic of Macedonia” an “acceptable basis for addressing the issue of the application” of this country for admission to the United Nations.

⁶⁴ See note 62.

⁶⁵ The issue of the flag was among the main objections raised in the letter to which the Security Council Resolution suggesting the admission of FYROM made particular reference. Greece expressed in this letter the consideration that “the hoisting and flying at the United Nations of the flag bearing the Sun of Vergina would result in great damage to the efforts undertaken [to settle the dispute] and render more difficult if not defeat, a solution”, Doc. S/25543.

⁶⁶ By the aforementioned Statement of the President of the Security Council, see Doc. S/25545.

⁶⁷ See also, Wood, see note 2, 239.

tober 1995 for (a different) flag to be raised on behalf of the “fY Republic of Macedonia” outside the New York Headquarters.

Thirdly, and maybe most importantly, the Security Council Resolution did not confine itself to recommending to the General Assembly the admission of the applicant,⁶⁸ but went on to make a specific reference to the existence of the naming dispute, urging the parties to “continue to cooperate with the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia in order to arrive at the speedy settlement of the difference.”⁶⁹ The contested legal character of these references accompanying the admission of the “fY Republic of Macedonia” to the UN will be discussed below.⁷⁰ It suffices here to stress that the Security Council operated extremely carefully and inventive in this process of admission. It connected directly the need for these unusual deviations from the normal protocol with the “interest of maintaining peace and good neighbourly relations in the region.”⁷¹

Although the above presented solution was clearly referring to purposes of the admission to the UN and for the use within the UN system,⁷² the cumbersome acronym was soon employed by many other international actors. As it was understood to be a convenient way to approach Skopje without provoking Athens, a significant number of states went on to establish relations with the “fY Republic of Macedonia” using the appellation “fYROM”.⁷³

Greece itself, however, not only refrained from this practice and refused recognition of the country even under “fYROM”, but, amidst an escalation of the crisis, imposed a trade embargo on its northern neighbour. Fuelled by the insistence of the two countries on rather inflexible positions,⁷⁴ the embargo⁷⁵ proved extremely harmful to the economy of a landlocked country situated in the middle of war-torn

⁶⁸ Which was never referred to as “Republic of Macedonia” but rather as “the State whose application is contained in document S/25147.”

⁶⁹ Op. para. 1, S/RES/817, see note 59; Wood, see note 35, para. 2.

⁷⁰ Under IV. 2. a.

⁷¹ S/RES/817, see note 59.

⁷² Wood, see note 2, 239.

⁷³ Japan, the Russian Federation, the United States and all EC countries had recognized “fYROM” until early 1994.

⁷⁴ Either a name without any reference to “Macedonia” (Athens) or the unqualified denomination “Republic of Macedonia” (Skopje).

⁷⁵ Allowing entrance from Greek custom points only to food and medicine.

Balkans. Response to this instrument of pressure came from a rather unexpected direction, as the EC Commission filed a suit against Greece before the European Court of Justice (ECJ) arguing violation of the common export rules.⁷⁶ Assessing the merits of the case, Advocate General Jacobs concluded that “it would be wrong to rule that Greece could not invoke Article 224 of the Treaty on the ground that there was no serious international tension constituting a threat of war.”⁷⁷ No final decision was, however, issued by the ECJ, as the Commission asked for the discontinuance of proceedings after Greece reached an agreement with the “FY Republic of Macedonia” providing *inter alia* for the lifting of the trade restrictions.⁷⁸

d. Interim Accord

This so-called Interim Accord,⁷⁹ signed in 1995, was the first effort of the two countries to regulate their complicated relations by means of

⁷⁶ The Commission sought namely a declaration that Greece has made improper use of the powers provided for in article 224 of the Treaty by imposing an trade embargo on FYROM and that, in doing so, Greece has failed to fulfil its obligations under article 113 of the Treaty and under Council Regulations Nos 2603/69, 288/82, 3698/93 and 2726/90, Opinion of Advocate General Jacobs on the Case C-120/94, Commission v. Hellenic Republic [1995], ECR I-01513, para. 26. The Court dismissed the Commission’s application for interim measures on the ground that no urgency justifying such measures was shown, Order of the Court in the Case C-120/94 R, Commission of the European Communities v. Hellenic Republic [1994], ECR I-03037, para. 93.

⁷⁷ Opinion of Advocate General Jacobs, see note 76, paras 56, 60. Making it clear however that “it is not for the Court to determine who is entitled to the name “Macedonia”, the star of Vergina and the heritage of Alexander the Great, or whether FYROM is seeking to misappropriate a part of Greece’s national identity, or whether FYROM has long-term designs on Greek territory or an immediate intention to go to war with Greece”, para. 54.

⁷⁸ Order of the President of the Court in Case C-120/94, Commission of the European Communities v. Hellenic Republic [1996] ECR I-01513, para. 5.

⁷⁹ United Nations – Treaty Series, Interim Accord (with related letters and translations of the Interim Accord in the languages of the Contracting Parties). Signed at New York on 13 September 1995, No. 32193, 1995, <http://untreaty.un.org/unts/120001_144071/6/3/00004456.pdf>.

international law.⁸⁰ The main objective of this regulation was to address the secondary effects of the naming dispute which presented insuperable practical obstacles to every aspect of bilateral cooperation. The Interim Accord was thus a “framework agreement”⁸¹ covering many aspects of common interest⁸² and providing for the establishment of diplomatic relations between the parties with the creation of Liaison Offices.⁸³ Greece recognised its cosignatory as “an independent sovereign state” under the provisional designation “fYROM”⁸⁴ and assumed the obligation not to obstruct any application made by the “fY Republic of Macedonia” for membership in international organisations, as soon as this application is made under the same reference.⁸⁵ On the other hand, the “fY Republic of Macedonia” undertook to abandon the insignia of the ancient Macedonian royal house as national symbols, and most crucially to remove the Vergina sun from its flag,⁸⁶ as well as to interpret its constitution as to clarify notions understood as irredentist by Greece.⁸⁷

The element that was not part of the settlement, justifying its designation as interim, was however the name itself. Although the parties agreed to continue negotiations until the settlement of the difference

⁸⁰ N. Zaikos, “The Interim Accord: Prospects and Developments in Accordance with International Law”, in: E. Kofos (ed.), *Athens-Skopje: An Uneasy Symbiosis*, 1995-2002, 2003, 21 et seq. (22).

⁸¹ Zaikos, see note 80, 24.

⁸² An analysis of the aspects of the Interim Accord going beyond the name dispute at interest here can be found in Kofos, see note 80.

⁸³ Article 1 paras 1 and 2 Interim Accord, see note 79.

⁸⁴ Letter to C. Vance, Special Envoy of the Secretary-General of the United Nations dated 13 September 1993, United Nations — Treaty Series, Interim Accord, see note 79, 12. In the agreement as such no reference of any designation was made whatsoever. Instead the formulation adopted was “[t]he Party of the First Part recognizes the Party of the Second Part as an independent and sovereign state, under the provisional designation set forth in a letter of the Party of the First Part of the date of this Interim Accord”, article 1 (1).

⁸⁵ Article 11 (1) of the Interim Accord, see note 79. Greece reserved thus the right to object to any such application made under the name “Republic of Macedonia”.

⁸⁶ Article 7 (2) of the Interim Accord read together with the letter to C. Vance, Special Envoy of the Secretary-General of the United Nations dated 13 September 1993, United Nations — Treaty Series, see note 79, 15.

⁸⁷ Article 6 of the Interim Accord, see note 79.

that they both recognised exists,⁸⁸ the only other reference to the outstanding name dispute was the right of either party that “believes one or more symbols constituting part of its historic or cultural patrimony is being used by the other party”, to bring such alleged use to the attention of the other party.⁸⁹ Characteristic of this insistence of the parties to secure their position regarding the name issue was that their identification in the agreement was only with regard to their capital cities (“the Party of the First Part” as having Athens as its capital and “the Party of the Second Part”, with the capital Skopje).⁹⁰ This intent to defer the naming dispute to future political negotiations was also expressed in the clause governing the settlement of disputes concerning the Interim Accord. It was agreed that those disputes could all be submitted to the ICJ with the explicit exception of the dispute over the name.⁹¹ The “provisional reference” “fYROM” was also in the case of bilateral relations acknowledged as a functional compromise serving short-term diplomatic purposes which avoided addressing the complex issues lurking behind the state denomination.

Greece officially referred to the “fY Republic of Macedonia” under the provisional name “fYROM”, often transcribed in Greek (ΠΥΔΜ/PGDM),⁹² and did not pose any objections to its membership in all international organisations.⁹³ Negotiations for the final solution of the dispute went on a regular basis, without however reaching any common agreement as to what should be the permanent name of the “fY Republic of Macedonia”. In this sense, the 1995 Interim Accord,

⁸⁸ Article 5 (2) of the Interim Accord, see note 79.

⁸⁹ The latter shall in such a case take appropriate corrective action or indicate why it does not consider it necessary to do so. Article 7 (3) of the Interim Accord, see note 79.

⁹⁰ Article 1 (2) of the Interim Accord, see note 79. Similar was the reference to the languages of the parties, which were not named but referred to as “the language of the Party of the First Part and the language of the Party of the Second Part”.

⁹¹ Article 21 (2) of the Interim Accord, see note 79.

⁹² In public parlance however and particularly in oral conversations where the almost unpronounceable acronym is impractical, the word “Skopje” as the denomination of the whole country is (still) commonly used.

⁹³ H. Kondonis, “Bilateral Relations between Greece and the Former Yugoslav Republic of Macedonia”, in: Kofos, see note 80, 73.

while serving well the gradual development of mutually beneficial economic relations,⁹⁴ left open the major parameter of the dispute.

In this environment of improved bilateral relations, the “fY Republic of Macedonia” actively and successfully pursued its recognition and reference with its constitutional name, both in international diplomatic fora and the media.⁹⁵ A significant number of countries gradually shifted away from the “fYROM” to the clearer and more straightforward “Republic of Macedonia” with the result that the Greek position was gradually and *de facto* eroded. By September 2007, 118 states were officially using the latterlike denomination.⁹⁶ Greek objections were thus restricted to multilateral fora of the EU or NATO, where Greece was still able to insist on the use of “fYROM”,⁹⁷ and at the bilateral level.⁹⁸ In result the plain reference “Macedonia” (as the political qualifier “Republic” was almost absolutely omitted) as the worldwide accepted reference was gradually established. This development made

⁹⁴ The admission of the “fY Republic of Macedonia” to the UN and the conclusion of the Interim Accord led gradually to a normalisation of the bilateral relations, with Greece evolving to the major financial partner of the “fY Republic of Macedonia” both in terms of trade and foreign direct investment, Kondonis, see note 93, 57.

