

## CHAPTER 2

# MACEDONIAN CONSTITUTIONAL IDENTITY VERSUS “EVER CLOSER UNION” CONCEPT – CHALLENGES, DILEMMAS, AND PERSPECTIVES



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### Abstract

In the past 33 years of Macedonia's independence, the country was involved in many economic, political, and inter-ethnic crises which were produced not only by internal, but also by external forces. Five of them have shaped the 33 years of political games and Macedonian struggles as an independent and sovereign country. From the non-recognition of its sovereignty through ethnic divisions to serious internal interferences by foreign ambassadors and mediators in the work of the domestic political institutions, Macedonia went through many heavy disruptions and challenges in the internal political reality and in the national and constitutional identity.

The first major crisis happened in 1992 when Greece blocked Macedonia's accession to full membership in the United Nations (UN), under its constitutional name Republic of Macedonia.

The second crisis was triggered by the armed conflict in 2001. The public is still waiting for the answer to what kind of conflict it was. Was it a military conflict or a civil conflict with ethnic background? Was it a terrorist attack against a sovereign country and its independent institutions by armed forces which came from Kosovo, or was it a conflict for gaining more human rights, as the armed forces have claimed?

The third serious political crisis happened at the end of 2014 and lasted very intensively in the following three years when the then opposition party, and now ruling party, publicly announced a massive scandal with illegal wiretapped conversations of then ruling politicians. The possession of recorded phone audio material by the opposition was announced after the failed meeting between the then leader of the

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opposition, later prime minister of the Macedonian Government, who tried to make the former Prime Minister into forming a technical government. What really made this political game so heated was not just the alleged seriousness of the illegal wire-tapped materials which were in the opposition leader's possession, but also the two parallel discourses which were formed around this issue that have completely polarized the Macedonian society.

In the meantime, the fourth crisis occurred after the opposition took over the government, and after the Prespa Agreement was signed in 2018, which meant compulsory acceptance of the constitutional name change. This was done under very dubious circumstances when charges against MPs and their relatives were dropped so that the government could reach the two-thirds majority in the Parliament needed for the name change. The Prespa Agreement did not only change the country's name, but it also changed the constitutional and national identity and history. The goal of this agreement was not to put an end to the decade-long dispute opposed by Greece on Macedonia, but to make serious changes in the collective identity and the history of the Macedonian people. This Agreement seriously violated the international law, number of international human rights accords, which will be the subject of analysis of this paper.

The fifth crisis happened in 2022 in correlation with the previous Bulgarian veto on the country's EU accession talks. France presented a proposal for the resolution of the dispute between two the countries. The so-called French proposal contained an obligation of Macedonia to change its Constitution again and to acknowledge a Bulgarian minority in the constitutional Preamble as well as in other constitutional provisions. The French proposal was passed by the Bulgarian and Macedonian parliaments. Unfortunately, the truth is that with this French framework, nationalism is enshrined and it renders the country hostage to the whims and impulses of Sofia. Bulgaria wants to change the Macedonian identity, abusing the EU accession process and imposing its own distorted version of history. This version infringes not only Macedonian history, but also the history of the EU, including its anti-fascist roots. Many Western analysts underestimate this issue, without having sufficient background to properly judge what the stakes are. Unfortunately, the "Macedonian question" is as relevant again as it was in 1913.

In the 21<sup>st</sup> century in the heart of Europe, two EU Member States abuse its position in the Union publicly denying Macedonia's national and constitutional identity, making the acceptance of such denial from the Macedonian people as a condition for the start of negotiations with the EU.

**Keywords:** politics, democracy, human rights, sovereignty, identity, crisis, international law, Constitution

## 1. Understanding Macedonian constitutional identity

The Macedonian<sup>1</sup> contemporary constitutional identity is usually analysed from two distinct yet intertwined perspectives: one which considers the development of Macedonia while being part of the former Socialist Federal Republic of Yugoslavia (SFRY), and another which places the emphasis on the period following the Republic of Macedonia’s attainment of independence in the early 1990s.

Looking back, the events related with the creation of the Kruševo Republic in 1903 had a serious impact on the overall national and constitutional identity within Macedonia, as did the period after the Second World War<sup>2</sup>, when the Macedonian state reaffirmed its existence in the documents adopted at the Anti-Fascist Assembly of the People’s Liberation of Macedonia, in August 1944.<sup>3</sup> As part of the SFRY, the legal and political development in Macedonia was largely viewed in close correlation with the Yugoslav federation.<sup>4</sup>

Moreover, it is worth stressing that today’s borders of the Republic of Macedonia practically date back to 1946 when the People’s Republic of Macedonia became a constituting part of the Federal People’s Republic of Yugoslavia. With the outbreak of the Yugoslav state crisis and Macedonia’s proclamation of independence, the new setting was accompanied by major changes in the political, economic, and social spheres, altogether reflecting the previously passed constitutional changes. More precisely, the constitutional amendments in 1990 had explicitly proclaimed the right of the Macedonian people to self-determination, including the right to secession from the former Yugoslavia, the adoption of which required a two-thirds majority of the Members of the Parliament. The citizens were given the right to express their opinion in a referendum, the success of which required a simple majority of votes.<sup>5</sup>

In accordance with the new election law, as well as a new law regarding political organisation of the citizens, the first democratic parliamentary elections took place in November 1990, coinciding with the first elections for the municipal councils, altogether involving participation of numerous political parties.<sup>6</sup> The new Macedonian assembly initiated the adoption of the Declaration for independent and sovereign state of Macedonia in January 1991. Following the Macedonian people’s overwhelming support for independence in September (with more than 95 percent voting in favour

1 Stefov, 2018.

2 Available at: <https://vmacedonia.com/history/independent-macedonia/the-republic-of-macedonia-from-a-member-state-of-the-yugoslav-federation-to-a-sovereign-and-independent-state.html> (Accessed: 15 June 2023).

3 See: Brown, 2003. Recent Macedonian history revolves around three historical events, nationally heralded as the “three Ilindens”: the Kruševo Republic created by the Ilinden Uprising on 2 August 1903, the Antifascist Council of National Liberation of Macedonia (2 August 1944), and the referendum for independence (8 September 1991). See: Vankovska, 2012, p. 13.

4 Lijphart, 1968; Lijphart, 1977; Lijphart, 1984; Lijphart, 1999.

5 Duncan, 1997, pp. 226–281.

6 Klimovski, Karakamisheva-Jovanovska and Spasenovski, 2016, pp. 256–321.

of it), the Assembly of the Republic of Macedonia adopted the first constitution of the independent and sovereign Republic of Macedonia in November 1991.<sup>7</sup>

In practice, the new constitution meant the beginning of the national political, economic, and legal struggle, largely conditioned by the neighbouring Greece, but also other neighbours of Macedonia. While the problem that Greece has had with Macedonia primarily relates to the name issue, it has also touched upon the ethnic identity of the Macedonians and the Macedonian language. Accordingly, Macedonia's constitutional name and the national flag (the Vergina Star) represented the main obstacle for the country's membership in the United Nations as an independent and sovereign country.<sup>8</sup>

In fact, in order to stop the recognition of Macedonia under its constitutional name, the Greek state, already a member of the then European Community, pressured other Member States during the adoption of the Lisbon Declaration to side with Athens,<sup>9</sup> prohibiting any territorial pretensions towards Greece, hostile propaganda, or, in general, the use of the term "Macedonia" by the Republic of Macedonia.<sup>10</sup>

Since Macedonia's attainment of independence, Greece has claimed that the word "Macedonia" is part of the Hellenic civilisation and that every use of the word, particularly as an official name of the state, usurps the exclusively Greek culture and tradition by the Macedonians.<sup>11</sup>

Despite numerous arguments offered by historians, politicians, and international experts, altogether pointing out that Greece has never officially used the word "Macedonia" for any part of its territory until 1988 (when the then-prime minister Georgios Papandreou's government decided to start using it for one of the country's northern

7 Mircev, 2001.

8 Ragazzi, 1992, pp. 1488–1526.

9 The European Council Lisbon, 26-27 June 1992, Documents in the dossier include: Lisbon European Council Reproduced from the Bulletin of the European Communities, No. 6/1992, available at: [http://aei.pitt.edu/1420/1/Lisbon\\_june\\_1992.pdf](http://aei.pitt.edu/1420/1/Lisbon_june_1992.pdf) (Accessed: 17 June 2023).

