

**The Prespa Agreement between Greece and North Macedonia and the settlement of the name dispute: Of objective regimes, *erga omnes* obligations and treaty effects on third parties**

*Vassilis Pergantis\**

1. *Introduction*

Among the various, eyebrow-raising provisions of the Final Agreement between Greece and henceforth North Macedonia of 17 June 2018 (hereinafter Prespa Agreement)<sup>1</sup> delineating, for instance, the ethno-historical roots of the citizens of North Macedonia (Article 7 of the Agreement) or tightly choreographing the multiple steps towards the agreement's conclusion (Article 1(4)), the stipulations on the *erga omnes* use of North Macedonia's new name raise a series of interesting questions pertaining to the effects of treaties on third States. While references to the *erga omnes* jargon are extremely rare in international treaties, all the more so in bilateral ones, the *erga omnes* use of the name agreed upon by the disputing parties has been an invariant of Greece's political position during the protracted negotiations with the former Yugoslav Republic of Macedonia.<sup>2</sup>

The outcome seems consonant with the Greek aspirations: Article 1(3)(a) provides that the Parties shall use the official name 'Republic of

\* Assistant Professor, Department of International Studies, Faculty of Law, Aristotle University of Thessaloniki. I would like to thank Nikolaos Zaikos, Vasileios Tzevelekos and Miltiadis Sarigiannidis for thoughtful discussions on various aspects of this paper. All mistakes remain mine.

<sup>1</sup> 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 (Prespa, 17 June 2018) <[www.mfa.gr/images/docs/eidikathemata/agreement.pdf](http://www.mfa.gr/images/docs/eidikathemata/agreement.pdf)>.

<sup>2</sup> Greek Ministry of Foreign Affairs, 'Foreign Ministry announcement on articles concerning Greece's stance on the name of the FYROM' (29 September 2014) <[www.mfa.gr/en/current-affairs/news-announcements/foreign-ministry-announcement-on-articles-concerning-greeces-stance-on-the-name-of-fyrom.html](http://www.mfa.gr/en/current-affairs/news-announcements/foreign-ministry-announcement-on-articles-concerning-greeces-stance-on-the-name-of-fyrom.html)>.

North Macedonia' *erga omnes*, or as Article 1(8) emphatically enunciates 'for all usages and all purposes *erga omnes*'. Article 1(5) further elaborates thereon by stressing that *erga omnes* means

'in all relevant international, multilateral and regional Organizations, institutions and fora, including all meetings and correspondence, and in all the bilateral relations [of the Parties] with all Member States of the United Nations'.<sup>3</sup>

On top of it, the Parties solemnly agree that the Prespa Agreement should 'remain in force for an indefinite period of time' and be irrevocable, while no modification is allowed to Article 1(3) concerning the new name (Article 20(9)).

This bold language must be measured *vis-à-vis* the basic principles of the law of treaties concerning effects on third States. The gist of this study's argument is that, despite the apparent wish of the parties to the Prespa Agreement to endow the name settlement with objective effect, thus extending its ambit on third States and international organizations alike, this goal is not fulfilled. On the one hand, it remains far-fetched to recast the Agreement as a territorial settlement or a public order treaty for the objective regime theory to be applicable, particularly because of the lack of concordant intention by the contracting parties themselves to that effect. On the other hand, the reference to *erga omnes* in the Agreement seems probably devoid of legal substance. In the end, the limitations of the law of treaties and the consensual construction of inter-State relations, as well as the ambivalent language of the Agreement regarding North Macedonia's obligation to promote the name solution, lead to the conclusion that the Agreement cannot produce effects on third parties, unless the UN Security Council (UNSC) intervenes in that direction, an implausible scenario based on the current power dynamics therein.

After presenting a brief historical account of the dispute between Greece and North Macedonia with specific focus on public international law rules on State naming and recognition of a State's name, the analysis

<sup>3</sup> Art 1(8) further clarifies that *erga omnes* also means use for all domestic usages and purposes, as well as for the bilateral relations between the two contracting parties or their diplomatic contacts in all regional and international Organizations and institutions. Art 1(3)(g) also stipulates that any constitutional amendments to embed the use of the new name domestically should be 'binding and irrevocable'.



focuses on two possible legal constructions for fleshing out the effects of the Prespa Agreement on third States, namely, the theory of objective regimes and the concept of *erga omnes* obligations and its varied meanings within international law. The last Part offers brief conclusions.

## 2. *International Law and the name dispute between Greece and North Macedonia*

Any analysis on the naming of States inescapably starts from the admission that the choice of a name is a core manifestation of State sovereignty<sup>4</sup> or as has been eloquently put ‘un refuge de la souveraineté’<sup>5</sup> and a linchpin of a people’s right to self-determination.<sup>6</sup> As a result, any change in a State’s denomination does not lead to a change in the State’s identity<sup>7</sup> and is simply registered by international organizations and States alike, which cannot prevent it from taking place.<sup>8</sup> In a sense, a State’s name is a matter of domestic jurisdiction, where the non-interference principle is applicable.<sup>9</sup>

Yet, the aforementioned rule is mitigated by a series of conditions and qualifications. *Primo*, States cannot abusively choose a name that might interfere with the self-determination of a people or the sovereign interests of another State or cause confusion in international relations.<sup>10</sup>

<sup>4</sup> S Sur, ‘Sur quelques tribulations de l’Etat dans la société internationale’ (1993) 97 *Revue Générale de Droit International Public* 881, 889.

<sup>5</sup> JP Quéneudec, ‘Conclusions’ in SFDI, *L’Etat souverain à l’aube du XXI<sup>e</sup> siècle. Colloque de Nancy* (Pedone 2000) 307, 313.

<sup>6</sup> MCR Craven, ‘What’s in a Name? The Former Yugoslav Republic of Macedonia and Issues of Statehood’ (1995) 16 *Australian YB Intl L* 199, 233.

<sup>7</sup> K Marek, *Identity and Continuity of States in Public International Law* (2nd edn, Librairie Droz 1968) 127.

<sup>8</sup> P Pazartzis, ‘La reconnaissance d’«une République Yougoslave»: la question de l’Ancienne République Yougoslave de Macédoine (ARYM)’ (1995) 41 *Annuaire Français de Droit International* 281, 286.

<sup>9</sup> N Zaikos, ‘The Onomastics of States in International Law. The case of the Former Yugoslav Republic of Macedonia’ in ID Stefanidis, V Vlasidis, E Kofos (eds), *Macedonian Identities through Time – Interdisciplinary Approaches* (Epikentro 2010) 337, 357.