⁹⁵ See Kofos, see note 80, 153.

⁹⁶ Among them four out of the five permanent members of the UN Security Council, namely China, the Russian Federation, the United Kingdom and the United States of America. France uses the appellation “fYROM”, as almost half of the other EU members.

⁹⁷ Wood, see note 35, para. 30; Kofos, see note 80, 154.

⁹⁸ In accordance with the Memorandum of Understanding for the Implementation of the Practical Measures Related to the Interim Accord, stickers were fixed to vehicles coming from the “fY Republic of Macedonia” as to indicate objections to the use of the car plate code “MK”, Zaikos, see note 80, 47. Extremely detailed regulations were also provided for the inscriptions used at the facilities of the Liaison Office in Athens. For example “In the case the Liaison Office is established in an apartment: At the building’s entrance, there will be placed an inscription bearing the provisional designation by which the Party of the Second Part is referred to in UN Security Council Resolution 817/93. At the bottom corner of the inscription there will be an indication that it was placed by another party. [...] On the front side of the main door [...] there will be an inscription bearing a name which the Party of the First Part does not recognize.”, Section 1, Part (a) of the Memorandum on the Mutual Establishment of Liaison Offices. Memorandum on the Mutual Establishment of Liaison Offices, <<http://www.hri.org/docs/fyrom/liaison.html>>.

Greece trying to insist on the use of the UN provisional reference and the “fY Republic of Macedonia”⁹⁹ unwilling to offer concessions in negotiations that seemed to be overtaken by the *de facto* international developments.

By that time, the positions of the parties had been crystallised as follows: Greece suggested that only a composite name with a geographic or even temporal qualification could be acceptable (as North, Upper or New Macedonia) and that the agreed solution should serve all the international purposes of state representation (*erga omnes*). The “fY Republic of Macedonia” insisted on nothing less than the international use of the word “Macedonia” as such without any kind of qualification.

e. Further Developments – Admission to NATO and the European Union

Taking into account these unfavourable developments, Greece regarded the aspirations of the “fY Republic of Macedonia” to enter NATO and the EU as its last chance to prevent the *de facto* and definite solution of the dispute to its disfavour. And this despite the fact that the Greek right to object to membership applications submitted on behalf of “fY-ROM” was circumscribed by the obligations that it had accepted under the Interim Accord.¹⁰⁰

As the republic applied for NATO accession, Greece made clear that it would object to its membership despite the fact that the designation used was that of “fYROM”.¹⁰¹ Although the prospect of a Greek veto motivated all interested actors¹⁰² to engage in more active negotiations,¹⁰³ no agreement was reached and at the Bucharest Summit in April 2008 Greece succeeded to prevent the “fY Republic of Mace-

⁹⁹ Rather than insisting on the former hard line of supporting non-recognition pending the settlement of the dispute, Kofos, see note 80, 154.

¹⁰⁰ See above III. 1. d.

¹⁰¹ Application of the Republic of Macedonia to the International Court of Justice, Dispute Concerning the Implementation of article 11, para. 1 of the Interim Accord of 13 September 1995, <<http://www.icj-cij.org/docket/files/142/14879.pdf>>, para. 6.

¹⁰² Among them the United States of America and other members of the NATO, International Crisis Group, *Macedonia’s Name: Breaking the Deadlock*, Europe Briefing No. 52, 2009, 6.

¹⁰³ In the process of which the possible names of “New Macedonia”, “Republic of Upper Macedonia”, and “Republic of Macedonia-Skopje” were considered.

donia” from receiving an invitation to join NATO.¹⁰⁴ Greek objections did not have to take the form of a veto since the decision not to address such an invitation to the “fY Republic of Macedonia” was included in the mutually agreed Summit Decision, stating furthermore the decision 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.”¹⁰⁵

The NATO Bucharest Summit was the first occasion where Greece blocked the accession of the “fY Republic of Macedonia” despite the fact that the latter agreed to the reference “fYROM” for application purposes. This resulted in the initiation of legal proceedings against Greece before the ICJ¹⁰⁶ on the basis of the 1995 Interim Accord, which stated as an obligation of Greece “not to object to the application by or the membership of the first Party [fYROM] in international, multilateral and regional organizations and institutions of which the second party [Greece] is a member.” As the Interim Accord explicitly excluded the resort to the ICJ for the name dispute as such,¹⁰⁷ the case currently pending before the Court will not extend to the main question of the controversy and will thus not be further analysed here.¹⁰⁸

¹⁰⁴ Kofos, see note 80, 2.

¹⁰⁵ <http://www.summitbucharest.ro/en/doc_202.html> Bucharest Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008, para. 20.

¹⁰⁶ Application of the Republic to the International Court of Justice, see note 101, para. 23.

¹⁰⁷ Article 21 (2) of the Interim Accord, see note 79.

¹⁰⁸ It should however be mentioned that Greece responded to this application claiming that there has been in fact no NATO decision to invite the “fY Republic of Macedonia” which had to be vetoed by Greece. It was rather the sharing of Greek concerns by the other members of the Alliance that led to this result. This position was supported by many NATO members and NATO officials, who referred to the non-invitation as a common position of NATO. On the other hand, the Interim Accord does not only forbid the exercise of a veto by Greece but more generally refers to those objections based on the name dispute. Furthermore, Greece has made it clear, by its actions and statements, that the sole reason for its objection to the applicant’s membership of NATO was the difference between the parties as to the applicant’s name. On this topic see also the comments of M. Karavias/ A. Tzanakopoulos, “Legality of Veto to NATO Accession: Former Yugoslav Republic of Macedonia Sues Greece before the ICJ”, *ASIL Insights* 12 (2008), <<http://www.asil.org/insight081229.cfm>>; Kofos, see

Most important were the repercussions of this renewed tension at the level of the “fY Republic of Macedonia’s” EU membership bid. The “fY Republic of Macedonia” was granted candidate country status in 2005 and during all the relevant stages of the process the provisional appellation “fYROM” was used, without Greece raising any objections. Athens succeeded, however, in 2008 in establishing the “[maintenance of] good neighbourly relations, including coming to a mutually acceptable solution to the name issue”¹⁰⁹ as a separate benchmark upon which the progress of the “fY Republic of Macedonia” is to be assessed. Against this background, the European Council decided in December 2009 not to act on the recommendation of the Commission, which suggested the opening of accession negotiations,¹¹⁰ and postponed such an opening, repeating that “maintaining good neighbourly relations, including a negotiated and mutually acceptable solution on the name issue, under the auspices of the UN, remains essential.”¹¹¹ Greek objections, stemming from the name issue, were among the primary, if not the only, considerations on deferring the decision of the EU on opening

note 80, 2. Beyond this resort to the ICJ, the Bucharest Summit resulted in the tension between the two countries reaching an unprecedented high. A series of events contributed to this tension, such as the decision of the “fY Republic of Macedonia” to name the trans-European transport corridor X, financed to a great extent by Greece itself, after “Alexander of Macedon”, a major figure connected with the historical dimension of the word “Macedonia”. This was received as a provocation by Greece, which consequently suspended its financial contribution towards construction of the motorway, “Macedonia Debuts ‘Alexander’ Highway”, *Balkan Insight*, 6 January 2009, <<http://www.balkaninsight.com/en/main/news/15863/>>.

¹⁰⁹ Presidency Conclusions of the European Council held in Brussels on 19 - 20 June 2008, <http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/misc/101086.pdf>, para. 56, reiterated on 8 December by the General Affairs and External Relations Council, Conclusions on the Western Balkans of the 2915th External Relations Council Meeting held in Brussels on 8 December 2008, <http://www.eu2008.fr/webdav/site/PFUE/shared/import/1208_CAGRE/Council_conclusions_on_Western_Balkans_EN.pdf>, 2.

¹¹⁰ Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2009-2010 Brussels, 14 October 2009 COM (2009) 533 final, <http://www.etc.org/doc/news/717_news_14_10.pdf>, para. 8.

¹¹¹ Conclusions on Enlargement, Stabilisation and Association Process of the 2984th General Affairs Council meeting held in Brussels on 7 - 8 December 2009, <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/111830.pdf>, para. 33.

membership negotiations. This question remains unresolved until today.

2. Other Cases Involving Disputed Symbols of Statehood

As unprecedented as the names dispute between the “fY Republic of Macedonia” and Greece may sound, it is not. Albeit not reaching the extent of the latter, there do exist comparable cases.

a. The Case of Ireland

One of the disputes that have for a long time involved issues of symbolic representation is that between Ireland and the United Kingdom of Great Britain and Northern Ireland (United Kingdom). Characteristic of this controversy, which is of course a facet of the complicated relations between the two countries, is its nature as a two-way contestation: both Ireland and the United Kingdom raised objections against the denomination used by the other party in several periods of their common history.

Regarding the appellation of the first of them, and according to article 4 of the 1937 Irish constitution, “the name of the state is *Éire*, or in the English language, *Ireland*”.¹¹² The contestable choice was here that of an appellation that coincided with the geographical area of the island of Ireland as a whole, extending thus to the UK-administered part of Northern Ireland. This preference should be read together with the constitutional clauses rejecting the partition of the island and calling for a politically unified Ireland. Article 2 of the Constitution declared thus that “the national territory consists of the whole island of Ireland, its islands and the territorial seas”,¹¹³ raising in this way a territorial claim

¹¹² Italics in the original. With this clause, the name “Ireland” was introduced as the denominator of the state officially referred to since its independence in 1922 as “Irish Free State”. The symbols of sovereignty (among them the oath of allegiance owned by the members of the Irish Parliament to the King) proved to be among the issues on which the United Kingdom was least prepared to compromise, see “The Implications of Eire’s Relationship with the British Commonwealth of Nations”, *International Affairs* 24 (1948), 1 et seq. (2).