10 Kotsovilis, 2005, as well as Shea, 1997, p. 280.

11 In 1988, Greece officially renamed its "Northern Greece" province to "Macedonia". It was also in the 1980s that Greek experts coined the phrase "Macedonia is Greek", which suggested to the Europeans that Greece had territorial ambitions toward the People's Republic of Macedonia. See: Evangelos, 1999, as well as Presidential/governmental decisions: "District of Central and Western Macedonia" and "District of Eastern Macedonia and Thrace" were established with article 1 of the Presidential Decree 268, "Official Gazette of the Greek Republic", 4<sup>th</sup> of October 1973, Issue A, 268, and "Ministry of Macedonia and Thrace" was named with the Y 704/13.8.1988 Decision of the Prime Minister, "Official Gazette of the Greek Republic", 19<sup>th</sup> of August 1988, Issue B, 575. "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. "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.

regions)<sup>12</sup>, the problem with the Republic of Macedonia’s constitutional name has remained on the UN agenda. The fact that until 1988 Greece never officially used the term “Macedonia” confirms in *de jure* terms that the existing dispute with Macedonia has been constructed purposefully by the Greek leadership.<sup>13</sup>

From the very beginning, Macedonia has been subject to political pressures in relation to its territory or, for that matter, anything else linked to the Macedonian aspect. Indeed, in the period from 1992 to 1995, Macedonian authorities pursued several political and legal steps to convince Athens that the young Macedonian state had no territorial pretensions and did not represent a threat to Greece.<sup>14</sup>

Having adopted a very rigid position towards the Macedonian state from the very beginning, Greece has been responsible for the Republic of Macedonia’s entire agony.<sup>15</sup> Back in 1993, it was forced to accept the so-called “compromise” solution – a temporary Former Yugoslav Republic of Macedonia (FYRoM) name reference, which

- 12 The first concessions that Macedonia made regarding Greek (and European Union) demands were articulated in constitutional amendments of January 1992. Amendment I declares that the Republic of Macedonia has no territorial pretensions vis-à-vis any neighbouring state, while Amendment II states that the Republic will not interfere in the sovereign rights of other states or in their internal affairs. The latter is an addendum to the provision from Article 49 that declares that the Republic cares for the status and rights of those persons belonging to the Macedonian people in neighbouring countries, as well as Macedonian expatriates, assists their cultural development, and promotes links with them. These bizarre amendments are not only rare in a comparative constitutional perspective but also ridiculous having in mind the size and the weakness of Macedonia in comparison to the NATO member states. They did not satisfy Greece, however. The next step was compliance with the demand to change the state flag allegedly because it offended this neighbour’s national feelings. Vankovska, 2012, p. 15. On the other hand, in response to Macedonia’s desire to be recognized as a country and as the Republic of Macedonia, Greece renamed its Thessaloniki airport from “Micra” to “Macedonia;” the airport in Kavalla was renamed “Alexander the Great;” and warships were “rebaptized” with ancient Macedonian names. Furthermore, the University of Thessaloniki was renamed to the University of Macedonia, Alexander the Great’s image was plastered onto coins, the star of Vergina (Macedonia’s national flag) was painted on all city buses, and that same symbol then was used to represent Greece’s annexed portion of geographic Macedonia. See: Sinadinovski, 2022.
- 13 Floudas, 2002.
- 14 Neophytos, 2007, p. 24. Political analysts are divided on how to interpret Greece’s position. Some, including Americans Janusz Bugajski and David Augustin, criticized Greece for ‘provoking nationalist feeling by aggravating fears over alleged Macedonian expansion,’ instead of contributing to the regional stability as a local superpower by ‘drawing the fragile and non-threatening Macedonians into a closer alliance. William Dunn, another American analyst, believed Greece’s desire for “cultural purity” dictated its position. He stated that the main political parties in Greece based their policies on a ‘myth of continuity with classical antiquity and a notion of exclusive entitlement to symbols, conquerors, kingdoms, and territories of the ancient world.’ Dunn also noted that Greece did not call any part of its territory “Macedonia” until 1988, when Andreas Papandreou’s Greek government changed the name of “Northern Greece” to “Macedonia.” See details in: Pop-Angelov, 2010.
- 15 The words of President Gligorov regarding the provisional reference were the following: ‘funny reference solely for couple of months...’, available at: <http://eprints.ugd.edu.mk/6307/1/45.%29%29%29%20Precedent.pdf>, p. 14 (Accessed: 13 June 2023).

was, according to the then Foreign Minister Stevo Crvenkovski and President Kiro Gligorov, supposed to last for two months only.<sup>16</sup>

However, it remained in use for more than a quarter of a century and under its temporary reference, the Macedonian state gained membership not only in the UN, but in other international organisations, such as the World Bank and the International Monetary Fund as well. Nevertheless, the Greek leadership imposed a trade embargo on Macedonia which lasted until 1995, clearly damaging Macedonian economy due to its dependence on access to Greek ports.<sup>17</sup>

Moreover, as argued by prof. Igor Janev, the “compromise” solution, involving a temporary name reference, was in contrast with the international law and it actually represented a legal paradox never seen before in international law.<sup>18</sup>

Prof. Janev is also right to note that the forcing of Macedonia to accept the temporary reference FYRoM before its UN membership represents an additional condition that is not foreseen in Article 4, Paragraph 1 of the UN Charter, which foresees general but no additional conditions for membership in the UN.<sup>19</sup> On the other hand, the term “Republic” which stood before the name Macedonia was never taken into consideration, although it clearly denoted a distinction between the Macedonian state, on the one hand, and the region of Macedonia in Greece, on the other.

In 1995, a temporary agreement was signed under the sponsorship of the UN.<sup>20</sup> As such, the Interim Accord was supposed to serve as a guarantee that Greek authorities would not block Macedonia’s membership and integration in international

16 Available at: <https://www.euractiv.com/section/enlargement/news/court-blames-greece-for-blocking-macedonia-s-nato-bid/> (Accessed: 13 June 2023).

17 Janev, 1999, p. 159.

18 The following conditions are expressly set forth in Article 4, paragraph 1 of the UN Charter, which provides: ‘Membership in the United Nations is open to all other [i.e., other than the original UN members] peace-loving states which accept the obligations contained in the present Charter and, in the judgment of Organization, are able and willing to carry out these obligations.’ The next paragraph of the article states the procedural rule that ‘[t]he admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.’

19 Available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/MK\\_950913\\_Interim%20Accord%20between%20the%20Hellenic%20Republic%20and%20the%20FYROM.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/MK_950913_Interim%20Accord%20between%20the%20Hellenic%20Republic%20and%20the%20FYROM.pdf) (Accessed: 10 July 2023).

20 ‘The name of a country is a name that comes from and is created by the people who created this country and live in it. The state created by the Macedonian people is called the Republic of Macedonia. The Macedonian people will never refer to their country with a name other than the Republic of Macedonia. We can never accept to change something that we’ve used for centuries, a name that has been carried by this state for more than 50 years, unlike the northern Greek province’. See: Skaric, 2000, p. 30. National self-determination is inherent to international law (*ius cogens*), a principle often seen as a moral and legal right that all peoples have, the right to freely determine their political status and freely pursue their economic, social and cultural development. Article 23 of the International Covenant on civil and political rights seems that implicit at least within self-determination lies an acknowledgment that peoples at the maximum may freely pursue their own forms of culture and identity. It would follow that it is for these peoples to determine the content of their culture or identity, including their collective name. See: Reimer, 1995, p. 359.

organisations. However, the whole shortcoming of the Interim Accord lied precisely in this condition; its Article 5 allowed Greece to negotiate with the Republic of Macedonia about its name, which represents direct violation of the right to self-determination.<sup>21</sup>

The same made “compromise” the UN presented in the 1993 Security Council’s Resolutions 817 and 845.<sup>22</sup> Although the Security Council concluded that the Republic of Macedonia fulfilled all general criteria and conditions for UN membership, it nonetheless observed that there were discrepancies regarding the country’s name. It is exactly this difference that became a condition for the Republic of Macedonia’s UN membership and an obligation on the country to negotiate about its name, which constituted violation of the Macedonian people’s right to self-determination. With this in mind, the Interim Accord as well as the 2018 Prespa Agreement which

