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A Diplomatic Fairytale or Geopolitics as Usual: A Critical Perspective on the Agreement between Athens and Skopje

Background to the Name Dispute and Its Implications

The so-called name dispute between Greece and the Republic of Macedonia has had a long and unique trajectory. Since the name dispute is not the focal point of this analysis, we shall only make a brief overview of its essential elements.¹ Paradoxically, the dispute was “born” – i.e. politically and legally outlined – rather than resolved by the United Nations (UN) Security Council in the early 1990s. Security concerns for the Balkan region, although highly legitimate at the time, have in the meantime served as a ‘fig leaf’ to conceal the power politics in the region and the Republic of Macedonia. In 2018, when the landscape of the territory of former Yugoslavia is radically different from what it was in the 1990s, this dispute is not only an indication of the impotence and political inertia of the global powers represented in the Security Council. It also shows that the name Macedonia represents much more than what foreign observers dubbed a “ridiculous and absurd” disagreement between two Balkan states. The deep roots of this dispute can be traced back a century, or at least as far as the Greek civil war and the beginning of the Cold War, and the declaration of independence in 1991 disturbed long sleeping ghosts. Incapable of dealing with the major conflict in former Yugoslavia, the UN rushed to prevent and resolve at least one (potential) clash. In spite of the fact that Macedonia met all requirements for membership in accordance with Article 4 of the UN Charter, an additional requirement was imposed with regard to the name.² In short, Macedonia’s admission to the UN was in breach of the Charter.³ Ever since, the state has been named “the former Yugoslav Republic of Macedonia” – a bizarre reference to a deceased state. The first ever UN preventive deployment mission was later established on the ground to monitor a negative peace.

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

1 For those interested in the dispute, we would suggest at least these major academic works: Mircela Dzuvalakovska Casule (ed.), *The Name Issue Revisited. An Anthology of Academic Articles*, Skopje, 2012; Svetomir Shkaric/Dimitar Apasiev/Vladimir Patchev (eds), *The Name Issue – Greece and Macedonia*, Skopje, 2009, available at: https://www.academia.edu/2592095/THE_NAME_ISSUE_-_Greece_and_Macedonia.

2 Cf. Charter of the United Nations, Article 4 at: <http://www.un.org/en/sections/un-charter/chapter-ii/index.html>.

3 Cf. Igor Janev, Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System, in: *American Journal of International Law* 1/1999, p. 155.

welcomed the first UN preventive mission (United Nations 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: The Ohrid Framework Agreement introduced the power-sharing model into the constitution and was praised as a miraculous act of post-conflict mitigation. The international community was unanimous: Translating the agreement into constitutional provisions ended the inter-ethnic conflict, and Macedonia was again a “success story”. Thus, only the issue of the name dispute remained to be resolved, as it not only prevented the full integration of Macedonia into NATO, but also hampered the process of international state-building. After a while, the international community defined the name issue as a security problem, which brought the discourse back to square one, where it had been in the nineties.⁴ The closer Macedonia came to meeting the admission criteria, the farther it was pushed back due to the Greek veto. Instead of receiving encouragement for the reform results they achieved, like Tantalus, the small state’s torments would just continue. NATO’s rejection of Macedonia at the 2008 summit set the scene for a significant political about-turn: Instead of continuing with its futile efforts to complete reforms, the political elite took advantage of the national frustration to fortify its rule by intensely reinforcing the national ethos and pride. The infamous “Skopje 2014” project, with its monuments, illustrated the process most vividly. Behind the façade, however, a captured state was established. The former Prime Minister Nikola Gruevski’s term of office (2006-2016) was brought to an end through a classic “coloured revolution” that lasted for almost two years (2014-2016). At the 2016 elections, his party (Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity/VMRO-DPMNE) won the largest number of seats but did not have the capacity to form a coalition, as the Albanian partner, the Democratic Union for Integration (DUI) was under strong international pressure not to continue their political collaboration. After a long ordeal in constitutional, political, and even security-related terms that escalated with the dramatic events of 27 April 2017,⁵ the Social Democrats (Social Democratic Union of Macedonia, SDSM)

4 Biljana Vankovska, *The EU Integration as Security Discourse: The Curious Case of the Republic of Macedonia*, Heinrich Boell Stiftung Magazine for SEE *Agenda*, No. 5, 2011 at: http://www.boell.rs/downloads/Agenda_5_Engl.pdf.

5 After more than two months of peaceful street protests, on 27 April 2017 the protesters stormed the Macedonian parliament building in reaction to the election of the new speaker, as his election violated the Constitution and the Code of Conduct of Parliament. The pretext for the mass protests was the so-called Tirana Platform (a list of ethnic demands set by the leaders of the Albanian parties in January 2017 as a condition for formation of the new government). The clashes on 27 April involved a group of violent protesters and a few MPs. Would-be Prime Minister Zaev was among those injured. The trial against the protesters and the organizers is still ongoing, but the charges against the opposition MPs served as a

formed a new government in coalition with a few Albanian parties. Zoran Zaev became the new prime minister, on the wings of the popularity he had gained during the wiretapping scandal (disclosed by him through so-called “audio-bombs”), and his government launched a new motto: “Life for all”. However, instead of liberating the state and meeting popular expectations, the government almost immediately turned towards “resolving” the open foreign policy problems with Bulgaria and Greece. Some believe that the reason for this was twofold. First, Zaev had made a commitment to the international community to do anything to help the country’s integration into NATO in return for their overt support. Second, it is easier for the government of a weak state to achieve NATO membership than it is to deliver wellbeing and meet the expectations of its citizens.

To foreign observers, the signing of the so-called Prespa Agreement⁶ on the name change between Skopje and Athens on 17 June 2018 seemed to be the third success story. The two prime ministers, Zoran Zaev and Alexis Tsipras, were even mentioned as potential candidates for the Nobel Peace Prize.⁷ A group of over 40 eminent foreign scholars rushed to greet the Agreement in an open letter. According to them, not only was the Agreement historic – it must also be honoured. At the same time, critics on both sides were accused of being hardliners and extremists.⁸ Having carefully read and analysed all possible political, societal, and legal consequences of the eventual implementation of the Agreement, another group of over 70 prominent scholars of Macedonian and foreign origin, including the internationally acclaimed writer Milan Kundera, drafted a letter warning that it was too early for unfounded optimism.

bargaining chip: their amnesty helped Zaev to provide the two-thirds majority necessary for the change to the Constitution in late 2018. For more information, see: Sinisa Jakov Marusic, Macedonia Moves Forward With Amnesty Law, *Balkan Insight*, December 13, 2018, <https://balkaninsight.com/2018/12/13/macedonia-amnesty-law-moves-forward-12-13-2018/>.

6 The full name of the Agreement reads: *Final Agreement for the Settlement of the Differences as Described in the United Nations Security Council Resolutions 817 (1993) and 845 (1993), the Termination of the Interim Accord of 1995, and the Establishment of a Strategic Partnership between the Parties*. For practical reasons we refer to it as the Prespa Agreement. This name has another symbolic significance too: the 2001 Framework Agreement that put an end to the inter-ethnic conflict is usually referred to as the Ohrid Agreement, as the negotiations took place by the Ohrid Lake. Prespa Lake is just across the mountain Galichica, and is now famous as a place where another agreement supposedly put to an end a long-lasting dispute between Greece and Macedonia.

7 The first to mention the Nobel Peace Prize was Edward P. Joseph, member of the International Crisis Group, in an article published prior to the signing of the Agreement. Cf. Alexis Tsipras Deserves the Nobel Peace Prize, *Foreign Policy*, 15 June 2018, at: <https://foreignpolicy.com/2018/06/15/alexis-tsipras-deserves-the-nobel-peace-prize/>. A few months later, there were a number of such opinions being expressed in the media. Cf., for example, Georgi Gotev, Tsipras and Zaev reportedly in the running for Nobel Peace Prize, *Euractiv*, 3 October 2018, at: <https://www.euractiv.com/section/enlargement/news/tsipras-and-zaev-reportedly-in-the-running-for-nobel-peace-prize/>.

