PRESPA AGREEMENT THROUGH THE PRISM OF INTERNATIONAL LAW AND ITS IMPLEMENATATION IN THE NATIONAL LEGAL SYSTEM OF NORTH MACEDONIA

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ABSTRACT

The name issue is a constant factor in a Balkan puzzle with many variables. For the Macedonians, the name issue has turned into identity question. That should not have been the case: identity is a matter of self-determination, not recognition. Macedonians hoped that electoral victory of Syriza in 2015 would bring to office a government that would be more leftist than populist, which did not happen. Additionally, the Greek Orthodox Church has joined with inflammatory discourse, playing a political role that one would think that a leftist government wouldn't allow them to play. Both governments, in Athens and Skopje, face different challenges since the beginning of the process. Although it was considered that Athens enjoys a historical, institutional, and geopolitical advantage, as it always did in this dispute and it was Greece has little to lose in the barraging game except "exclusive possession over history" the Prespa agreement was not accepted with applause. On the other side North Macedonia was supposed to negotiate between its past and future, and the agreement brough mixed feelings and polarization of the society. Opposition was calling for invalidity of the treaty and protest were held in both capitals. The aim of this paper is to provide legal analysis of the process and the agreement from the point of international public law relieved from daily politics and populism.

Keywords: International law, Prespa agreement, Security Council, constitutional amendments

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Introduction

"Final agreement on overcoming the differences described in Security Council resolutions 817 (1993) and 845 (1993), termination of the 1995 Interim Accord and establishment of a strategic partnership between the two parties" is the full name of the Macedonian-Greek agreement settled in Prespa in June 2018 (Влада, 2018). Although it has been referred to as the "name dispute" by the general public, in fact the subject of the contract is much more comprehensive. De facto, it addresses the decades-old name dispute, but, de jure, it is an act based on Security Council resolutions that are legally binding.

Whatever the content of the agreement and how unpleasant it is for the signatory parties and the general public, it is undoubtedly historic and will find its place in textbooks of international law.

Background and contextualisation

The Prespa agreement was reached in 2018 between Greece and the Republic of Macedonia, under the auspices of the United Nations, resolving a long-standing dispute between the two. Apart from resolving the terminological differences, the agreement also covers areas of cooperation between the two countries in order to establish a strategic partnership between them. Signed beside the mutually shared Lake Prespa, from which it took its name, and ratified by the parliaments of both countries, the agreement went into force on 12 February 2019 when the two countries notified the UN of the deal's completion, following the ratification of the NATO accession protocol for North Macedonia on 8 February 2020 (North Macedonia joins NATO as 30th Ally, 2022) . It replaces the Interim Accord of 1995 and sees the Republic of Macedonia's

constitutional name changed to the Republic of North Macedonia erga omnes (UN, 1995).

The legal basis

The international legal position of the agreement is crystal clear: the agreement finds its legal basis in the resolutions of the UN Security Council and emanates the clearly expressed will of the international community to resolve the disagreements between the two countries.

Namely, there are two Security Council Resolutions on which the dispute resolution is based, dating from the first years of independence of North Macedonia. The first one is brought following the consideration of the Republic of Macedonia's application for admission to the United Nations (UN), on 7 April 1993 the UN Security Council adopted Resolution 817 (1993). In the preamble of this resolution, the Council reaffirms that the Republic of Macedonia meets the criteria for membership in the United Nations, but underlines that there is a difference in the name of the country and notes that the difference should be resolved in the interest of maintaining peaceful and good neighborly relations. With this resolution, the UN Security Council recommends to the UN General Assembly that the Republic of Macedonia be admitted as a member of the United Nations, and for all purposes within the UN to temporarily call the country "the former Yugoslav Republic of Macedonia" Macedonia) until the name dispute is resolved (UNSCR 817,1993).

This happened as a result of the Greek opposition to the request of the then Republic of Macedonia for full membership in the UN, and based on the recommendation of UN Security Council Resolution 817 (1993), the country was admitted as a member of the United Nations on April 8, 1993, with recommendation to be temporarily addressed with the reference "the

former Yugoslav Republic of Macedonia" until the final settlement of the name dispute. The Secretary-General of the United Nations was tasked with assisting in the settlement of the dispute, for which purpose he appointed a Personal Representative (MFA,2022).