<sup>10</sup> JP Quéneudec, ‘Le nom et les symboles de l’Etat au regard du droit international’ in *L’Etat souverain dans le monde d’aujourd’hui: Mélanges en l’honneur de Jean-Pierre Puissechet* (Pedone 2008) 247, 252. See also Universal Peace Congress Budapest, *Bulletin officiel du VII<sup>e</sup> Congrès universel de la paix, tenu à Budapest du 17 au 22 septembre 1896* (Impr Michel & Büchler 1986) 140 (Article 15 of the Principles of International Law)

In such instances, the State that considers the name change as offensive might issue diplomatic protests and react in the framework of international organizations invoking the responsibility of the State that violated the abuse of rights principle, and seeking cessation of the illegal conduct and non-repetition or appropriate reparation.<sup>11</sup> The said principle, which is admittedly part of the general principles of law applicable in the international legal order,<sup>12</sup> could be invoked, because the use of a name in such circumstances would “impede the enjoyment by other States of their own rights”, such as the right of a State’s people to self-determination, and would distort the purpose of recognizing for each State a sovereign right to name itself, since in the case at hand a State would be using this process for ulterior purposes causing injury to another State.<sup>13</sup>

*Secundo*, other States and international organizations are not obliged as such to recognize the change in a State’s name and there is no international law rule according to which a State’s refusal to recognize another State’s name designation is an internationally wrongful act.<sup>14</sup> Consequently, it is upon a State’s discretion to accept a name change and conduct diplomatic relations using the new official name of that other State, a possible exception being the extreme case that a State’s name violates the right to self-determination of a people under international law. In other words, recognition of a State, a government or, in the case at hand, of a State’s name is, the above caveat notwithstanding, a unilateral and exclusive right of the recognizing State.<sup>15</sup> *Tertio*, a State might agree to negotiate its official name, thus internationalizing this issue and removing

reproduced in ILC, ‘Preparatory Study Concerning a Draft Declaration on the Rights and Duties of States: Memorandum submitted by the Secretary General. Topic: Fundamental rights and duties of States’ (1948) UN Doc. A/CN.4/2.

<sup>11</sup> ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts YB ILC 2001 vol 2/II, UN Doc A/CN.4/SER.A/2001/Add.1 arts 30-31.

<sup>12</sup> PCIJ, *Certain German Interests in Polish Upper Silesia* [1926] Series A, No 7, 5, 30, where the principle was rejected for lack of sufficient proof; *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Appellate Body WT/DS58/AB/R (12 October 1998) <www.wto.org> para 158.

<sup>13</sup> For such a definition of the abuse of rights principle, see A Kiss, ‘Abuse of Rights’ in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* vol I (OUP 2012) 20 para 1.

<sup>14</sup> MM Whiteman, *Digest of International Law* vol 5 (US Government Printing Office 1965) 171.

<sup>15</sup> H Lauterpacht, *Recognition in International Law* (CUP 1947) 32-33, who masterfully argues that this unfettered discretion is determined by international law.



it itself from those matters of domestic jurisdiction that are subject to the principle of non-interference.<sup>16</sup>

The above considerations were at the heart of the name dispute between Greece and North Macedonia that flared up in the 90s when North Macedonia declared its independence under the name 'Republic of Macedonia' leading Greece to react as this was the name of its northern region.<sup>17</sup> The dispute led to the delayed admission of the newly formed State to the United Nations under the provisional designation of 'former Yugoslav Republic of Macedonia' (fYROM)<sup>18</sup>, while the UNSC determined that the resolution of the name dispute would be 'in the interest of the maintenance of peaceful and good neighbourly relations in the region'.<sup>19</sup> By assenting to the UNSC accession conditions, fYROM effectively acquiesced to the internationalization of its name issue. An Interim Accord between the two disputing parties that followed in 1995, did not deal with name controversy, save for Article 11(1), which stipulated that Greece would not object to North Macedonia's requests of admission to international organizations, as long as the latter 'was to be referred to in such organization or institution as "the former Yugoslav Republic of Macedonia"'.<sup>20</sup> As the name dispute dragged on, an increasing number of States officially recognized fYROM under its constitutional name of 'Republic of Macedonia'.

Thus, by agreeing to a commonly acceptable name in the Prespa Agreement, the two disputing parties had also to cater for the acceptance

<sup>16</sup> Zaikos (n 9) 358.

<sup>17</sup> Of course, the dispute was not limited to North Macedonia's name but extended to other issues linked to irredentist claims, the use of symbols belonging to the Ancient Macedonian Kingdom of the Hellenistic period etc. For all that, see DM Poulakidas, 'Macedonia: Far More Than a Name to Greece' (1995) 18 *Hastings Intl and Comparative L Rev* 397, *passim*. We will limit our considerations to the name dispute henceforth.

<sup>18</sup> For the fact that the name on the basis of which fYROM acceded in the UN was not an official name but only a provisional designation, see M Wood, N Pavlopoulos, 'North Macedonia' [April 2019] *Max Planck Encyclopedia of Public International* (online edn) para 22.

<sup>19</sup> UNSC Res 817 (7 April 1993) UN Doc S/RES/817.

<sup>20</sup> This requirement was found by the ICJ to be inapplicable concerning the name used by fYROM within the organization after accession and in its relations with the member-States of the organization; ICJ, *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v Greece)* (Judgment) [2011] ICJ Rep 674 paras 94-98.



of this solution by States that had previously recognized North Macedonia under its old constitutional name. The question is therefore raised whether this bilateral agreement, i.e. the Prespa Agreement, could be automatically opposable towards third parties and whether the latter have a right under international law to pinpoint violations of the agreement by the contracting parties. In other words, can the Prespa Agreement create obligations and rights for third States? In the next two sections, two arguments are explored to that effect, namely whether the Prespa Agreement can be treated as an objective regime or whether the stipulated obligations on the name dispute create *erga omnes* obligations, respectively. The next section deals with the first of these arguments.

### 3. *Third party effects of the Prespa Agreement: Are we dealing with an objective regime?*

It is one of the basic precepts of the law of treaties that agreements produce only *inter partes* effects, that is, among the contracting parties; for any third parties a treaty is a *res inter alios acta*. The principle of *pacta tertiis nec nocent nec prosunt* is validated both in case-law<sup>21</sup> and in doctrine,<sup>22</sup> and is enshrined in Article 34 of the Vienna Convention on the Law of Treaties (VCLT), which stipulates that '[a] treaty does not create either obligations or rights for a third State without its consent'.<sup>23</sup> This

<sup>21</sup> See, indicatively, ICJ, *North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; Federal Republic of Germany v The Netherlands)* (Judgment) [1969] ICJ Rep 25, para 28; PCIJ, *Case of the Free Zones of Upper Savoy and the District of Gex (France v Switzerland)* [1932] Series A/B No 46 at 141; PCIJ, *Case concerning Certain German Interests in Polish Upper Silesia (Germany v Poland)* [1926] Series A No 7 at 30.