8 Cf. Historic deal on shared Macedonian identity must be honoured, *The Guardian*, 20 July 2018, at: <https://www.theguardian.com/global/2018/jul/20/historic-deal-on-shared-macedonian-identity-must-be-honoured>.

Sadly, all mainstream Western media refused to publish it, so in the end, it appeared on a digital portal with limited international reach.⁹

The Murky Path to Prespa:¹⁰ Prologue to the Agreement

A brief outline of the manner in which the Prespa Agreement was concluded is necessary to understand the consequent developments that led to today's deep constitutional and political crisis in the Republic of Macedonia. To quote Dante, the road to hell is paved with good intentions. The day of the signing ceremony was sunny, and motorboats carried the Macedonian delegation into the small port where the dignitaries were ready to greet the expected victory. By coincidence, it was UN Special Representative Matthew Nimetz's birthday. The group then moved to the Macedonian side of the lake to celebrate over lunch. Everything seemed idyllic and only a few of the participants were cautious and calling to hold off with the celebrations. The very same evening the special police used shock bombs and tear gas against peaceful protesters in front of the parliament building in Skopje; almost immediately, the media reacted as if orchestrated, accusing the protesters of violent actions.¹¹ The day that was applauded as historic marked the beginning of a long list of violations of the rule of law and democratic principles in order to push forward the name change and the geopolitical agenda. Indeed, Oxford professor James Pettifer argued that the talks leading to the Agreement were of a coercive nature designed to produce a short-term possible gain at the cost of increasing regional instability.¹²

After decades of formal UN mediation by Nimetz, it looked as if the two parties had made a huge leap forward towards direct bilateral negotiations between the foreign ministers and the two prime ministers in the months prior to the signing ceremony. The general picture presented to the public in both countries, however, seemed to portray a situation that more closely resembled arm wrestling, especially between the two foreign ministers, Nikola Dimitrov

9 Letter to the Editor: Academics Take Issue With Prespa Agreement, *Balkan Insider*, 29 August 2018, at: <https://www.balkaninsider.com/letter-to-the-editor-academics-take-issue-with-prespa-agreement/#menu-main-slide>.

10 The Agreement was signed in the village of Nivici (Psarades in Greek) by Prespa Lake, on the Greek side of the border, but it is widely referred to as the Prespa Agreement by the Macedonian public.

11 The author was among the protesters and witnessed the brutal use of force. Some participants in the Coloured Revolution testified that it was unprecedented, unlike anything they had seen during the Gruevski regime and mass protests in 2015. Cf. Apasiev: Uchestvuvav na site protesti na "sharenite", no ne se sekjavam na solzavci i shok-bombi!?" [Apasiev: I participated in all "Coloured" protests but I have no recollection of any use of tear gas and shock bombs], *Ekonomski.mk*, 18 June 2018, at: <https://ekonomski.mk/apasiev-uchestvuvav-na-site-protesti-na-sharenite-no-ne-se-sekjavam-na-solzavci-i-shok-bombi/>.

12 Cf. Marjan Veleviski, Interview with James Pettifer, Makedonija se stave vo vazalska položba kon Grcija [Macedonia Puts Itself into de facto Suzerainty Position Towards Greece], in: Nova Makedonija, 7 July 2018, at: <https://www.novamakedonija.com.mk/makedonija/makedonija-se-stava-vo-vazalska-polozh>.

and Nikos Kotzias. On the other hand, reports from the meetings between the prime ministers, and especially the interviews with Zoran Zaev, indicated that talks had been warm, friendly and almost intimate with no references to any “red lines” (i.e. protecting national interests) from the Macedonian side. In an interview on Greek television, Zaev addressed the Greek public, explicitly stating that he was refraining from thinking in terms of “red lines” but preferred to believe in exit lines.¹³ With the acceptance of the new name with *erga omnes* (Latin for “towards all”) effect (including in the internal legal and political order) and the change to the constitution, the Prespa Agreement de facto meant breaking the unspoken societal and political consensus regarding “red lines”, abandoning the two most important pillars of Macedonia’s policy towards the name dispute.

The public had been kept in the dark with practically no official information about the course of the negotiations. The only news came from the Greek media – and proved to be correct. Government officials used the same refrain: We cannot disclose any details in order to avoid jeopardizing the delicate process and its eventual success. The proposed future name “Ilinden Macedonia”, which was allegedly agreed between the prime ministers during the EU-Western Balkans Summit in Sofia,¹⁴ served as a political barometer to test the public’s reaction. It was also a trick to get the opposition to adopt a clearly patriotic position but then express disagreement with the name “Ilinden Macedonia”, and thus reveal their true colours. As soon as Tsipras got back home, however, the Greek side detected “irredentist claims” in Ilinden.¹⁵ To make matters worse for the Macedonian side, Zaev failed to create either a political consensus or an inclusive and co-operative political climate with the opposition and the President of the Republic.¹⁶

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- 13 In an interview for the Greek television station Alpha TV on 8 January 2018, Zoran Zaev made a metaphorical link to the mythological labyrinth and minotaur, portraying himself as Theseus and his counterpart as Ariadne, at: https://www.youtube.com/watch?time_continue=3&v=xsrZJ4vBSsY.
 - 14 Cf. Zaev Cites Agreement with Greeks on “Ilinden Macedonia” Name, *RadioFreeEurope/RadioLiberty*, 19 May 2018, at: <https://www.rferl.org/a/macedonia-zaev-greece-name-dispute-ilinden/29237627.html>.
 - 15 Ilinden (St. Elijah’s day, 2 August) refers to the 1903 uprising against the Ottoman Empire, which embraced Macedonian freedom fighters also from today’s Greek territories. The uprising resulted in the Krushevo Republic established by the Macedonian rebels, which lasted for ten days. On the same day, in 1944, the Anti-Fascist Assembly for the National Liberation of Macedonia took place. Its decisions have historic and constitutional meaning for the Macedonians’ right to national and political self-determination. However, the proposal for Ilinden Macedonia was taken as a bad joke by the public, and soon it appeared to be just a barometer for the government too.
 - 16 In addition to the calls for the parliamentary opposition, on the eve of the Prespa Agreement’s conclusion, the Cabinet of President Ivanov issued a formal statement appealing to Prime Minister Zaev and the government to submit the proposal for negotiations with a constitutional basis, the draft of the agreement and the views of the delegation in the negotiation process – in order to provide a broader consensus on the name issue. This call fell on deaf ears. Cf. Ivanov calls for a national consensus on the name, *Republika English*, 1 June 2018, at: <https://archive.english.republika.mk/ivanov-calls-for-a-national-consensus-on-the-name/>.

The few days that preceded 17 June were particularly tense for the public, with the atmosphere changing from cold to hot within minutes. The Agreement (in its original English) was leaked by the Greek daily morning newspaper *Kathimerini*, and was only later translated and re-published in Macedonia.¹⁷ The 20-page document came as a shock to the Macedonian public. In the months between the signing of the Agreement and the consultative referendum on 30 September 2018, there were a number of public opinion polls. Arguably, these were published in order to generate public opinion and not to assess it. This became evident once the results of the referendum were known, despite prognoses from pro-government media and PR agencies that the agreement would be accepted. The government's focus was on the number of citizens that would, or would not abstain from the vote, but some of these polls indicated another interesting point: Very few citizens had actually read the text of the Agreement – as few as three per cent according to the Skopje-based MCIC survey of August 2018. The conclusion of this survey was that the citizens claiming that they were familiar with the content and propositions of the Agreement – over 84 per cent – had got their information from second-hand sources. According to this survey, in response to the question regarding where respondents had found the necessary information, for a large majority (73 per cent) the media was the main source, followed by social media networks (almost 14 per cent), and relatives and friends (about six per cent).¹⁸ Bearing in mind that the new government had failed to free the media space from political control, and the fact that a number of popular television talk shows were (and still are) funded by foreign agencies (mostly USAID, but also by some European embassies)¹⁹, campaigning in favour of the agreement had been intensive and continuous even before the referendum was called. Yet the distrust would only deepen in the months to come.