¹¹³ Article 2 of the 1937 Constitution of Ireland, emphasis added. According to article 3 “Pending the re-integration of the national territory, and without prejudice to the right of the Parliament and Government established by

over the geographic entirety of the island of Ireland. The strong connection of the name of the country with the partition of Ireland is also stressed by the fact that the 1937 constitution was not proclaimed on behalf of the Irish people as a whole, but it is rather introduced with the phrase “We, the people of Éire [...]”,¹¹⁴ Éire understood in this sense to better describe “the part of [Ireland] which [the sovereign Irish state] can effectively control.”¹¹⁵

For these reasons, the denomination “Ireland” was among the Irish constitutional arrangements that soon caused London’s objections.¹¹⁶ The British response took the form of using Éire (or Eire) instead of “Ireland”, despite the constitutional preference of the latter state to be termed Ireland in English language contexts.¹¹⁷ According thus to the British instrument implementing the 1938 Anglo-Irish Agreements and for the purposes of English law, the country “which was [...] known as Irish Free State shall be styled as [...] Eire (sic).”¹¹⁸

In 1949 with the adoption of the Republic of Ireland Act, a further complication was introduced. This statute, albeit not amending the constitutional name of the country,¹¹⁹ introduced the appellation “Republic

this Constitution to exercise jurisdiction over the whole of that territory, the laws enacted by that Parliament shall have the like area and extent of application as the laws of Saorstát Éireann and the like extra-territorial effect.”

¹¹⁴ See A. Morgan, *The Belfast Agreement*, 2000, 97 asserting convincingly that this formation in the English language text was due to the fact that the constitution was not enacted by the people of the island of Ireland as a whole, but from those that have established in 1922 the Irish Free State. Clarifying this aspect is also the reference of de Valera one of the prominent figures of Irish Independence: “It is true that the authority of the state will not take effect, as I have said, over the whole island, but that is not a reason for not naming the state Éire. When a province of France was taken away, they continued with the old name, and that is the way it will be with us until the whole country is under our jurisdiction”, cited in J. Coakley, “‘Irish Republic’, ‘Eire’ or ‘Ireland’? The Contested Name of John Bull’s Other Island”, *The Political Quarterly* 80 (2009), 49 et seq. (52).

¹¹⁵ De Valera speaking at the committee stage in the *Dáil*, quoted in Morgan, see note 114, 97.

¹¹⁶ Coakley, see note 114, 53.

¹¹⁷ Morgan, see note 114, 101.

¹¹⁸ Section 1 of the Eire (Confirmation of Agreements) Act 1938, see Morgan, see note 114, 101. A provision repealed in 1981 Part V of the Schedule I of the Statute Law (Repeals) Act 1981.

¹¹⁹ As it only had the range of an ordinary statute.

of Ireland” as “the description of the State”¹²⁰ in order to signify the severance of the links between Ireland and the Commonwealth¹²¹ and to assert its status as a republic.¹²² An additional reason for the distancing from the denomination “Éire” seems to be exactly the fact that the latter was “identified [...] with the Twenty-Six Counties [an informal description of the sovereign state on Ireland] and not with the State that was set up under this Constitution of 1937.”¹²³ Although the reference “Republic of Ireland” was used for internal purposes, the Irish government campaigned for the international reference to its statehood under the unqualified appellation “Ireland”¹²⁴ and this was the name under which the country joined the United Nations and the European Economic Community.¹²⁵ The reason for this insistence seems to be mainly connected with the international campaign against the partition of Ireland: the unqualified term “Ireland” was thought to reinforce the cause of a politically unified Ireland by having “a definite psychological effect in favour of the unity of this country on both Irish and foreign minds.”¹²⁶

Britain responded to the introduction of the term “Republic of Ireland” with its official endorsement¹²⁷ backed up with reservations regarding its practical use.¹²⁸ What was in any case to be avoided by the

¹²⁰ Article 2, Republic of Ireland Act, 1948, No. 22/1948.

¹²¹ In the sense that the Republic of Ireland Act, 1948 awarded the President the external affairs’ powers, article 3.

¹²² *Vis-à-vis* a kingdom, as the United Kingdom, J. Furlong, “Ireland – the name of the State”, *Legal Information Management* 6 (2006), 297 et seq. (298). The introduction of the political qualifier “republic” goes however back to the political objectives and terminology of the Irish struggle for independence”.

¹²³ Dáil Éireann, Volume 113, 24 November 1948, The Republic of Ireland Bill, 1948 – Second Stage, 395.

¹²⁴ Coakley, see note 114, 54.

¹²⁵ Morgan, see note 114, 99.

¹²⁶ J.P. Duggan, “An Undiplomatic Diplomat”, *Studies: An Irish Quarterly Review* 90 (2001), 207 et seq. (210), citing the position of the Irish Government.

¹²⁷ “[T]hat part of Ireland heretofore known as Eire [...] may [be referred to] as the Republic of Ireland”, Section 1 (3) Ireland Act 1949.

¹²⁸ The views of the British Prime Minister of the time in the British cabinet meeting are enlightening in this respect: “Suggested therefore we shd.[should] use “Republic of Ireland”. N.I. [Northern Ireland Ministers] prefer “Irish Republic”. But let us not speak of “Ireland”. Can we put Re-

British side was the constitutional name “Ireland”. The issues of nomenclature that arose when the two states concluded bilateral treaties were addressed by their adoption in “duplicate” rather than “in two originals” as the usual practice; each of these duplicates used the designations accepted by each of the parties.¹²⁹ Moreover, e.g. the arrival of the Australian ambassador in Dublin was delayed until 1965, as the Australian insistence¹³⁰ on an accreditation to the “President of the Republic of Ireland” instead “of Ireland” was unacceptable to the Irish government.¹³¹ Further efforts of the United Kingdom to discourage the international usage of Ireland as the reference to the Irish state seem to have failed (as in the case of the UN and the EU),¹³² but interestingly resulted in the more persistent use of the full title on its behalf (“United Kingdom of Great Britain and Northern Ireland”). This was in order to downplay confusion regarding the status of the part of the island under British administration.¹³³

The use of “Republic of Ireland” instead of “Ireland” by British authorities was also judicially condemned by the Irish Supreme Court. The latter, examining British extradition warrants referring to the “Republic of Ireland”, stated that “[the courts of the United Kingdom] are not at liberty to attribute to this State [Ireland] a name which is not its correct name”¹³⁴ and went on to clarify that, by virtue of the duty of

public of Ireland on Bill: but use in official pp.[papers] etc. Irish Republic or Southern Ireland. Agreed.” (formation in the original), National Archives, List of Interesting topics in the Cabinet Secretaries Notebook, Transcript 195/7, see under <<http://www.nationalarchives.gov.uk/documents/transcript-cab195-7.pdf>>, 5.

¹²⁹ “Ireland” and “United Kingdom of Great Britain” for the Irish duplicate and “Republic of Ireland” and “United Kingdom of Great Britain and Northern Ireland” for the British one, M. Walsh/ J.B.D. Oliver, “What’s in a name?”, *Irish Tax Review* 16 (2004), 565 et seq. (565).

¹³⁰ Following the British styling views and presenting as the reason for this insistence that accreditation to the “President of Ireland” would imply sovereignty over the whole island, J. Casey, *Constitutional Law in Ireland*, 2000, 3rd edition, 32.

¹³¹ Id.

¹³² Interestingly however, the Statute of the Council of Europe, signed in London in 1949, mentions the “Irish Republic” among its original signatories, although “Ireland” is the appellation used for the country for all Council of Europe purposes.

¹³³ Morgan, see note 114, 101.

¹³⁴ *Ellis v. O’Dea* [1989] I.R. 530, (539-540) per Walsh J.

the courts and of the *Garda Síochánaí* to uphold the Constitution, “such warrants should be returned [...] until they are rectified.”¹³⁵

The Anglo-Irish dispute was however not restricted to the symbols employed by the Irish state, but included the appearance of the word “Ireland” within the full title of the United Kingdom. Irish objections were firstly raised against the use of the royal designation “King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas.”¹³⁶ This title remained so despite the creation of the independent “Irish Free State” in 1922, exercising authority over five-sixths of the island. Upon insistence of the Irish government, this title was amended in 1926 as to refer to “the United Kingdom of Great Britain, Ireland, and the British Dominions beyond the Seas.”¹³⁷ The insertion of the so-called “O’Higgins comma”¹³⁸ was a change of the British symbols that was meant to reflect the change of authority over the island and the fact that a “United Kingdom of Great Britain and Ireland” did not exist anymore.¹³⁹ It took however until 1953 for Queen Elizabeth II to bear the title “of the United Kingdom of Great Britain and Northern Ireland”. Even the subsequent designation of the Kingdom as of “Great Britain and Northern Ireland” continued to attract however significant criticism from the Irish side as running contrary to its official territorial claim to Northern Ireland.¹⁴⁰

Settlement of the disagreement seems to have been reached, after more than 60 years of dispute, with the Good Friday Agreement of 1998. This was the first formal agreement signed between “the Government of the United Kingdom of Great Britain and Northern Ireland” and the “Government of Ireland.”¹⁴¹ Although there has been no

¹³⁵ Id. See also Casey, see note 130.

¹³⁶ The full title of the British sovereign from 1901 to 1927 being “By the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India”.

¹³⁷ Coakley, see note 114, 53. For details see R.F. Shinn, “The King’s Title, 1926: A Note on a Critical Document”, *The English Historical Review* 98 (1983), 349 et seq. (351).

¹³⁸ From the name of the, at the time, Minister for External Affairs Kevin O’ Higgins, id., M.O. Hudson, “The style and titles of his Britannic Majesty”, *AJIL* 22 (1928), 146 et seq.

¹³⁹ Although the King himself still had authority over Ireland.

¹⁴⁰ See above the reference of the Irish “duplicate” of bilateral treaties to “United Kingdom”.

¹⁴¹ Coakley, see note 114, 54.

particular provision for the name issue in the Agreement and there are still commentators arguing that difficulties remain,¹⁴² subsequent practice¹⁴³ seems to imply that the dispute is now settled.