United Nations Security Council resolution 845, adopted unanimously on 18 June 1993, after recalling Resolution 817 (1993) and considering the secretary-General's report pursuant to it, the council urged both Greece and the Republic of Macedonia to continue efforts to settle the naming dispute (UNSCR 845,1993).

Security Council resolutions are legally binding on all member states of the international community, in accordance with Article 25 of the Charter of the United Nations (UN, 1945). The framework for reaching international agreements, on the other hand, is given in the Vienna Convention on the Law of Treaties, which is largely a codification of international custom (UN,1969). The Vienna Convention, on the other hand, as an international agreement accepted by both parties, is the primary source of law under Article 38 of the Statute of the International Court of Justice - the Supreme Court of the United Nations based in The Hague (ICJ, 1946).

The Vienna Convention on the Law of Treaties states in Article 7 who has "full power" to sign international agreements. In paragraph two of Art. 7 it is said that he is the one who "produces adequate full power" or "it is obvious from the practice of the States involved or it follows from other circumstances that the State intended to treat that person as producing" adequate full power ".

Paragraph two of the same article, line one, states that these are the Heads of State and Government and the Ministers of Foreign Affairs, in order to

carry out all the acts necessary to conclude the agreement. In this case, the agreement was signed between the ministries of foreign affairs although the Prime ministers were also present. The Interim Accord was signed by foreign ministers, not only because of the legal powers, but also because of the nature and specificity of the agreement and probably the desire for the act to be treated in the field of foreign policy.

Article 26 of the Vienna Convention refers to the archaic legal principle: pacta sunt servanda, meaning: treaties are to be respected, in bona fides. Good faith is also a principle that should be applied in the interpretation of contracts, as set out in Article 31 of the Convention, which stipulates that the primary method of interpreting contracts is linguistic. Article 27 states that the domestic law of a state cannot be an obstacle to the implementation of an international agreement.

Potential for the invalidity theory

Vienna Convention (UN,1969) very precisely defines the grounds for the invalidity of an international treaty and none of the views expressed in this regard overlaps with its provisions.

With regard to the grounds for the invalidity of an international treaty, the Convention recognizes fraud, corruption, coercion or contrary to the treaty in accordance with the international law. This means that A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations. A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. The peremptory norms of international law are also known as ius cogens and are a generally accepted principle of the international community - something that is understood to be the norm in itself - and are a real obligation regardless of whether they are part of an international agreement of a specific country

is a party to that agreement - it is obliged to respect the peremptory norms. They arise from international custom and are not defined in a separate instrument, but the case law of international judicial institutions as well as the interpretations of prominent lawyers know how to point out some norms as peremptory. The ban on genocide, for example, is treated as such. This is how the right to self-determination is treated, but the way the law is interpreted is far from a consistent legal regime, so that a clear practice can be extracted that would benefit the resolution of the dispute.

Constitutional consequences for Macedonian side

The constitutional position of international law in North Macedonia is supreme, ie, international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law, as determined by Article 118 of the Constitution. Although the Constitution further states that international agreements are concluded by the President as a rule, and the Government as an exception, we must not forget that the Vienna Convention, to which Macedonia has long acceded, provides for the possibility for foreign ministers to be signatories to agreements.

The four amendments to the constitution of North Macedonia

Based on the Prespa agreement, four constitutional amendments were proposed by Macedonian government to the Parliament (Влада, 2017). The central change is the thirty-third amendment, which states that "In the Constitution the words" Republic of Macedonia "are replaced by the words" Republic of Northern Macedonia ", and the word" Macedonia "is replaced by the words" Northern Macedonia ", except in Article 36. “Article 36, on the other hand, refers to the rights of the fighters from the

national liberation wars of Macedonia, and such a solution is logical in a historical and temporal context**.**

Amendment 34 refers to the Preamble and reads: "In the Preamble of the Constitution of the Republic of Macedonia the words" decisions of ASNOM "are replaced with the words" Proclamation from the First Session of ASNOM to the Macedonian people for the session of ASNOM ", after the word" year "are add the words "and the Ohrid Framework Agreement", and delete the words "decided to".