Some of the most renowned professors of international law, such as Francis A. Boyle and Richard Falk, took a critical stance towards the Agreement. In a media comment, Boyle said, “Greece and Macedonia should be able to agree upon a mutually acceptable name without Macedonia having to sign

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- 17 Cf. Agreement. Final Agreement for the Settlement of the Differences as Described in the United Nations Security Council Resolutions 817 (1993) and 845 (1993), the Termination of the Interim Accord of 1995, and the Establishment of a Strategic Partnership between the Partners, 12 June 2018, *Ekathimerini.com*, The full transcript of the Greece-FYROM deal, 12 June 2018, at: <http://s.kathimerini.gr/resources/article-files/symfwnia-aggliko-keimeno.pdf>. Two days later, on 14 June 2018, the Macedonian media published an unauthorized translation, at: <https://www.mkd.mk/makedonija/politika/celosen-transkript-od-dogovorot-megju-makedonija-i-grcija>.
- 18 Cf. Macedonian Center for International Cooperation (MCIC), *Referendum 2018: Public Opinion Poll in Macedonia*, August 2018, p. 7-8, at: <http://www.mcms.mk/images/docs/2018/referendum-2018-public-opinion-poll-in-macedonia.pdf>.
- 19 For instance, a popular talk show “Top Theme - On Your Side” (Top tema na vasha strana), broadcasted on TV Telma, is officially funded by USAID. See: <https://www.usaid.gov/north-macedonia/news-information/press-releases/top-tema-your-side-exemplifies-journey-toward-self>. The same applies to a few other TV projects at TV Sitel (Detektor) and Kanal 5 TV (Samo vistina).

a 20 page agreement basically drafted by the US State Department that would take a professional international lawyer quite some time to figure out what it means and what would be the consequences for Macedonia. How can the Macedonians know what they are voting for? As we Americans say, Macedonians will be getting the proverbial ‘pig in the poke’ if you vote for this agreement in the forthcoming referendum. The Americans have never cared about constitutional requirements when they are trying to get people to swallow an agreement.”²⁰ In his opinion, scholars should research the ruling by the Permanent Court of International Justice on Germany’s annexation of Austria in 1938. The annexation was ruled illegal because it violated the Treaty of Versailles by severely compromising the political and economic independence of Austria in favour of Germany. This could be seen as an analogous historical situation to that outlined by the Prespa Agreement, in this case in favour of NATO within the context of the new Cold War.

The Prespa Agreement ratification was never completed in the Macedonian parliament: The ruling coalition supported it with a majority vote (69 votes out of 120, with no consent from the opposition) on 20 June, with no substantial debate. President Gjorge Ivanov decided not to sign the decree promulgating the law ratifying the deal, stating that “the agreement has no constitutional ground and is not ratified in compliance with the constitution”.²¹ In spite of the repeated positive vote in the parliament, Ivanov used his so-called pocket veto and never signed the decree, which left the Agreement no more than a legal fiction. The government moved ahead, however, calling for a consultative referendum – again seriously breaching the national legislation and the Code of Good Practice on Referendums of the Venice Commission. The three initiatives submitted before the constitutional court were easily dismissed, so the referendum process could proceed.

The Prespa Agreement: A Critical Perspective

The rush with which the Prespa process proceeded speaks for itself. As we have seen, the Prespa Agreement was the culmination of the West’s desire to produce a “success story”, sell it to the public as such,²² and put an end to the

20 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.mk*, 28 July 2018, at: <https://m.off.net.mk/lokalno/razno/dogovorot-so-grcija-vi-e-machka-vo-vrekja> (author’s translation).

21 Ivanov fails to sign law ratifying name agreement, *European Western Balkans*, 26 June 2018, at: <https://europeanwesternbalkans.com/2018/06/26/ivanov-fails-sign-law-ratifying-name-agreement/>.

22 Professor Ljubomir Frchkoski, an influential intellectual, and once a foreign minister who strongly defended the constitutional name, changed his mind, arguing that the main problem for the government would be “selling the deal to its (popular) base”; Frchkoski: Sè e resheno osven prodavanjeto na dogovorot na svojata baza [Frchkoski: Everything has been settled except selling the agreement to the base], *Plusinfo*, 8 June 2016, at: <https://plusinfo.mk/фрчкоски-сè-е-решено-освен-продавањет> (author’s translation).

long-lasting name dispute. The result was an asymmetric deal, with obligations only on the weaker side and all rights on the stronger one. Consequently, the political rhetoric differed significantly. Instead of a win-win situation, Tsipras openly spoke of his government achieving more than it could ever expect, while Zaev tried to prove that the price was high but worth it: this was the best possible agreement under the circumstances and that Macedonia had to accept the Greek ultimatum in order to move ahead towards NATO and the EU. Throughout the process, Zaev talked of a “second independence”, “confirmation of the state’s existence once and for all”, and “getting a place in the cadastral map”, which would make the Republic of Macedonia a real state for the first time in its history.²³

Apart from the political campaign that accompanied the whole process, there has been a sharp divergence in the public debate in the domestic and international media to date. Unlike the Greek practice of inviting opinions from academic and intellectual circles, including the scholars from abroad who were included in drafting and analysing the agreement,²⁴ the Macedonian expert team was kept unidentified. Despite calls from the public to make its stance known, the Macedonian Academy of Sciences and Arts (MANU) refrained from criticizing the deal and expressed support for the government. The only debate including academics and experts was held on 11 September during the official referendum campaign. Participation was by invitation only, and not all academics were invited to give presentations. The invitation letter was circulated secretly among the members of the academic community, and referred to the need for *in bona fide* interpretation of the Agreement for the purpose of preparing the forthcoming constitutional review and full implementation of the agreement.²⁵ Thus, there was a scene for an apology instead of a call for critical

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- 23 Prior to the signing of the Agreement, Zaev had given such statements repeatedly. Cf. Zaev: So dogovor za imeto Makedonija dobiva imoten list, kje vpisheme vo katastar Republika Makedonija, [Zaev: With the name agreement Macedonia gets its cadastral map, we will be registered in the cadaster as the Republic of Macedonia], *Focus*, 11 May 2018, at: <https://fokus.mk/zaev-so-dogovor-za-imeto-makedonija-dobiva-imoten-list-ke-vpisheme-vo-katastar-republika-makedonija/> (author’s translation). In the Independence Day speech, he indicated that the forthcoming referendum would be a vote for a second independence. Cf. Vlada na Republika Makedonija, *Premierot Zaev na Denot na nezavisnosta: Nashata generacija so glas na referendumot kje go ostvari sonot na generacijata shto ja iglasa nezavisnosta od 1991, da obezbedi sigurna, mirna i stabilna – Evropska Makedonija* [Government of the Republic of Macedonia, Prime Minister Zaev on Independence Day: With a vote on the referendum, our generation will make the dream come true of the generation that voted for independence in 1991, and will secure a safe, peaceful and stable – European Macedonia], Official website of the Government of the Republic of Macedonia, at: <http://vlada.mk/?q=node/15417&ln=en-gb> (author’s translation).
- 24 As early as February 2018, the Macedonian media pointed out that Greece was making clever use of its intellectual potential, unlike Macedonia. Cf. Fotofinish od pregovorite. Grchkite pregovarachi se sudii, diplomati, profesori ... koj e nashiot ekspertski tim? [Photo finish of the negotiations. Greek negotiators include judges, diplomats, professors... Who makes up our expert team?], *MKD*, 22 February 2018, at: <https://www.mkd.mk/makedonija/politika/grchkite-pregovarachi-se-sudii-diplomati-profesori-koj-e-nashiot-ekspertski-tim>.
- 25 The debate’s title “The Prespa Agreement: International Significance and its Implications for the Euro-Atlantic Integration of the Republic of Macedonia” echoed the already defined

analysis. The only academic institution that organized an open debate was the Faculty of Philosophy, Ss. Cyril and Methodius University. The debate went ahead despite pressures on the dean's office and the professors.²⁶