<sup>22</sup> M Shaw, *International Law* (8th edn, CUP 2017) 703; J Crawford, *Brownlie's Principles of Public International Law* (8th edn, OUP 2012) 384; M Fitzmaurice, 'The Practical Working of the Law of Treaties' in M Evans (ed), *International Law* (5th edn, OUP 2018) 138, 151; P Reuter, *Introduction au droit des traités* (3rd edn revue et augmentée par Philippe Cahier, PUF 1995) 93, para 153; Lord A McNair, *The Law of Treaties* (OUP 1986) 309.

<sup>23</sup> Vienna Convention on the Law of Treaties, 1969, 1155 UNTS 331 art 34. See the analysis by E David, 'Article 34' in O Corten, P Klein (eds), *Les Conventions de Vienne sur le droit des traités: commentaire article par article* (Bruylant 2006) 1403, 1403-1404; M Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Brill 2009) 467-468; A Proelss, 'Article 34' in O Dörr, K Schmalenbach (eds), *Vienna Convention on the Law of Treaties. A Commentary* (2nd edn, Springer Verlag 2018) 655, 655-656 para 1.



fundamental rule of treaty law is complemented by Articles 35 and 36 VCLT, which provide respectively that obligations for third States arise only on the basis of their explicit and written consent, while rights are presumed to be granted to them, unless those States object thereto. Yet, the discussion about the *erga omnes* nature of North Macedonia's new official name does not concern a scenario where third parties explicitly consent through a discretionary act of recognition of the new official name or assent to it by not protesting when North Macedonia uses its new name in international relations. Any reference to third parties' consent denies the agreement an automatically objective effect and thus makes a discussion on *erga omnes* obligations with regard to the name settlement irrespective of State consent moot.

Instead, the question that may be asked is whether the provision on the new name is opposable *erga omnes* notwithstanding the lack of consent/assent by any third parties. In other words, the question is whether third parties (States and international organizations) are *obliged* to use North Macedonia's new official name in all their diplomatic contacts. In this framework, the VCLT offers no help, as the scenario of *erga omnes* opposability without a third State's consent/assent is not envisaged, except in case a treaty rule has been transformed into customary international law (Article 38 VCLT), a state of affairs that is obviously not relevant in the case at hand.

The absence of regulation in the VCLT does not necessarily signify that international law prohibits any form of non-consensual third party effects with regard to treaties. On the contrary, the International Law Commission in its work on the law of treaties studied the question of objective regimes as an exception to the *pacta tertiis* rule. And while it, ultimately, opted for setting the question of objective regimes aside due to lack of general acceptance thereon and because the remaining VCLT articles on effects to third States allowed 'the establishment of treaty obligations and rights valid *erga omnes*',<sup>24</sup> the absence of regulation does not

<sup>24</sup> ILC, 'Report of the International Law Commission on the work of its eighteenth Session' (4 May-19 July 1966) (1966) II YBILC UN Doc A/CN.4/SER.A/1966/Add.1, 231.



necessarily signify that such regimes are impermissible or cannot be created under current rules of international law.<sup>25</sup> Consequently, the flexibility of the Vienna rules allows for the further development of a theory on objective regimes.<sup>26</sup>

In broad lines, there are two different types of treaties allegedly establishing objective regimes.<sup>27</sup> On the one hand, there are dispositive treaties creating localized obligations for the benefit of another State, such as boundary treaties or treaties of cession, where the new regime is opposable to all States. On the other hand, there are status treaties established to serve the general interest of the international community and which are applicable *erga omnes*, giving rise to rights and obligations for third States regarding that status settlement. In both cases, it is required firstly, that the contracting States share the intention that their agreement produce *erga omnes* effects and secondly, that those States have competence to regulate the subject-matter of the agreement which third parties are expected to comply with. The question is thus raised whether the Prespa Agreement falls within one of these categories of objective regimes and whether the aforementioned conditions are fulfilled in the case at hand. The following sub-sections briefly discuss these two processes for establishing objective rules.

<sup>25</sup> I Sinclair, *Vienna Convention on the Law of Treaties* (2nd edn, Manchester University Press 1984) 105-106; Reuter (n 22) 97, para 161. Contra G Gaja, 'Article 38' in O Corten, P Klein (eds) (n 23) 1505, 1519.

<sup>26</sup> F Salerno, 'Treaties Establishing Objective Regimes' in E Cannizzaro (ed), *The Law of Treaties Beyond the Vienna Convention* (OUP 2011) 215, 223.

<sup>27</sup> See the analysis by M Udina, 'La succession des Etats quant aux obligations internationales autres que les dettes publiques' (1933) 44 RCADI 665, 717-720; Gaja (n 25) 1517; P Cahier, 'Le problème des effets des traités à l'égard des états tiers' (1974) 143 RCADI 589, 661; DJ Bederman, 'Third Party Rights and Obligations in Treaties' in DB Hollis (ed), *The Oxford Guide to Treaties* (OUP 2012) 328, 342; J Klabbers, 'Les cimetières marins sont-ils établis comme des régimes objectifs? A propos de l'accord sur l'épave du *M/S Estonia*', (1997) 11 *Espaces et Ressources Maritimes* 121, 131; M Fitzmaurice, 'Third Parties and the Law of Treaties' (2002) 6 *Max Planck YB United Nations L* 37, 70. Various scholars consider the category of dispositive treaties as not falling within the definition of objective regimes; see CJ Tams, *Enforcing Obligations Erga Omnes in International Law* (CUP 2005) 81; H Waldock, 'Third Report on the Law of the Treaties' (1964) II YBILC UN Doc A/CN.4/SER.A/1964/ADD.1, 32 para 15.



### 3.1. *The Prespa Agreement as a dispositive treaty*

The term dispositive treaty relates to agreements concerning the determination of a boundary, the cession of territory, or restrictions upon its use, such as rights of transit over the territory, fishing or navigational rights, and demilitarization obligations enacted for the benefit of a foreign State.<sup>28</sup> There is no doubt that restrictions with regard to the choice and use of a name by a State for the benefit of another State cannot be fully assimilated to restrictions on the use of a territory. A State's official name does not constitute a tangible asset 'in the sense of real or immovable property', instead being conceptually closer to the functions performed by intangible property.<sup>29</sup> Consequently, any rights and obligations associated with a State's official name cannot be easily equated with rights and obligations *in rem*.

