

**The meaning and effects of *erga omnes* within the Prespa Agreement
of 17 June 2018 between Greece and North Macedonia.
An introductory note**

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1. *Background information: The naming dispute and the road to the Prespa Agreement*

The Prespa Agreement (PA, the Agreement) – officially titled the ‘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’¹ – is a bilateral international treaty. The Agreement entered into force on 12 February 2019 and it was signed on 17 June 2018 at the lake Prespa (after which it is unofficially named), a natural border between Greece, North Macedonia and Albania. The parties to the Agreement are the first two neighbouring states, namely Greece and North Macedonia.

The PA’s primary object and purpose is to settle a relatively longstanding dispute between the two parties. This dispute arose in the aftermath of the former Yugoslavia’s dissolution, when North Macedonia declared its independence under the constitutional name of Republic of Macedonia. Greece, whose northern region is also called Macedonia, was opposed to the use of this name by its neighbour for a number of reasons, involving historical concerns and fears of irredentism; however, the roots of this disagreement, which also pertain to history and identity-building in the region, are considerably deeper. The dispute’s core and

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¹ The UNTS volume number is not yet available. UN registration number: I-55707. The text of the Agreement can be found at <<https://treaties.un.org/doc/Publication/UNTS/No%20Volume/55707/Part/I-55707-0800000280544ac1.pdf>>.



nuances cannot easily be fully appreciated by an audience that has no familiarity with the local history, border changes, and the movement of populations. These elements underpin and nourish the idiosyncratic nature of this rather eccentric international dispute. Ultimately, the naming issue pertains to the sensitivities and, to a certain degree, the existential anxieties of the two neighbouring populations. On the one hand, arguably the dispute concerns the (natural) need of a newly independent state, namely North Macedonia, to construct and demarcate its distinctive identity, and to use this very identity, not only as an international ‘trademark’, but also as the basis for its sought-after internal cohesion and unity. On the other hand, the dispute stems from the (phobic, to some extent) reaction by another state, namely Greece, owing to the strong sentiment of a significant part of its population that the ingredients used by its new neighbour to found and portray its identity were misappropriated and misused, thus challenging Greece’s own identity and historical narrative and, essentially, usurping and undermining the – fairly similar – process of identity-building through which it went at an earlier time.

The saga before concluding the PA is rather long. Discussing in detail what led to the Agreement exceeds the confines of this introductory note, however, notable key chapters in this saga are the internationalisation of the dispute resulting in the involvement of the United Nations Security Council,² the admission to membership of North Macedonia to the United Nations (UN) under a provisional international name (ie former Yugoslav Republic of Macedonia - FYROM),³ and the conclusion in 1995 by the two concerned states of a bilateral Interim Accord⁴ containing a number of friendship and co-operation provisions. Although the Interim Accord did not tackle the naming dispute *per se*, it is clear that its parties saw this treaty as ‘a basis for negotiating a permanent Accord’⁵ on their difference over North Macedonia’s name. To that end, the parties agreed ‘to continue negotiations under the auspices of the [UN] Secretary-General’ as a means for solving the naming dispute.⁶ Moreover,

² UNSC RES 817 (7 April 1993) UN Doc S/RES/817, para 2.

³ UNGA Res 47/225 (8 April 1993) UN Doc A/RES/47/225.

⁴ Interim Accord (between Greece and the former Yugoslav Republic of Macedonia) (signed 13 September 1995, entered into force 13 October 1995) 1891 UNTS 1-32193, 3.

⁵ *ibid* at the preamble. The permanent accord is the PA that solves the dispute.

⁶ *ibid* art 5.



with the Interim Accord, Greece recognised FYROM as an independent sovereign state under its provisional UN name (ie FYROM).⁷ The two parties to the Interim Accord felt it necessary to recall the principles of the inviolability of frontiers and of territorial integrity⁸ and ‘their mutual interest in the maintenance of international peace and security’,⁹ whilst also confirming ‘their common existing frontier as an enduring and inviolable international border’,¹⁰ and agreeing ‘that neither of them will assert or support claims to any part of the territory of the other Party or claims for a change of their existing frontier.’¹¹ Fears of irredentism can also be detected in Article 6 of the Interim Accord, by means of which FYROM declared ‘that nothing in its Constitution [...] can or should be interpreted as constituting or will ever constitute the basis of any claim [...] to any territory not within its existing borders.’¹²

The Interim Accord is known to international law experts due to the weighty¹³ judgment that the International Court of Justice (ICJ) delivered in the homonymous case concerning the interpretation of this treaty’s text. FYROM brought this case against Greece as a response to the latter’s objection (essentially Greece’s veto) to its (ie FYROM’s) admission to NATO in April 2008.¹⁴ This conduct was a means for Greece to compel its neighbour to negotiate a mutually agreed name and to react to the significant number of states that had recognised it with its constitutional name (ie Macedonia). With its judgment in the *Application of the Interim Accord of 13 September 1995* case, the ICJ found that, by hindering the admission of its neighbour to NATO, Greece had breached Article 11(1) of the Interim Accord.¹⁵

⁷ *ibid* art 1.