While no serious scholarly texts have yet been published yet, most of the public commentaries appear to place an emphasis on the political effects and desirability of solving the dispute, but few go into a rigorous analysis of the long and complex text of the Agreement. One of the few scholars who put some effort into analysing the text, which is 45 pages in the Macedonian language, and its future implications is a professor of constitutional law, Gordana Siljanovska-Davkova.²⁷ An alternative view was expressed in a blog by another constitutional lawyer, Svetomir Shkaric, who has changed his basic position from the time when he was the main editor of the major book on the name dispute, published in 2008.²⁸

The Agreement consists of a preamble and three parts. The first part includes eight articles regulating the name issue and related issues; the second deals with the strategic partnership, the third concerns the "settlement of disputes", and at the end, there are "Final Clauses". The official title, as already pointed out, is quite ambitious, aiming to be a comprehensive solution. However, it does not even mention the name issue, but includes a reference to the (future) strategic partnership. Interestingly, while the UN Resolutions speak of one difference, the agreement uses the plural form "differences". It would take another, longer analysis to explain why and how this came about. For the purposes of this article, we focus only on the current document, its controversial content, and (un)intended consequences.

referendum question. Furthermore, the invitation already spelled out the conclusion: the Agreement should be made permanent because "its provisions do not jeopardize the national identity of the Macedonian people, the Macedonian language and culture".

- 26 The debate entitled "The Agreement between Greece and the 'Second party': Pandora's Box or an Exit from the Labyrinth" took place on 3 September. It was open for the academic community and the general public. The keynote speakers included professors of law, sociology, constitutional law, pedagogy, and political science. Some of the talks can be seen at: <https://antropol.mk/2018/09/08/dogovorot-megu-grcija-i-vtorata-strana-pandorina-kutija-ili-izlez-od-lavirintot/>.
- 27 Cf. Gordana Siljanovska-Davkova, Za "Prespanskiot dogovor" i poshiroko [On the Prespa Agreement and Beyond], in: *Nova Makedonija*, the entire text is available at: [https://www.novamakedonija.com.mk/wp-content/uploads/2018/10/3A-%D0%90%D0%90%D0%90-%D0%90%D0%90%D0%90.pdf](https://www.novamakedonija.com.mk/wp-content/uploads/2018/10/3A-%D0%90%D0%90%D0%90%D0%90-%D0%90%D0%90%D0%90.pdf).
- 28 In one of his recent texts, unlike the books and numerous chapters written in the previous decades, Svetomir Shkaric starts with the following sentence: "The constitutional name is undecided." Svetomir Shkaric, Bez Dogovorot so Grcija, Makedonija i natamu kje ostane bez drzhavno ime na megjunaroden plan [Without the Agreement with Greece, Macedonia will remain with no name in international relations], *respublica*, 22 August 2018, at: <http://respublica.edu.mk/blog/2018-08-22-08-12-53> (author's translation). The author's position in his publication of 2008 is in contrast with this comment: "The Republic of Macedonia must fight alone for its name! No one can help the country regarding this matter as much as it can help itself. Macedonia has the strength for this, and the international law is on its side." Svetomir Shkaric, ICG Composition and Proposal for "Slavic Transcription" of the name, in: Shkaric/Aspasiev/Patchev (eds), cited above (Note 1), pp. 330-335, here: p. 334.

The title and the content of the Agreement indeed aspire to overcome the previous UN Resolutions as well as the 1995 Interim Accord (i.e. the document that has been regulating the bilateral relations ever since). Strangely, it does not mention the 2011 decision of the UN International Court of Justice (ICJ), which ruled that the Hellenic Republic had violated the Interim Accord (Article 11) by vetoing NATO's invitation to the Former Yugoslav Republic of Macedonia (FYROM) to the Bucharest summit in 2008. In the end, both sides agree that the same court would be entitled to resolve eventual disagreements during the implementation process of this Agreement. It remains unclear how one could trust that Greece would obey the future verdicts of ICJ if it did not obey the previous one. The answer is simple: The Prespa Agreement is so asymmetrical that there is no possibility for Greece to be taken to the court; all obligations are carefully phrased and refer to the "Second Party", which remains unnamed throughout the whole text of the agreement. Siljanovska-Davkova stresses that "the Final Agreement is an agreement for the 'settlement of differences'", however, the differences on the name have transformed into differences and negotiations over Macedonian history, Macedonian identity, Macedonian language, culture, education, the political and legal system, the constitution, and human rights and freedoms. It imposes constitutional changes, i.e. constitutionalizing of the new name and the derived attributes; it regulates the manner, timeframe and oversight over the implementation of all solutions in the legal and political system of the "Second Party".²⁹ From the very beginning of the text, it cannot be overlooked that the document does not represent a compromise or an agreement between equal parties. The dispute has never been symmetrical, so the compromise is just a euphemism for the power imbalance that is embedded in the text. The picture of David vs. Goliath remains accurate.³⁰ According to key figures in peace research and conflict resolution, compromise is not the most desired or efficient way to resolve or mitigate conflicts or disputes, and even if it is taken as the only way out, there must be an assumption that one party does not impose a dictate.³¹ What most observers turn a blind eye to is the fact that both parties have been under external dictate. There are serious indications that those who really drafted the Agreement should not be sought among the local elites or experts.³²

29 Cf. Siljanovska-Davkova, cited above (Note 24), p. 2.

30 Cf. Biljana Vankovska, David vs. Goliath: The Macedonian Position(s) in the So-called "Name Dispute" with Greece, in: *Südosteuropa*, 3/2010, pp. 436-467.

31 Cf. Johan Galtung, *Conflict Transformation by Peaceful Means (the Transcend Method)*, United Nations Disaster Management Training Programme, s.l. 2000, p. 10, at: https://www.transcend.org/pctrcluj2004/TRANSCEND_manual.pdf.