21 The Security Council in its Res. 817 (1993) [2], after affirming that ‘the applicant fulfils the criteria for membership laid down in Article 4 of the Charter of the United Nations’ [3], has nevertheless added that the applicant state shall be ‘provisionally referred to for all purposes within United Nations as ‘the former Yugoslav Republic of Macedonia’, pending settlement of the difference that has arisen over the name of the state’. The second part of the above sentence implies an obligation on the new UN member to negotiate over its name with a neighbouring state (Greece). Both imposed conditions on Macedonia at the moment of its admission (namely: (i) to accept a provisional name for all purposes within the UN and (ii) to negotiate with Greece over its name), defining its UN Membership status, are in sharp violation of Article 2 (1) (“*sovereign equality of Members*”) of UN Charter. Moreover, the provision in SC Res. 817 (1993) that the applicant should negotiate over its name with another state is in violation with Article 2(7) of the UN Charter prohibiting United Nations to intervene in matter(s) of the domestic jurisdiction of states (‘Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state’). The condition (ii) is also in violation of Article 1(2) of the Charter (the principle of “*equal rights and self-determination of peoples*”). The violations of Articles 1(2), 2(1) and 2(7) of the UN Charter in SC Res.817 (1993) represent serious breaches of the Charter. We note that the UN General Assembly admitted Macedonia to UN membership (GA Res. 47/225 (1993)) [4] on the basis of SC Res.817 (1993) (with the addition conditions therein). The SC Res. 817 (1993), by imposing two additional conditions (obligations) on the applicant state for its admission to UN Membership (after affirming that the applicant meets ‘the criteria for membership laid down in Article 4 of the Charter of the United Nations’) is in severe conflict with the Advisory Opinion of International Court of Justice (ICJ) of May 28, 1948 [5], related to the conditions required for admission of a state to UN membership, and accepted by the General Assembly in its resolution A/RES/197 (III) on December 8, 1948. The opinion of the International Court of Justice was that ‘the conditions stated in paragraph 1 of Article 4 must be regarded not merely as necessary conditions, but also as the conditions which suffice’ (for admission). Furthermore, it stated: ‘Nor it can be argued that the conditions enumerated (in paragraph 1 of Article 4) represent an indispensable minimum, in the sense that political considerations could be superimposed upon them and prevent the admission of an applicant which fulfils them’. See: Janev, 2019, pp. 50–59.

22 Amerikanski profesor po pravo: Dogovorot so Grcija vi e machka vo vrekja [An American Professor of Law: The Agreement with Greece Is a ‘Pig in a Poke’], *Off Net* 28 July 2018 [Online]. Available at: <https://m.off.net.mk/lokalno/razno/dogovorot-so-grcija-vi-e-machka-vo-vrekja> (Accessed: 20 June 2023). See also: Letter to the Editor: Academics Take Issue With Prespa Agreement, *Balkan Insider*, 29 August 2018 [Online]. Available at: <https://www.balkaninsider.com/letter-to-the-editor-academics-take-issue-with-prespa-agreement/> (Accessed: 20 June 2023).

replaced it and saw the country's constitutional name change to the Republic of North Macedonia, were adopted in order to justify a breach of the international law.<sup>23</sup>

The issue concerning Greece's opposition to the name of Macedonia should not have been resolved through mediation by the United Nations because the whole issue was about the right to self-identification. According to international law, the Republic of Macedonia and the Macedonian people have the right to self-identify themselves with any name they choose, having in mind the fact that the country has an equal status in the international legal system as any other state.

However, the UN put the Republic of Macedonia in a position to prove its right to self-identification. In June 1995, the International Court of Justice (ICJ) stated that the right to self-determination had an *erga omnes* meaning, even though this was not taken into consideration when drafting the Interim Accord.<sup>24</sup> With Article 5 of the interim agreement of 1995 (and in contrast with the UN Charter's understanding of the right to self-determination as a *ius cogens* norm that no one can violate), negotiations concerning Macedonia's right to self-determination was heavily obstructed, which was a solid ground for the agreement's annulment. Indeed, from the present perspective, it makes sense to ask whether the Interim Accord really helped in shading light on the problem that Greece had with Macedonia and whether it actually provided legal basis for its overcoming.

In tackling the above dilemma, we should point out that Article 11 of the Interim Accord explicitly foresaw an obligation for Greece not to oppose Macedonia's membership in international organisations under the interim reference (FYRoM), something that was also foreseen in the UN Security Council Resolution 817.

In fact, when receiving an invitation for NATO membership, the Republic of Macedonia respected this provision and agreed, in the procedure for joining NATO, to be referred to as FYRoM, as foreseen in Article 2 of the Resolution 817. However, despite its obligation, during the April 2008 NATO Summit in Bucharest, Greece

23 Available at: <https://www.icj-cij.org/files/case-related/84/084-19950630-JUD-01-00-EN.pdf> (Accessed: 20 June 2023).

24 In April 2008, at the NATO summit in Bucharest, Greece exercised a veto over Macedonia's NATO membership under the provisional reference, which effectively led to the Judgment of the International Court of Justice in favour of Macedonia, proclaiming that Greece has breached the 1995 Interim Accord. Unfortunately, the judgment had no practical implications on solving the name dispute. A year later, the dispute also transferred to the EU stage. The European Commission recommended the start of accession negotiation noting that 'maintaining good neighbourly relations, including a negotiated and mutually acceptable solution to the name issue, under the auspices of the UN, remains essential.' In December 2009, Greece vetoed the start of Macedonia's EU membership negotiations, available at: <https://www.esiweb.org/index.php?lang=en&id=562> (Accessed: 12 June 2023).

directly stood against the reception of the Republic of Macedonia in NATO, and then in 2009, it also stood against the EU accession of the Republic of Macedonia.<sup>25</sup>

Because of the related NATO and EU vetoes, Macedonian authorities launched a procedure before the ICJ in late 2008, demanding the Court to establish whether Greece violated its obligations under the Interim Accord.<sup>26</sup> Even though the Court ruled that Greece had violated the Agreement, it did not accept the plea from the Republic of Macedonia to order the Greek leadership to end this opposing in the future since the Court found that there was no reason to assume that the country whose behaviour was deemed illegal by the ICJ would continue to behave in the same manner, mostly due to the assumption of good faith from that country. Furthermore, the Court found that ‘this obligation remains in force and the judgement of the Court would have continuous applicability with regard to the future implementation of the Interim Agreement (paragraph 51), i.e. it is assumed that having in mind the decision of the Court, Greece will not oppose our Euro-Atlantic integration in the future (paragraph 168).’

However, despite the belief of the Court, Greece have never changed its approach and continues to violate the international law and show disrespect towards the ICJ’s ruling.<sup>27</sup>

25 Available at: <https://www.icj-cij.org/files/case-related/142/142-20111205-JUD-01-00-EN.pdf> (accessed: 13 June 2023). Available at: <http://www.mfa.gov.mk/images/stories/Dokumenti/Summary-ICJ-ENG.pdf> (Accessed: 13 June 2023). Available at: <https://www.loc.gov/law/foreign-news/article/greece-international-court-of-justice-judgment-on-blocking-entry-of-the-former-yugoslav-republic-of-macedonia-into-nato/> (Accessed: 13 June 2023).

26 Available at: <http://umdiaspora.org/2019/01/28/on-the-prespa-agreement-and-beyond-by-professor-dr-gordana-siljanovska-davkova/> (Accessed: 15 June 2023).