⁸ *ibid* at the preamble and in art 3.

⁹ *ibid*.

¹⁰ *ibid* art 2.

¹¹ *ibid* art 4.

¹² *ibid* art 6(1).

¹³ Amongst other reasons, due to the analysis it contains on countermeasures.

¹⁴ *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v Greece)* (Judgment) [2011] ICJ Rep 644.

¹⁵ Art 11(1) of the Interim Accord (n 4) reads: ‘Upon entry into force of this Interim Accord, [Greece] agrees not to object to the application by or the membership of [FYROM] in international, multilateral and regional organizations and institutions of which [Greece] is a member; however, [Greece] reserves the right to object to any membership referred to above if and to the extent of [FYROM] is to be referred to in

2. *The Prespa Agreement: Its architecture and key features*

One cannot tell with certainty if or to what extent this ICJ judgment stirred Greece and North Macedonia to conclude the PA, but – as is explained in more detail below – it is this Agreement that paved the way for North Macedonia’s forthcoming accession to NATO.¹⁶ Most significantly, the PA settles an international dispute in an amicable, mutually accepted and, hopefully, sustainable¹⁷ way that opens the way for deeper co-operation between the two neighbouring nations and for North Macedonia’s participation in the process of European integration and, more generally, in international institutions.

As is reflected within its structure, the PA’s purpose is twofold. First and foremost, the Agreement aims at solving the aforementioned dispute between the two contracting states over North Macedonia’s name. The second purpose concerns the ‘intensification and enrichment of co-operation between’¹⁸ Greece and North Macedonia in a number of areas; thus, Part 2 of the Agreement amounts to a rather typical friendship and co-operation bilateral treaty. Language in this Part is, to an extent, abstract and soft – ie it often points to a direction¹⁹ and/or makes declarations²⁰ that are not necessarily constitutive of concrete obligations or rights.

such organization or institution differently than in paragraph 2 of the United Nations Security Council resolution 817 (1993)’.

¹⁶ North Macedonia has not yet joined NATO. A Protocol to the North Atlantic Treaty on the Accession of the Republic of North Macedonia was signed on 6 February 2019, but this has not yet entered into force as, according to art II of the Protocol, all parties to the North Atlantic Treaty need to ratify it before it enters into force.

¹⁷ See discussion that follows and the Preamble of the Prespa Agreement (n 1), which declares resolving the dispute in a dignified and sustainable manner.

¹⁸ Title of Part 2 of the Prespa Agreement (n 1).

¹⁹ For example, see art 14(5) of the Prespa Agreement (n 1), which reads: ‘The Parties shall promote, extend and improve cooperative synergies in the areas of infrastructures and transport as well as on a reciprocal basis, road, rail, maritime and air transport and communication connections, using the best available technologies and practices.’

²⁰ For example, see the first sentence of art 15 of the Prespa Agreement (n 1), which reads: ‘In the age of the new industrial revolution and second age of machines, the deepening of cooperation amongst States and societies is necessary now more than ever [...]’.



As already explained, Part 1 of the PA is devoted to the naming dispute. The PA is final and terminates the Interim Accord.²¹ This does not, however, mean that the two instruments (ie the PA and the Interim Accord) do not partially coincide. For instance, the PA echoes the provisions of the Interim Accord that refer to the inviolability of frontiers and to territorial integrity.²² Moreover, the parties to the PA reiterate ‘their common existing frontier as an enduring and inviolable international border [and agree, *inter alia*, that n]either Party shall assert or support any claims to any part of the territory of the other Party or claims for a change to their common existing frontier’.²³ As far as irredentism is concerned, amongst other provisions within the Agreement, the parties commit and declare that their national constitutions, as they are in force or as they may be amended in the future, cannot and should not ‘be interpreted as constituting [...] the basis for any claim to any area that is not included in its existing international borders’.²⁴ In similar terms, the parties undertake, *inter alia*, ‘not to make or to authorize any irredentist statements [...]’,²⁵ and they commit to prevent conduct likely to incite chauvinism, hostility, irredentism, and revisionism against the other party. This not only includes when such acts are attributable to the state, but also when they are committed by private entities whose conduct is not attributable to either party.²⁶ Applying the same logic, Article 3(4) of the Agreement provides *inter alia* that ‘[n]either Party shall allow its territory to be used against the other Party by any third country, Organization, group or individual carrying out or attempting to carry out subversive, secessionist actions, or actions or activities which threaten in any manner the peace, stability or security of the other Party.’²⁷ In a nutshell,

²¹ This is reflected within the title of the Prespa Agreement (n 1) and is also explicit in art 1.

²² Prespa Agreement (n 1), for instance at the preamble and within arts 3(2) and 5(2).

²³ *ibid* art 3(1).

²⁴ *ibid* art 4(1).

²⁵ *ibid* art 4(2).