General Considerations

Drawing some general lessons as well as parallels with the main case study of this article, the dispute over the use of the term “Macedonia”, is of course not easy. The case of Ireland needs to be approached within the particular context created by the 1920-1922 partition settlement and the long-existing dispute over the political unification of the island. Geographical realities should be considered as well as ethnological dimensions. In this direction, it would be helpful to refer to the three intertwined dimensions adjacent to the use of a state symbol in general: the political, the geographical and the national/identity one.

The unqualified use of “Ireland” (or even that of the “Republic of Ireland”) has to be firstly read as a reflection of the constitutionally sanctioned claim to political unity for the geographic area of Ireland. Although the state reference “Ireland” never coincided with the territorial reach of the sovereign country, this was the constitutionally proclaimed aim of the latter: the national territory of the state of Ireland was according to article 2 not only the southern part of the island but extended to “the whole island of Ireland, its islands and the territorial seas”.¹⁴⁴ In this aspect also, the name did reflect an existent political aspiration of the entity bearing it and was utilised to reinforce an understanding of political unity of the said geographical area. The changes brought to this claim in 1998 with the Good Friday Agreement,¹⁴⁵ were

¹⁴² Morgan, see note 114, 92.

¹⁴³ See for example the reference to “Government of Ireland” and “Ireland” in: The Disqualifications Act 2000, Ch. 42.

¹⁴⁴ See above the reference to articles 2 and 3 of the Irish Constitution.

¹⁴⁵ The Belfast (or Good Friday) Agreement substantially modified, but not completely removed the claim of the republic to the northern part of the island. Articles 2 and 3 of the Irish Constitution were replaced as follows: “2. It is the entitlement and birthright of every person born in the island of Ireland, which includes its islands and seas, to be part of the Irish nation. That is also the entitlement of all persons otherwise qualified in accordance with law to be citizens of Ireland. Furthermore, the Irish nation cherishes its special affinity with people of Irish ancestry living abroad who share its cultural identity and heritage” and “3.1. It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the terri-

not enough to affect the consolidated name of the republic. In any case the Irish state always occupied by far the largest part of the geographic area of Ireland, almost five sixths of it.

Nevertheless, much more important than the relationship between the political and geographical dimensions of the term Ireland seems to be the one connected with its national symbolism. The relationship between the cultural-historical content of the term “Irish” and its state use is not fundamentally contested. No group claims to be “Irish” in a way profoundly different from that of Irish citizens.

In short, even if the term Ireland as state name does not coincide with the geographical area bearing the same name, it does not create significant tension with the historical/cultural meaning it has. That is to say that the attribute “Irish”, as derived by the state name, corresponds to a very significant extent to the attribute “Irish” in its “pre-state”, cultural-historical dimension as used to signify personal identities. This is not to exclude however, that the use of a particular terminology does not play itself a role in the evolution of the said meanings. On the contrary it is commented that “persistent use of “Ireland” to refer to twenty-six counties not only reflects existing political realities [...], it also reinforces them.”¹⁴⁶

b. The Case of German Austria

If the name of Ireland was employed to express and reinforce the claim of political union of the Irish geographic/ethnic area, the use of the short-lived term “German Austria (Deutschösterreich)”¹⁴⁷ was an allu-

tory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of the people, democratically expressed, in both jurisdictions in the island. Until then, the laws enacted by the Parliament established by this Constitution shall have the like area and extent of application as the laws enacted by the Parliament that existed immediately before the coming into operation of this Constitution”, <http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20Ireland.pdf>.

¹⁴⁶ This is not to exclude however, that the use of a particular terminology does not play itself a role in the evolution of the said meanings. On the contrary it is commented that “persistent use of “Ireland” to refer to twenty-six counties not only reflects existing political realities [...], it also reinforces them”; Coakley, see 114, 57.

¹⁴⁷ Sometimes transcribed “Deutsch-Österreich”.

sion to post-World War I Germanic unity. Instead of asserting an Austrian territorial claim (as was the case with Ireland), however, this name was primarily utilised to express a belonging of the country to the broader German linguistic and ethnical area and the desire for the subsequent joining of the German Weimar Republic.

With the impending collapse of the Austro-Hungarian Empire, after the defeat of the Central Powers in World War I, the representatives of the German-speaking areas of the Empire gathered as the provisional “National Assembly of the German Representatives”¹⁴⁸ and assumed constitutive authority. The Assembly proclaimed on 12 November 1918 the “Law for the Form of the State and Government”,¹⁴⁹ which declared in article 1 that “German Austria [Deutschösterreich] is a democratic republic.”¹⁵⁰ On the same day the National Assembly issued a declaration to the “German Austrian people”¹⁵¹ calling for national solidarity and unity within the new republic.¹⁵²

The choice of the name “German Austria” was based on the unofficial appellation used to describe the German-speaking part of the Austro-Hungarian Empire before its disintegration. Beyond that, however, the appellation chosen was connected with two of the main characteristics of the new republic: its claim to include in its boundaries the former Austro-Hungarian territories with German-speaking majori-

¹⁴⁸ “Nationalversammlung der deutschen Abgeordneten” according to the title of the respective stenographic protocol, Stenographische Protokolle, Erste Republik, Session 1, <<http://alex.onb.ac.at/cgi-content/anno-plus?apm=0&aid=spe&datum=00010003&seite=00000001&zooom=2>>. Sometimes referred to as “Provisional Assembly for German Austria (Provisorische Nationalversammlung für Deutschösterreich)”.

¹⁴⁹ Gesetz vom 12 November 1918 über die Staats- und Regierungsform von Deutschösterreich, StGBL. Nr 5/1918.

¹⁵⁰ The designation of the country as “German Austria” was restated by the Beschluß der Provisorischen Nationalversammlung für Deutschösterreich of 30 October 1918, StGBL. 1/1918 and the 1919 “Provisional Constitution”, Gesetz vom 14 März 1919 über die Volksvertretung, StGBL. 179/1919 and Gesetz vom 14 März 1919 über die Staatsregierung, StGBL. 180/1919.

¹⁵¹ “An das deutschösterreichische Volk”.

¹⁵² W. Goldinger, *Geschichte der Republik Österreich*, 1962, 19-21. The same term, “German Austria”, was also used in the Declaration of 11 November 1918, which brought the end of the Habsburg dynasty and recognised “in beforehand the decision of German Austria regarding its future state form”, Wiener Zeitung, Nr. 261, Extra-Ausgabe, 11. November 1918.

ties¹⁵³ and the aim to ultimately be itself united with Germany in a future Austro-German union. As in the case of Ireland, these aims were constitutionally sanctioned. According to article 2 of the above mentioned Law for the Form of the State and Government, “German Austria is an integral part of the German Republic.” This clause, although not creating by itself a unified Austro-Germany, was a clear expression of the will of the National Assembly to ultimately form a political unity with the German Republic.¹⁵⁴ Both these elements were themselves intertwined with the need to express a break with the Austro-Hungarian Imperial past¹⁵⁵ and to make clear that “German Austria” was a different entity to the defeated Empire, having no stronger connections with the Dual Monarchy than the other states emerging from its collapse.¹⁵⁶ The qualification “German” was thought to be both adequate and necessary for this differentiation, as the sole term “Austria (Österreich)” (itself not easily defined¹⁵⁷) was decisively connected with the defeated, multinational Empire.¹⁵⁸

¹⁵³ M.E. Haider, *Im Streit um die österreichische Nation. Nationale Leitwörter in Österreich 1866–1938*, 1998, 165; Speech of K. Renner on 6 September 1919, *Österreichische Parlamentsschriften, Stenographische Protokolle, Erste Republik, Session 2, Sitzungsprotokolle*, 766, see under <http://alex.onb.ac.at/sten_pro_er_fs.htm>.

¹⁵⁴ An aim that was to be achieved through negotiations between the two countries.

¹⁵⁵ Haider, see note 153, 168; O. Bauer, *Die österreichische Revolution*, 1923, 159.

¹⁵⁶ Stressing in particular that it was in no aspect the successor of the Austrian-Hungarian Monarchy in terms of international law or regarding the issue of liabilities, Telegramm Nr. 69, Staatskanzler Renner an Staatsamt für Äußeres, Saint Germain 30 Mai 1919, in: K. Koch/ A. Suppan/ W. Rauscher, *Außenpolitische Dokumente der Republik Österreich 1918–1938: Band 2, Im Schatten von Saint Germain*, 1994, 194; Haider, see note 153, 165.

¹⁵⁷ Haider, see note 153, 156 et seq.

¹⁵⁸ Used until 1867 primarily to identify the entire empire and from that point to 1918 the west part of it, Haider, see note 153, 157.

Although clearly preferred for these reasons by the new state,¹⁵⁹ the appellation “Deutschösterreich” faced the opposition of the victorious Allies. They announced, in the process of concluding the treaty of St. Germain,¹⁶⁰ that they would only recognise “Austria” as their negotiating partner. The mandates submitted by the Austrian delegation were thus accepted by the Committee for Verification with the notice, that “the allied and associated powers have decided to recognize the new republic under the appellation Republic of Austria (République d’Autriche); for this reason they declare that they approve the mandates received on the 19th of May as to authorize the delegates holding them to negotiate in the name of the Republic of Austria.”¹⁶¹

The reasons for this insistence of the Allies on the name “Austria” seem to include their intent to imply a sense of continuity of the new state with the old Monarchy.¹⁶² Very important for this decision, reached on 29 May 1919 at Woodrow Wilson’s residence, were however the concerns of the Czech and Yugoslav delegations that the designation “German-Austria” would be an ongoing inherent claim of the new state to the German-inhabited territories of the old Monarchy, now under their jurisdiction.¹⁶³ Moreover, the consideration was expressed that

¹⁵⁹ Furthermore, the choice of this appellation was perceived as deriving from the nature of the new state entity itself, as it “included the German territories of Austria and was established through constitutive act of all the German members of the Austrian Imperial Council” as well as an allusion to the right of the non-German peoples of the former Empire to self-determination. See the Response of the Minister of Foreign Affairs Bauer to Chancellor Renner (translation by the author), Telegramm Nr. 86, Staatssekretär für Äußeres Bauer an deutsch-österreichische Friedensdelegation (Saint Germain), in: Koch/ Suppan/ Rauscher, see note 156, 195.

¹⁶⁰ Treaty of Peace between the Allied and Associated Powers and Austria, (St. Germain-en-Laye, 10 September 1919).