32 According to the UK professor Vassilis Fouskas, "The Agreement has been baked in Pentagon and Berlin and as such it serves, first and foremost the interests of the USA and Germany. In both countries, Greece and Macedonia, I stand with that part of the public that recognizes this reality, namely, the geopolitical and cultural drives of NATO and Germany-led Europe to exclude Russia from the Balkans [...] Imperial powers never solve problems. They only fix them. Look around. In terms of security: Has Greece benefitted from NATO membership? No. [...] Has Greece benefitted from EU/Eurozone membership? Quite the opposite, as you know! [...] When German-led policy of austerity and discipline comes to

The Preamble lists relevant international documents, including the UN Charter, and numerous principles and goals, such as the prohibition of interference in internal affairs. However, the content of the Agreement that follows demonstrates the opposite, since Greece is entitled to interfere directly in the internal affairs of the “Second Party”, including constitution making, history, culture, nationality, language, and more. Regulation of such issues in a bilateral international agreement is an unknown precedent in modern international law. To call upon international law in order to establish a precedent that is beyond and against the international legal framework and practice is cynical and hypocritical, to put it mildly.³³ This bilateral Agreement is supposed to have more legal force than *jus cogens* (Latin: compelling law) norms that derive from the UN Charter and accompanying international instruments that guarantee the right of political independence of any sovereign state. Under the UN Resolutions, the Macedonian side has de facto more sovereignty rights than it would under the Prespa Agreement, including the use of its constitutional name and self-determination, the imposed provisional reference FYROM and the Interim Accord. For instance, the state is currently recognized by its constitutional name by over 135 out of 190 UN member states, including some permanent members of the UN Security Council. In the Greek media, the minister of foreign affairs has repeatedly said that Greece is the winner in the negotiations, and that the neighbouring country would never be called Macedonia again.³⁴

Instances of interference are numerous. For instance, Article 1(3)(a) states that the official, constitutional name of the “Second Party” would be the Republic of North Macedonia and that it would be used *erga omnes*. Both signatories disregard the fact that a state’s name is an essential element of its legal personality, and as such, it is an essential right – *stricto sensu* it is a part of its internal sovereign realm. No other state, or international entity, has the right to interfere in this matter. As prominent scholars of international law argue there “appears to be no basis in international law or practice” for the Greek demand that Macedonia change its name, “claiming that the right to use

bite the Macedonian people, Zaev may not even be in power. Zaev is there to deliver NATO and Europe; he has no political programme. He does that, and then he is out, especially when Macedonians realize how futile it is to expect security from NATO and prosperity from the EU.” Prespanskiot dogovor e zgotven vo Pentagon [The Prespa Agreement was cooked in the Pentagon], Interview with Vasilis Fouskas, in: *Nova Makedonija*, 13 July 2018, at: <https://www.novamakedonija.com.mk/makedonija/politika/prespanskiot-dogovor-e-zgotven-vo-pen> (author’s translation). James Pettifer believes that “the 20 page ‘agreement’ [...] seems to have been written by an unknown junior operative in a think tank not widely known for Balkans expertise.” See: Should Albanians Support or Use the New Name?, *Illyria*, 27 June 2018, <http://illyriapress.com/should-albanians-support-or-use-the-new-name/>.

33 Cf. Siljanovska-Davkova, p. 4.

34 Cf. Kodzijas: Grcija e pobednik vo pregovorite za umeto, sosednata zemja vekje nikoj nema da ja vika Makedonija [Kotzias: Greece is the winner in the negotiation process, the neighbouring country will not be named Macedonia by anyone in the future], 9 September 2018, *Kurir*, at: <https://kurir.mk/makedonija/vesti/kodzijas-grcija-e-pobednik-vo-pregovorite-zaimeto-sosednata-zemja-vekje-nikoj-nema-da-ja-vika-makedonija/>.

that name should belong exclusively to Greece.”³⁵ Yet, more important is the understanding of the *erga omnes* principle. According to *Britannica*, international law has established “a category of *erga omnes* obligations, which apply to all states. Whereas in ordinary obligations the defaulting state bears responsibility toward particular interested states (e.g., other parties to the treaty that has been breached), in the breach of *erga omnes* obligations, all states have an interest and may take appropriate actions in response.”³⁶ The Greek request for *erga omnes* usage of the new name is not a new or a surprising one, but the acceptance of this condition by the Macedonian side is unique, and rather imprudent, as no one really understands how a bilateral agreement can impose obligations on third parties that are not affected by their mutual issue. Some experts rightly point out that this legal principle is mostly used in property rights and in general international law.³⁷ Its scope and nature is unclear in the context of the name issue, especially in the way it is prescribed by the Prespa Agreement, which is written in a mixture of diplomatic, political, and legal language. According to Lozanoska, “the problem further culminates with the insistence on the application of the *erga omnes* legal principle, whose roots, according to the Greek law, are derived from inheritance law. *Erga omnes* as a legal institution indeed exists in international public law. [...] Bearing in mind this difference in the effect and the usage of this legal institution, the name of a state cannot represent an obligation arising from *erga omnes* as an institute of international public law because of the essence of this issue. Therefore, *erga omnes* in the Macedonian-Greek dispute stems from property law. In this context, we should ask what inheritance, i.e. the property, is at stake here. And, can this serve as grounds for demands to rename a state in the present, which has its own borders, a legal and a political system?”³⁸

The proponents of the agreement in the Republic of Macedonia mostly insist on the “achievement” embedded in Article 7, namely the use of the terms “Macedonian” when it comes to the nationality and language.³⁹ This appears to be a desperate attempt to select just one (allegedly favourable) provision that

35 Louis Henkin/Richard C Pugh/Oscar Schachter/Hans Smit, *International Law: Cases and Materials*, Third edition, St. Paul, MN, 1993, p. 253; cf. also Francesco Messineo, The ICJ and the Macedonian Dispute, in: *Cambridge Journal of International and Comparative Law*, 1/2012, pp. 169-190, here: p. 189.

36 *Encyclopædia Britannica*, at: <https://www.britannica.com/topic/international-law/Custom#ref794940>.

37 Cf. Jana Lozanoska, Macedonia: erga omnes – dominus?, *Transconflict*, 10 July 2012, at: <http://www.transconflict.com/2012/07/macedonia-erga-omnes-dominus-107/>.

38 Jana Lozanoska, Neophodnosta od javen protor i debata i Dogovorot za imeto [The necessity of public space and debate and the name agreement], *respublica*, 19 September 2018, available at: <http://respublica.edu.mk/blog/2018-09-19-09-41-16> (author’s translation).

39 Cf. Shkarikj: Dogovorot od Prespa e dobar, ustavnite promeni se najchuvstvitelni [Shkarikj: Prespa Agreement is good, the constitutional changes are the most sensitive], *Fokus*, 21 July 2018, at: <https://fokus.mk/shkarikj-dogovorot-od-prespa-e-dobar-ustavnite-promeni-se-najchuvstvitelni/>; cf. also Katerina Kolozova, Za “Makedonshtinata” i Republika Makedonija [On Macedonianness and the Republic of Macedonia], *Civil Media*, 5 September 2018, at: <https://civilmedia.mk/za-makedonshtinata-i-republika-makedonija/>.

guarantees the “Macedonian-ness” of the state, its constitutive population and its language and culture by neglecting the totality of the document. In fact, it is essential to look more closely at Article 1, as it is in direct contradiction to the Preamble, which acknowledges non-intervention in the state’s internal affairs and good neighbourly relations in line with the UN Charter and the Helsinki Final Act of 1975. At the same time, it prescribes a total restructuring and redesigning of the internal order of a sovereign state, starting with the constitution, changes to names of the state institutions, symbols, currency, history, culture, trade codes, etc.⁴⁰ In other words, even if Article 7 appears to be a concession from the Greek side, it is a subsidiary provision that serves to operationalize Article 1 and the paragraphs that refer to, and are related to, Article 7. Lozanoska is right in arguing that Article 7 cannot be read, understood, or implemented without having in mind Article 1 *in toto*.

Aleksandra Gjurkova has also provided an in-depth analysis of Article 1, which confirms the argument that the Agreement is a document with overwhelming effects on all aspects of legal, political, cultural, linguistic, and societal life in the Republic of Macedonia.⁴¹ She successfully deconstructs the government’s false argumentation regarding its achievements in the negotiation process, especially the claim that it preserved the Macedonian language – an issue that has never been a part of the UN process and/or a matter of interstate agreements. As a linguist, she elaborates the future linguistic acrobatics of the name of the Macedonian people, especially in some Nordic and Germanic languages (German: *Nordmazedonier*, Danish and Swedish: *Nordmakedonsk/a*). This is not just a hypothetical possibility, as there are numerous examples of Western and English-language media not even waiting for the referendum outcome or final ratification to start writing and speaking of North Macedonia and North Macedonians.⁴² This is particularly frustrating for the generations who, for the last 27 years, have endured the ordeal of trying to explain to various passport and consulate officers where they were coming from. An especially sensitive issue that remains not only unresolved but even more complicated, is the issue of the identity rights of the Macedonian minority in northern Greece, who have been documented by various international bodies as suffering discrimination by the Greek government. However, perhaps the most important and threatening problem is the issue of (self)censorship when historical research, and education, are submitted to oversight by an inter-governmental commission, as prescribed in the Prespa Agreement.