In practice, however, the distinction between tangible and intangible assets is not as neat as it first appears to be. The choice of an official name by a State relates inextricably to the specific territory, where that State exercises sovereignty.<sup>30</sup> Thus, in a way, a restriction on the choice of a State name, such as the one encompassed in the Prespa Agreement, resembles a localized obligation and can produce *erga omnes* effects *vis-à-vis* third States in much the same way. Besides, the concept of servitude, which is the most characteristic example of a localized restriction with *erga omnes* effects, has been used *mutatis mutandis* for the study of other obligations undertaken by a State, such as human rights obligations.<sup>31</sup> Consequently, while, nowadays, the nomenclature of servitudes might seem outdated and although various authors have challenged the concept's applicability in international law *in toto*, the function of servitudes as objective regimes that must be respected by third States because they are an emanation of the sovereign competence of the territorial State, can

<sup>28</sup> S Marchisio, 'Servitudes' in R Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law*, vol 9 (OUP 2013) 158 para 3.

<sup>29</sup> I Bantekas, 'The Authority of States to Use Names in International Law and the Macedonian Affair: Unilateral Entitlements, Historic Title, and Trademark Analogies' (2009) 22 *Leiden J Intl L* 563, 575.

<sup>30</sup> Whiteman (n 14) 170.

<sup>31</sup> ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (separate opinion of Judge Weeramantry) [1996] ICJ Rep 595, 652.



be applicable in the case of the Prespa Agreement with regard to restrictions over the North Macedonia's name.

Moreover, though such localized obligations are opposable *erga omnes* because they are linked to the territorial sovereignty of the granting State<sup>32</sup>, it has been persuasively argued that *erga omnes* opposability of status regimes can be equally effectuated on the basis of other kind of State authority and interests beyond territorial sovereignty.<sup>33</sup> Thus, if the choice of an official name cannot be directly linked to the exercise of sovereign competence over a territory, this does not prevent it from creating an objective regime that other States are obliged to respect.

### 3.2. *The Prespa Agreement as an objective regime established in the general interest of the international community*

A second type of territorial arrangement that is opposable *erga omnes* and is, thus, an objective regime, concerns a state of affairs whose purpose is 'to introduce an element of stability into international politics which, although brought about only by a limited number of states, has a certain importance for the international society as a whole'.<sup>34</sup> This is, for instance, the case with treaties establishing the permanent neutrality of a territory/State or the denuclearization of a specific area.

The *Åland Islands* case represents the *locus classicus* of such a regime. More specifically, the dispute between Sweden and Finland concerned a 1856 Convention, to which neither was a party, providing for the demilitarization of the islands. When Finland was granted sovereignty over the islands and after a plebiscite, where the population of the islands voted in favour of re-uniting with Sweden, the latter submitted the dispute to the League of Nations. The League appointed a Committee of Jurists to deal with the questions of whether the treaty was still in force and if the answer to that first question was in the affirmative, what were the rights and obligations of the two disputing States on the basis of that treaty. The Committee declared that the provisions of the 1856 Convention

<sup>32</sup> U Fastenrath, 'Servitudes' in R Bernhardt (ed), *Encyclopedia of Public International Law. Instalment 10: States, Responsibility of States, International Law and Municipal Law* (North-Holland 1987) 389, 390-391.

<sup>33</sup> RA Barnes, 'Objective Regimes Revisited' (2004) 9 *Asian YB Intl L* 97, 114.

<sup>34</sup> H Mosler, 'The International Society as a Legal Community' (1974) 140 *Recueil des Cours de l'Académie de Droit International* 235.



‘were laid down in European interests. They constituted a special international status relating to military considerations for the Åland Islands. It follows that until these provisions are duly replaced by others, every State interested has the right to insist upon compliance with them. It also follows that any State in possession of the Islands must conform to the obligations binding upon it arising out of the system of demilitarization established by these provisions.’<sup>35</sup>

Consequently, the regime established by the 1856 Convention was binding upon every State creating obligations that could be claimed by any interested State (*erga omnes*).<sup>36</sup>

From the above analysis it is evident that conventional arrangements crucial for the maintenance of the international public order, international peace and security or international stability can be opposable *erga omnes*.<sup>37</sup> The Prespa Agreement falls squarely within the above paradigm, since among its explicitly stated purposes is the peaceful settlement of disputes, the strengthening of cooperation and stability in Southeastern Europe and the development of friendly neighbourly relations.<sup>38</sup> The settlement of the name dispute effectively contributes to the realization of those purposes. This was clearly observed by the UNSC, which in its resolution recommending the accession of North Macedonia to the UN under the provisional designation of ‘former Yugoslav Republic of Macedonia’ had insisted, as explained above, that the name dispute ‘be resolved in the interest of the maintenance of peaceful and good neighbourly relations in the region’.<sup>39</sup> By linking the solution in the name dis-

<sup>35</sup> Report of the International Committee of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Åland Islands question, League of Nations OJ, Special Supplement, No 3 (October 1920), at 19.

<sup>36</sup> Draft art 63(3)(b) in Waldock (n 27) 27. See also the observations of Tams (n 27) 86; G Distefano, ‘Article 12’ in G Distefano, G Gaggioli, A Hêche (eds), *La Convention de Vienne de 1978 sur la succession d’États en matière de traités. Commentaire article par article et études thématiques* vol 1 (Bruylant 2016) 397, 442. *Contra* M Ragazzi, *The Concept of International Obligations Erga Omnes* (OUP 2000) 33, who argues that the Committee restricted the right to legal standing on the basis of the Treaty’s provisions.

<sup>37</sup> See Barnes (n 33) 105-106 and 142; SP Subedi, ‘The Doctrine of Objective Regimes in International Law and the Competence of the United Nations to Impose Territorial or Peace Settlements on States’ (1994) 37 *German YB Intl L* 162, 193.

<sup>38</sup> See the Preamble of the Agreement (n 1).

<sup>39</sup> UNSC Res 817 (n 19) para 3 of the Preamble; see also UNSC Presidential

pute with international peace and security, the UNSC not only internationalized the dispute thus effectively circumscribing North Macedonia's sovereignty thereon,<sup>40</sup> but also rendered any settlement a matter of general interest for the international community.<sup>41</sup> The fact that Matthew Nimetz, the UN Secretary General's Personal Envoy, witnessed the signing of the Agreement testifies to that effect and showcases that the Prespa Agreement was concluded in the framework set by the United Nations and is, in a way, endorsed by it.