²⁶ *ibid* art 6. It should be noted, however, that this provision can raise concerns to the extent that it may clash with fundamental human rights binding the parties to the PA. For instance, historical revisionism may clash with (academic) freedom of expression. Art 5 of the Agreement refers to human rights, both in general and in respect to a number of international human rights instruments, holding, *inter alia*, that in the conduct of their affairs, the parties to the Agreement shall be guided by the spirit and principles of human rights.

²⁷ *ibid* art 3(4).



the PA also establishes (admittedly, in a manner that rather lacks detail and specification as to the exact standards of the expected conduct) some positive obligations of means (ie a duty to demonstrate due diligence) regarding the offering of protection from the conduct of non-state actors.

As far as the dispute between the two states is concerned, the PA declares²⁸ that it solves the issue once and for all. To that end, one of its final clauses provides that the Agreement's provisions 'shall remain in force for an indefinite period of time and are irrevocable.'²⁹ Moreover, the drafters of the PA included in the same Article a rather peculiar – but also legally inoperative³⁰ – clause, providing that '[n]o modification to this Agreement contained in Article 1(3) and Article 1(4) is permitted.'³¹ This clause essentially aims at partially 'locking' the Agreement by preventing future generations from revisiting and/or amending some of its key provisions concerning the naming dispute. Irrespective of any reservations one may express as to the unamendability of certain parts of the PA, this language is indicative of the intention of the parties to treat this Agreement as an enduring, permanent basis that contains the definitive terms of the settlement of their dispute.

Articles 1(3) and 1(4) – whose modification is not permitted according to the PA – concern the settlement of the dispute and the entry into force of the Agreement. Article 1(3) in particular refers to the core of the dispute, that is, the treaty's primary object and purpose. The Agreement establishes 'North Macedonia' as the new, mutually accepted name,³² 'Macedonian/citizen of the Republic of North Macedonia' as this state's nationality,³³ and 'Macedonian' as its official language.³⁴ In that respect, Article 1(3) explicitly points to Article 7 of the Agreement, whereby the parties 'acknowledge that their respective understanding of the terms "Macedonia" and "Macedonian" refers to a different historical context and cultural heritage',³⁵ and clarify that 'the Macedonian language, is

²⁸ This is reflected in the titles of the Prespa Agreement (n 1) and of its first Part. The preamble and art 20(5) of the Agreement are explicit in that respect.

²⁹ Prespa Agreement (n 1) art 20(9).

³⁰ To the extent that it prevents sovereign will from producing legal effects in the future.

³¹ Prespa Agreement (n 1) art 20(9).

³² *ibid* art 1(3)(a).

³³ *ibid* art 1(3)(b).

³⁴ *ibid* art 1(3)(c).

³⁵ *ibid* art 7(1).



within the group of South Slavic languages [and that this language is] not related to the ancient Hellenic civilization, history, culture and heritage of the northern region of [Greece].³⁶ The PA goes into quite some detail regarding the use of the terminologies in dispute – ie Macedonia(n). Its provisions span from the use of the terms at issue on car license plates,³⁷ to the adjectival reference to state public entities,³⁸ whilst also leaving certain issues to be negotiated in the future.³⁹

It is very interesting – and a rather distinctive feature of this treaty – that the PA requires the amendment of North Macedonia’s national constitution as a means for this state to adopt the new terminologies agreed upon by the parties⁴⁰ and, as is discussed below, as a precondition for Greece to accept being bound by the PA. The Agreement is explicit and detailed as to the required constitutional modifications.⁴¹ According to Article 1(3)(g), North Macedonia ‘shall adopt [this name] as its official name and the terminologies referred to in Article 1(3) through its internal procedure that is both binding and irrevocable, entailing the amendment of the Constitution as agreed in this Agreement’.⁴² This means that no future amendment of national law, including the North Macedonian constitution, can modify the terminologies in dispute (such as the constitutional name of the state) without breaching the PA.

The constitutional amendment within the North Macedonian legal order is part of a rather complex ‘choreography’ and set of preliminary steps and preconditions for the PA to enter into force. In this respect, both Articles 20(2) and (3) of the Agreement, which are part of the final clauses of it and concern the ratification of the Agreement and its entry into force, refer to Article 1 and to the steps that this Article enlists as preconditions before the Agreement can become legally binding. This

³⁶ *ibid* art 7(4).

³⁷ *ibid* art 1(3)(e).

³⁸ *ibid* art 1(3)(f).

³⁹ *ibid* art 1(3)(h), concerning commercial names, trademarks etc.

⁴⁰ *ibid* arts 1(3)(g), 1(4)(d) and (e), 1(11) and 1(12).

⁴¹ *ibid* art 1(12), reading: ‘The name and terminologies as referred to In Article 1 of this Agreement shall be incorporated in the Constitution of [North Macedonia]. This change shall take place en bloc with one amendment. Pursuant to this amendment, the name and terminologies will change accordingly in all articles of the Constitution. Furthermore, [North Macedonia] shall proceed to the appropriate amendments of Its Preamble, Article 3 and Article 49, during the procedure of the revision of the Constitution.’