Amendment 35 states that "the Republic shall respect the sovereignty, territorial integrity and political independence of neighboring States", supplementing Article 3 of the Constitution, which deals with territorial integrity. Respect for the territorial integrity and political independence of all states, not just neighboring ones, is a recognized cognitive (mandatory) norm of international law, integrated into the UN Charter, the Helsinki Final Act, the Declaration of Friendship and other international instruments.

Amendment 36 states that “The Republic protects, guarantees and nurtures the historical and cultural heritage of the Macedonian people. The Republic protects the rights and interests of its citizens living or residing abroad and promotes their ties with the homeland. The Republic takes care of the members of the Macedonian people living abroad. The Republic will not interfere in the sovereign rights of other states and in their internal affairs. "This amendment replaces Article 49 of the Constitution of the Republic of Macedonia which reads:" The Republic cares for the position and rights of the Macedonian people in neighboring countries. and for the emigrants from Macedonia, it helps their cultural development and

promotes the relations with them. "The Republic takes care of the cultural, economic and social rights of the citizens of the Republic abroad."

Just like the previous amendment, it does not mean anything that is no longer an existing obligation or a already regulated matter at a higher level. On the other hand, what has so far been explicitly stated as a constitutional obligation has not helped minorities in neighboring countries much to improve their position.

Legal regıme of identity conflicts

The demand to recognize equal value for different cultures is a reflection of the deep human need to be unconditionally accepted. The sense of such acceptance, which implies acknowledgment of ethnic particularity and the universal potential of individuals – is an essential part of a sense of identity. The policy of equal dignity is based on the idea that all people deserve equal respect (Frchkoski,2016).

States exist on the basis of principles established by international law. Although there are several theories about the role of recognition in the constitution of the state and the system of collective security is at least declaratively based on the principle of sovereign equality, each state has emerged in its own specific constellation. Macedonia has had the good fortune or misfortune to be a glaring example for which articles on international law will be written as a case of sui generis, but whether it stays there as an example of a lesson learned or a serious political failure depends mostly on its citizens and the wisdom of political elites.

Although identity is perceived as an emanation of sovereignty, identity is not a legal category. It is not a matter of recognition but a state of mind. It is not the nation that is recognized, but the state. Nation-states were born centuries ago and are slowly dying out under the blows of globalization,

and ideas born during the Romantic era were brutally abused in the previous century, escalating into the chaos of World War II. In other words, nation-states find it difficult to adapt to civil society.

The determination of the name and symbols is not regulated by a special international legal regime. In principle, the name is usually a reflection of identity, with the exception of a stumbling block and a subject of agreement, as was the case with Ireland and Northern Ireland - although any parallel between two cases of identity conflict is inappropriate and ungrateful. However, the geographical determinant North, which is indicated exclusively as such, is not what it defines: just as the adjective does not define the noun. The noun exists in and of itself. At a very simplistic level, it is a counterpart to identity determination.

Fairness of international law and real politic

Is this setting of international law and reaching such an agreement fair? Fairness is probably rarely a legal category, but the purpose of the legal norm is to strive for fairness so that legality is always as legitimate as possible. Therefore, a well-known principle in international relations is that "big fish swim alone, and small ones always move in flocks."

Geography is a matter of fate, but history is created when diplomacy seizes or squanders the moment. Maybe we owe this "historic" chance to many others, previously gambled.

The agreement goes far deeper and PR services forget to mention a crucial issue: that it is not the name, but the temporary reference that has been negotiated. The general legal principle is that no one can transfer more rights to another than they have: thus, the Macedonian government (led by any ruling party) can not negotiate the name even if it wants to, but

only the temporary reference. (Former Yugoslav Republic of Macedonia-FYROM) . The successes of Macedonian diplomacy then in bilateral relations towards the recognition of the state under its constitutional name and the demands for a double formula were probably the farthest one could go.

The Prespa agreement was reached in very sensitive political surrounding and provoked polarization within society. However, in a legal manner, it is a crystal clear evidence of the implementation of the national law, shaped by geopolitical constrains.

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