Additionally, North Macedonia's previous constitutional name, which was at the heart of the dispute with Greece, was somewhat justifiably associated by the Greek side with irredentist claims formulated by the North Macedonian authorities and private parties in that State, as well as with the appropriation of historical symbols identified with Ancient Greece. This wider context further exacerbated the tensions between the two countries created by the name dispute. Hence, by settling North Macedonia's name and providing for the amendment of its constitution accordingly, the Prespa Agreement actually contributed in manifold ways to appeasement in the relations between the two countries. For all those reasons, one can argue that, due to its content, the Prespa Agreement furthers collective interests and thus, has the potential to be recognized as an objective regime.

### 3.3. *From the content of the agreement to the intention of the contracting parties: Cracks in the objective regime approach?*

Having illustrated the Prespa Agreement's potential for acquiring an objective status, analysis now moves to the actual intention of the parties in this regard. It will be argued that the parties' intention as revealed by multiple stipulations of the agreement does not live up to the above potential.

It is widely accepted that for an objective regime to be created the agreement's content must be coupled with the requisite intention of the contracting parties to create legal effects (rights and obligations) *vis-à-vis*

Statement (1993) UN Doc S/25545.

<sup>40</sup> M Ioannidis, 'Naming a State – Disputing over Symbols of Statehood at the Example of "Macedonia"' (2010) 14 Max Planck YB United Nations L 509, 556.

<sup>41</sup> Zaikos (n 9) 347.



third parties on the basis of the agreement.<sup>42</sup> More specifically, the PCIJ found in the *Free Zones of Upper Savoy and the District of Gex* case that the existence of rights (and all the more, of obligations) in favour or at the expense of third States could not be lightly presumed and that there had to be a clear proof that the contracting parties meant to create for a third State a right or an obligation.<sup>43</sup> This was validated in Sir Humphrey Waldock's treatment of the objective regimes theory in his third report to the ILC, where draft Article 63 stipulated that

[a] treaty establishes an objective régime *when it appears from its terms and from the circumstances of its conclusion that the intention of the parties is to create in the general interest general obligations and rights ...*<sup>44</sup>

Hence, it is not enough for the contracting parties to establish a status regime that would incidentally affect third parties' interests,<sup>45</sup> but those parties must intend to settle the matter with effect *erga omnes* (and delineate the treaty's object so that it serves the general interest).<sup>46</sup>

On that basis, the analysis of the relevant clauses in the Prespa Agreement leads to conflicting conclusions. On the one hand, the intention of the contracting parties for the name solution to acquire a permanent status is more than evident: Article 20(9) stipulates that the agreement 'shall remain in force for an indefinite period of time' and be irrevocable, while, as far as the name settlement is concerned, the parties agree *per* Articles 1(3)(g) and 20(9) that no modification is permitted. On the other hand, references to third parties or omissions thereto illustrate that the contracting parties were fully conscious of the relative effect of their settlement. For instance, Article 20(7) enunciates that the Agreement

<sup>42</sup> C Laly-Chevalier, F Rezek, 'Article 35' in O Corten, P. Klein (eds) (n 23) 1425, 1427; CF de Casadevante Romani, 'Objective Regime' in R Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* vol 7 (OUP 2013) 912 para 2; Klabbers (n 27) 127.

<sup>43</sup> *Free Zones case* (n 21) 148.

<sup>44</sup> YBILC 1964 (n 27) 26 (emphasis added). See also the analysis by C Chinkin, *Third Parties in International Law* (OUP 1993) 31.

<sup>45</sup> Barnes (n 33) 131.

<sup>46</sup> B Simma, 'The Antarctic Treaty as a Treaty Providing for an "Objective Regime"' (1986) 19 *Cornell Intl LJ* 189, 199.

‘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’.

More to the point, only contracting parties are granted the mere discretion to request (but not to demand) the

‘immediate rectification ... of mistakes, errors, omissions in the proper reference of the name and terminologies referred to in Article 1(3) ... in the context of international, multilateral and regional Organizations, institutions, correspondence, meetings and fora, as well as in all bilateral relations of the Second Party [i.e. North Macedonia] with third States and entities ... and the avoidance of similar mistakes in the future’.

Last but not least, North Macedonia undertakes the obligation to simply request organizations and all UN Member States ‘to adopt and use the name and terminologies referred to in Article 1(3) of the Agreement’ (Article 1(6)).

The watered down language with regard to the way third parties should be incited to respect the name settlement reflects the doubts of the contracting parties concerning the possible third party effects of the agreement. It also reflects the parties’ careful considerations with regard to third States that are directly interested by the settlement and could react unpredictably if a bolder language was used. More importantly, the very fact that the contracting parties undertake to adopt appropriate measures (ie requests) in order to prevent acts by third parties that might undermine the agreement is an admission that the latter are not automatically bound by it.<sup>47</sup>

<sup>47</sup> Cahier (n 27) 664, concerning art X of the Antarctic Treaty. For a more nuanced approach, see R Wolfrum, ‘Le régime de l’Antarctique et les États tiers’ in V Coussirat-Coustère (ed), *Mélanges offerts à L. Lucchini et J.-P. Quéneudec* (Pédone 2003) 695, 700. *Contra* David (n 23) para 13, who argues that ‘stand guarantee obligations’, namely ‘clauses requiring that States parties obtain a specific behaviour from a third State’ can be considered as exceptions to the *pacta tertiis* principle.



#### 4. *The curious reference to erga omnes in the Prespa Agreement*

Having dispensed with the idea of the Prespa Agreement as an objective regime, the debate about the proper meaning of the reference to *erga omnes* in the agreement remains valid. In the next few lines, three different conceptions on *erga omnes* will be presented: Firstly, the paper will explore whether the solution concerning the name is rendered opposable *erga omnes*, and thus creates obligations for third States to respect it,<sup>48</sup> not on the basis of the Prespa Agreement itself but *via* general international law. Secondly, it will be examined whether the reference to *erga omnes* signifies the granting of a legal standing to third States to invoke the responsibility of one of the contracting parties for violations of the Prespa Agreement provisions on the name settlement. At this point, analysis will shift from the primary rules having the nature of *erga omnes* obligations, to the secondary rules concerning state liability for breaches of such primary rules, which was the way *erga omnes* obligations were conceptualized by the ICJ in the *Barcelona Traction* case.<sup>49</sup> Thirdly, it will be scrutinized whether the reference to *erga omnes* signifies something totally different from the two aforementioned legal constructions, illustrating how the notion of *erga omnes* has been repeatedly employed in different contexts unrelated to opposability or legal standing, thus causing a certain conceptual confusion, which is also patent in the discussion over *erga omnes* in the Prespa Agreement.