¹⁶¹ As quoted by the Austrian Chancellor K. Renner in his telegraph to the Ministry of Foreign Affairs, dated 30 May 1919 (translation by the author), Telegramm Nr. 69, Staatskanzler Renner an Staatsamt für Äußeres, see note 156, 194.

¹⁶² Speech of the Reporting Member of the Assembly Weiskirchner, Österreichische Parlamentsschriften, Stenographische Protokolle, Erste Republik, Session 2, Sitzungsprotokolle, 872, <http://alex.onb.ac.at/sten_pro_er_fs.htm>.

¹⁶³ A.D. Low, *The Anschluss Movement 1918-1919*, 1974, 327.

the latter name could reinforce the tendencies for a future “Anschluss” and the creation of an Austro-German union.¹⁶⁴

The immediate Austrian response to this position of the Allied Powers was to inform them that “the Republic established in the territories of Austria inhabited by Germans is named, according to its fundamental constitutional laws, German Austria”¹⁶⁵ and that there could be no change of this appellation without a respective constitutional amendment.¹⁶⁶ Taking into account the stance of the Allied Powers, and especially France’s, on the issue,¹⁶⁷ Chancellor Karl Renner went on to suggest the constitutional change of the name.¹⁶⁸ The response from Vienna to these developments was to reassert its preference for the current constitutional name, stressing that it bears no connection to the issue of a future Austro-German union, and to confine itself to “taking notice” that the allied and associated countries identify the republic with another name than the one that it chose for itself.¹⁶⁹

Such appeals for freedom of the new republic to choose its own symbols of sovereignty were however not adopted by the Allies, which insisted on the change of the name. Although there is no special provi-

¹⁶⁴ Id.

¹⁶⁵ Telegramm Nr. 69, Staatskanzler Renner an Staatsamt für Äußeres, see note 156, 194.

¹⁶⁶ Id. International recognition could not suffice, according to the Austrian delegation, for such a change, but with the parliamentary ratification of the Peace treaty this would occur automatically. See also the response of the Minister of Foreign Affairs Bauer to the Chancellor Renner, Telegramm Nr. 86, Staatssekretär für Äußeres Bauer an deutsch-österreichische Friedensdelegation (Saint Germain), in: Koch/ Suppan/ Rauscher, see note 156, 195.

¹⁶⁷ The French Prime Minister, Georges Clemenceau was reported to reject with a fierce gesture the mistaken reference of a French translator to “L’Autriche Allemande”, speech of the Member of the Assembly Waber, Österreichische Parlamentsschriften, Stenographische Protokolle, Erste Republik, Session 2, Sitzungsprotokolle, 867, see under <http://alex.onb.ac.at/sten_pro_er_fs.htm>.

¹⁶⁸ Telegramm Nr. 69, Staatskanzler Renner an Staatsamt für Äußeres, see note 156. Renner has also previously suggested the name “Südostdeutschland”, G. Schmitz, *Karl Renners Briefe aus Saint Germain und ihre rechtspolitischen Folgen*, 1991, 165.

¹⁶⁹ Telegramm Nr. 86, Staatssekretär für Äußeres Bauer an deutsch-österreichische Friedensdelegation (Saint Germain), in: Koch/ Suppan/ Rauscher, see note 156.

sion in the Treaty of St. Germain prohibiting the use of the name “Deutschösterreich”, the preamble of the Treaty states that “[f]rom that moment, and subject to the provisions of the present Treaty, official relation will exist between the Allied and Associated Powers and the Republic of Austria.” The treaty itself bore furthermore the title “Treaty of Peace with Austria” and no reference whatsoever was made to “German Austria.” An explicit prohibition of the union of “Austria” with Germany without the consent of the Council of the League of Nations was also included, regarding the constitutional aspirations to a future “Anschluss”.¹⁷⁰

Although the new name was understood from some major figures of Austrian politics as an overwhelming dictate of the Peace Treaty¹⁷¹ or even a hostile appellation,¹⁷² other political powers appeared more open to its use.¹⁷³ Ultimately the view prevailed that the peace agreement was establishing a duty to abandon the later appellation¹⁷⁴ and adopt instead the term “Austria”.¹⁷⁵ Regardless of the existence of an international

¹⁷⁰ Article 88 of the Treaty.

¹⁷¹ According to the Minister of Foreign Affairs Otto Bauer, “[d]er Friedensvertrag raubte der Republik selbst ihren Namen. [...] Der Friedensvertrag zwang uns, der Republik den alten Namen Österreich wiederzugeben; der Imperialismus zwang uns den verhaßten Namen auf” (The Peace Treaty robbed the Republic even of its name. [...] The Treaty compelled us to give back the Republic the old name Austria; Imperialism imposed us the hateful name), Bauer, see note 155, 159. Members of this fraction brought moreover the argument that the Treaty of St. Germain did not amount to an international obligation to change the name of the country to “Austria” suggesting that “Autriche” was “only a French translation of Deutschösterreich”, Speech of the Member of the Assembly Waber, see note 167, 867.

¹⁷² According to the Member of the Assembly Austerlitz “One is now forced to abandon the name we have chosen for ourselves and to interchange with a name that is alien to us, or even hostile”, Österreichische Parlamentschriften, Stenographische Protokolle, Erste Republik, Session 2, Sitzungsprotokolle, 867, <http://alex.onb.ac.at/sten_pro_er_fs.htm>.

¹⁷³ Like the Chancellor Renner, see note 153, 767.

¹⁷⁴ Speech of the Member of the Assembly Austerlitz, see note 172, 867.

¹⁷⁵ Speech of the Member of the Assembly Austerlitz, see note 172, 870. According to the Parliamentary Reporter to the name issue, there was a clear obligation for change in the wording of the preamble of the Treaty and “Austria” was the name that the country should use in the future, Speech of the Reporting Member of the Assembly Weiskirchner, see note 162, 872.

obligation however, and considering the results of the St. Germain treaty in general, the view was expressed that the name “German Austria” was no longer an accurate identification for the republic.¹⁷⁶

For the implementation of the Treaty the “Law for the Form of the State” was enacted,¹⁷⁷ with article 1 declaring, that “German Austria [Deutschösterreich], in its borders defined by the Treaty of St. Germain, is a democratic Republic under the name “Republic of Austria” [“Republik Österreich”],” and article 2 providing for the change of the appellation “Republik Deutschösterreich” (German Austria) with that of “Republik Österreich” (Republic of Austria) in all the laws referring to the first term.¹⁷⁸ According to article 3, and to the implementation of the union-prohibition, the provision “German Austria is an integral part of the German Empire” was set out of force.¹⁷⁹ The only symbol of the period of “Deutschösterreich” that survived this change as a relic was interestingly the song used as the unofficial national anthem of Austria from 1920 to 1929: it continued to praise “German Austria”¹⁸⁰ in words written by Chancellor Renner himself.

General Considerations

The case of Austria offers an example of regulation of the name of a state by means of international law. The appellation of the country was one of the elements of the Austrian constitutional order that needed to be modified in the aftermath of the peace treaty of St. Germain.

The denomination initially employed by Austria had the clear purpose of expressing a connection with the German character of the coun-

Noting however, that the time would come when the National Assembly would choose the name it wanted.

¹⁷⁶ And since “the Germans of Sudetenland were separated by those of the Alps” even a total change to the name “Deutsche Alpenlande” was suggested, Haider, see note 153, 320 at fn. 80.

¹⁷⁷ Gesetz vom 21 Oktober 1919 über die Staatsform, StGBI. 484/1919, 250, amending the above mentioned 1918 “Law for the Form of the State and Government”.

¹⁷⁸ Id.

¹⁷⁹ Id.

¹⁸⁰ “German Austria you wonderful country”. The full first verse being “Deutsch-Österreich, du herrliches Land, wir lieben dich!” and that of the third strophe “Deutsch-Österreich, du treusinnig Volk, wir lieben dich!”, see J. Steinbauer, *Land der Hymnen: eine Geschichte der Bundeshymnen Österreichs*, 1997, 30.

try and a disconnection with the formation of the defeated multinational Dual Monarchy. Together with the clauses referring to a future Austro-German union, the name “Deutschösterreich” formed a constitutional framework intended to promote a collective identity where the German element would be critical, if not predominant.¹⁸¹ It would be a symbol describing a prevailing understanding regarding the character of the new state. The objections to that symbol were thus not referring to the danger of its monopolisation and were not raised by entities claiming its use. Such contestation was rather directed to the incorporation of both the German connotations that the word was called to employ: the claim of the territories of the former Empire with German majorities, ultimately included in the Slavic states of the region, and the desire for an Austro-German union. As these symbolic meanings were unwanted by the victorious Allies, they insisted on a denomination that would not include the Germanic connotations. The abandonment of the latter was considered to be a necessary safety for the post World War I arrangements in Central Europe, a view that stresses the importance of state symbols in a context much broader than that of protocol and nomenclature. From an internal perspective, the actual results of this change to the evolution of the Austrian identity are an issue that cannot be investigated here.

IV. International Regulation of State Symbols

1. International Law Principles and Concepts

As it has been clear from the cases discussed above, there are neither special rules regarding state symbols nor a single body dealing with claims or objections on the issue. Nevertheless, general international

¹⁸¹ See for example the greeting that the German Austrian Parliament unanimously decided to direct to the German Parliament: “Wir hoffen, daß es der deutschen Nationalversammlung im Vereine mit der deutschösterreichischen Volksvertretung gelingen wird, das Band, das die Gewalt im Jahre 1866 zerrissen hat wieder zu knüpfen, die Einheit und Freiheit des Deutschen Volkes zu verwirklichen und Deutschösterreich mit dem deutschen Mutterlande für alle Zeiten zu vereinen”, Österreichische Parlamentsschriften, Stenographische Protokolle, Erste Republik, Session 2, Sitzungsprotokolle, 581, <http://alex.onb.ac.at/sten_pro_er_fs.htm>; G. Stourzh, *Vom Reich zur Republik. Studien zum Österreichbewußtsein im 20. Jahrhundert*, 1990, 32.

law concepts and international institutions may play an important role in the settlement of the relevant disputes.