40 For instance, Article 1(3)d prescribes that the terms “Macedonia” and “Macedonian” “have the meaning given under Article 7 of this Agreement”.

41 Cf. Aleksandra Gjurkova, Spogodbata za reshavanje na sporot za imeto kako upatstvo za avtocenzura [The agreement on the settlement of the name dispute as a manual for self-censorship], *respublica*, 25 September 2018, at: <http://respublica.edu.mk/blog/2018-09-25-08-29-42>.

42 One of the latest examples is the announcement of Harvard University for student enrolment, which already uses the name “Northern Macedonia”. See: <https://www.timeshighereducation.com/unijobs/listing/112997/pierre-keller-visiting-professorship/>.

For many, including the author of this contribution, the issue of constitutional sovereignty, i.e. the right to political self-determination, is heavily violated by the demand not only for constitutional review, but a revision of the preamble of the Constitution that refers to the historical traditions (Krushevo 1903 and ASNOM 1944). The key provision of the Agreement, contrary to international law (i.e. *ius cogens* when it comes to self-determination), is Article 1(3)(g), which envisages that adoption of the Agreement's clauses through the internal procedure would be "both binding and irrevocable, entailing the amendment of the Constitution". Siljanovska-Davkova rightly points out that "it is highly unusual for a bilateral agreement to possess the power to tie the hands of future constitution-makers."⁴³

As in any other sovereign state, there are strictly determined subjects who may initiate a constitutional review. In the Republic of Macedonia, this would be the government, the president of the republic, 30 MPs or 150,000 citizens. In no case can another state impose such a request, initiate, or even set the time frame for its completion. Furthermore, according to the Agreement, as soon as the "Second Party" finishes the constitutional revision, it is the Greek parliament who will promptly ratify the Agreement (Article 4[f]), and thus have the final say. One aspect of the problem is the uncertainty as to whether the First Party ("the Hellenic Republic", i.e. Tsipras government) will be satisfied with the constitutional amendments and able to provide the required majority (three fifths) for the ratification of an Agreement that is unpopular, not only with the Greek opposition, but also with some coalition partners in the government. A far more important aspect is the following: Does sovereignty really derive from the Macedonian citizens and belong to them, as stipulated by Article 2 of the Constitution? The Macedonian signatory (the minister/government) has agreed to make the state they represent dependent on the political will of the political representatives of another state. At the moment the Agreement was signed, theoretically, no one could know the exact content of the constitutional amendments, as there had been no debate, consensus, or even consultation with the public and the opposition.⁴⁴ Furthermore, up to 17 June 2018, all political parties agreed over one postulate: No one would accept a change in the constitution for the purpose of the name change. Adopting the behaviour of a colony, the "Second Party" submitted to the obligation to inform the First Party when all necessary procedures were complete.

In sum, the Agreement is nothing but an imposition of a sort of "eternity clause" by a bilateral agreement, which would result in an imposed constitution (*constitution octroyée*) – i.e. a constitutional review imposed on the majority of people without their full agreement.⁴⁵ Strictly speaking, the "full agreement"

43 Siljanovska-Davkova, cited above (Note 24), p. 14 (author's translation).

44 However, there are rumours that the text of the amendments had been drafted prior to the conclusion of the Agreement by the Greek side, while some Macedonian constitutional lawyers were consulted – without the public's knowledge.

45 Cf. Mark W. Janis, "Human Rights and Imposed Constitutions", *Connecticut Law Review*, 4/2005.

will require that a majority of the people expressly consent to a constitution through a formal procedure. Constitutional development may always occur but it should be carried out in “a considered and consensual way and where the fundamental identity of the country is not threatened”.⁴⁶ As President Ivanov has rightly pointed out, the issue is constitutional and Zaev and his foreign-influenced collaborators have no legal mandate at all to change it on the signature of a single person. Long ago Cicero asserted that a constitution, in the sense of the foundation of a republic, cannot result from the capacity of a single person, but from that of many people acting across centuries and ages rather than within a single generation.⁴⁷ It is also worth mentioning Article 28 of the Declaration of the Rights of Man and of the Citizen, attached to the French Constitution of 1793, according to which “[a] people always has the right to review, reform, and amend its constitution. One generation may not subject future generations to its laws”. It is believed that constitutions are meant to declare certain values transcendent, beyond the reach of temporary political majorities.⁴⁸

The Collateral Damage of the Prespa Agreement: Beneath the Ruins of the Rule of Law

The Prespa Agreement is not the first instance in which the rule of law has been sacrificed for “higher” causes (usually, peace and stability, or better – ensuring stabilitocracy⁴⁹). Previously, the Macedonian constitution was amended after the 2001 armed conflict in order to mitigate the Albanian minority’s demands. Thus, the power-sharing model was introduced in a way that seriously deformed the parliamentary system originally embedded in the country’s basic law. The amendments were drafted by the international state-builders (EU and US envoys and their experts), while the Macedonian MPs simply had to obey and proceed with the formal process in Parliament. Then during the “wiretapping scandal” and following the Colourful Revolution, the 2015/2016 political crisis was again managed in an extra-constitutional way with the so-called Przhino Agreement, which introduced changes to the Electoral Code that were evidently unconstitutional. The Constitutional Court

46 Pettifer, cited above (Note 29).

47 Cicero, *De re Publica*, Book II, 1.

48 Cf. Frank Michelman, *Law’s Republic*, *The Yale Law Journal* 8/1988, pp. 1493-1537, here: pp. 1501-1502, footnote 28.

49 The term “stabilitocracy” was introduced by the Canadian scholar Srdja Pavlović in order to describe a regime where undemocratic practices persist and the West turns a blind eye to this while simultaneously preaching the virtues of democracy and the rule of law”. Cf. Srđa Pavlović, *Montenegro’s “stabilitocracy”: The West’s support of Đukanović is damaging the prospects of democratic change*, The London School of Economic and Political Science (LSE) blog, 23 December 2016, at: <http://blogs.lse.ac.uk/europpblog/2016/12/23/montenegros-stabilitocracy-how-the-wests-support-of-jukanovic-is-damaging-the-prospects-of-democratic-change/>.

remained silent, behaving as a co-operative political entity rather than a legal entity.

From a legal point of view, the Prespa Agreement was an initiative of international power circles that was doomed to fail from the start. In the discourse over Macedonia, Western foreign policy-makers have revived the old Soviet Brezhnev Doctrine of limited sovereignty of client states.⁵⁰

To make matters worse, any legalistic approach or criticism has immediately been labelled anti-Western, pro-Russian, etc. – in short, backwards and damaging for the bright Euro-Atlantic future of the country and the region. Some prominent academics and intellectuals overtly complained and even advocated that the document should not be interpreted from a legal point of view: The name dispute was a political matter, and a legal interpretation meant disregarding not only the constitutional and legal consequences of the deal's implementation but also the essential rule of law principle and constitutionalism as such.

From the very long list of breaches of procedural and material electoral law, for the sake of brevity, the author points out just a few of the most evident.