27 Former president Kiro Gligorov and former foreign minister Blagoj Handziski told “Bosnia Report” that Macedonia is an island of stability in a dangerous neighbourhood, but that continued peace and development are closely linked to integrating Macedonia into Euro-Atlantic structures, especially the EU. Available at: <https://www.rferl.org/a/1341362.html> (Accessed: 14 June 2023). In its short political history, the Republic of Macedonia has been called “a success story” at least twice. Having avoided violent secession and when it welcomed the first UN preventive mission (UN Preventive Deployment Force, UNPREDEP), the country was commended as “a success story” of preventive diplomacy. It proved difficult to maintain peace in the turbulent region, so the violence spilled over from Kosovo and fanned the flames of existing internal contradictions, leading to an outbreak of conflict in 2001. The short-lived inter-ethnic conflict was terminated with the help of international mediation by the USA and the EU. See: Vankovska, 2018 and [Online]. Available at: [https://www.researchgate.net/publication/334363857\\_A\\_Diplomatic\\_Fairytale\\_or\\_Geopolitics\\_as\\_Usual\\_A\\_Critical\\_Perspective\\_on\\_the\\_Agreement\\_between\\_Athens\\_and\\_Skopje](https://www.researchgate.net/publication/334363857_A_Diplomatic_Fairytale_or_Geopolitics_as_Usual_A_Critical_Perspective_on_the_Agreement_between_Athens_and_Skopje) (Accessed: 2 July 2023).

## 2. The 2001 conflict and the Ohrid Framework Agreement (OFA) – second step of Macedonian constitutional identity change

The first decade following Macedonia's independence was characterized by a rather unique transition, involving a scandalous process of privatization (which created a small but politically powerful network of oligarchs), as well as a range of scandals dominating the country's political scene.

However, different evaluations tended to portray Macedonia an "island of stability,"<sup>28</sup> mostly because it was the only nation-state to emerge from the former Yugoslav federation without some sort of a military conflict and/or intervention.<sup>29</sup>

In early 2001, the notion of an "island of stability" lost its relevance and Macedonia became a new testing ground for experiments of power-sharing. What seems to have remained unanswered is what really happened in Macedonia in 2001.

Was the conflict imported from Kosovo, with Kosovo terrorists having illegally crossed the border in order to destabilize Macedonia? Did the "imported" armed group wish to start "a fight for human rights"? Did Macedonia witness a restricted civic conflict that was supposed to produce a much larger military intervention, or was it an inter-ethnic conflict between the Macedonians and the Albanians? Was it a civil conflict or a conflict that some authors<sup>30</sup> described as a war without state of war being declared?<sup>31</sup>

The 2001 conflict was resolved by the EU-US-sponsored OFA. In the background, negotiators presented the OFA as the only possible resolution to the conflict; as the US chief negotiator James Pardew later observed, the agreement provided Macedonia with an opportunity 'to avoid destructive divisions and to develop as a democracy.'<sup>32</sup>

Indeed, it is undeniable that the OFA substantially altered the country's institutional landscape in political, legislative, and social terms, having established itself

28 Gligorov, 2006.

29 Vankovska, 2007.

30 Ragaru, 2005.

31 Pardew, 2011, pp. 21–23. Other authors have different views for the 2001 conflict in Macedonia. 'The conflict in Macedonia in 2001 could be seen as a further manifestation of the will to greater autonomy, self-rule and even independence by the ethnic Albanian community. What was unique about that particular moment in time was the confluence of forces that encouraged militant armed struggle. The conflict of 2001 can be seen as an extension of the process of violent breakup of Yugoslavia that began with the brief conflict between the Slovenian National Guard and the Yugoslav Army in 1990. The fighting that eventually broke out in Croatia, Bosnia and Kosovo in the ten years that followed finally spilled over into Macedonia in 2001. The exact moment of the outbreak of violent armed conflict depended upon a number of factors.' For more details see: available at: [http://jsis.washington.edu/ellison//file/REECAS%20NW%202012/Seraphinoff\\_REECASNW.pdf](http://jsis.washington.edu/ellison//file/REECAS%20NW%202012/Seraphinoff_REECASNW.pdf) (Accessed: 10 June 2023).

32 Available at: <https://www.idea.int/sites/default/files/publications/democracy-conflict-and-human-security-handbook-volume-1.pdf> (Accessed: 12 June 2023).

as a key political and legal filter in decision-making processes. Its glorification by both domestic and international actors made Macedonia a testing ground, where members of ethnic communities began to enjoy a great portion of their rights based on statistical variables, thus making Macedonia a rare example in constitutional theory where collective rights were recognized on the grounds of a statistical rather than civil basis.<sup>33</sup>

Moreover, the creation and consequent elevation of the status of the OFA has developed hand in hand with Macedonia's European integration. During the 2001 crisis a lot of attention was suddenly paid to Macedonia within the context of the EU foreign policy agenda, and by the end to the conflict, Skopje had officially launched its European agenda through the implementation of the Stabilization and Association Agreement with the EU.<sup>34</sup>

In the view of the Brussels administration, Macedonia was a multicultural and multi-ethnic society whose members had overcome their prior religious and ethnic divisions, so that they could cooperate and work together for a common good. Here, it is likely that the EU used the US experience with the 1995 Dayton Peace Accords, which ended the war in Bosnia and Herzegovina, and having seen the previous mistakes, decided to adopt another approach with the Ohrid Framework Agreement. More precisely, while the Dayton agreement was about separation of the three ethnic communities (Serbs, Croats and Bosnians) territorially and politically, turning Bosnia and Herzegovina into a federal government, the idea behind the OFA was to preserve the unitary character of Macedonia, with the intention of achieving 'inter-ethnic peace by encouraging the two main ethnic communities (the Macedonian and Albanian) to resolve their own problems through a process of integration and institutional bargaining and compromise, both at local and state level.'<sup>35</sup>

However, the main issue arising from practical application of the OFA relates to whether its purpose has truly fitted within the milieu of the principle of rule of law, an essential aspect and criteria for Macedonia's European integration.

Accordingly, the question to ask is whether the concept of rule of law sometimes takes a backseat in the application of the OFA and whether the OFA negates the so-called Europeanised values that are core to the ideals of the EU. As such, the OFA has several downsides, the most important being about the model of power-sharing it has brought along.<sup>36</sup>

In fact, there is no similar model in any other institutional design for multi-ethnic states,<sup>37</sup> which in return allows for different and contradictory interpretations of its provisions.

33 See: EU Enlargement: The Former Yugoslav Republic of Macedonia. Available at: [http://ec.europa.eu/enlargement/candidatecountries/the\\_former\\_yugoslav\\_republic\\_of\\_macedonia/relation/index\\_en.htm](http://ec.europa.eu/enlargement/candidatecountries/the_former_yugoslav_republic_of_macedonia/relation/index_en.htm) (Accessed: 10 June 2023).

34 Vankovska, 2007.

35 Siljanovska Davkova and Nikolovska, 2001; Binningsbø, 2013, p. 16; Daskalovski, 2009.

36 Pettifer, 2001, p. 143.

37 Lijphart, 1977.

More to the point, following the implementation of the OFA, the Macedonian system has resembled a consociational power-sharing model, although it does not fully correspond to Lijphart's consociational democracy model.<sup>38</sup>

The OFA did not manage to offer an adequate response to the 2001 conflict, but that increased the tensions, with the majority believing that inter-ethnic relations have become worse. Such an impression is largely due to the ethnicisation aspect, meaning the new power-sharing and quota distribution system, which make it unclear whether the OFA transformed the country into a bi-national state rather than a multi-ethnic society.<sup>39</sup>

While the OFA certainly prevented conflict escalation or conflict re-emergence and managed to resolve some old issues (such as the provision of higher education in Albanian), it nevertheless failed to fundamentally transform the interethnic relations in Macedonia. The changes put forward by the OFA are quite asymmetrical and many Macedonians describe the agreement as a loss for the Macedonian side.

The agreement was widely perceived as a zero-sum game, where one community's gain inevitably signifies a loss for another. In essence, many Macedonians view the OFA as a platform in order to accommodate Albanians in the state, whereas many Albanians consider the agreement as a foundation for building future relations with the Macedonians and with other communities in the country.

One of the main challenges regards the OFA's implementation (the model of inter-ethnic relations) which has been at stake due to the disproportionate political power-sharing model. Another challenge is about the so-called bargaining power and in this context the implementation of the OFA has been entrusted to political actors who often ignore institutions so they can carry out their plans.