The absence of international rules on state symbols is more interesting if compared with the status of symbols representing an economic value. Trademark law regulates the use of symbolisms at the domestic and international level in significant detail. Misappropriations of symbols and misnomers regarding the source of a product are thus extensively addressed by means of law and there are also rules governing the use of geographical symbols in trade contexts (geographical indications).¹⁸² When it comes to the symbolic representation of states, however, no similar regulation exists.¹⁸³ Aspects of a naming dispute could, however, be connected to some general concepts of international law.

a. Statehood and Recognition

While a potential change of denomination does not affect the statehood of an entity or its international rights and obligations,¹⁸⁴ considerations over appellations have come to play an important role at the stage of international recognition. This was true for the recognition of Austria as a party to the peace negotiations after World War I but gained a wholly new dimension in the case of the “fY Republic of Macedonia”.

Regarding the connection of statehood to recognition, there is here no need to go into detail regarding the classical distinction between the nature of state recognition as declaratory or constitutive for the international legal personality of a state.¹⁸⁵ In any case, in the example of the “fY Republic of Macedonia” the state denomination was widely utilised as a relevant criterion.

¹⁸² See for example article 22 (1) and (2) of the TRIPS Agreement, providing for the duty of the WTO Members to provide interested parties with the legal means necessary to prevent “the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good”.

¹⁸³ Froomkin, see note 38, 845.

¹⁸⁴ H. Kelsen, *Principles of International Law*, 1953, 261; A. Jennings/A. Watts (eds), *Oppenheim’s International Law*, 1992, 9th edition, 141.

¹⁸⁵ See generally H. Lauterpacht, *Recognition in International Law*, 1947; Jennings/Watts, see note 184, 134 et seq., J. Crawford, *The Creation of States in International Law*, 2007, 2nd edition, 17-26.

International recognition by the European Communities and a great part of the international community was thus withheld for a period of at least fifteen months¹⁸⁶ although the new republic clearly fulfilled¹⁸⁷ the so-called effectiveness criteria for statehood,¹⁸⁸ namely permanent population, defined territory, effective government and independence.¹⁸⁹ Moreover, even if it is accepted that the conditions of recognition are not confined to those referring to the effectiveness of an entity but also include the respect of core elements of international law,¹⁹⁰ there was no infringement of those norms that are usually elevated by practice and theory of criteria of international personality.¹⁹¹ Nevertheless, the recognition by the EC of the “fY Republic of Macedonia”, together with that of all other former Yugoslav states, was subjected to a rather unique coordinated mechanism¹⁹² based on a broad spectrum of substantive conditions beyond those described above.¹⁹³ The assessment of the fulfilment of these requirements, ranging from minority to democracy questions, was referred to an Arbitration Commission.

To these general conditions, an additional criterion was subsequently added, namely “the adoption of constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring Community State and that [the applicant] will conduct no

¹⁸⁶ From January 1992, when the country withdrew its members from the Yugoslav parliament and the agreement for the withdrawal of the Yugoslav National Army in April 1993, when it was admitted to the UN.

¹⁸⁷ That was also the opinion No. 11 of the Badinter EC Arbitration Commission.

¹⁸⁸ Crawford, see note 185, 45.

¹⁸⁹ M.C.R Craven, “What’s in a Name? The Former Yugoslav Republic of Macedonia and Issues of Statehood”, *Australian Yearbook of International Law* 16 (1995), 199 et seq. (212). For the requirements of statehood connected with effectiveness see article 1 of the Convention on the Rights and Duties of States, Montevideo, 26 December 1933, 165 LNTS 19; Crawford, see note 185, 45 et seq.

¹⁹⁰ See Crawford, note 185, 97 et seq.

¹⁹¹ As for example the creation of the entity in violation of the prohibition of the non-use of force or the principle of self-determination, Craven, see note 189, 211.

¹⁹² See T. Grant, *The Recognition of States*, 1999, 156 et seq.

¹⁹³ Referring to minority, democracy and non-proliferation standards, Declaration on the ‘Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union’ (16 December 1991), reproduced in Türk, see note 50, 72.

hostile propaganda activities versus a neighbouring Community State, including the use of a denomination which implies territorial claims.”¹⁹⁴ By that, a state appellation, connected with potential territorial implications, was effectively raised to a consideration relevant to the recognition of statehood. These concerns were moreover not allayed by the introduction by the applicant of substantial constitutional amendments renouncing all territorial claims.

The effective infusion of considerations relevant for the representation of an entity in the concept of recognition has been a rather new development. It is nevertheless in line with the general approach to infuse to the concept of state recognition substantive assessments beyond effectiveness. The effect that such an approach may have for the functionality of the international law concept of recognition is rather unclear.¹⁹⁵ Although the statehood of “fY Republic of Macedonia” was not in doubt,¹⁹⁶ its admission to international intercourse on many occasions took into account the appellation it used,¹⁹⁷ as a constitutional arrangement of broader interest for the international community. The now prevailing usage of the constitutional name reassures that the initial withholding of recognition was not based on any kind of statehood considerations, but policy assessments that connected the issue with peace and security questions.

¹⁹⁴ Declaration on Yugoslavia (Extraordinary EPC Ministerial Meeting, Brussels, 16 December 1991), reproduced in Türk, see note 50, 73.

¹⁹⁵ Critical, Craven, see note 189, 216, 218. The introduction of such requirement may have effects on the statehood of an entity depending on the choice between the declaratory or constitutive theory of recognition. It should be mentioned, however, that the requirement of a constitutional amendment as to allay concerns related to territorial claims, did not amount to derogation from the “fY Republic of Macedonia’s” formal independence, as a requirement for its statehood, Crawford, see note 185, 68.

¹⁹⁶ Crawford, see note 185, 95.

¹⁹⁷ Unclear in the particular case is also the importance of expression by the UN Security Council of the hope “that [...] all others concerned, will avoid taking steps that would render a solution more difficult” regarding the subsequent recognition of the “fY Republic of Macedonia” under its constitutional name, pending the settlement of the dispute. See the Statement by the President of the Security Council, Doc. S/25545 of 7 April 1993; Zaikos, “Onomatodosia and FYROM”, in: I. Stefanides/ V. Vlassides/ E. Kofos (eds.), *Macedonian Identities in Time* [in Greek], 516 et seq. (533).

b. Self-Determination

Self-determination is a concept of international law mainly concerned with the claim of a people to self-government.¹⁹⁸ Being an extremely uncertain subject in itself, the right to self-determination is connected with the choice of state symbols in an indirect way: at issue here is not the right of a people “freely to determine, without external interference, [its] political status”¹⁹⁹ as such, but the means it chooses for its representation.²⁰⁰ As the examples of Macedonia, Ireland and Austria show, the states opposing the use of the particular symbols did not contest the fact that the respective citizenry constituted a “people” or its right to form an independent state. Under dispute was rather the appellation that the people and its political formation would use.

Nevertheless, the choice of the symbols of representation is closely connected with the right to self-determination, as one of the most fundamental dimensions of the latter is indeed the freedom of self-representation.²⁰¹ The main issue arises here from the critical problem of defining the legitimate limits of the group (the “self”) entitled to self-determination, which is also apparent in the area of self-representation.

¹⁹⁸ Among the other contested facets of the issue is the form that this self-government should take, namely if it implies a right to statehood or to some extent “internal self-determination” would suffice. For the concept in general see, C. Tomuschat (ed.), *Modern Law of Self-Determination*, 1993; C. Brölman/ R. Lefeber/ M. Zieck, *Peoples and Minorities in International Law*, 1993; A. Cassese, *Self-Determination of Peoples: A Legal Appraisal*, 1995; M. Koskenniemi, “National Determination Today: Problems of Legal Theory and Practice”, *ICLQ* 43 (1994), 241 et seq.

¹⁹⁹ “And to pursue [its] economic, social and cultural development”, according to the 5th Principle of the so-called Friendly Relations Declaration of the UN General Assembly, containing the most authoritative elaboration of the right to self-determination - Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, A/RES/2625 (XXV) of 24 October 1970.

²⁰⁰ Although this seems to be an often made misunderstanding, see for example Craven, see note 189, 200.

²⁰¹ See Craven, see note 189, 233; I. Janev, “Some Remarks on Macedonia’s Legal Status in the United Nations”, *Review of International Affairs* 53 (2002), 33 et seq. (34).

Conceptually, the entitlement to self-determination presupposes the definition of an authentic community²⁰² that comprises some people and extends over a certain territory. These elements form the limits of the entitlement: if the emerging political formation claims to incorporate people that are “other” (i.e. they form another “self”), it usurps their own, distinctive right to self-determination. In the same way that it would be an abuse of the right to self-determination to include in the new formation people not belonging to the community, it seems unjustified to occupy a symbol that extends beyond the said community. Both could be described as cases of misappropriation, of a territory or a symbol respectively. The inclusion of a part of an alien ethnical group in a state emerging on the basis of self-determination would infringe the right of this “other” group of its own self-determination. Likewise, the state use of a symbol that has already a meaning and value for an “other” group could evolve its meaning or *de facto* monopolise it – and thus affect the representation of this “other” group.

The problem of identifying what constitutes a “self-determination unit”²⁰³ for the purposes of international law has been indeed a notorious one. To determine who is the holder of the respective right, has to face the difficulty of setting the boundaries of a particular “self” against an “other”.²⁰⁴ Regardless of how insuperable these difficulties might seem, however, if the resort to the concept of self-determination is to have any meaning, the ascription of some intersubjective dimension to the “self” is inevitable. This conceptual necessity was addressed for the purposes of state delimitation in the recourse to linguistic, historical and other criteria as well as referenda. What are exactly the proper conditions for the purposes of self-representation, is apparently equally problematic.²⁰⁵ In any case, what is important is to stress that if a right to self-representation might be derived from the concept of self-determination, they both share the same limits. One is entitled to represent himself in the way he chooses but to the extent he does not interfere with the legitimate interests of others.

The general principle behind this assertion is easily discernible in other fields of law. At the most basic level, the right to self-representation, as an expression of the right to self-determination, in-

²⁰² Koskenniemi, see note 198, 564.

²⁰³ Id., 260.

²⁰⁴ Id., 264.