⁴² *ibid* arts 1(3)(g).

‘choreography’ (ie the sequence of steps to be followed by each party towards the ratification of the Agreement) is quite telling. It is revelatory, not only of the complexity of the dispute, but also of the issues that the parties considered as a *conditio sine qua non* for accepting to be bound, of their priorities, but also of the process that the parties felt was necessary as a means for them to build the volume of trust that would allow them to confidently make the PA legally binding by ratifying it. Thus, according to Article 1(4) of the PA, upon signing the Agreement, North Macedonia was expected to submit it to its Parliament for ratification.⁴³ To that end, it could hold a referendum.⁴⁴ Moreover, as aforementioned, North Macedonia had to amend its national constitution⁴⁵ and notify accordingly Greece, which would be then expected to ratify the Agreement.⁴⁶

Upon receiving the notice of the ratification of the PA by North Macedonia, Greece had to promptly ‘notify the President of the Council of the EU that it supports the opening of the EU accession negotiations of [North Macedonia] under the [...] terminologies agreed, and] notify the Secretary General of NATO that it supports the extension of an accession invitation by NATO to [North Macedonia].’⁴⁷ Greece’s support for North Macedonia’s accession to NATO was ‘conditional, first, to an outcome of referendum, if [North Macedonia] decide[d] to hold one [...] and, second, to the completion of the constitutional amendments provided for in th[e Prespa] Agreement. Upon receipt of notification by [North Macedonia] concerning the completion of all its internal legal procedures for the entry into force of th[e Prespa] Agreement, including a possible national referendum with an outcome consistent with th[e Prespa] Agreement, and upon conclusion of the amendments in the Constitution of [North Macedonia], [Greece] shall ratify [North Macedonia]’s NATO Accession Protocol. This ratification procedure shall be concluded together with the ratification procedure of this Agreement.’⁴⁸ Accordingly, for the PA to enter into force, North Macedonia had to amend its constitution so that it complied with the PA (and Greece’s

⁴³ *ibid* art 1(4)(a).

⁴⁴ *ibid* art 1(4)(c).

⁴⁵ *ibid* arts 1(4)(d) and 1(11).

⁴⁶ *ibid* art 1(4)(f).

⁴⁷ *ibid* art 2(4)(a) and (b).

⁴⁸ *ibid* art 2(4)(b).



concerns regarding irredentism and the use of the names/terminologies in dispute), whilst Greece committed to ratify the instrument on North Macedonia's accession to NATO.

Interestingly, this sequence of acts before the PA entered into force – and as a precondition for the same – resulted in certain provisions of the Agreement being implemented before its official ratification by the two parties and its entry into force. This raises a noteworthy theoretical question as to whether the provisions of the PA that had to be implemented before the parties ratified it – and for the parties to ratify it – produced normativity (ie whether the provisions at issue became legally binding for the parties before the PA entered into force). The purpose and confines of this introductory note do not permit the exploration of this question in depth. Suffice it to explain that one approach, for example, would be to treat the PA's text as essentially containing two agreements, one of which is an agreement in simplified form that develops normativity and produces legal effects upon its signature by the two governments, ie a legally binding agreement for which no ratification (thus approval by the national parliaments) is necessary. Another approach would see the PA's text as containing two agreements, with the difference in this second scenario that the part of the PA's *negotium* being implemented before the ratification of the PA instrument by the parties amounts to a non-binding gentlemen's agreement that comprises of political commitments not intended to establish legally binding rights/obligations. Rather, such a non-legally enforceable agreement merely operates on the basis of good faith.

The second scenario seems more convincing. A combination of two factors support the labelling of part of the PA as a gentlemen's agreement. First, indeed, this Agreement contains a number of provisions that were designed to be implemented (and which were implemented, ie they led to specific conduct) by the parties before the PA entered into force. Second, it does not seem that the intention of the parties was to establish the aforementioned required steps/conduct for the Agreement's entry into force as legally binding obligations, the breach of which would engage their international responsibility. In similar terms, the nature of the arrangements and the provisions of the part of the PA that amount to a gentlemen's agreement are such that they establish no solid/proper legal obligations. Rather, they offer a 'roadmap' and set a framework of (political) conditionality for the parties to feel secure enough, that is, to be



satisfied to turn the remaining agreement (ie the part of PA's *negotium* that had not been yet implemented) into a formally legally binding instrument. As such, had North Macedonia failed to amend its constitution in a way that would meet the requirements of the PA, this 'omission' would not amount to a breach of an international obligation, that is to say, no internationally wrongful conduct would exist in that case. However, unless Greece subsequently consented to different arrangements, this 'omission' by North Macedonia would prevent the PA from entering into force. It is evident, therefore, that good faith is very important within this framework, including both the gentlemen's agreement (which is also a means to build trust between the parties) and the rest of the PA. In any event, this is also reflected within Article 18 of the 1969 Vienna Convention on the Law of Treaties (VCLT), which states that, when signing a treaty, states assume an obligation not to defeat its object and purpose prior to its entry into force.⁴⁹