##### 4.1. *The Prespa Agreement's potential opposability erga omnes under general international law*

In the framework of the discussion on the theory of objective regimes, various international law scholars have argued that such *erga omnes* opposability does not stem directly from the agreement itself or the regime established thereby, but from general international law. In other words,

<sup>48</sup> It must be borne in mind that the notion that a conventional regime is opposable *erga omnes* does not necessarily translate into third parties undertaking specific obligations *vis-à-vis* the contracting parties; see Cahier (n 27) 661. For the sake of our argument, however, we will use the two ideas of opposability *erga omnes* and obligations *erga omnes* as interchangeable.

<sup>49</sup> For an exhaustive presentation of the *erga omnes* concept categorizations, see Tams (n 27) 101-116.



third States may have to comply with treaty stipulations, and, in the case at hand, recognize and conduct diplomatic relations with North Macedonia under the new official name, because of a general international law duty incumbent upon third States to abstain from acts that undermine the effective implementation of the object and purpose of a lawful and validly enacted international agreement<sup>50</sup> and a corollary general international law duty to ‘recognize and respect situations of law and fact established’ by such an agreement as long as they ‘do not infringe the legal rights of States not parties to them in the legal sense’.<sup>51</sup> Such duties, so the argument goes, result from the principles of non-interference and peaceful co-existence,<sup>52</sup> as well as the obligation to act in good faith in international relations,<sup>53</sup> and reflect the exclusive control of sovereign states over the issues regulated by the agreement purporting to develop third party effects.<sup>54</sup>

There are two main objections in this line of reasoning, which are very much pertinent in the instant case. First of all, as has been pointedly observed, those arguments that are based on a general international law obligation to abstain from undermining a treaty concluded by others, and to recognize its effects, are not specific to status or territorial treaties; instead they pertain to all treaties rendering the *pacta tertiis* principle devoid of content.<sup>55</sup> In other words, if third States are obliged to comply with the effects produced by each and every agreement, the latter cannot anymore be *res inter alios acta*. Secondly, premising third party obligations on the fact that the treaty was concluded by the competent state in the exercise of its exclusive sovereign powers appears to be a misplaced explanation with regard to a name settlement, where third parties have a sovereign right to recognize or not the entity under its new official name

<sup>50</sup> See the analysis by Laly-Chevalier/Rezek (n 42) 1438; David (n 23) para 10; J Verhoeven, *Droit international public* (Larcier 2000) 417.

<sup>51</sup> G Fitzmaurice, ‘Fifth Report on the Law of Treaties’ (1960) II YBILC UN Doc A/CN.4/130, 98 para 71, as well as arts 17 and 18 of the Draft Guidelines proposed by Sir Gerald in the ILC *ibid* 80-81.

<sup>52</sup> ILC, ‘Summary Records of the sixteenth Session’ (11 May – 24 July 1964) (1964) I YBILC UN Doc A/CN.4/SER.A/1964, 100 para 18.

<sup>53</sup> G Kyriakopoulos, ‘Οι “*erga omnes*” υποχρεώσεις της Συμφωνίας των Πρεσπών’ [The ‘*erga omnes*’ obligations of the Prespa Agreement] (Greek Ministry of Foreign Affairs), 8 < [https://www.mfa.gr/docs/giorgos\\_kyriakopoulos](https://www.mfa.gr/docs/giorgos_kyriakopoulos) >.

<sup>54</sup> Barnes (n 33) 135; Marchisio (n 28) paras 19-20.

<sup>55</sup> Waldock (n 27) 28, para 6.



and conduct diplomatic contacts accordingly.<sup>56</sup> Thus, the sovereign capacity of North Macedonia to regulate its name is pitted against the sovereign power of the other States to recognize that name or not, rendering any arguments based on sovereignty inconclusive.

4.2. *Does the Prespa Agreement allow for an erga omnes enforcement of its stipulations?*

If the reference to *erga omnes* in the Prespa Agreement does not concern an obligation imposed on all third parties to recognize North Macedonia's new official name, then one might presume that it relates to the famous dictum of the *Barcelona Traction* case, according to which obligations owed to the international community as a whole are the concern of all States, and thus, all States 'can be held to have a legal interest in their protection'.<sup>57</sup> This was given flesh and bones in Article 48 of the Articles on State Responsibility recognizing the entitlement of all States to invoke the responsibility of a State for breaching an obligation owed to the international community as a whole and to claim cessation of the wrongful conduct, assurances and guarantees of non-repetition, as well as reparation in the interest of the injured State or of the beneficiaries of the obligation breached.<sup>58</sup> The issue of collective enforcement was already raised with regard to status treaties/objective regimes in the ILC's work on the law of treaties, where draft Article 63(3)(b) of Waldock's third report to the ILC stipulated that third States were 'entitled to invoke the provisions of the [general interest] regime and to exercise any general right which it may confer'.<sup>59</sup> Hence, it is evident that under this prism, the *erga omnes* does not anymore translate into an obligation imposed on all third parties, but to a general interest granted to them 'in seeing a treaty regime observed'.<sup>60</sup> In other words, it becomes an invitation 'to partake in the collective enforcement of the values shaping the

<sup>56</sup> Whiteman (n 14) 170: 'There is, however, no international law that one State shall refer to another State by its official name'; Pazartzis (n 8) 289.

<sup>57</sup> ICJ, *Case concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)* (Judgment) [1970] ICJ Rep 32 para 33. See also ICJ, *Case concerning East Timor (Portugal v Australia)* [1995] ICJ Rep 102 para 29.

<sup>58</sup> ILC YB 2001 (n 11) art 48 (1)-(2).

<sup>59</sup> ILC YB 1964 (n 27) 27.

<sup>60</sup> Tams (n 27) 81: '[W]here a treaty creates an objective status, all States are entitled

international public order'.<sup>61</sup> It is a shift from the effects of treaties on third parties to the latter's legal standing in invoking responsibility for breaches of those rules.

Yet, nothing in the Prespa Agreement presages such a reading. Not only Article 20(7) limits the potential for a third party effect, but also Article 19 on the peaceful settlement does not make any reference to the possibility of third States raising issues of compliance with the agreement. And the same applies for Article 1(13), where only the contracting parties can request rectifications of mistakes and errors with regard to the official name of the Second Party. Thus, if there is an *erga omnes* obligation, this is an *erga omnes partes* one<sup>62</sup>, which in the case of a bilateral treaty seems like a misnomer. In other words, only Greece can invoke the lack of due diligence on the side of North Macedonia in ensuring that third parties use the new official name.<sup>63</sup> And this obligation of due diligence is remarkably weak, as it will be shown right now.