²⁰⁵ Historical analysis and the views of different groups would also here be the most obvious candidates.

cludes the right of oneself to choose (or change) one's name or other means of personal representation. This does not amount, however, to a right to present oneself as another person with the intent (or the effect) to create confusion about one's actual identity. Rules exist to protect against the usurpation of symbolic meanings or falsified forms of "self"-representation. Beyond general public policy considerations²⁰⁶ the right of other persons to represent themselves without the danger of confusion is thus hereby protected.²⁰⁷ In short the right to self-representation, as a correlate of the right to self-determination, meets its limits where the chosen means amount to misnomer, one type of which is the *pars pro toto* fallacy.²⁰⁸ All these considerations, however, are not sufficient to answer why the choice of a particular denomination can be of such an importance as to significantly affect the right to self-representation of other groups. This will be investigated in the following.

c. Naming a State as Exercise of Power

The recourse to state symbols as a means of promoting political unity, loyalty and solidarity beyond consensus²⁰⁹ is a practice as long as the creation of political communities itself. As indicated by the practical examples offered above, particular symbols have been employed for a variety of purposes, ranging from the promotion of ethnical cohesion and political influence to the expression of territorial claims.²¹⁰ The importance of such decisions in the international framework cannot be overestimated. To restrict the significance of state denomination to a rudi-

²⁰⁶ As the security of transactions.

²⁰⁷ In the same token, the manufacturer of a product is free to choose the label of his product. This right is circumscribed, however, by rules protecting trademarks and geographical indications. For an approach of the question of state names through the trade mark analogy and the concept of historic title, see I. Bantekas, "The Authority of States to use Names in International Law and the Macedonian Affair: Unilateral Entitlements, Historic Title, and Trademark Analogies", *LJIL* 22 (2009), 563 et seq.

²⁰⁸ Where a part of an object or concept is used as to represent the entire object or concept. In this context for example the state of Ireland, bears the name of the whole of the island although it is a part of it.

²⁰⁹ See D.I. Kertzer, *Ritual, Politics, and Power*, 1988, 14.

²¹⁰ See the example of the use of the colours red and white in Poland, S. Harrison, "Ritual as Intellectual Property", *Man* 27 (1991), 225 et seq. (236).

mentary aspect of self-representation does not do justice to its function in the international scene. Far from being only a question of self-ascription, the choice of a state name can have effects extending beyond its own boundaries.

Much more difficult to conceptualise than other potential threats to international peace and justice, the exercise of this form of “symbolic power” can be approached, however, using insights from research in other social contexts.²¹¹ In the words of Pierre Bourdieu, one of the most influential theorists on the issue, “[b]y structuring the perception which social agents have of the social world, the act of naming helps to establish the structure of the world, and does so all the more significantly, the more widely it is recognized, i.e. authorized.”²¹² If this is true for social agents in general, it is even more so for states, which endow their name and its derivatives with the highest authority possible in an international community primarily organized along state lines.

Given this understanding, the choice of a state denomination should be regarded as an authoritative decision, not only from an internal perspective, but also *vis-à-vis* other international actors. In an international order organised on the basis of the state paradigm, the authority to name its constituent parts can have an effect on the understanding of the structure itself. Turning to the conflict potential of the exercise of such power, international disputes over state symbols in particular names are in parallel with the fights of social groups over the right to control the naming process in social contexts. The latter offer again a good example of the importance of symbolic conflicts.²¹³ Important as the choice of such an appellation might be, it is usually unproblematic. Controversies usually arise when other international actors claim some interest in the symbolic content of the term before its use as state symbol. It is true that states generally resort to symbols that are already in use and bear a particular symbolic meaning, rather than inventing totally new ones.²¹⁴ Geographical or ethnological symbols, like “Mace-

²¹¹ See P. Bourdieu, “Symbolic Power”, *Critique of Anthropology* 4 (1979), 77 et seq. (82); P. Bourdieu/ J. Thomson, *Language and Symbolic Power*, 1991, 170.

²¹² Bourdieu/ Thomson, see note 211, 105.

²¹³ As the contestation of the authority to affix names to social attributes, Bourdieu, see note 211, 80.

²¹⁴ Although this cannot be excluded, as in the case of the name “Tanzania”. The latter denomination is a portmanteau of Tanganyika and Zanzibar, the

donia”, “Ireland” or “Deutsch”, have been thus employed as to convey their symbolic meaning to the political formation choosing them.

Problems arise when the attachment of this pre-existing symbolism to a particular political formation is contestable. In such cases, actors that claim an affiliation to this symbolism (in its pre-state use), but do not intent to be included in the new political formation may contest its use. This contestation takes the form of a claim of misappropriation of the old symbolism and misnomer regarding its new use. The parties thus engage in a “proprietary contest”²¹⁵ over the use of symbols in which both recognise some value.²¹⁶ The essence of this dispute usually lies in the fact that the several meanings of a word used as state name stand in a relationship *pars pro toto*, i.e. there is a divergence between the meanings a symbol has before its use as state name and what it is called to represent after this use. The greater this divergence is, the more interests it can potentially affect and the more likely international tension is. In short, the existence of a relationship *pars pro toto* between the meaning of a term as state name and the meanings beyond this use, is understood by the parties that have an interest in this “over-state meaning” but are excluded from the “state symbolism” as misnomer. The resort to such a potential misnomer, however, is usually not accidental or indifferent: by implying through their name an attachment to some broader symbolical content (be it a geographic region or of historical-identity nature), states may establish an indirect but effective claim to it.

In the case of Macedonia for example, the term used as a state name seems to drastically diverge from both the pre-state symbolic meanings of the term, namely its geographical and historical dimensions. For the actors that have an interest in these latter meanings, like states sharing that geographic region or having an identity affiliation with the historical connotation, this state denomination qualifies as misappropriation and misnomer. Aspects of the Irish dispute can also be understood in the same way, as the state appellation “Ireland” diverged from the geographical meaning of the term; however, no such a divergence seems to be significant here regarding the historical-identity connotations. Tension was also created by the *pars pro toto* use of the unqualified term “Ireland” in the title of the United Kingdom even after the creation of

two countries which formed in 1964 the new state of the “United Republic of Tanzania”.

²¹⁵ S. Harrison, “Four Types of Symbolic Conflict”, *Journal of the Royal Anthropological Institute* 1 (2001), 255 et seq. (258).

²¹⁶ Id.

an Irish state. In the Austrian example, peace and security consideration seem to have prevailed, rather than arguments over competing claims on the meaning of the term. The exercise of symbolic power was contested here because it was understood as undermining the post World War I security arrangements.

2. International Fora and the Regulation of State Symbols

In the case of state symbols something similar to an “international registry” does not exist. Sometimes, however, respective issues are manifested as questions of participation in international organisations, and more prominently the United Nations. Other facets include the regulation of internet domain names (the well known two last letters of an internet address) and the role of non-governmental organisations dealing with international standardisation (ISO).

a. United Nations

Although there is nothing like an official universal list of state names,²¹⁷ the first place for somebody to look for the international use of a state denomination is the United Nations. The name of the state might become of relevance mainly at two stages, during the admission of a state as new member of the United Nations and later on for terminological purposes of the UN administration.

As the example of the “fY Republic of Macedonia” vividly displays, the admission to the United Nations can be a crucial point for raising objections against a state appellation. In this case, as described above, the Security Council connected the issue with the interest of maintaining peace and good neighbourly relations in the region,²¹⁸ suggested the admission with a “provisional reference” and urged the parties to continue negotiations. An issue that arose regarding this suggestion (and the subsequent decision of the General Assembly) is whether the acceptance of the provisional reference and the call for negotiations amount

²¹⁷ Froomkin, see note 38, 846.

²¹⁸ S/RES/817, see note 59.

to additional admission requirements beyond those exhaustively²¹⁹ laid down in Article 4 (1) of the UN Charter.²²⁰

Although it is not clear whether or not the acceptance of a provisional reference amounts to the imposition of an additional requirement,²²¹ the fact that the “fY Republic of Macedonia” indeed fully acquiesced to the use of the provisional reference, is not by itself enough to disqualify the nature of the provisional reference as such:²²² the characteristic of a prerequisite is not its fulfilment against consent, but rather its indispensability for the advent of another, distinct event which is the ultimate aim of the actor. The practical importance of this discussion lies in the fact that, according to the ICJ, the enumeration of criteria for admission in the UN Charter is exhaustive.²²³ That would make the imposition of an additional membership requirement a violation of the UN Charter.

According to the Security Council and the General Assembly, which ultimately endorsed the membership application, the existence of the naming dispute did not affect the admission criterion of the “willingness or ability of the applicant to carry out the obligations of the Charter.”²²⁴ The explicit connection drawn by the Security Council between the name dispute and the interest of maintaining peace²²⁵ was rather referring to the use of the contested, unqualified term “Macedonia” for

²¹⁹ Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), ICJ Reports 1948, 57 et seq. (62).

²²⁰ According to which “Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations”.

²²¹ As argued by I. Janev, “Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System”, *AJIL* 93 (1999), 155 et seq. (158); I. Janev, “On the legal status of Macedonia in the United Nations: A case for juridical redress”, *Politička revija* 4 (2005), 515 et seq. (arguing for the inconsistency of the admission to the UN Charter).

²²² Wood seems to be of this opinion, see note 35, para. 32.

²²³ Conditions of Admission of a State to Membership in the United Nations, see note 219, 62.

²²⁴ Since, as suggested by the Security Council, the applicant did fulfil “the criteria for membership in the United Nations laid down in Article 4 of the Charter”, S/RES/817, see note 59.

²²⁵ “Noting however that a difference has arisen over the name of the State, which needs to be resolved in the interest of the maintenance of peaceful and good-neighbourly relations in the region”, *id.*

UN purposes. The acceptance of the provisional reference seems thus to have been understood as adjacent to the duty of the UN Member States to maintain peaceful relations with each other. In this sense, the use of the reference “the former Yugoslav Republic of Macedonia” until the settlement of the dispute, was and still is regarded by the Security Council as a particular aspect of the general duty of all members to abide by the Charter obligations in the interest of maintaining international peace.²²⁶ Given this understanding, the acceptance of the provisional reference is indeed a condition for the admission of the new republic, but not an additional one: it could be rather subsumed under the general requirements of “peace-lovingness” and the “willingness to carry out the obligations of the Charter”. The same can be said regarding the obligation to continue negotiations over the name issue – with the difference that the text of the General Assembly Resolution, unlike the Security Council suggestion, is not drafted as to imply a self-standing obligation,²²⁷ but rather a temporal qualification: as long as no agreed solution is to be found, the provisional reference “fYROM” will be used for UN purposes.