- The Agreement is in contradiction with Article 118 of the Macedonian Constitution, which reads: "International treaties ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law". This means that international agreements are not above the Constitution, neither can the Constitution be changed by the force of an international agreement.
- The ratification of the Agreement did not comply with the principle of the rule of law (Article 8) since there was no constitutional basis for this kind of an agreement. The procedure was in breach of the Law on conclusion, ratification, and implementation of international agreements, both in terms of the entitled institution and the procedure. In the Macedonian constitutional system, the president of the Republic is *primus*, while the government is *secundus* when it comes to the conclusion of international agreements.
- The Code of Conduct of the Macedonian parliament was violated repeatedly: The Law on Ratification of the Agreement was directed to the parliamentary Commission on European Issues (misuse of the so-called European flag) instead of the parliamentary Commission on Foreign Affairs. This was done in order to bypass the latter commission whose head comes from the opposition. The Law on Ratification was also invalid, since it did not define the constitutional basis for its adoption, the reasons for the ratification, and did not provide assessment for the

50 Cf. Srđa Pavlović, Nomen est omen (Imeto e sudbina), in: *Nova Makedonija*, 10 October 2018, at: <https://www.novamakedonija.com.mk/mislenja/kolumni/nomen-est-omen-името-е-судбина>.

- financial costs of the implementation of the law (all against Article 188 of the Code);
- Parliament adopted the Law on Ratification with a simple majority vote, despite the fact that the Agreement presupposes a change to the Constitution and the name of the state; the Law was adopted with only 69 votes and in the absence of the opposition;
 - Parliament issued notice of a referendum without any constitutional or legal ground, since the Law on Ratification of the Agreement was never promulgated, thus it was not published in the Official Gazette – it was and still is nothing but a legal fiction.
 - Parliament’s decision on issuing notice of a referendum was invalid in a number of aspects, meticulously listed in the motion put before the Constitutional Court that was submitted by the political party Levica. Among other reasons for questioning the referendum notice, Professor Dimitar Apasiev stressed the following: The parliamentary decision was incomplete as it lacked the seven formal elements prescribed by the Law on Referenda; the referendum question was manipulative and captious, which goes against the Law and the Venice Commission’s Code of Good Practice in Referendums;⁵¹ Parliament did not define the type of referendum (obligatory or consultative, preceding or subsequent); the Macedonian constitution does not regulate consultative referenda, as Article 73 explicitly determines that a decision made in a referendum is binding, and must be adopted on the condition that more than half of the total number of voters cast a vote (50 per cent + 1).⁵²
 - The referendum campaign was problematic in its own way. Instead of running a purely informative campaign, the government was overtly involved in the “Yes” campaign, using the budgetary means and resources to support it. In their everyday meetings with citizens, government ministers and the prime minister were speaking publicly lobbying for a “Yes” vote. The media space was completely “occupied” by the pro-government experts, video messages, etc. The other options (“No” and “Boycott”) could use only social media. Some of the most disreputable examples of the campaign include Zaev’s public call for political corruption, encouragement for private businessmen to “incite” their

51 The question on the referendum ballot was: “Are you in favour of European Union and NATO membership by accepting the agreement between the Republic of Macedonia and the Republic of Greece?” Translation into English in: Macedonia sets question for name referendum, *euobserver*, 30 July 2018, at: <https://euobserver.com/tickers/142494>.

52 Cf. Apasiev: “Sobraniskata Odluka za referendum ne mozhe pravno da proizvede dejstvo, bidejkji e protivustavna” [Apasiev: “The Parliamentary Decision on the referendum cannot have any legal effect because it is unconstitutional”], *Antropol*, 9 August 2018, at: <https://antropol.mk/2018/08/09/apasiev-sobraniskata-odluka-za-referendum-ne-moze-pravno-da-proizvede-dejstvo-bidejkji-e-protiv-ustavna/>. Professor Siljanovska agreed with this position: Siljanovska: It’s time for the Constitutional Court to gather strength and say that the referendum question is unconstitutional, unclear and imprecise, *Republika English*, 4 September 2018, at: <http://archive.english.republika.mk/p203913/>.

employees to go and vote,⁵³ intimidation, abuse of the military for a video message showing Zaev as a commander in chief at the monument in Krushevo, etc. The active engagement of the international community was also unusual. In addition to Western ambassadors, the European Delegation played a part in campaigning (including billboards and posters depicting children, under the motto “Imagine the Future”).

The list of breaches of the European standards and national legislation for good referendum practices is endless (including the day of the vote and ballot stuffing). Even before the results were made known, the government came out with the “Plan B”: to proceed with the constitutional review regardless of the opinion of the people. Sadly, the OSCE’s ODIHR observation mission appears to have missed, or downplayed, breaches of the law and human rights. The preliminary conclusions read that the referendum was administered impartially and fundamental freedoms were respected throughout the campaign.⁵⁴

Referendum Aftermath: Vox Populi that Does Not Matter

The Agreement mentions the referendum as a facultative option of the “Second Party”. Calling for a consultative referendum displayed the government’s insecurity and fear of failure, so the referendum de facto became nothing more than a very expensive public opinion poll. The question read: “Are you in favour of European Union and NATO membership by accepting the agreement between the Republic of Macedonia and the Republic of Greece?”. The promise of NATO and EU membership were intended to sugar coat what could be considered a bitter pill, resolving the controversial name issue by the back door. To respond with simple “yes” or “no” was impossible, due to the three variables and eight possible combinations in answering. The question lacked the formal, substantial, and hierarchical logic required by the Venice Commission’s Code of Good Practice on Referendums. From the very beginning (i.e. the day after Parliament issued the notice), the basic line of the government campaign, supported overtly by a long list of foreign officials and dignitaries, some of whom visited the state personally,⁵⁵ was that the referendum must be successful. For that purpose, the opponents were demonized and intimidated. For instance, Vlado Kambovski, a member of the Macedonian Academy of

53 Cf. PrimeMinister #Zaev caught on camera promising money to people that vote on the #namechange, at: https://www.youtube.com/watch?v=syZeP_JrdjE.

54 International Referendum Observation Mission. The former Yugoslav Republic of Macedonia, Referendum, 30 September 2018, *Statement of Preliminary Findings and Conclusions*, available at: <https://www.osce.org/odihr/elections/fyrom/398210?download=true>.

55 The list of foreign visitors included the NATO Secretary General, the German and Austrian Chancellors, EU Commissioners, etc. Each visit was interpreted as giving support and encouraging Euro-Atlantic integration of the Republic of Macedonia.

Sciences and professor of criminal law, argued that organizing a boycott of the referendum would be subject to prosecution for engaging in criminal activity.

Faced with such an undemocratic and even threatening atmosphere, with no equality of opportunity for all sides and the overt use of public funds for campaigning purposes, while the freedom of voters to form an opinion was limited,⁵⁶ citizens self-organized in a horizontal movement “I Boycott”. Bearing in mind the national regulation and the current context, there was a widespread opinion that boycotting would be the most intelligent and most effective strategy to make the referendum fail.⁵⁷

Parliament was the formal proposer of the referendum, so the government was not entitled to run the campaign with budgetary means. According to the Law on the Referendum, the Venice Code, and the Przhino Agreement, this was a clear breach of the rule of law. In bypassing the Electoral Code that regulates some aspects relevant for the referendum process, the government extended the length of the campaign over 20 days (more precisely, from 1 August – instead of 10 September – until 28 September). Under Macedonian law, it is illegal to finance a referendum with foreign funds or from the state budget, but state ministers dominated in literally all media outposts that strongly advocated the “Yes” side of the campaign.

The referendum result was a mixture between a very expensive public opinion poll and a reality show, especially for the international public. With a turnout of only 37 per cent, it showed that the citizens were largely aware that the government had no intention of acting on the vote, as it had already announced its determination to proceed with the implementation of the Agreement regardless of the outcome of the referendum. The overwhelming abstention from voting represents “a very wide and conscious rejection” of the Agreement. The citizens’ vote was intended to annul the result of the 1991 referendum on independence⁵⁸ and provide the ruling elite with a sort of political legitimacy for the upcoming constitution change “once and for all” as the

56 Cf. European Commission for Democracy through Law (Venice Commission), *Code of Good Practice on Referendums*, Strasbourg, 25 October 2018, pp. 17-18, at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)_008_rev-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)_008_rev-cor-e).