38 Today there is almost nothing left of the idea of the "civic approach" articulated in the document. Multi-ethnicity has been sacrificed and replaced by binationality, while the power-sharing arrangement makes democracy look like a pipedream (Vankovska, 2006). Up to now all polls show that the Albanian community is much more in favour of OFA than any other community in Macedonia. This is partly a result of an "albanianisation" process that initially was meant to be in favour of all the citizens of Macedonia. Here below, are some main criticisms that one could find in research papers, media articles and blog posts, and are related to the implementation of Ohrid framework agreement: (a) The implementation of the OFA has damaged the other ethnic minorities, meaning the minorities that are below the "magic number" of 20%. (This is the principle of double majority voting suggested and accepted at the Ohrid Framework Agreement OFA. It is in fact a right to veto, or else known as the *Badinter principle*, basically meaning that laws with a significant impact on ethnic minority communities may not be adopted by a simple majority but require a "double" majority, including a majority among political representatives of the minority). (b) The implementation of the OFA is exclusively an Albanian-oriented process. (c) The process of the implementation of the OFA is quantity-oriented and not quality-oriented. (d) The implementation of the OFA is mostly focused on ensuring equitable representation of Albanians, by that the Secretariat for Implementation of the Framework Agreement (SIOFA) has turned in Agency for Employment of Albanians. (e) The implementation of OFA has forgotten its main concept of civic approach and multiculturalism, and they are replaced by the concept of binationality. (f) The OFA turned out to be all about numbers and percentages. For more details, see: Maliqi and Hani, 2011.

39 Karakamisheva-Jovanovska, 2014; and available at: [http://jtl.columbia.edu/wp-content/uploads/sites/4/2017/05/Ruffer\\_Macedonia-Framework-Agreement-1.pdf](http://jtl.columbia.edu/wp-content/uploads/sites/4/2017/05/Ruffer_Macedonia-Framework-Agreement-1.pdf) (Accessed: 20 June 2023).

A third challenge is that the OFA has not come up with any new instruments that would elevate community interests above the interests of political parties. Because of the supremacy of political parties, every inter-ethnic debate becomes a political issue, making discussions of community interests without party involvement impossible. Moreover, ethnic representation in institutions has often implied party representation, resulting in a fair amount of intra-ethnic discrimination.<sup>40</sup>

In addition to challenges arising from the OFA's implementation, the agreement has also created a knotty link between demographics and language usage, by linking the use of language to 20 percent of the population at the state and local level. While such a link is not innately problematic, it can result in an exceptionally constricted interpretation of language rights capable of causing new tensions; for example, if language rights are withdrawn in a municipality where a community narrowly fails to reach the 20 percent threshold in a census.

The agreement further politicised the population census which had already been highly controversial back in the 1990s and, as some would argue, led to census failure in 2011. Yet, possibly the largest problem is that the OFA is often viewed as a full-fledged solution to interethnic problems in Macedonia. In reality, the agreement only addresses the basic legal and institutional issues; it does not provide for tools to build intercommunal trust and support for the institutions the agreement itself created or transformed.

Nonetheless, the OFA is still perceived as a founding stone in the Macedonian legal system, where it consistently overshadows constitutional and legal norms. This comes as a result of the fact that not only domestic actors, but also the international community continually talk about the implementation of the OFA instead of implementation of the constitution and the rule of law.

However, the OFA is not a legal act; it is a political act which was never ratified by the Macedonian parliament, meaning it is neither part of the legal system nor it can have greater political or legal power than the constitution.

The OFA has led Macedonia to being defined as a state of communities rather than a state of its citizens. If this model is seen as vital and irreplaceable for the survival of the country, then it is necessary to conclude that the country can only prevail on a significantly less than democratic foundation.

In this sense, the OFA has proven to be an excessively flexible compromise agreement that has gone through many “creative” interpretations and readings. Careful observers have no doubt that it is only a transitional solution.

Furthermore, the policy-making process has become non-transparent; it is hard to identify the bearers of accountability for any action or decision. Power remains concentrated in the party leadership, which enables cronyism, corruption, and centralism within the political parties.<sup>41</sup> The parties themselves cease to be mediators

40 Siljanovska-Davkova, 2011, p. 1.

41 Available at: <http://data.consilium.europa.eu/doc/document/ST-15914-2005-REV-1/en/pdf> (Accessed: 19 June 2023).

between the citizens and the power elite, but rather turn into a major mechanism for the articulation of (ethnic, communal) group interests.

### 3. Continuity of the constitutional identity crisis

In 2005, the EU officially approved the candidate status of the Republic of Macedonia under its temporary reference<sup>42</sup>, after the government agreed to sign and implement the disgraceful OFA, and later also the new Law on territorial reorganization, a controversial law which introduced territorial division of the country based on ethnic lines.

Despite the opposition from the citizens who clearly said “no” to the new territorial division on local referendums, the Government still adopted the new law, thus introducing new ethnic division in the local communities.<sup>43</sup>

By merging the rural with the urban communities, this law created a completely new ethnic reality in bigger towns, i.e., made them bilingual (Macedonian and Albanian), which, instead of a true European local government decentralisation, which never happened, brought to the country a fortified ethnic composition in most of its western and northern area.<sup>44</sup>

Instead of the state and the government to be interested in Macedonia’s Europeanisation by introducing European standards that will improve the local government,<sup>45</sup> they kept on putting the focus on the ethnic divisions, thus striving to make one ethnic group (the Albanians) equal with the majority and Macedonians, at the expense of the smaller ethnic groups (Turks, Roma, Serbs, Vlach, etc.), but also at the expense of the majority – the Macedonians. The alleged “fight for more human rights” promoted with the 2001 conflict created tectonic shifts within the country’s system and brought along discrimination against the rights of the other ethnic communities and the majority community, giving benefits only to the Albanian community. Even though Macedonia respected and applied all international conventions for minority rights protection, and even though Macedonia is probably the country with the highest standard of minority rights protection in general, still, a step further was made exclusively for the Albanian community so that their ethnic appetites are satisfied.

The Constitution suffered changes with the introduction of the consensual model of democracy despite the fact that the country does not meet the minimum criteria

42 Ragaru, 2005, pp. 163–204.

43 Gjorgje, 2000.

44 Available at: <https://rm.coe.int/bpp-best-practice-programme-for-local-governments/1680746d97> (Accessed: 10 September 2022).

45 Lijphart, 1968; Lijphart, 1977; Lijphart, 1984; Lijphart, 1999.

as foreseen in the Liphart’s theory for its implementation in our political system (at least three ethnic communities present in the country, none of which is majority).<sup>46</sup>

Macedonia accepted changes to the Constitution aimed at “equitable and adequate representation”<sup>47</sup> of non-majority communities, as well as granting rights based on the number of population of the community, conditions that are contrary with the European standards for a system of merits and professional and educational qualifications, first of all during employment. A new provision was incorporated in the Macedonian Constitution that granted rights based on the percentage of the total population in the country (at least 20%).

This discrimination against the smaller communities vis-à-vis the Albanian community received its confirmation in 2018, when under the pressure from the Albanian political structures, the controversial Law on the Use of Languages was adopted (i.e., the Law on the Use of the Albanian language).<sup>48</sup>

This law was adopted in a highly problematic procedure and without the signature of the President of the State, which is compulsory before any law is published in the “Official Gazette”.<sup>49</sup>

The main factor in the ongoing political crisis in the country was the permanent partisanship of the system, present since the day the country gained independence. The parties were and remained the main factor during employment in the state and public administration. The parties and the employment based on partisan membership, and not on professional qualifications damaged the system and made it

46 Macedonian Constitution, Amendment VI, 1. Equitable representation of persons belonging to all communities in public bodies at all levels and in other areas of public life, available at: [https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns\\_article-constitution-of-the-republic-of-north-macedonia.nspix](https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspix) (Accessed: 11 July 2023).

47 Available at: <https://balkaninsight.com/2018/01/12/opposition-mounts-against-macedonia-s-language-law-01-12-2018/> (Accessed: 2 July 2023).