In any case, what the result of the UN admission process revealed is that the choice of a state symbol, and in particular the name of a state, can be regarded as having an importance beyond the party choosing it. This significance can moreover affect the decision of the Security Council in respect of its admission to the United Nations. A similar vein could be recognised in the assessments leading to the name reference of Austria in the conclusion of the Treaty of St. Germain. Also in this case, peace considerations affected the decision of the proper denomination of one of the concluding parties. Both can be regarded as examples where the freedom of a state to choose its own symbols of representation was circumscribed by the need to secure international peace and security.

Furthermore, and beyond the stage of admission, a state denomination can be of importance for the purposes of UN nomenclature. This

²²⁶ For this reason it cannot be said that “fYROM’s status” within the UN “is obviously different from that of other Member states”, I. Janev, “Some Remarks on Macedonia’s Legal Status in the United Nations”, *Review of International Affairs* 1108 (2002), 33 et seq. (34).

²²⁷ Also Janev, *AJIL*, see note 221, 155.

mainly concerns instances of name change, a practice that is not as rare as it might sound.²²⁸

In this context, it should be briefly noticed that the current “authority” in respect of country names in the official languages of the United Nations is the UN Terminology Section.²²⁹ It²³⁰ maintains UNTERM,²³¹ a multilingual terminology database which provides UN nomenclature technical or specialised terms and common phrases in all official UN languages and is the successor to UN Terminology Bulletin No. 347/Rev. 1.²³² The UN Conferences on the Standardization of Geographical Names have also established an expert working group on country names under the UN Group of Experts on Geographical Names which in 2007 submitted a full list of official country names, as used both for domestic and UN purposes.²³³ The UN Statistics Division is lastly a common reference for state names, which itself still refers, however, to the Terminology Bulletin No. 347/Rev.1, now probably the work of UNTERM.²³⁴

Interestingly however, the authoritative list of country names used by UNTERM²³⁵ is connected to the work of the International Organization for Standardization (ISO), a non-governmental organisation being briefly presented below.

²²⁸ See for example the changes of the name of Venezuela to “the Bolivarian Republic of Venezuela” and Bolivia to “the Plurinational State of Bolivia”, <http://www.iso.org/iso/country_codes/updates_on_iso_3166.htm>.

²²⁹ As confirmed in the 21st Sess. of the United Nations Group of Experts on Geographical Names held in Vienna on 28 March to 4 April 2006, Report of the Working Group on Country Names, Working Paper No. 16, <<http://unstats.un.org/unsd/geoinfo/gegn23wp16.pdf>>, 2.

²³⁰ The full title of which is: Terminology Team of the Terminology and Reference Section, Documentation Division of the Department for General Assembly and Conference Management.

²³¹ United Nations Multilingual Terminology Database.

²³² Department for General Assembly and Conference Management of the United Nations Secretariat, Terminology Bulletin No. 347/Rev. 1., Doc. ST/CS/SER.F/347/Rev. 1.

²³³ Presented on the Ninth Conference on the Standardization of Geographical Names held in New York, 21 - 30 August 2007, United Nations Publication Sales No. E.08.I.4 (2007). E/CONF.98/89/Add.1.

²³⁴ <<http://unstats.un.org/unsd/methods/m49/m49.htm>>.

²³⁵ To the same catalogue refers also the United Nations Statistics Division, <<http://unstats.un.org/unsd/methods/m49/m49.htm>>.

b. ISO

ISO is a Geneva-based international organisation that has proved extremely successful in promulgating technical standards.²³⁶ One of these standards is ISO-3166, establishing codes for the representation of names of countries, territories or areas of geographical interest, and their subdivisions. ISO-3166 is divided in three parts, the most important one being ISO-3166-1, referring to codes for the representation of names of countries and their subdivisions. The latter standard has become globally accepted as the point of reference regarding the well known two- and three-letter country codes²³⁷ but also the official appellation of countries. International organizations like WIPO or IAEA and a great number of private entities resort to ISO-3166 for practical purposes of state reference.²³⁸ The relevant standards are maintained by the ISO 3166 Maintenance Agency, an ISO body composed by ten members with voting rights, serving in their capacity as experts. Half of them come from the national standard organisations of five countries (France, United States, United Kingdom, Germany and Sweden)²³⁹ and the other five are representatives of major UN or other international organisations.²⁴⁰

ISO is in close cooperation with the UN in defining the codes it promulgates and refers to the UN Statistics Division and the United

²³⁶ According to the ISO itself, ISO has developed over 18000 International Standards on a variety of subjects and some 1100 new ISO standards are published every year, see <http://www.iso.org/iso/iso_catalogue.htm>.

²³⁷ <http://www.iso.org/iso/country_codes/background_on_iso_3166/what_is_iso_3166.htm>.

²³⁸ <http://www.iso.org/iso/country_codes/background_on_iso_3166/implementation_of_iso_3166-1.htm>.

²³⁹ These are respectively, the Association française de normalization (AFNOR), the American National Standards Institute (ANSI), the British Standards Institution (BSI), the Deutsches Institut für Normung (DIN) and the Swedish Standards Institute (SIS), <http://www.iso.org/iso/country_codes/background_on_iso_3166/members_of_iso_3166_ma.htm>.

²⁴⁰ Namely IAEA, International Telecommunication Union (ITU), Internet Corporation for Assigned Names and Numbers (ICANN), UPU, United Nations Economic Commission for Europe (UNECE), id.

Nations Bulletin Country Names²⁴¹ as the authoritative inputs to the international country code standard.²⁴²

V. Conclusions

The naming process carries great potential. By using a term to identify something for the first time, the symbolic meanings that this term already has are decisively connected with the named object. The attributes that came to be connected with this word through its use, are now linked to the new name bearer. Naming can thus have a major impact on the understanding of the characteristics of the named entity itself; a same or similar name effectively implies identity or similarity of characteristics between the objects with the same or similar name.

This article has tried to show the importance of this process at the state level. Conscious of this importance and the potential of the naming process, states have traditionally resorted to symbols already connected with attributes they valued and wanted to be linked with. Naming played, in this sense, the role of a linkage to some pre-existing meaning. This could be a geographical meaning, a national one or sometimes both; by the respective choice, a state connects itself with a geographical area or a national identity. This connection is hardly a random one. The name chosen by a state very often reflects political aspirations, which sometimes are constitutionally embedded, and in any case are an indispensable element of nation building.²⁴³

In connection with these considerations, international friction can be caused by a name that gives grounds to allegations of misappropriation. What can be misappropriated with the use of the name becomes clearer, if its potential is looked into: misappropriated can be the connection with the attributes and qualities that a word has come to express through its use. If the characteristics of a state (like its territorial reach) significantly diverge from this “pre-state” meaning of the word, other parties that have an interest in the latter symbolism might contest its use as state denomination. This contestation can sometimes be very

²⁴¹ Meaning probably the UN Terminology Bulletin No. 347/Rev. 1, and its current successor, the UNTERM list, see above under IV. 2. a.

²⁴² <http://www.iso.org/iso/country_codes/iso_3166-faqs/iso_3166_faqs_specific.htm>.

²⁴³ See A.D. Smith, *Nationalism and Modernism. A Critical Survey of Recent Theories of Nations and Nationalism*, 2001, 8.

persistent, because in a world organised along territorial lines the possibility exists that other meanings are subsumed under the state use. The latter can absorb other facets of a term and reintroduce them under a new perspective. For example the adjective “Macedonian”,²⁴⁴ although bearing an immense variety of pre-state meanings (geographical, historical and ethnical, as shown above), becomes gradually and *de facto* monopolised by the state using it as its denomination. Geographical areas that were previously identified by the sole word “Macedonia” (like the broad geographical region in the Balkans), are now connected with the homogenous state. Similarly, cultural identities, influenced to a very great extent by historical references, can hardly be represented as “Macedonian” without being associated with the ethnical characteristics of the same state.

The potential of naming and its actual employment by states has not attracted a set of special rules or a central instance dealing with the relevant controversies. Nevertheless, the historic examples offered above show that, in cases where the conflict potential of the naming process materialised, symbolic representation was elevated to an international issue. It went beyond the realm of domestic interest and was addressed as something beyond the sole disposal of the named entity.

Although no special rules or a “central register” for state names exist, an international law approach of the issue can offer invaluable insights and inform normative arguments. The introduction of assessments of symbolic representation in the question of recognition reinforces old uncertainties and poses new questions about its proper function in this context. The concept of self-determination on the other hand, provides a solid basis for the right of each state to choose its own symbols of representation. At the same time, however, it also offers an understanding of its limits. The conceptual boundaries of self-representation seem clearer here: the utilisation of symbols with a pre-existing content must take into account this content and the interests af-

²⁴⁴ It could be accepted that “Macedonian” is currently used as a derivative of the word Macedonia with a meaning broader than an identifier of a national identity. If the term “Macedonian” had already evolved to an attribute of nationality, no further ethnic qualifiers would be necessary for such a use. Nevertheless, current discourse in international context refers to ethnicities in the geographical area of Macedonia using ethnic prefixes: even texts representing the views of the “fY Republic of Macedonia” refer to “Greek-Macedonians” in order to describe persons of Greek ethnicity but living in broader Macedonia, see e.g. Institute for Democracy “Societas Civilis”, *Flawed Arguments and Omitted Truths*, 2009, 6.

filiated to it. The use of a name in order to assert the qualities of this pre-existing content can have repercussions beyond self-representation.

Symbols do not exist in a vacuum. Their value is their connection with some attribute. Even the word symbol itself, referring to the production of two halves of a token used as a shared mark of identification,²⁴⁵ reveals its role as identifier of a link. The distortion of this correspondence through a new use of a symbol by an actor with a great factual capacity to occupy its use, as is the case with states, might have international repercussions which cannot be ignored.

²⁴⁵ “Conversely, this token served to differentiate them from other people who had no such proof”, R. Firth, *Symbols. Public and Private*, 1973, 47. The word symbol comes from the Greek *συμβολον*.