

AN OVERVIEW OF THE DISPUTE BETWEEN NORTH MACEDONIA AND BULGARIA THROUGH THE OPTIC OF INTERNATIONAL LAW

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Abstract

Often disputes and conflicts are present among states consequently, international law requires peaceful means for dispute settlement. From a legal perspective, the dispute settlement in international law constitutes some obligations for states to solve their disputes in harmony with the international law by using the peaceful means so they can choose between diplomatic, judicial and institutional means. Quite often bilateral disputes have been crucial barrier and obstacle for EU enlargement process to occur, especially in the South-Eastern Europe. The dispute between North Macedonia and Greece and North Macedonia and Bulgaria has had a significant impact in this direction. Clearly, when it comes to history, culture and identity states favor national interest over European interest. This paper strives to contribute in the recent debate about the dispute settlement between North Macedonia and Bulgaria regarding the identity issues. The neighbors have a long-lasting dispute, which resulted in Bulgaria vetoing North Macedonia's path to EU accession.

It is characteristic that the dispute between Bulgaria and North Macedonia is of 'diverging narratives' of the past and the dispute does not stop neighbors to cooperate on economic level. The paper goes beyond the political interpretations of the dispute and attempts to examine the legal background so in this paper I'll try to explain the role of international law in the resolution of disputes between two states. The dispute between North Macedonia and Bulgaria it is becoming an acute problem in the region because it blockades North Macedonia's path towards EU membership due to Bulgarian veto in this direction North Macedonia, for instance, has affected Albania's European path through the current coupling of the two countries' accession process, because the bloc is treating the pair as a political package. The issue is treated from both sides pointing out increasingly divergent interpretations of the past regarding language, history and culture and it is evident that there is no quick fix for this dispute however solving it will be a panacea for the long list of other regional disputes occurring in the Western Balkan region.

Keywords: Dispute settlement, North Macedonia, Bulgaria, Identity, EU accession.

1. Introduction

This paper is concerned with the issue of how disputes are resolved taking into account the international framework in dispute settlement. Looming over many articles and research papers I've come to the conclusion that there is not a single formula in settling up a dispute because each dispute has its own roots and in the case of North Macedonia and Bulgaria the problems that two neighboring states have are of identity and historical nature.

Quite often North Macedonia and Bulgaria have had complicated neighborly relations and some background story needs to be explored to find out the roots of the dispute. Despite the fact that Bulgaria was the first country to recognize the independence of North Macedonia, they have had tense relations since then and the reason for this unhealthy neighborly relation is rooted in identity and history, this problem becomes acute whenever North Macedonia is trying to join the European Union. This problem has tended to polarize the debate around other Western Balkans countries as well such as the case with Albania which at a certain extent the Bulgarian veto to a considerable extent is also stopping Albania in its path toward EU accession, this kind of rhetoric

will have a dialogical epilogue and it seems preferable from a scholarly standpoint to keep the argument on the bilateral level between Bulgaria and North Macedonia.

This is one of those issues where the question of identity, origins, language and history is particularly fraught; both nations have divergent views of the past. However, in the following sections I'll make some crucial leaps across the *longue durée* of the history and wider context of the current problem. Because only by having looked backwards into history we can revive a narrative of enduring story.

Even though scholars tend to distance themselves from biased arguments of this issue needless to say but in the conditions of the contemporary geopolitical realities it is hard to break the historical shackles and sometimes the rhetoric becomes imperil and a pendulum between historical and political standpoint it is constantly fluctuating and all we have on scholarly spectrum is an ambidextrous approach regarding this dispute.

2. International dispute settlement

As Kissinger would say “no truly global world order has ever existed”, since the international system is characterized by a lack of legislature, executive and judiciary it is reputed that there cannot then be a legal order.

As Austin (1832) says: “International law has not been able to solve the problem of conflict, aggression and war despite the hopes of idealists of the ‘peace-through-law’ approach who believe that law and institutions could form the basis and inspiration for a commonwealth of states. It is clear that international law differs in many respects from other types of law, so much so that some allege that it is not ‘law properly so-called’ but is at most ‘positive morality’.”

But beside this pessimistic view of Austin, international law does survive even if there is a narrow applicability in high profile areas of controlling aggression, conflict and war. (Evans & Newnham, 1998, p.262.) To this regard throughout the centuries international law, even though truncated, has played a vital and crucial role in shaping and creating a system of rules covering diplomacy, conflict-resolution, human rights and almost each sphere upon which one state impinges another one.

And it is something of an exaggeration to say that international law is present in each bilateral dispute between states to mitigate their conflict, and quite often states in this view create their own morality which is their national interest and do not go beyond its *raison d'état*.