3. *The meaning and the effects of erga omnes within the Prespa Agreement: Some scenarios to explore*

The key features and elements of the PA that were identified and briefly discussed earlier in this note are not the only noteworthy ones. Considering, however, that it is impossible to analyse all notable elements within this issue of *Questions of International Law*, the focus of the papers contained herewith and of the discussion that follows in this note is on one particular theoretical set of interconnected issues raised by the PA provisions, namely the use of the term '*erga omnes*' within the Agreement, the meaning and effects of this term within this context, and the associated questions of who is bound by the PA and, accordingly, who may invoke the international responsibility of a wrongdoer in case of breach of its provisions or, more generally, who may enforce it.

Erga omnes appears twice in the text of the Agreement. First, in Article 1(3)(a), which reads: 'The official name of the Second Party [ie the state nowadays named North Macedonia] shall be the "Republic of North Macedonia", which shall be the constitutional name of the Second

⁴⁹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 18.



Party and shall be used *erga omnes*, as provided for in this Agreement. The short name of the Second Party shall be “North Macedonia”.⁵⁰ The second instance is in Article 1(8), which explains the meaning of *erga omnes*. This Article reads: ‘Upon entry into force of this Agreement and taking into account its Article 1(9) and (10), the Parties shall use the name and terminologies of Article 1(3) for all usages and all purposes *erga omnes*, that is, domestically, in all their bilateral relations, and in all regional and international Organizations and institutions.’⁵¹

These two Articles must be read in conjunction with other provisions that imply *erga omnes* – in the sense that this term is employed within the PA – without explicitly mentioning the term. For instance, according to Article 1(5), ‘[u]pon entry into force of th[e Prespa] Agreement, the Parties shall use the name and terminologies of Article 1(3) in all relevant international multilateral and regional Organizations, institutions and fora, including all meetings and correspondence, and in all their bilateral relations with all Member States of the United Nations.’⁵² Unlike Article 1(5), which concerns the international use of the agreed terminologies, Article 1(9) deals with the internal use of the same. Thus, Article 1(9) provides that ‘[u]pon entry into force of th[e Prespa] Agreement, [North Macedonia] shall promptly in accordance with sound administrative practice take all necessary measures so as the country’s competent Authorities henceforth use internally the name and terminologies of Article 1(3) of this Agreement in all new official documentation, correspondence and relevant materials.’

Read as an ensemble, these provisions support the contention that the term ‘*erga omnes*’ refers to the use of the agreed terminologies for all usages and all purposes in three different levels/instances. First, the parties to the PA must employ the terminologies at issue domestically.⁵³ Second, they must employ the terminologies in the framework of their bilateral relationship.⁵⁴ Finally, the terminologies must be also used in all of their international relations,⁵⁵ both regarding international institutions

⁵⁰ Prespa Agreement (n 1) art 1(3)(a).

⁵¹ *ibid* art 1(8).

⁵² *ibid* art 1(5).

⁵³ *ibid* arts 1(8) and 1(9).

⁵⁴ *ibid* art 1(8).

⁵⁵ *ibid* arts 1(5) and 1(8).

and in their relations with other states. To that end, under the PA, North Macedonia assumes a duty to

‘[n]otify all international, multilateral and regional Organizations, institutions and fora of which it is a member of the entry into force of th[e Prespa] Agreement, and request that all those Organizations, institutions and fora thereafter shall adopt and use the name and terminologies referred to in Article 1(3) of this Agreement for all usages and purposes. Both Parties shall also refer to [North Macedonia] in accordance with Article 1(3) in all communications to, with, and in those Organizations, institutions and fora. [Moreover, North Macedonia shall n]otify all Member States of the United Nations of the entry into force of th[e Prespa] Agreement and shall request them to adopt and use the name and terminologies referred to in Article 1(3) of this Agreement for all usages and purposes, including in all their bilateral relations and communications.’⁵⁶

Accordingly, with the PA the two states parties agreed to employ the terminologies at issue for all usages and purposes both domestically and internationally. The latter dimension does not only concern the bilateral relationship between the two parties to the PA, but all international occasions within the framework of and in their relations with all types of international institutions, in addition to their international relations with all other UN member states. This appears to be the meaning of the term ‘*erga omnes*’ within the PA context; therefore, *prima facie*, this term is employed within the Agreement as a rhetorical flourish that aims at endowing the PA with the gravitas of legal Latin. On the other hand, it may also be seen as a convenient (yet, not as clear as one would wish) way to explain the use of the agreed terminologies in a concise manner. Thus, *erga omnes* must be read literally. It rather serves a descriptive purpose. Accordingly, it is not used as a term of art denoting a particular type of international obligations. Rather, it refers to the instances when and the persons vis-à-vis whom the agreed terminologies must be used; not vis-à-vis whom the obligation to employ these terminologies is owed. Thus, at first sight, the obligation to use the agreed terminologies for all usages and all purposes, *erga omnes*, both domestically and internationally is a bilateral obligation that one party to the PA owes to the other party.