#### 4.3. *The erga omnes stipulations of the Prespa Agreement as a simple term of art*

Ultimately, the reference to *erga omnes* in the Prespa Agreement only serves a descriptive function not entailing specific legal consequences,<sup>64</sup> but simply indicating that 'the agreed [name] solution should serve all the international purposes of state representation'.<sup>65</sup> International law is no stranger to the use of the *erga omnes* concept in a descriptive fashion. In the *Nuclear Tests* case, for instance, the ICJ declared that French unilateral declarations to stop atmospheric nuclear testing were binding

to react against status breaches' (and 84); *Åland Islands Question* (n 35) 17-19.

<sup>61</sup> V Tzevelekos, L Lixinski, 'Towards a Humanized International "Constitution"?' (2016) 29 *Leiden J Intl L* 343, 359.

<sup>62</sup> See ICJ, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* [2012] ICJ Rep 449 paras 68-69.

<sup>63</sup> M Sarigiannidis, 'Μια κριτική προσέγγιση στη «Συμφωνία των Πρεσπών» [A critical approach to the 'Prespa Agreement'] (2018) 78 *ΔτΑ* 843, 859. Thus, any benefits in favour of third parties or duties incumbent upon them remain non-justiciable, as they are based on socio-political considerations and do not allow them to claim violations of the treaty provisions; see generally, C Rozakis, 'Treaties and Third States: A Study in the Reinforcement of the Consensual Standards in International Law' (1975) 35 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 1, 8.

<sup>64</sup> Tams (n 27) 112-114

<sup>65</sup> Ioannidis (n 40) 529.



upon it because they were ‘made publicly and *erga omnes*’.<sup>66</sup> In that case the use of the term solely described to whom the statements were addressed and no direct legal consequences stemmed from the fact that they were addressed *erga omnes*,<sup>67</sup> apart from the recognition that France had undertaken an obligation to not conduct atmospheric nuclear testing *vis-à-vis* each and every State of the international community.<sup>68</sup>

This ostentatious use of *erga omnes* in the Prespa Agreement seems all the more misplaced if one considers the obligations incumbent upon North Macedonia in order to fulfil the promise of *erga omnes* use with regard to its new official name. More specifically, next to North Macedonia’s own obligation to not use another name in the conduct of its international relations, the means for achieving the ambitious goal of *erga omnes* use of the new official name by the other States and all international organizations and institutions alike are limited to a rather thin and light-weight obligation of conduct (ie due diligence)<sup>69</sup> to merely notify and request the latter to use that name (Article 1(6)(a) and (b)). This obligation is much weaker than the one undertaken by the contracting parties in the Prespa Agreement in respect of irredentist claims and propaganda activities, where the contracting parties bind themselves to prevent, discourage and suppress such phenomena (Articles 3 and 6 of the Agreement).

The obligation to notify and request is also much more diluted than the classic formula of a State’s obligation to respect and ensure respect (*‘respecter et faire respecter’*) of conventional norms, which is found, among other texts, in common Article 1 of the Geneva Conventions.<sup>70</sup> Consequently, an argument such as that North Macedonia itself ‘will be internationally responsible to ensure proper use of its new constitutional name in the conduct of its public affairs’ is not fully supported by the

<sup>66</sup> ICJ, *Nuclear Tests Case (Australia v France)* [1974] ICJ Rep 269 para 50.

<sup>67</sup> Tams (n 27) 114.

<sup>68</sup> *Nuclear Tests Case* (n 64) para 51.

<sup>69</sup> See T Koivurova, ‘Due Diligence’ in R Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* vol 3 (OUP 2013) 236 paras 1 and 3. See also generally, R Pisillo-Mazzeschi, ‘The Due Diligence Rule and the Nature of the International Responsibility of States’ (1992) 35 *German YB Intl L* 9 *passim*.

<sup>70</sup> L Condorelli, L Boisson de Chazournes, ‘Quelques remarques à propos de l’obligation des Etats de “respecter et faire respecter” le droit international humanitaire “en toutes circonstances”’ in C Swinarski (ed), *Etudes et essais sur le droit humanitaire et sur les principes de la Croix-Rouge en l’honneur de Jean Pictet* (Martinus Nijhoff 1984) 17 *passim*.



provisions of the treaty.<sup>71</sup> In practice, the only obligation undertaken is to notify and request; if, after North Macedonia has undertaken those steps, third parties decide to continue using another designation for this State, the latter cannot be held responsible for breaching its obligations under the Prespa Agreement but should continue insisting accordingly.<sup>72</sup> Such an understanding of the ‘notify and request’ obligation is consonant with the object and purpose of the treaty, as well as good faith, and illustrates the outer limits of due diligence under the agreement.<sup>73</sup> Consequently, the agreement requires North Macedonia to always use the new name and to continuously request that the others use it as well.<sup>74</sup>

### 5. *Conclusion: The way forward*

The above analysis attempts to shed light to the potential legal strategies and the challenges encountered when arguing in favour of an objective effect with regard to the name settlement reached in the Prespa

<sup>71</sup> A Ventouratou, ‘The Settlement Agreement between Greece and the Former Yugoslav Republic of Macedonia’ *EJIL: Talk!* (18 June 2018) <[www.ejiltalk.org/the-settlement-agreement-between-greece-and-the-former-yugoslav-republic-of-macedonia/](http://www.ejiltalk.org/the-settlement-agreement-between-greece-and-the-former-yugoslav-republic-of-macedonia/)>.

<sup>72</sup> It must be borne in mind that the due diligence obligation to notify and request is not ‘a one-time effort but requires a continuous effort’; see Koivurova (n 69) para 22 citing ILC, ‘Draft Articles on Prevention of Transboundary Harm from Hazardous Activities’ (2001) II/2 YBILC UN Doc A/CN.4/SER.A/2001/Add.1, 420.

<sup>73</sup> *Contra* V Tzevelekos, ‘Μία πρώτη αποτίμηση της συμφωνίας για το Μακεδονικό’ [A First Assessment of the Agreement on the Macedonian Dispute] *The Books’ Journal* (7 July 2018) <<http://booksjournal.gr/%CE%B3%CE%BD%CF%8E%CE%BC%CE%B5%CF%82/item/2761-makedoniko-mia-prvth-apotimhsh>>, who argues that the Prespa Agreement falls short of imposing any due diligence obligation on North Macedonia citing Article 1(13), according to which ‘in the event of mistakes, errors, omissions in the proper reference of the name ... either of the Parties *may* request their immediate rectification and the avoidance of similar mistakes in the future’ (emphasis added). While the language used in this provision is hortatory and not mandatory, one can argue that on the basis of Article 1(6) of the Agreement and good faith, and taking into account the object and purpose of the treaty, the contracting States’ discretion is transformed into an obligation of due diligence to ensure that third parties respect the name arrangement by continuously drawing the latter’s attention thereto, otherwise the Agreement could be very easily emptied of much of its substance.