Concerning the process of settlement of disputes there is a *prima facie* need to recognize the meaning of ‘disputes.’ The dispute has a broad interpretation and therefore its hard task to provide an accurate explanation. In general, a dispute it's often considered as a disagreement between two states and the precondition of having a dispute is that the parties involved must show opposing views, as a result there are two bases on which a disagreement can occur among two parties; political or legal.

The difference between the two is solely subjective. It is mainly the attitude of the states that decide whether a dispute is a legal or a political, as such for a dispute to be regarded as a legal, States must settle it on the basis of law, or else it becomes a political dispute conversely, the difference between the two becomes extremely important because the procedure for settlement of disputes as laid down in International Law deals only with the legal disputes. (Khan, 2020)

In this direction not all international controversies and disagreement can be put under the umbrella of “question of a legal nature of the dispute”, there are international disputes suited for arbitration and there are controversies that can be solved on a bilateral level. Throughout the

history of international disputes a general understanding was created that there were legal disputes and required legal reasoning and they were disputed under the designation of political disputes.

Actually, the categorization of international disputes is one of the most difficult tasks in international law. It lies at the very basis of compulsory arbitration.

International dispute settlement is concerned with the techniques and institutions which are used to solve international disputes between States as stated in the Art. 33 of the UN Charter as follows:

“The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” (Art. 33, UN Charter)[1].

Peaceful settlement of international disputes is a vital principle of international law that is stated also in the United Nations Charter under Article 2 on the Principles of International Law involving the cooperation and friendly relations among states. [1]

To this regard Article 2, paragraph 3 of the U.N. Charter requires that: “All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.”[2]

Hitherto the U.N. General Assembly in adopting Manila Declaration on the Peaceful Settlement of Disputes in 1982[3] highlighted the fact that “the need to exert utmost efforts in order to settle any conflicts and disputes between States exclusively by peaceful means” and that “the question of the peaceful settlement of disputes should represent one of the central corners for States and for the United Nations.”

The purpose of the International Law was to create the means and methods by which the disputes between the States may be settled by peaceful means and based on Justice. In this direction, the rules of international law are to a certain extent in the form of law-making treaties and customs. In an international dispute, the dispute should be among States in case of wrong has occurred by one state; nevertheless, it does not become an international dispute till it is taken up by the government of the nation of the injured State. Thereafter, the dispute must lead to some action by the aggrieved nation.

But this is not the case with Bulgaria and North Macedonia, in the context of this dispute there is flagrant violation of international law but divergent perspectives on identity and historical issues which can be overcome through a treaty and mediation of a third party. To this regard Bulgaria member state of European Union has anticipated to sign an agreement based on the Joint Declaration of 1999 guaranteeing the good neighborly relations between the two countries, in order to allow Bulgarian support for the accession of North Macedonia to the European Union.

The dispute between North Macedonia and Bulgaria does not fit in the box because until this stage both countries are trying to solve their dispute on a bilateral level without a third party.

3. Roots and wider context of the dispute

As Ker-Lindsay (2021) says: “to understand the dispute between North Macedonia and Bulgaria one need not go back to the late 19th century, yet, we nearly always do, and perhaps it is helpful to start with the ancient story. In fact, the roots of the dispute can be found with the decline of the Ottoman Empire having controlled most of Southeast Europe. In 1878, the Principality of Bulgaria was established with the Treaty of Berlin as an autonomous state within the Ottoman

Empire, from the start the nascent Bulgarians saw Macedonia as part of their national territory.” In the 1890s the Internal Macedonian Revolutionary Organization (VMRO) was dedicated to liberating the territory. This was followed by several Bulgarian attempts to take Macedonia, including during the Balkan Wars and during the First and Second World War. However, following the end of the Second World War, Macedonia became a separate territory within Yugoslavia, then becoming an independent state in 1991. Nevertheless, while Bulgaria was willing to recognize its sovereign statehood, it argued that the Macedonians could not be regarded as a separate people; rather, they should be understood as Bulgarians and those they speak a dialect of Bulgarian, a brute fact that the Macedonians themselves now deeply reject. In response Bulgaria has now blocked the start of EU accession talks until the issue is solved. (Ker-Lindsay, 2021)

Although Bulgaria in 1992 was the first country to recognize the sovereignty of the then-Republic of Macedonia en route Bulgaria has strongly rejected to recognize the existence of a separate ethnic Macedonian nation and a separate Macedonian language quite often arguing that Macedonian language is Bulgarian dialect. (Pulton, 2000, p.214.)

This perplexity is best encapsulated when it comes to signing of treaties between two neighboring states, such agreements are signed with this long phrase at the end: “done in the official languages of the two states the Bulgarian language, according to the Constitution of the Republic of Bulgaria, and the Macedonian language, according to the Constitution of the Republic of North Macedonia” [4].