⁵⁶ *ibid* art 1(6).



Thus, the PA establishes obligations linked with self-interests that are exclusive to each contracting state *uti singuli*. In different words, the term ‘*erga omnes*’ is *not* referring to obligations that one state owes towards all other states (parties to a treaty, if the obligation stems from a multilateral treaty) because these obligations pertain to common interests/values, the breach of which concerns the international community as a whole (or all state parties, if the obligation stems from a multilateral treaty). *Mutatis mutandis*, at first sight, *erga omnes* within the PA does not justify collective enforcement by non-injured states in case of breach of the obligation to employ the agreed terminologies.⁵⁷

This reading of the term ‘*erga omnes*’ in the PA is also (partially, as is argued below) supported by Article 1(13), which provides that ‘[i]n the event of mistakes, errors, omissions in the proper reference of the name and terminologies referred to in Article 1(3) of this Agreement in the context of international multilateral and regional Organizations, institutions, correspondence, meetings and fora, as well as in all bilateral relations of [North Macedonia] with third States and entities, either of the Parties may request their immediate rectification and the avoidance of similar mistakes in the future.’⁵⁸ The text of this provision employs the word ‘may’ rather than the stronger term ‘shall’. Due to this, the parties to the Agreement enjoy discretion, that is, the provision establishes a right and not a duty for the parties. Moreover, although cessation of wrongfulness and (assurances and guarantees of) non-repetition correspond to key secondary obligations, ie key consequences of an internationally wrongful act,⁵⁹ Article 1(3) of the PA does not (necessarily) concern reaction to wrongfulness by an injured state. Nevertheless, it is revelatory of who the parties to the PA understand to have an interest in seeing the treaty duly implemented and the terminologies that it establishes employed. It is the parties to the Agreement that have such an interest and not any third actor *vis-à-vis* whom the agreed terminologies must be used.

These observations support the argument that, on the face of it, the PA is a bilateral treaty establishing reciprocal, synallagmatic obligations

⁵⁷ ILC, ‘Articles on Responsibility of States for Internationally Wrongful Acts’ (2001) UN Doc A/CN.4/SER.A/2001/Add.1 (Part 2) art 48.

⁵⁸ Prespa Agreement (n 1) art 1(13).

⁵⁹ ILC, ‘Articles on Responsibility of States for Internationally Wrongful Acts’ (n 57) art 30.



pertaining to interests that, *prima facie*, are exclusive to the two parties to the Agreement. Read in this way, the PA does not create any obligations or rights for third parties. As such, in case of breach of the obligation to employ the agreed terminologies *erga omnes*, those injured can only be one of the two parties to the PA. Accordingly, only one of the two parties to the Agreement is entitled to invoke the responsibility of the other party when such party violates the Agreement. *Mutatis mutandis*, under this logic, third states cannot be injured and have no interest in invoking the responsibility of one of the parties to the Agreement or of any third state/actor when they do not employ the agreed terminologies. This reading is supported by both the text of the PA and by the VCLT. Starting with the former, Article 20(7) provides that the PA ‘is not directed against any other State, entity or person. It does not infringe on the rights and duties resulting from bilateral and multilateral agreements already in force that the Parties have concluded with other States or international Organizations.’⁶⁰ With respect to the VCLT, it is common knowledge that its text explicitly provides that a treaty cannot establish rights or duties for third states without their consent.⁶¹ In addition to the requirement for express acceptance in writing by third states, another precondition set by the VCLT for a treaty to establish an obligation for third states is that its parties intended to do so, ie that the states parties intended to establish an obligation for third states.⁶² In quite similar terms, both the intention of the parties to a treaty and the assent (that can also be presumed in this case) of third states are necessary for a treaty to establish rights for third states.⁶³

In light of this, a preliminary conclusion that may be reached on the basis of the argumentation given thus far is that the PA is a typical bilateral international treaty. As such, it establishes no rights or obligations for third states. However, this reading and ‘labelling’ of the PA neglects certain factors that may invite us to reconsider this conclusion. For instance, the PA is a bilateral international treaty that does not exclusively concern the relationship between the two parties, but also the use of the

⁶⁰ Prespa Agreement (n 1) art 20(7).

⁶¹ Vienna Convention on the Law of Treaties (n 49) art 34.

⁶² *ibid* art 35.

⁶³ *ibid* art 36. Assent in art 36 VCLT implies a more passive stance, compared to consent provided by art 35 VCLT. See also the French version of art 36 which employs the term ‘*consentement*’ rather than ‘assent’.



agreed terminologies by the parties in their international relations with third actors, such as states and international institutions. Inevitably, this invites us to explore whether these third actors may assume any rights or obligations under the PA. For instance, what are the legal consequences of the acceptance by non-parties of the request addressed to them on the basis of the PA to adopt and use the new terminologies? Could the request by North Macedonia that international institutions *shall* (according to the text of 1(6)(a) – emphasis added) adopt and use the terminologies at issue for all purposes and usages be interpreted as showing the intention of the parties to the PA to open this particular aspect of the treaty (ie the use of the new terminologies) to third actors? Does the acceptance by a state or an international organisation of a request to employ the new terminologies establish a duty for them to thereafter employ these terminologies? And, if the PA can establish obligations for non-parties who accept to be bound, vis-à-vis whom do (non-)parties owe the obligation to use the new terminologies? In similar terms, who would be entitled to react in case of breach of the obligation to employ the terminologies and against whom?