<sup>74</sup> See V Tzevelekos, ‘Revisiting the Humanisation of International Law: Limits and Potential. Obligations *Erga Omnes*, Hierarchy of Rules and the Principle of Due Diligence’ (2013) 6 *Erasmus L Rev* 62, 73.



Agreement. Having illustrated that the agreement cannot be easily reconciled with the notion of objective regimes for lack of relevant intent by the contracting parties, and having explored what does the reference to *erga omnes* really signify, one might feel that the agreement is a linguistic means that is not accompanied by the appropriate implementation safeguards. In a sense, this reference seems more like a political tool addressed to the public opinion and political scenes in both countries so as to stress as clearly as possible the need to respect the obligations undertaken bilaterally. Thus, the only way forward in order to preserve the Prespa Agreement in the face of opposition by third parties could be to confirm the due diligence obligation stemming from the agreement that falls upon both parties to continuously request the proper employment of the name arrangement by third actors. In any event, the inherent limitations of a bilateral agreement cannot be easily overcome by simply using a more robust language in relation to the duties of North Macedonia in promoting its new official name. In other words, arguing that a bilateral agreement establishes a public order or collective interest regime with *erga omnes* effects feels like using a band-aid to fix a bullet hole; it is a rather inadequate means for such ambitious goal if one takes into account the consensualist nature of treaty-making.

A possible solution could be the adoption of a UNSC resolution under Chapter VII of the UN Charter. Integrating the Agreement in such a resolution and demanding UN member-States to effectively respect it, or even simply endorsing the new name in a Chapter VII resolution and calling member-States to employ it, while not necessary and imperative for the new arrangement to be applicable within the Organization, would create a quasi-objective régime<sup>75</sup> allowing for its effects to be extended beyond the circle of the Prespa Agreement's contracting parties and increasing the Agreement's legitimacy.<sup>76</sup> Though exceptional in the practice of the UNSC, this has been attempted in the past. For instance, the UNSC has called all States to actively co-operate in the implementation

<sup>75</sup> K Wellens, 'The Practice of the United Nations Security Council with Regard to Treaties and (Other) Agreements Governed by International Law' in M Craven, M Fitzmaurice (eds), *Interrogating the Treaty. Essays in the Contemporary Law of Treaties* (Wolf Legal Publishers 2005) 139, 155.

<sup>76</sup> Though one might object that the previous UNSC resolution advising States to refrain from measures that could undermine the negotiations on the name was not fully respected.



of an agreement or contribute thereto, or requested States to refrain from any action that could undermine or jeopardize the performance of the obligations stemming from an agreement.<sup>77</sup> Moreover, in the case of the establishment of the Special Tribunal for Lebanon, the UNSC forced the entry into force of an agreement between the United Nations and Lebanon that was not ratified by the latter, by annexing it to a Chapter VII resolution and thus, rendering it opposable to all UN member-States.<sup>78</sup>

In the instant case, however, there is no doubt that under the current political power constellation within the UNSC, a similar scenario is not viable. Moreover, employing the “threat to peace” qualification in the case at hand would mean overstressing an already overworked notion, though there is precedent for such use with a view of preventing conflict and instability.<sup>79</sup> Besides, the reactions of the vast majority of States to the Agreement and their practice at a bilateral level and in the framework of international organizations and institutions showcases a widespread acceptance of the solution reached. This illustrates the crucial role that subsequent practice can play for the transformation of the Prespa Agreement into an objective regime. On the one hand, the subsequent practice of the contracting parties could contribute to the re-interpretation of the Agreement’s relevant provisions, thus recognizing objective effects. For example, if North Macedonia repeatedly requests the use of its new name by third parties that fail to do so, or if Greece and North Macedonia coordinate their diplomatic initiatives to that effect, then one might more persuasively argue in favour of the agreement’s objective status.<sup>80</sup> On the

<sup>77</sup> See *mutatis mutandis*, among others, UNSC Res 696 (30 May 1991) UN Doc S/RES/696 preamble: ‘*Stressing further* the importance of all States refraining from taking any actions which could undermine the agreements mentioned above [i.e. the ‘Accordos de Paz para Angola’] and contributing to their implementation’ (emphasis in the original); UNSC Res 793 (30 November 1992) UN Doc S/RES/793 para 8.

<sup>78</sup> UNSC Res 1757 (30 May 2007) UN Doc S/RES/1757 para 1(a). See the analysis in Y Daudet, ‘L’attentat terroriste contre Rafik Hariri et la création du Tribunal spécial pour le Liban’ in *Liber amicorum Jean Pierre Cot: Le procès international* (Bruylant 2009) 51, 62-64; A Lelarge, ‘Le Tribunal spécial pour le Liban’ (2007) 53 *Annuaire Français de Droit International* 397, 403; B Fassbender, ‘Reflections on the International Legality of the Special Tribunal for Lebanon’ (2007) 5 *J Intl Criminal Justice* 1091, 1096-1098; S Talmon, ‘Security Council Treaty Action’ (2009) 62 *Revue Hellénique de Droit International* 65, 105-106.

<sup>79</sup> N Krish, ‘Article 39’ in B Simma *et al* (eds), *The Charter of the United Nations: A Commentary* (3rd edn, OUP 2013) 1289-1293.

<sup>80</sup> See, VCLT (n 23) art 31(3)(b), and, generally, G Nolte (ed), *Treaties and*



other hand, the subsequent practice of third parties, which cannot be considered as 'legally unconcerned' by the agreement,<sup>81</sup> since they are called to take it into account in conducting their diplomatic interactions with North Macedonia, might render the contractual provisions *erga omnes* on the basis of 'tacit recognition through estoppel by silence or acquiescence'.<sup>82</sup> Therefore, it cannot be excluded that subsequent practice could gradually lead to the embedment of the new name in all usages and for all purposes.

*Subsequent Practice* (OUP 2013), which also includes Nolte's reports to the ILC on the topic of 'treaties over time'.

<sup>81</sup> For this term, see Jiménez de Aréchaga (1964) I YBILC UN Doc A/CN.4/SER.A/1964, 101 para 21.

<sup>82</sup> See Simma (n 46) 205.

