

# OBSERVANCE OF THE RULE OF LAW AND THE TREATY OF PRESPA



**ANA NIKODINOVSKA KRSTEVSKA  
ASSOCIATE PROFESSOR  
UNIVERSY 'GOCE DELCEV' - STIP**

International Academic Conference:  
BRATISLAVA LEGAL FORUM 2020  
6 – 7 February 2020, Comenius University Bratislava

# STRUCTURE OF THE PRESENTATION:

- Introduction
- Rule of law
- Treaty of Prespa, 17 June 2018
- Violation of internal law
- Violation of international law (formal and material aspects)
- Conclusions and questions



# ORIGINS AND CHARACTERISTICS OF THE NAME DISPUTE :

- The name issue originates since the 1<sup>st</sup> and 2<sup>nd</sup> Balkan wars when the geographical region Macedonia was divided between Greece, Bulgaria, Serbia and Albania
- The name issue **sensu stricto** refers to the Greek concern about the use of the name Macedonia (regarding possible territorial claims from Macedonia)
- The name issue **sensu lato** concerns:
  1. Historical-cultural claims related to Ancient Macedonia (especially after the discovery of the sarcophagus of Philip II Macedon in Northern Greece in 1977),
  2. The non-recognition of the Macedonian minority in Greece (discriminatory policy towards Macedonian minority after the Treaty of Sèvres from 1920 that was manifested with maximum intensity during the exodus of the Macedonian population during the Greek civil war between 1946 – 1949)

# NAME DISPUTE:

- Referendum for independence of the Republic of Macedonia (8 September 1991)
- The country was not internationally recognized by the European Community (contrary to Opinion N.6 of the Badinter Commission)
- After the change of the Constitutional amendments (art. 3 e 49), the country presented an application for UN membership and became a UN member in April 1993 under the provisional name 'former Yugoslav Republic of Macedonia) in violation of art. 4 (2) of the UN Charter
- Imposition of a total embargo by Greece towards Macedonia (1994-1995)
- Interim Accord between Macedonia and Greece from 13 September 1995 (foresees the change of the flag)
- Matthew Nimetz, was a mediator nominated by the Secretary General of the UN in order to mediate the conflict from 1998 until 2018
- In 2008 Greece vetoes Macedonian membership to NATO and violates the Interim Accord from 1995
- In 2008 Macedonia initiates a case against Greece in front of the International Court of Justice for infringement of art. 11 of the Interim Accord, and in 2011 the Court rules in favour of Macedonia, condemning Greece for breaching the Accord
- In 2009 Greece blocks the opening of negotiations inside the EU
- In June 2018 the two countries conclude the Treaty of Prespa that resolves the name dispute and replaces the previous Interim Accord of 1995





# - TREATY OF PRESPA -

OR

Final Agreement for the settlement of the differences as described in the United Nations Security Council Resolutions 817 (1993) and 845 (1993), the termination of the Interim Accord of 1995, and the establishment of a strategic partnership between the parties  
(17 June 2018, Mala Prespa)

## AGREEMENT

FINAL AGREEMENT FOR THE SETTLEMENT OF THE DIFFERENCES AS DESCRIBED IN THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS 817 (1993) AND 845 (1993), THE TERMINATION OF THE INTERIM ACCORD OF 1995, AND THE ESTABLISHMENT OF A STRATEGIC PARTNERSHIP BETWEEN THE PARTIES

## PREAMBLE

*The First Party, the Hellenic Republic (the "First Party") and the Second Party, which was admitted to the United Nations in accordance with the United Nations General Assembly resolution 47/225 of 8 April 1993 (the "Second Party"), jointly referred to as the "Parties",*

-Recalling the principles and purposes of the Charter of the United Nations, the Helsinki Final Act of 1975, the relevant Acts of the Organization for Security and Cooperation in Europe ("OSCE") and the values and principles of the Council of Europe,

-Guided by the spirit and principles of democracy, respect for human rights and fundamental freedoms, and dignity,

**Contained in 3 parts, 20 articles e 90 paragraphs  
(in total 20 pages):**

**First part** – regulates the name issue and questions related to it, and also good neighbourly relations

**Second part** – regulates the strategic cooperation between the parties

**Third part** – regulates the modality of conflict resolution

**Final part** – final dispositions of the the Treaty

**From a questionnaire conducted by a Macedonian NGO 'MCMS' it results that only 3% of the population have read the Treaty text**

## Violation of internal law :

### 1. Procedures relative to the conclusion of the Treaty

- **Treaty negotiations** (absence of a constitutional proposal for negotiations and negotiations were conducted in a secret manner – contrary to art. 3 and 8 of the Law on conclusion, ratification and execution of international treaties from 1998)
- **Signing of the agreement** (unconstitutional/conclusion of an “ultra vires” act – contrary to art. 119 Cost and art. 3 of the Law on conclusion, ratification and execution of international treaties from 1998)
- **The procedure for adoption of the Treaty of Prespa** (the Parliament applied a simplified procedure instead of regular procedure, the Treaty was examined within an inadequate Parliamentary Commissions, voted with simple majority instead of 2/3 majority as foreseen for questions of fundamental importance)
- **Law for ratification of the Treaty** (2 suspensive veto from the President of the Republic, nevertheless the Treaty was promulgated from the President of the Parliament, together with the Law regarding the use of the Albanian language (the Law was also suspended 2 times).