Thus far, it has been suggested in this note that the PA may be read as being a typical bilateral treaty, ruled by the maxim *res inter alios acta, aliis nec nocet nec prodest*, or a bilateral treaty, a part of which is aimed at establishing obligations (and rights) for consenting non-parties. Outside of these two readings of the PA, a third scenario is also possible and worthy of exploration. Be it a bilateral treaty, the PA is solving an international dispute that involves *inter alia* peace in the Balkans and irredentism. Arguably, the Agreement and especially the terminologies that it adopts are a means of prevention of territorial claims, tension and conflict. This is clear in both the Interim Accord and in the PA. The PA thus serves purposes that are not solely ‘private’, and which do not exclusively concern the interests of the parties to it, as peace, conflict prevention and the preservation of the existing borders are also a matter of general interest. This suggests that the PA could fall within the category of treaties establishing an objective regime, ie a regime binding everyone and which ought to be respected by everyone, including non-parties to the Agreement. Qualifying part of the PA as an objective regime would imply the establishment of an obligation owed by all actors vis-à-vis all other actors, that is to say, an obligation *erga omnes*. Indeed, the term ‘*erga omnes*’ is commonly employed in the context of objective regimes, which produce

objective effects that bind universally all states/actors irrespective of their will. If the term '*erga omnes*' is used in the PA in this sense, this would mean that non-parties to the PA owe an obligation vis-à-vis all other states and international organisations to adopt and employ the terminologies at issue irrespective of their will/consent. An associated question in this framework would be whether, outside of the duty that all actors have *erga omnes* to use the terminology at issue for all usages and all purposes, these actors also have a right to invoke the responsibility of an actor who fails to employ the agreed terminologies.

4. *In this issue of Questions of International Law*

In summer 2018, a few days following the release of the PA's text, the author of the present introductory note published a comment in Greek assessing the Agreement from a normative perspective (ie concerning its desirability), whilst also considering some of its more technical dimensions.⁶⁴ Although such note was written for a broader audience (ie non experts), it argued *inter alia* that, as parts of the PA concern general interest, especially peace, irredentism and territorial integrity, Greece and North Macedonia could treat the part of the Agreement that concerns the use of the new terminologies as establishing an objective regime. That is, the argument could be made that the term '*erga omnes*' within the PA has been chosen by the parties with the intention to establish an objective regime with regard to the agreed terminologies. Admittedly, this should be (more) clear and unequivocal in the Agreement. Additionally, an important obstacle to this reading is Article 20(7), which, as already explained, provides that the PA is not directed against non-parties.

Ultimately, however, many things in law are a matter of interpretation. For instance, Article 1(6) was discussed earlier in this note concerning the positive duty that it establishes for North Macedonia to notify third actors of the entry of the PA into force and request them to adopt and employ the new terminologies. As already argued, the request

⁶⁴ VP Tzevelekos, 'Μία πρώτη αποτίμηση της συμφωνίας για το Μακεδονικό' ['A First Assessment of the Agreement on the Macedonian Dispute'] (2018) *The Books' Journal* <<http://booksjournal.gr/%CE%B3%CE%BD%CF%8E%CE%BC%CE%B5%CF%82/item/2761-makedoniko-mia-prvth-apotimhsh>>.



provided by Article 1(6) may be interpreted as the parties to the PA intending to open their Agreement to third parties. However, different interpretations are also possible. For example, rather than containing an invitation to non-parties to consent to being bound to employ the new terminologies, Article 1(6) could be understood as merely exemplifying the means through which North Macedonia is expected to promote the new terminologies. This reading of Article 1(6) is compatible with the other two scenarios given earlier, namely that the PA is a typical bilateral treaty that produces no effects for non-parties or that part of this Agreement establishes an objective regime. Another possible reading of Article 1(6) is that it reflects the intention of the parties to invite as many non-parties as possible to consent to be bound to adopt the new terminologies and provides at the same time the means to be employed to that end. With respect to the means of promoting the new terminologies in the PA, as the author of the present note also argued within his 2018 comment, these means are rather passive and, thus, inadequate. The primary obligation for the parties under the PA is negative, consisting of a duty to abstain from using the old terminologies, whereas the standards of positive obligations to actively promote the agreed terminologies – consisting essentially in North Macedonia’s duty to introduce itself to the rest of the world with its new name and in requesting third actors to employ this name and the associated terminologies – are rather low.