48 The Law on the Use of Languages is unconstitutional as a whole. It will mean the introduction of a complete bilingualism on the overall territory of the Republic of Macedonia. The law will mean bilingualism in every state authority and body on a central and local level, public institutions and enterprises, natural persons, social and legal entities. The purpose of the Law on the Use of Languages is to bypass the changing of the Constitution of the Republic of Macedonia by which bilingualism on the whole territory of the country would become official, which is being done with the draft law. The Law on the Use of Languages cannot be given a place above the Constitution as the highest legal act in the country. There is no law that can be above the Constitution. Furthermore, bilingualism on the whole territory of the Republic of Macedonia is not a part of the OFA. The OFA is put into the constitutional amendments (from Amendment IV to Amendment XVIII proclaimed by a Decision of the Assembly of the Republic of Macedonia from the 16th of November 200 by which the legislative frame of that agreement is done and finished. Every further reference to the OFA, which is already *ad acta* politically and is not a legal document, does not lead to respecting the law and the principles of the rule of law as the fundamental value of the constitutional order of the Republic of Macedonia. Available at: <http://library.fes.de/pdf-files/bueros/skopje/15211.pdf> (Accessed: 3 September 2022). Available at: <https://www.refworld.org/pdfile/3de774134.pdf> (Accessed: 2 September 2022). Available at: <https://www.ganintegrity.com/portal/country-profiles/macedonia/> (Accessed: 30 August 2022).

49 Siljanovska-Davkova, 2005, pp. 26–62.

dependant on the decisions of the parties and their leadership, quite often on the decisions of the leaders themselves. Macedonia rightfully gained the epithet “captured state”,<sup>50</sup> captured by a few political parties who have been coming and going from power in the past decades.

The partitioning and nepotism in the system, the presence of corruption and organised crime within the party leadership continue to be the main characteristics of the Macedonian political system.<sup>51</sup>

The criminal privatisation of the state capital in the nineties, together with the inefficient fight against organised crime, corrupted judiciary and public prosecution, dependence of the police from the politics are only some of the problems that still exist within the Macedonian system.<sup>52</sup>

The parties simply cannot find the strength to democratise themselves. They were and continue to be a Sultan parties which simply refuse to undergo deep, structural and inner-democratic reforms.<sup>53</sup>

The most significant political crisis in the country took place with the major case of wiretapped conversations of current politicians and other public figures, an affair that was revealed by the former opposition led by today’s prime minister.<sup>54</sup> Also, before the 2001 conflict, Macedonia faced another wiretapping affair code-named “the Big ear” which was revealed in the Parliament, however, it had much smaller effects than the new wiretapping affair.

By presenting telephone conversations to the public, the former opposition, contrary to the laws in the country, and with direct help from the foreign factor, forced the former prime minister to resign, which led to early elections in the country.

The wiretapped conversations, parallel with the pressure from the international community, forced the former government to make numerous unconstitutional compromises and to agree with the signing of the problematic Przino 1 and Przino 2<sup>55</sup> agreements, i.e., with the introduction of a special prosecutor’s body (the Special Public Prosecutor’s Office) that will pursue criminal acts originating from the wiretapped conversations, introduction of additional ministers in the “Government for

50 Available at: <https://www.nytimes.com/2015/06/22/world/europe/macedonia-government-is-blamed-for-wiretapping-scandal.html> (Accessed: 10 June 2023).

51 Available at: <https://www.osce.org/odihr/elections/fyrom/235701?download=true> (Accessed: 10 June 2023).

52 Available at: <https://www.aljazeera.com/news/2016/06/macedonia-protest-demonstrators-160604153228127.html> (Accessed: 10 July 2023).

53 Available at: <https://balkaninsight.com/2015/07/27/macedonia-parties-discuss-implementing-crisis-deal/> (Accessed: 20 June 2023).

54 Available at: <https://balkaninsight.com/2017/03/01/macedonian-president-rejects-awarding-pm-mandate-to-opposition-leader-03-01-2017/> (Accessed: 18 June 2023). Available at: <https://www.rferl.org/a/macedonia-democrats-opposition-zaev-prime-minister/28332662.html> (Accessed: 18 June 2023).

55 Available at: <https://www.bbc.com/news/av/world-europe-36440895/protesters-in-macedonia-stage-colourful-revolution> (Accessed: 10 June 2023).

conducting elections,” also known as the Przino Government, it also agreed with the installation of ad-hoc bodies for monitoring (censoring) of the “hostile” media.

The former opposition and today’s government also invented phantoms in the Voters’ List, they suggested impossible census for gaining a parliamentary mandate by Macedonian citizens living abroad, they committed numerous electoral frauds, bribery, paralysed the judiciary and the public prosecution, all in order to get the government.

These events took place parallel with the protests of the so-called Colourful Revolution,<sup>56</sup> whose activists threw paint on the façades of the institutions of the system and on several memorials, thus expressing their dissatisfaction with the politics of the former government. The bargaining on the system reforms at leaders’ and inter-party meetings outside the state institutions remained to be a burden for the state system, which even further intensified the partisan supremacy over the state institutions.<sup>57</sup>

At the 2016 early parliamentary elections, despite the fact that the former government won the majority of the seats in parliament, after the leader of the winning party returned the mandate to the President of the State for failing to form a government, the opposition, helped by the DUI party from the Albanian bloc, managed to do that and to win the central government.<sup>58</sup>

The events that followed intensified the legal and political crisis in the country. The citizens, revolted by the “Colourful Revolution” protests,<sup>59</sup> and additionally by the behaviour of the then opposition which announced that they would accept the controversial Tirana platform,<sup>60</sup> i.e., the introduction of the Albanian language as an official language on the entire territory of the country, gathered for a 70 days-long protest in the streets of Skopje and several major towns throughout Macedonia under the motto “For common Macedonia.” Unfortunately, the peaceful protests were misused by the former opposition in their interest and on 27 April 2017 committed an unconstitutional and illegal “election” of the President of the Assembly, contrary to the Assembly Rulebook.<sup>61</sup>

56 Available at: <https://europeanwesternbalkans.com/2017/04/07/ivanov-essence-of-tirana-platform-is-to-change-constitutional-order/> (Accessed: 18 June 2023).

57 Karakamisheva-Jovanovska, 2018.

58 Available at: <https://www.rferl.org/a/north-macedonia-sentences-parliament-invasion/29824558.html> (Accessed: 1 July 2023).

59 Available at: <https://vlada.mk/sites/default/files/dokumenti/spogodba-en.pdf> (Accessed: 10 July 2023).

60 The inherent right of a state to have a name can be derived from the necessity that a juridical person must have a *legal identity*. In absence of such identity, the juridical person, such as a state, could to a large extent lose its capacity to interact with other juridical persons (e.g., conclude agreements, etc.) and independently enter into and conduct its external relations. The name of a state is, thus, an essential element of its juridical personality and of its statehood. See: Janev, 2019, pp. 50–59.

61 Available at: <http://www.ekathimerini.com/resources/article-files/aggliko-1.pdf> (Accessed: 1 July 2023); Sarlas, 2018.

Revolted by the violations of the Constitution and the Rulebook, some of the citizens who protested before the Parliament broke into the Parliament building because of what they called parliamentary lawlessness. Certain individuals misused this situation and tried to physically deal with the MPs who elected the parliament's speaker, and who did that without the sufficient number of votes, without any minutes, literally on the parliament's stairway. Most of these individuals were later sentenced for terrorism and received draconic sentences of 15 years in prison.<sup>62</sup>

After the illegal election of the president of the Assembly, the procedure for election of the new government took place and soon after that the process of changing the state name.

The change of the name "Republic of Macedonia" to the "Republic of North Macedonia" with the new amendments that foresee both internal and international use, and which came as an ultimatum from the final agreement, are not only contrary to international and national legislation, but also contrary to the good legal practice. There is no other case in Europe or in the world for a neighbouring country or an international organisation to order to another sovereign entity, to another state to change its historic and constitutional name to join certain international organisation.

Additionally, this change confronts with the rule of law as a single most important principle in the work of the international organisations, as well as of the democratic countries. The suggested change of our historic name also violates our right to self-determination as Macedonians, as well as our national dignity and integrity. In the international law, as well as in the European and in the Macedonian law, it is noted that all disputes among the states that concern violation of the obligations for mutual trust and respect, will be resolved before the court or arbitrarily.

Therefore, it is logical to ask, who in the country, why, and based on which international law, allowed the dispute that Greece had with our country to remain trapped in the hands of the mediator Nimitz, i.e., on a level of some biased mediation? Why no judicial dispute was initiated, besides the dispute over the Interim accord?