57 This decision is in line with the recommendations of the Venice Code when it comes to quorums: “A turn-out quorum (minimum percentage) means that it is in the interests of a proposal’s opponents to abstain rather than to vote against it. For example, if 48% of electors are in favour of a proposal, 5% are against it and 47% intend to abstain, the 5% of opponents need only desert the ballot box in order to impose their viewpoint, even though they are very much in the minority. In addition, their absence from the campaign is liable to increase the number of abstentions and thus the likelihood that the quorum will not be reached. Encouraging either abstention or the imposition of a minority viewpoint is not healthy for democracy (point III.7.a). Moreover, there is a great temptation to falsify the turn-out rate in the face of weak opposition.” Venice Commission, *Code of Good Practice on Referendums*, cited above (Note 53), p. 23, para. 51.

58 The turnout of the 1991 referendum when Macedonia decided to form a sovereign and independent state was over 75 per cent (despite the boycott by ethnic Albanians who were still waiting and hoping for an integral solution of the “Albanian Question” on a regional basis). Over 95 per cent of the votes were in favour of independence. It was hoped that this second referendum would eventually substitute the expressed will of the people who voted for an

Greek side demanded. Despite the government's endless efforts to translate the defeat into a victory by counting and comparing the number of votes with those achieved in various parliamentary, local, or presidential elections, bare legal logic meant that the referendum did not pass – an outcome that was confirmed in the formal report of the State Electoral Commission. The “Boycott” movement delegitimized the government. The prime minister had already publicly admitted that he had been gambling with his people “all in”. He lost the referendum, but the international community continued its support using a political oxymoron, claiming that the Agreement received popular and wide support, despite the fact that the turnout had been very low. Two weeks later, the government initiated a constitutional revision, and on 19 October it managed to provide a two-thirds majority for the second stage of the process. However, the process was undemocratic, as opposition MPs were bribed, intimidated, or blackmailed to join the parliamentary majority. Nevertheless, the international media has taken more interest in alleged Russian interference than in the way democracy has been undermined and the involvement of the US ambassador. One of the rare objective observers was Panagiotis Lafazanis, the leader of the Greek political party Popular Unity, who compared the Western powers' treatment of people and referenda in both countries: “In a similar way as they did with the 2015 referendum in Greece, they managed to set one more ‘night of long knives’, an orgy of blackmail and pressures in order to get ‘yes’ votes and to achieve the magic number of 80 parliamentarians”.⁵⁹ According to him, “the real masters of Greece and Macedonia – two countries that have become loose protectorates of the US and NATO – are the US ambassadors. Also, it is not possible to sustain agreements in the long run purely relying on the signatures of the governments and parliaments susceptible to corruption, pressures, led by their selfish interests; agreements need the people.”⁶⁰ For a television interview, Greek professor Stavros Mavroudeas spelled out a similar conclusion. According to him, the Agreement would not bring any good to either country, or to the region. Rather, it was forcefully imposed upon both countries by the US and the EU. The leaders and governments of both countries, in his opinion, are very subservient, very weak, and they did not object to the Agreement, which means that it is artificial, intended not to ensure stability, friendship, and peace in the area, but to secure the area in the Western sphere of interest and potentially against Russia. Such an Agree-

“independent state of Macedonia” and instead decide on a “second independence” (to use the Prime Minister's words) for the state North Macedonia.

59 Λαφαζάνης: Οργιο εκβιασμών, πιέσεων και εξαγορών για να περάσει η συμφωνία στην ΠΓΔΜ [Lafazanis: A ban on blackmail, pressure and redemption to pass the deal to FYROM], *Protothema*, 20 October 2018, at: <https://www.protothema.gr/politics/article/831437/lafazanis-orgio-ekviasmon-pieseon-kai-exagoron-gia-na-perasei-i-sumfonia-stin-pgdm/> (author's translation).

60 Ibid. (author's translation).

ment, on the other hand, aggravates tensions in the area and nationalist tendencies in both countries. The pressure from the West is extreme, and it reminds one of colonial era involvement in internal politics.⁶¹

The Prespa process has never been about dispute settlement but about a geopolitical power game and the NATO chessboard in the Balkans. The name dispute, a nuisance for many years, could not be tolerated any longer. The US clearly has an interest in Macedonia joining NATO one way or another.

The Way Ahead: Instead of a Conclusion

At the time of writing, there are far more uncertainties and insecurities than one would have expected when the Prespa Agreement was drafted and signed. The name issue has not been resolved and will remain an open wound for a very long time because Macedonian society is heavily bruised. The international power centres – as ever – prefer quick fixes and do not think of future consequences, which locals then have to live with. In a misguided attempt to settle a dispute, the international powers around Nimitz have a constitution that goes against the stated policy of the international community to strengthen the rule of law in the Western Balkans and has effectively broken international laws and the constitution.

If fully ratified and implemented, the Prespa Agreement will remain an alleged compromise that was imposed on the Macedonian citizens at an extremely high price. Dag Hammarskjöld's words ring true in this case: "It is my firm conviction that any result bought at the price of a compromise with the principles and ideals of the Organization [United Nations] either by yielding to force, by disregard of justice, by neglect of common interests or by contempt for human rights, is bought at too high a price. This is so because a compromise with its principles and purposes weakens the Organization in a way representing a definite loss for the future that cannot be balanced by any immediate advantage achieved."⁶²

To make things even more ironic, the Prespa Agreement is a typical Balkan deal for at least three reasons: first, using the pretext of the "(state) name dispute", the deal regulates archetypal issues such as identities, languages, cultures, and histories. As the first party is superior in power and influence to the second, it "extorts" confession of the Greek continuity myth by banning the alternative Balkan continuity myth. As such, the deal goes beyond UN resolutions and Nimitz's mediation prerogatives. Second, the deal was drafted and imposed by the Western powers for the sake of their geopolitical interests in the Balkans, while the local elites are merely executors of the will of external

61 Cf. Interview with Stavros Mavroudeas, on Press TV, 30 September 2018, at: https://www.youtube.com/watch?time_continue=6&v=LWZ3VAri_g4.

62 Introduction to the Annual Report of the Secretary-General on the Work of the Organization, 15 June 1959-15 June 1960, quoted from: John S. Gibson, *International Organizations, Constitutional Law, and Human Rights*, New York 1991, p. XV.

stakeholders. Third, the way in which the whole process has been carried out is also typical of the Balkan region. In both countries, the rule of law has been sacrificed, there was political corruption and black funds, bribery of the media and civil society circles which aided the spread of propaganda, etc. The Prespa process revealed the unpleasant truth about international conflict management on the European periphery and the dependence syndrome of the local elites. Instead of overcoming a long-lasting dispute and nationalism on both sides, it has already produced the opposite in both countries. Rather than paying attention to the real problems of the citizens, both societies were pushed back to the vicious circle of an identity conflict that would not only fester, but would distract from internal political and economic struggles.

The unsuccessful referendum of 30 September and the way in which a two-thirds majority was secured on 19 October indicate that the popular will was completely disregarded. It remains unclear how the government will put into force an agreement and legal regulations without the use of coercion. The weak Macedonian state is now even weaker, not stronger. Not even immediate admission to NATO could compensate for the deep societal and political distrust, rehabilitation of the criminals for the sake of the constitutional review - and the definite end of (what existed of) the rule of law principle. The international observers proved to be pragmatic and to care only about the "wider picture" of Euro-Atlanticism, thus neglecting the new potential for future internal rupture and regional destabilization.