A further example of an equivocal provision that is susceptible to alternative interpretations is Article 1(13), which – as already explained – enables either of the parties to the Agreement to request the rectification and the avoidance of any mistakes, errors and omissions in the use of the new terminologies by third actors. Earlier in this introductory note, Article 1(13) was mentioned in connection with the first scenario pertaining to the meaning of the term ‘*erga omnes*’ in the PA, namely the scenario that treats this treaty as a purely bilateral, synallagmatic instrument that only binds the parties to it. However, Article 1(13) may also be read as supporting the third aforementioned scenario, which understands *erga omnes* as referring to the establishment of an objective regime on the basis of which all actors must employ the new terminologies. Accordingly, under the latter reading, what the two interested parties (ie Greece and North Macedonia) wish to achieve with Article 1(3) is to permit them to react to the conduct of non-parties who undermine the effectiveness of the objective regime that they are establishing with respect to the new terminologies.



These examples serve to illustrate why the meaning of the term ‘*erga omnes*’ within the PA and the answer to the question of who is bound to employ the new terminologies under this Agreement depend upon how its terms will be practiced and, more generally, interpreted in the future. With this in mind, the author of the present note invited his colleagues, Dr Ioannis Prezas and Dr Vassilis Pergantis, to contribute to this issue of *Questions of International Law* by treating the PA as a case study that asks scholars to explore the meaning and the effects of the term ‘*erga omnes*’ within this particular context, and to opine as to the obligations and rights this treaty potentially establishes for non-parties. Pergantis and Prezas partially concur and partially diverge in their reading of the PA.

Starting with a key point of convergence, both authors hold that the term ‘*erga omnes*’ in the PA is not used to refer to the aforementioned class of international obligations that are owed to the international community as a whole (because they safeguard collective interests/values). Accordingly, collective enforcement and invocation of responsibility by non-injured states are impossible. In this respect, Prezas’ analysis makes a thought-provoking point regarding the right of non-parties to invoke the responsibility of the parties to the PA if they (ie the parties) fail to employ the agreed terminologies. According to Prezas, such a right could stem, not from the PA itself, but from a separate source, namely a joint unilateral act contained within the PA that would serve as a basis for the parties to confer a right to non-parties to react in case of a breach by the parties of their duties pertaining to the agreed terminologies. However, Prezas admits that the most plausible interpretation of the PA is that it does not contain or envisage any such joint unilateral acts. Pergantis and Prezas thus coincide in their contentions that the obligation to use the agreed terminologies in the PA is owed *inter partes* – not vis-à-vis non-parties. This explains why both authors point to the United Nations Security Council, arguing that it could endow (by means of and on the basis of UN law) the new terminologies with (quasi-)objective effects.

The involvement of the Security Council is explored by Prezas and Pergantis because they concur that the third scenario given earlier in this note, namely that part of the PA amounts to an objective regime, is not tenable. However, their reasoning differs substantially in that respect. Prezas squarely rejects the concept of objective regimes all together. Supposing that it existed in positive international law, his view is that the PA would not fall within this concept. On the other hand, Pergantis believes



that the concept of objective regimes exists, and that the PA can qualify as a status treaty that raises issues of general interest. Therefore, according to Pergantis, the PA has the potential to develop objective effects. It does, however, fail to do so, the reason being that the contracting parties did not intend for it to develop such effects.

As far as other points of divergence between the two authors are concerned, in his thoughtful and thorough analysis, Pergantis suggests that the PA must be read as merely establishing rights and obligations for the two contracting parties. Unless the Security Council interferes in a way that essentially ‘objectivises’ the new terminologies, third actors enjoy full discretion as to whether to recognise North Macedonia with its new name. This is also supported by his reading of Article 1(6), which concerns the request/invitation by North Macedonia to third actors to use the new terminologies. Pergantis understands this as establishing a thin obligation of conduct for North Macedonia that reflects the doubts of the two contracting states that their bilateral treaty can produce third party effects. Prezas’ sophisticated paper suggests that Article 1(6) can lead to non-parties accepting an obligation to employ the new terminologies, provided that, by requesting third parties to employ the new terminologies, the parties to the PA intended to open their Agreement to third parties. In accordance with this understanding, the request amounts to an invitation to non-parties to assume an international obligation under the PA. Essentially, this results – according to Prezas – in a new agreement between the requesting state(s) and the actor who consents to use the new terminologies.

Finally, both Prezas and Pergantis refer to general international law, particularly the principle of non-interference with the affairs of others. However, they use these same ‘ingredients’ to make different points. Essentially, Pergantis submits that the sovereign right of third states to refuse to recognise North Macedonia with its new constitutional name trumps the duty that states have under general international law (e.g. principle of non-interference) to respect the stipulations of the PA. Prezas’ analysis employs the same principle (associated with a particular conception of ‘opposability’) to make the argument that only third parties whose rights may be affected by the PA can challenge this treaty. According to Prezas, all other third parties have a duty to respect, tolerate and abstain from challenging the use of the new terminologies by the parties or by any other third party.