62 See: The Practitioner's Guide to International Law, 2<sup>nd</sup> edition, International Law Committee, The Law Society of New South Wales (New South Wales Young Lawyers International Law Committee), available at: <https://www.lawsociety.com.au/sites/default/files/2018-05/NSWYL%20-%20The%20Practitioner%27s%20Guide%20to%20International%20Law%2C%20Second%20Edition-ilovepdf-compressed.pdf> (Accessed: 20 June 2023).

#### 4. The Prespa Agreement concluded between Greece and the “Second Party”<sup>63</sup>

The presence of *mala fides*, bad intention in the process of concluding international agreement according to the international law always entails the nullification of that agreement. In the legal systems of the European countries, the annulment and the cancellation of any legal act or legal effect is envisaged if that act or action is committed to “bad intention/*mala fides*”. The international documents and laws of the EU and of the UN also provide for a sanction in the event that certain bilateral or international problem are tried to be solved with bad intentions, i.e., through the direct violation of the basic rules and principles of the international law and of the *jus cogens* norms.<sup>64</sup>

Starting from this very important legalistic point of view, Macedonians should seek invalidity of the already signed bilateral agreement, because the content of the agreement is in direct conflict with the *jus cogens* norms that have absolute character and that must not be injured by anyone, especially not by UN and EU representatives.

The annulment of this bilateral agreement should be based by refereeing Vienna Convention on the Law of Treaties, specifically Article 44, paragraph 2 which reads:

A ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty recognized in the present Convention may be invoked only with respect to the whole treaty except as provided in the following paragraphs or in article.<sup>60</sup>

Under Article 53 of the Vienna Convention, all agreements or treaties that are contrary to the imperative norms of general international law (*jus cogens*) are null and void. If the agreement at the time of its conclusion is contrary to the imperative norms of general international law, according to the Vienna convention, it could be null and void. *Jus cogens* norms are imperative norms that are accepted and recognized by the international community. These are the norms that can’t be changed with new treaties norms.

63 In 1953, Sir Hersch Lauterpacht, the ILC’s Special Rapporteur, said: ‘A treaty, or any of its provisions, is void if its performance involves an act which is illegal under international law and if it is declared so to be by the International Court of Justice.’ According to Lauterpacht, there were certain peremptory norms, otherwise known as *jus cogens* norms, that reflected ‘overriding principles of international law’ and: ‘[M]ay be regarded as constituting principles of international public policy (...) expressive of rules of international morality so cogent that an international tribunal would consider them as forming part of those principles of law generally recognized by civilized nations which the International Court of Justice is bound to apply.’ See: Sue, 2017.

64 Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>. (Accessed: 20 June 2023).

Referred to in Article 30, paragraph 1 of Vienna Convention, it could be remarked that in defining nullity for violating the imperative norm of the international law, we are taken into consideration Article 103 of the UN Charter:<sup>65</sup> ‘In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.’

If there is contradiction between the obligations of two or more States, the United Nations must act in accordance with its Charter on the one hand, and in accordance with the obligations arising under any other international agreement only if they are consistent with the Charter of the United Nations on the other hand.

In our case, the bilateral agreement is contrary to the principles and objectives stipulated in the UN Charter. Article 2 of the UN Charter<sup>66</sup> provides for that the organization and its members, in pursuit of the purposes stated in Article 1, shall act in accordance with the following principles: (1) The Organization is based on the principle of the sovereign equality of all its members. (2) All members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

The important element is that in the UN, the obligations are set out in the Charter prevail. International disputes by peaceful means could be solved in such a manner that international peace and security, and justice, are not endangered. ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.’

In particular, the bilateral agreement concluded between Greece, and the “Second Party” is contrary to the principle of sovereign equality of all of its States (Article 2, paragraph 1).

The legal equality of the “Second Party” (meaning: the Republic of Macedonia) as sovereign state, a country equal to Greece within the UN is not protected. This bilateral agreement breach Article 2, item 7 of the UN Charter:<sup>67</sup>

Nothing contained in the present Charter shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.

The bilateral Agreement allows Greece to interfere directly in the internal, sovereign affairs of Macedonia.

65 Available at: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> (Accessed: 20 June 2023).

66 Available at: <http://legal.un.org/repertory/art2.shtml> (Accessed: 10 July 2023).

67 Available at: <https://www.un.org/en/sections/un-charter/un-charter-full-text/> (Accessed: 20 June 2023).

“Second Party” as Macedonia is referred to in the Agreement accepts many obligations, to change all its history, constitutional name, national identity, etc. – obligations that are part of strict internal jurisdiction of the Republic of Macedonia. With this, Greece flagrantly violates the sovereignty of the Republic of Macedonia and internal constitutional legal order of the Republic of Macedonia. This Agreement also violates Article 4, paragraph 1 of the Charter referring to the Macedonian admissibility in the UN having in mind that specific conditions for our membership were applied as a unique precedent.

The Agreement opposes the OSCE Helsinki Final Act<sup>68</sup> which commits all countries to respecting the sovereign equality and individuality of the states, as well as the rights arising from the sovereignty, including the right of each state to legal equality, territorial integrity, and political independence.

The Act also establishes the obligation of all countries to respect the right of other countries to make their own choices and to develop their own political, social, economic, and cultural systems, as well as the right to make and set their own laws and regulations. The agreement does not respect the right of the Republic of Macedonia to make its own laws and Constitution independently, nor to develop its political, cultural, social, and economic system independently.

This agreement is of a definitive nature, it is radically asymmetrical in terms of obligations, as it creates a number of obligations only for the Macedonians, i.e., to create new Macedonian history, new identity, new features and new present and future of the Macedonian people. The agreement also calls for the protection of the principles and values of the Council of Europe – respect for human rights, development of democracy and dignity – but its content means flagrant harm and the abolition of the fundamental rights of Macedonians, their fundamental right to dignity, to their own cultural and national identity in accordance with the right to self-determination and with international law.

From all of the above it could be concluded that the only way out of this drastic illegal situation is to urgently demand that this agreement be declared null and void. The flagrant violation of the international law and the national Constitution is contrary to the imperative *jus cogens* norms.

68 Available at: <https://www.osce.org/helsinki-final-act?download=true> (Accessed: 20 June 2023).

## **5. Bulgarian veto for Macedonian EU accession talks – Whether the Balkans return to the route set by the Bucharest Agreement from 1913?**

The Bulgarian “state-yes, nation-no” formula was present from the very beginning of Macedonian independence. In these initial years of transition, several assertions regarding Macedonians seemed to be largely shared and characterized by the general understanding on the Macedonian question in Bulgaria which is expressed in the following statement:

Today’s Macedonians are former Bulgarians who had to live separately for a long time because of turbulent historic developments and thus have forgotten their “Bulgarian-ness.” The so-called Macedonian language is simply a dialect of the Bulgarian language. Macedonian identity, consequently, is “artificial” and does not really exist. There is, therefore, no historical and ethnic Macedonian nation.<sup>69</sup>

Since the beginning of the transition, Bulgarian nationalism regarding Macedonia has established itself in “table-folk nationalism” who denied the existence of an independent Macedonian nation. In 2017, Macedonia and Bulgaria signed so-called Friendship Treaty immediately after the Social Democrats came to power. Soon after signing the Treaty, the EU document setting out the EU’s conclusions on starting negotiations with Skopje has been published, after the fulfilment of a long list of Bulgaria’s demands together with the non-recognition of the Macedonian language.<sup>70</sup>

After the decades-long drama with Greece over the name issue, now Bulgaria has set its mind to change the Macedonian route to Brussels via Sofia. Bulgaria wants to change the Macedonian identity, abusing the EU accession process and imposing its own distorted version of history. This version infringes not only Macedonian history, but also the history of the EU, including its anti-fascist roots. Unfortunately, the “Macedonian question” is as relevant again as it was in 1913.

In 21<sup>st</sup> century in the heart of Europe, two EU member states abuse their positions in the Union, publicly denying Macedonia’s national and constitutional identity,

69 Available at: <http://www.newbalkanpolitics.org.mk/item/Bulgarian-%E2%80%98Macedonian%E2%80%99-Nationalism-in-the-Post-1989-Decade> (Accessed: 20 June 2023).