Throughout the time the relations between NM and Bulgaria have been tense and often this relation has been characterized with its ups and downs, few had any idea what Bulgaria or NM would do next in this direction. Despite the number of domestic crises and conflicts both countries have advanced their relations in the political, economic, and military spheres. Both governments have worked to recover commerce relations with each other, in this respect Bulgaria has also donated artillery and military technology to the Army of NM, in this regard new rules governing good neighborly relations settled between Bulgaria and NM in the Joint Declaration of 1999 reaffirmed by a joint memorandum signed in 2008, in Sofia.

4. Treaty of Friendship between North Macedonia and Bulgaria

North Macedonia’s complicated relations with Bulgaria with which it shares close historic and linguistic ties, have for a long time disadvantaged North Macedonia’s efforts to join NATO and the European Union and since Bulgaria belongs to both organizations it uses veto power to stop the accession of North Macedonia on the EU but the so-called Treaty of friendship[5] was intended to end years of diplomatic wrangling and boost Macedonia’s European integration because the most profound divergences are cured with treaties which serve as the principal source of International Law.

To this regard this dispute is no exception; both countries Bulgaria and North Macedonia in 2017 decided to sign a Friendship Treaty to strengthen their relations and to overcome the differences. The Treaty of Friendship was ratified by both Parliaments on 2018 and this episode was a crucial sign in Bulgaria’s ongoing mission to use the position in the EU council for spreading the European Union into the Western Balkans.[6] As a result of the bilateral agreement a joint commission on historical and educational issues was formed in 2018 to serve as an opportunity to set up the controversial claims from both sides.[7]

For many scholars the treaty was considered a positive milestone and will help both countries to

set aside their differences in this direction in the document Bulgaria pledged to encourage North Macedonia's NATO and EU integration. It was the first time that two countries came to a solution without a third mediator. (Casule & Krasimirov, 2017)

5. 'The French Proposal' as a modality to overcome the divergences

After years of lower interest, France has signaled its ambition to re-engage in the Western Balkans. Bilateral disputes have always been a trouble and indirectly oppose the idea of European integration but without a doubt they have served as a feature when it comes to Western Balkans, notably North Macedonia's case illustrates systematic issues in the EU with regional implications. Since the current geopolitical atmosphere faces some turbulent harsh truths taking into account Russian aggression on Ukraine, it is a great and urgent momentum for the EU to address the issue of the Western Balkan and among the most urgent issues beside the Serbia-Kosovo dialogue is also the case of North Macedonia and Bulgaria.

The involvement of France would help to restore the declining credibility of the EU in addressing bilateral issues. The French proposal puts conditions on the starting of accession talks and that means changes to the constitution are needed in this regard Bulgaria insists on the need for right constitutional protection for Bulgarians in North Macedonia and insists that there would be no assumption that Sofia will recognize Macedonian as a separate language from Bulgarian. (Abazi & Ristofski, 2022, p.11)

Somehow the dispute between North Macedonia and Bulgaria was 'quasi mediated by the EU' at the end of EU Council Presidency France came with a draft proposal with the sole aim to remove Bulgarian veto on North Macedonia's EU accession process.[8]

The so-called 'French proposal' requires from North Macedonia to change the Constitution and include Bulgarians in the Preamble and subsequently adopt an Action Plan for the protection of their rights, so that it can start accession negotiations with the European Union.

6. Conclusions

For years both Bulgaria and North Macedonia searched for common ground to solve their dispute but unfortunately all the attempts were resulted to be a zero-sum game until the French proposal came on the table for discussion as a modality for a way out. The outgoing EU presidency's proposal is expected at removing Bulgaria's veto and start on of accession talks. But for the first time of the EU history the case of North Macedonia and Bulgaria involves the bilateral dispute into the EU negotiating process, giving legitimacy and serving as a precedent to future EU members blocking accession countries to act in this way and this is relevant because somehow it is against European ambition and in roundabout way it gives legitimacy 'to deny the identity of an existing nation' and frame it under EU's negotiating framework but in the conditions of the current geopolitical realities, the EU has all eyes in Western Balkans especially to solve the bilateral disputes occurring in the region, it is not in the EU interests to allow states to block accession over contested views on the existence of a national identity and language because this divergences can cause implications for the whole region characterized by ethnic tension.