**THE VIOLATION OF THESE NORMS OF FUNDAMENTAL IMPORTANCE WAS MANIFEST, NOTORIOUS AND CONCERNS A FUNDAMENTAL RULE OF THE INTERNAL LAW, AND THUS AFFECTS THE INTERNATIONAL LEGITIMACY OF THE TREATY OF PRESPE WHICH UNDER ART.46 VCLT REPRESENTS A LEGAL BASIS FOR ITS NULITY AND INVALIDITY**



### Violation of internal law:

## 2. Procedures related to the opening of the procedure for constitutional amendments for the name change

- **Unlawful procedure for induction of referendum** (contrary to art.9 of the Law of Referendum and other modalities of participation, the type of referendum was unconstitutional because it was consultative/advisory instead of obligatory; the referendum question was too vague and inadequate as well as the referendum procedure was contrary to the Code of good conduct from the Commission of Venezia from 2007)
- **The referendum decision was not taken into consideration** (the referendum failed, it didn't meet the threshold of 50%, because the turnout was 36,9%)
- **Unlawful opening of the procedure for constitutional amendments** (there was no constitutional basis for opening the amendment procedure)
- **Unlawful methods for adoption of the constitutional amendments** (using bribe and threat with 8 parliamentarians of the opposition blackmailing them with the Law for amnesty for terroristic acts for the assault to the Parliament of 27 April 2017, in order to reach the necessary quorum of 2/3 majority (81 deputies), necessary for adoption of amendments)



## Violation of international law (formal or procedural aspects of law) :

- Violation of the provisions of internal law regarding the competence to conclude international treaties – VIOLATION WAS MANIFEST CONCERNING A RULE OF LAW OF INTERNAL LAW OF FUNDAMENTAL IMPORTANCE [ violating artt. 7 and 8 of the Convention of Vienna on Law of Treaties (CVLT), 1969]

Violated art. 119 of the Constitution of the Republic of Macedonia and art. 3 of the Law on conclusion, ratification and execution of international treaties from 1998 = ACCOMPLISHED “ULTRA VIRES” ACT

THIS  
MEANS  
THAT

In base of art. 46 of CVLT these represent the basis for invalidity of the Treaty for the lack of competence to conclude international treaties

Violation of international law  
(material aspects) :

1. Violation of the principle of sovereign equality between States (principle of sovereignty)

- In the Treaty the **name of the State** – Republic of Macedonia or also ‘Former Yugoslav Republic of Macedonia **is not mentioned** in any part, instead the State is referred to as ‘the part that was admitted into the United Nations in accordance with Res. 47/225 of 8 April 1993’. The text retrogrades in respect to the previous Agreement where the ‘second part’ was referred to under the name ‘Former Yugoslav Republic of Macedonia’
- In the introductory part of the Treaty a series of international documents are being recalled, however **the Sentence of the International Court of Justice** from 2011 concerning the violation of art. 11 of the Interim Agreement from 1993 by Greece for blocking Macedonia’s entry into NATO, has been **omitted**.
- **The Treaty is assymmetric regarding** right and obligations for both parties (i.e. Greece has only rights, except 2 obligations, while Macedonia has no right only obligations)

# Violation of international law (material aspects) :

## 2. Violation of the principle of self-determination of people

- The subject of the Greek-Macedonian dispute regarding the name is missing, on the contrary it has been amplified contrary to the previous Treaty, and instead of speaking of 'one' difference regarding the name now it speaks of 'differences' (art.1) (regarding name, language, culture, history, educational system etc.) that reenter in the principle of self determination of people, as an imperative norm of international law of Jus cogens character and contrary to the previous Treaty

**The Treaty  
imposes:**

1. **The change of the name** in «Republic of North Macedonia», for erga omnes use
2. **The complete elimination of the adjective 'Macedonian'** and the term '**Macedonia**' without additional wording, replacing it with «of North Macedonia» or «from North Macedonia»



In base of art. 53 CVLT this treaty is to be considered void,  
because it is in violation with peremptory norms of general  
international law

## Violation of international law (material aspects) :

### 3. Violation of the principle of non-interference in internal affairs

- The Treaty imposes the **revision of official documents** of the State in order to adapt them with the new name and imposes the removal of the term 'Macedonia' or the addition of the term 'North' from every state symbol or documents, institutions, buildings, etc.
- The Treaty foresees the **institution of a 'Common committee'** composed of diplomats, archeologists, historians... appointed to revision all school books and educational materials and clean them from the term 'Macedonia' or 'Macedonian'



# The confirmation of the Jus cogens character of violated treaty norms:

- **Art. 53** of the CVLT establishes the invalidity of treaties concluded in **conflict/collision with a peremptory norm in general international law**, and subsequently defines what represents an imperative norm, however it does not give an explicit reference
- In the **preparatory work of CVLT by the UN International Law Commission** there have been listed the peremptory norms of Jus cogens character, among which figure also the discussed
- The discussed norms are to be considered imperative/mandatory in base of the universality of the Charter of the United Nations, because they **represent general principles of law**, but above all in base of **art.103 of the UN Charter**.
- From this it follows that the norms are mandatory and they cannot become the object of a treaty, and thus in base of **art. 53 and 64 from the Convention of Vienna on the Law of Treaties**, the Treaty of Prespa is to be considered **void/invalid under international law**.

## CONCIUSIONS:

The reality is that the great powers always decide and have the final word, while small states are weak in front of this. In fact history is written by the actual great powers.

This confirms that the rule of law in international relations is a weak principle and has no adequate protection because there is no sanctionary body that will stand above sovereign states.

## QUESTIONS:

- OBSERVANCE OF RULE OF LAW?

**THANK YOU FOR THE ATTENTION!**



[ana.nikodinovska@ugd.edu.mk](mailto:ana.nikodinovska@ugd.edu.mk)

**ACADEMIA.EDU / PROFILE: ANA NIKODINOVSKA KRSTEVSKA**