70 Available at: <https://www.intellinews.com/balkan-blog-is-bulgaria-the-next-serious-hurdle-on-north-macedonia-s-eu-path-182814/> (Accessed: 10 July 2023). The treaty seems to be a Trojan horse for Macedonians as many hidden demands from the Bulgarian side may emerge from it. Under the friendship treaty, Skopje and Sofia formed a mixed commission on historical and educational issues, whose work was suspended by the Macedonian party in December 2019 due to the insurmountable disagreements about national hero Goce Delcev, who fought for Macedonia’s independence during the Ottoman Empire – for Macedonians he was a Macedonian and for Bulgarians he was a Bulgarian.

making the acceptance of such denial from the Macedonian people as a condition for the start of the negotiations with the EU.

Examining the negotiation and membership criteria, it's clear that there are no EU criteria related to changes of the national identity, historical and linguistic features of a nation and of a country. But Macedonia had an obligation to change its constitutional name, under the Greek political pressure, and to make corrections in the Macedonian national identity according to Bulgaria's requirements should the country want to continue its European accession process.

The official statements from the Bulgarian politicians that Macedonia must accept changes in its national history and must accept that the Macedonian language is a dialect of Bulgarian language seriously affect the region and the EU, injecting poison by nationalism and conflicts.<sup>71</sup> Imagine France setting conditions for the Netherlands that the modern Dutch language comes from French, or that Norwegian language was created based on Swedish dialectal speeches. It is impossible to imagine such a thing, because it is unthinkable!

And honestly, we should not worry about the behaviour and statements of the officials in Sofia. They are so obsessed with the Macedonian national question and what it means for them as a state and society, we see that governments are falling because of that “issue”, just like in Greece at the time in the early nineties.

We should be more concerned about the indolent and hypocritical attitude of the European leaders, who, violating all European rules and norms and international law, repeatedly impose anti-civilization conditions on us on our road to Europe. Without pathos and subjectivity, in these three decades of its independence, Macedonia has become a training ground for the violation of international law.

## 6. Conclusion

Since it gained independence, Macedonia has gone through a number of political, legal and economic crises, and its people went suffered repeatedly, being denied of their national and constitutional identity, name and history. What can be concluded for certain is that all the above-mentioned and explained processes transformed Macedonia into a hostage of the numerous unreasonable policies led by the leaders of the political parties, a hostage to their obsession with foreign ambassadors and the obedience towards them.

71 Bulgaria has sent a memorandum to the other 26 countries insisting that EU documents need to acknowledge that ‘the official language used in today’s Republic of North Macedonia can be only considered as a written regional norm of the Bulgarian language.’ Available at: <https://www.politico.eu/article/bulgaria-north-macedonia-eu-accession-talks-language-dispute/> (Accessed: 10 July 2023).

During the past years, the national parties failed to develop authentic policies in favour of the Macedonian people and other ethnic communities living in Macedonia; instead, their political activities remained fully dependant on the instructions they received from the different centres of power.

The previous national dependence and affiliation with Belgrade as a centre of all developments within the Yugoslav federation was transformed into national obedience and political dependence towards Washington and Brussels. Parties and politicians in Macedonia failed to profile their short-term and long-term policies based on the interests and needs of the Macedonian citizens, which is the first and probably the most negative characteristic of the national system. For this general political and economic dependence and obedience, I do not want to blame the foreign factor but only the national parties, who could not or did not want to become mature political entities who are able to take responsibility for the creation and implementation of the national policies.

In a situation of incompetent and politically powerless political parties, and in the context of an ethnically divided society, the international factor noticed the weaknesses and became a key factor in shaping the politics in Macedonia.

The second characteristic of the Macedonian political system is its openness to different political experiments, most often imposed unconditionally from outside. The model of consensual democracy which came from the Ohrid Framework Agreement, as it was elaborated before, did not correspond with the political and ethnic reality of the country, because in conditions of an apparent majority of 64,17% Macedonians and several minorities, of whom the Albanian minority is the largest, there are not even theoretical assumptions to apply this model of democracy and to make it functional or efficient.

Additionally, the consensual model of democracy was opposed to replace the majority model of democracy after the country had lost in the conflict that was opposed from outside, which was practically seen as another defeat for the majority in the country. If we add to this the scandalous law on the languages that was adopted in 2018, and which gave to the Albanian language the status of second official language on the entire territory of the country contrary to the Constitution, then it is quite safe to say that Macedonia is not moving towards integration, but towards ethnic disintegration and possibly – federalisation.

The third, and possibly most painful characteristic of the Macedonian politics is that practically all problems in the past and today were solved without any respect for international and national law. This was particularly visible when Greece was allowed to dispute our constitutional name and our Macedonian identity. Neighbouring Bulgaria also denies Macedonia's identity and national history. But, instead of resolving all the open issues with respect to international law, Macedonia and the international community allowed these issues to be "solved" by controversial mediations contrary to international law, and with ultimatums that had nothing to do with agreements.

In this chaotic mediation process, the international community plays the leading role because it agreed that the problem Greece had with Macedonia's constitutional name and Bulgaria had with Macedonia's national identity should be “solved” in a highly disputable procedural and material constellation of relations and allowed the disputes to be resolved by the foreign ministers of the two countries, outside their constitutional and legal mandate.

The fourth characteristic is the absence of the rule of the law in the country and the lack of legal security as perceived by the citizens. Macedonia is a country without a rule of law, Macedonia is a country that belongs to the political elite and to the political mafia. In many cases it became obvious that the politics has a higher status than the law and that it determines the judicial decisions and the work of the prosecutors. It is a fact that the judiciary and the prosecution in the country are far from being independent and politically impartial and that in most of the cases, the politics misuses judges and prosecutors so that they make decisions in the interest of the politicians and their business interests. Macedonia is a country with political prisoners, people sentenced for being terrorists although they have not committed any act of terrorism.

Macedonia is far from being a legal state and a state in which the Constitution and the laws are above all, especially above the politicians. The political pressure over the MPs in the Parliament in 2018 led to the non-democratic changes in the Constitution. The wiretapped conversations that contained conversations of MPs and current politicians, although recorded illegally, which means they could not have been used in the court, were used as a tool for direct pressure on the MPs to support constitutional changes. With this political pressure and with the dismissal of charges against some of the MPs, the constitutional changes came to realisation, changing the constitutional name, the Macedonian identity, everything that was Macedonian, contrary to the will of the citizens that was expressed in the referendums in 1991 and in 2018.

The fifth characteristic of the Macedonian system is its economic impotence. With the criminal privatisation of the social capital in the nineties of the last century and with the ongoing growth of the national debt through credits from foreign banks, Macedonia has become an economically unsustainable country, in other words, a country facing bankruptcy. The politics of attracting foreign investments and intensifying infrastructure projects that were emphasised by the previous government were completely annulled by the current government that did not demonstrate any knowledge in the development of macro- and microeconomic policies. Apart from the huge foreign debt, blooming organised crime, the recent major scandal of racketeering, the bribery and regime manners, the new government failed to demonstrate anything else. The Macedonian economy is facing a total collapse.

The political and economic suffering of Macedonians must come to an end. For three decades, the country has suffered from misguided policies characterised by complete dependence from the foreign centres of power, without any autonomous idea or courage to demonstrate vision for improving the quality of life in the country.

Macedonia is a cradle of false elitism, incompetent people in high political positions, some of them misusing their political positions to advance their private or family businesses. National and foreign resources are misused to advance the personal wealth of the politicians, EU IPA funds included, the state suffers from incompetent administration, from people who did not get into their positions on the basis of merit, but due to partisan employment, nepotism and corruption. The country and its people have become victims of the politicians and their arrogance, supremacy and corruptive behaviour.

Macedonia suffers from captured institutions.

Also, Macedonia has a huge number of examples where direct violations against international law went unnoticed by the international community (the problem that Greece had with our constitutional name, the controversial law on languages, the Tirana platform, the Prespa Agreement, and the Treaty with Bulgaria as a Trojan horse).

Macedonia was and still is an experimental ground for the West!

Who wins, how much and how?

This is the question that will have to be answered by the current generations if they seek for a road sign to create a new, authentic Macedonian strategy for the country with preserved national and constitutional identity.

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