References

- [1]. Austin, J. (1954), *The Province of Jurisprudence Determined* (Weidenfeld & Nicolson, London, first published 1832)
- [2]. United Nations Charter (full text) (Art. 33, UN Charter). <https://www.un.org/en/about-us/un-charter/full-text> Retrieved on 31.12.2022
- [3]. United Nations Charter (full text) (Art. 2, UN Charter). <https://www.un.org/en/about-us/un-charter/full-text> Retrieved on 31.12.2022
- [4]. U.N. General Assembly Resolution 37/10, 51 U.N. GOAR Supp. 261 U.N. GOAR Supp. 261, U.N. Doc. A/37/51 (Nov. 15, 1982) <https://legal.un.org/avl/ha/mdpsid/mdpsid.html>
- [5]. Manila Declaration on the Peaceful Settlement of International Disputes New York, 15 November 1982 Retrieved on 12.11.2022
- [6]. Agreement of free trade between the Republic of Macedonia and the Republic of Bulgaria <https://wits.worldbank.org/GPTAD/PDF/archive/Bulgaria-Macedonia.pdf> Retrieved on 28.12.2022
- [7]. Devere, Heather; Mark, Simon; Verbitsky, Jane (2011-12-01). "The Language of Friendship in International Treaties". *International Politics*. 48. doi:10.1057/ip.2010.34.
- [8]. "Macedonian Parliament Ratifies The Declaration of Cooperation With Bulgaria". Archived from the original on 2018-01-15. Retrieved on 2022-11-11.
- [9]. Georgi Gotev, "Borissov warns North Macedonia against stealing Bulgarian history." EURACTIV.com. Jun 20, 2019. Retrieved on 2022-11-12.
- [10]. Bulgarian lawmakers accept French proposal for lifting veto, published on 24.06.2022, available at <https://europeanwesternbalkans.com/2022/06/24/bulgarian-lawmakers-accept-french-proposal-for-lifting-veto/> Retrieved on 12.18.2022
- [11]. Florent Marciacq and Romain Le Quiniou (eds.), "French Engagement in the Western Balkans: Boosting Strategic, Political, Economic and Societal Cooperation", *Études de l'Ifri*, Ifri, February 2022.
- [12]. Evans, G., & Newnham, J. (1998). *Dictionary of International Relations*. Penguin Press p.262.
- [13]. Casule, K., & Krasimirov, A. (2017, August 01). Macedonia, Bulgaria signed a treaty to improve ties. (G. Jones, Ed.)
- [14]. Khan, A. (2020, April 29). Settlement of disputes in International Law. Retrieved from <https://blog.ipleaders.in/settlement-of-disputes-in-international-law/> 12.11.2022
- [15]. Poulton, Hugh, "Who Are the Macedonians?" C. Hurts & Co. Publishers, 2000, p. 214 26

Notes:

- [1]. United Nations Charter (full text) (Art. 33, UN Charter). <https://www.un.org/en/about-us/un-charter/full-text> Retrieved on 31.12.2022
- [2]. United Nations Charter (full text) (Art. 2, UN Charter). <https://www.un.org/en/about-us/un-charter/full-text> Retrieved on 31.12.2022
- [3]. See: U.N. General Assembly Resolution 37/10, 51 U.N. GOAR Supp. 261 U.N. GOAR Supp. 261, U.N. Doc. A/37/51 (Nov. 15, 1982) (hereinafter cited as "Manila Declaration" <https://legal.un.org/avl/ha/mdpsid/mdpsid.html> Manila Declaration on the Peaceful Settlement of International Disputes New York, 15 November 1982 Retrieved on 12.11.2022
- [4]. See: Agreement of free trade between the Republic of Macedonia and the Republic of Bulgaria <https://wits.worldbank.org/GPTAD/PDF/archive/Bulgaria-Macedonia.pdf> Retrieved on 28.12.2022
- [5]. A treaty of friendship, also known as a friendship treaty, is a common generic name for any treaty establishing close ties between countries. Friendship treaties have been used for agreements about use and development of resources, territorial integrity, and access to harbors, trading lanes and fisheries, and promises of cooperation. Whilst not common, there are some treaties agreeing to some forms of military alliance which have use friendship terminology in their titles. See: Devere, Heather; Mark, Simon; Verbitsky, Jane (2011-12-01). "The Language of Friendship in International Treaties". *International Politics*. 48. doi:10.1057/ip.2010.34.

- [6]. "Macedonian Parliament Ratifies The Declaration of Cooperation With Bulgaria". Archived from the original on 2018-01-15. Retrieved on 2022-11-11.
- [7]. Georgi Gotev, Borissov warns North Macedonia against stealing Bulgarian history. EURACTIV.com. Jun 20, 2019. Retrieved on 2022-11-12.
- [8]. Bulgarian lawmakers accept French proposal for lifting veto, published on 24.06.2022, available at <https://europeanwesternbalkans.com/2022/06/24/bulgarian-lawmakers-accept-french-proposal-for-lifting-veto/> Retrieved on 12.18.2022