

# Peacemaking and Constitutional Change: Negotiating Power-sharing Arrangements and Identity Issues

**The Republic of (North) Macedonia and The Ohrid  
Framework Agreement**

Boshko Stankovski

Case Study

## IMPRINT

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## About this publication

This publication is part of the project *Towards Sustainable Peace: The Nexus of Peacemaking and Constitution Building*, implemented by the Berghof Foundation, in collaboration with the United Nations Mediation Support Unit – Department of Political and Peacebuilding Affairs. It was generously supported by the German Federal Foreign Office.

The project explored how peacemaking – particularly mediated peace negotiations – interfaces with constitution building in practice, a so far understudied area. It identified the challenges and opportunities at this ‘nexus’, the lessons learned, and policy options and their implications on sustaining peace.

To this end, a number of thematic and field studies were commissioned, desk studies were conducted, and expert roundtables, interviews and peer exchange were organised involving scholars and practitioners from the fields of mediation and constitution building. The following publications capture the insights from the project on crucial processual and substantive issues at the nexus, which are expected to be valuable for practitioners.

### Key output

- ≡ Key considerations for practitioners working at the nexus of constitutions and peace processes

### Case studies

- ≡ Burundi [French and English]
- ≡ Guatemala [Spanish and English]
- ≡ Republic of (North) Macedonia

### Thematic studies

- ≡ From armed intra-state conflict to a functioning constitutional order: reconciling principles of third-party support – a reflection
- ≡ Constitution making in contexts of conflict: paying attention to process
- ≡ Critical substantive issues at the nexus of peacemaking and constitution building
- ≡ The imperative of constitutionalizing peace agreements

The publications are available online at [www.berghof-foundation.org/pmcb](http://www.berghof-foundation.org/pmcb).

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# 1 Introduction

The armed crisis in the Republic of (North)<sup>1</sup> Macedonia in 2001 was the last in the string of ethnic conflicts in the Balkans. These began after the collapse of Yugoslavia, with the wars in Bosnia-Herzegovina and Croatia in 1992-1995, followed by the 1999 crisis in Kosovo. The relatively brief and geographically limited conflict<sup>2</sup> between the Government of the Republic of (North) Macedonia and the armed organisation known as the National Liberation Army (NLA) could have, nonetheless, easily pushed the country into a full-blown civil war. Moreover, considering the history of the Balkans, the crisis could have potentially spread in the wider region.

As will be elaborated in more detail, after it was clear that the institutions of the Republic of (North) Macedonia could not find a political solution to the crisis on their own, the international community's reaction was relatively swift. The European Union (EU), the United States (US), the North Atlantic Treaty Organization (NATO) and the Organisation for Security and Co-operation in Europe (OSCE) coordinated the response. It was also a possibility for the EU to take a more proactive role, especially after the experiences in Bosnia and Kosovo. As the position of EU High Representative for Common Foreign and Security Policy (at the time held by Javier Solana) was only created in 1999, it was also the first opportunity for the EU to engage as an institution in a serious European foreign policy and security issue (Pardew 2018, 271).

For NATO, the situation was particularly acute. The Alliance had 3,000 troops in the Republic of (North) Macedonia providing logistics support to Kosovo, so “the consequences of a war in Macedonia would be immediate and direct” (ibid.).

The international engagement in resolving the crisis in The Republic of (North) Macedonia was characterised by a dual track approach. The security component, which included the NLA, was discussed separately from the political process with the leaders of the two major ethnic Macedonian political parties<sup>3</sup> and the two major ethnic Albanian political parties.<sup>4</sup> These talks were held in Skopje and Ohrid, formally under the auspices of the President of the Republic of (North) Macedonia. However, the process was *de facto* led by the EU and US mediators and their expert teams. Although these two components were separate, they functioned in parallel. Their coordination and complementarity were instrumental in securing a solution to the conflict.

The Ohrid Framework Agreement (OFA) was signed on 13 August 2001 in Ohrid, the Republic of (North) Macedonia. The Agreement is structured around four areas: securing peace, decentralisation and use of emblems, regulations relating to minorities, and education and use of languages (Czymmeck and Viciska 2011, 75). It also contains three annexes. Annex A provides the text of the proposed constitutional amendments submitted to the Parliament for adoption.

1 Following the Prespa Agreement of 12 June 2018 and the subsequent constitutional changes, the official name of the country as of 11 January 2019 is the Republic of North Macedonia. However, when referring to legal acts and state institutions before this date, the case study uses the former constitutional name of the country, the Republic of Macedonia.

2 The clashes were limited to the north-west part of the Republic of (North) Macedonia.

3 The two ethnic Macedonian political parties in the negotiations were the Internal Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (VMRO-DPMNE), led by Ljubcho Georgievski who also served as Prime Minister at the time, and the Social Democratic Union of Macedonia (SDSM), led by Branko Crvenkovski.

4 The two ethnic Albanian political parties in the negotiations were the Democratic Party of the Albanians (DPA), led by Arben Xhaferi, and the Party for Democratic Prosperity (PDP), led by Imer Imeri.



Annex B lists the necessary legislative modifications to make during the implementation process. Annex C details implementation and confidence-building measures. With regard to Annex B, there were different interpretations over the exact laws to be amended or adopted. A process facilitated by the international community resulted in a list of 46 laws. The Law on Languages and the Law on Territorial Organisation of the Local Self-government of the Republic of (North) Macedonia proved to be most difficult and controversial to adopt and implement.

The OFA establishes an “enhanced” form of self-government: it avoids designating the concerned areas as autonomous units, although special provisions were made “in relation to them in view of their ethnic composition” (Weller 2010, 6). The Agreement, however, does not change the institutional structure of the country, with the exception of the Parliamentary Committee of Inter-Community Relations, although some institutions, especially local ones, do get an added weight (Weller 2005, 57). It establishes a “strict subsidiarity requirement” of the competences of the municipalities over the ones of the state, with the latter one (i.e. the parallel competence of the state) “significantly reduced” (ibid., 54). Generally, the OFA strikes a balance between the consociational model as introduced by Lijphart (1977; 1984) and the integrative approach by Horowitz (1985), resulting in “minimalist consociational system” (Bieber 2008, 13).

The OFA is an important example of a peace agreement implementing a policy of multiculturalism on a constitutional level, establishing a complex power-sharing mechanism among communities. The OFA was not just brokered by the international community, but the EU and the US also signed as its guarantors, therefore classifying it as a type of a hybrid, internationalised peace agreement. Moreover, the OFA became a prerequisite for the country’s Euro-Atlantic integration process. As EU Ambassador Fouéré stated, “[the country’s] road to Brussels goes via Ohrid” (Erwan Fouéré, EU Ambassador to Skopje, 2018). Considering this, this case can provide interesting lessons for peacemakers involved in peace processes in heterogeneous, ethnically and/or religiously fragmented societies.

This case study explores the nexus of peacemaking and constitution making in the OFA process, and the lessons learned for international mediators. Generally, they are analysed within the triangular framework of actors, process and substance. In that regard, three sets of issues are particularly examined. *First* are the issues raised during the OFA negotiations. They particularly refer to the “institutionalisation” of the process; the interplay between the security component and the political process; and the role of the mediators, with particular focus on the international experts. *Second* are the most important constitutional issues in the OFA itself. This covers the correlation between the resource-based and identity-based provisions, as well as the OFA structure, terminology used and interpretation, with particular emphasis on the so-called “dual interpretation”. *Third* are the roles of the international community (as a subsequent mediator) and the civil society, with particular focus on young people.

## Methodology

The research involved different methodological approaches, given the three different segments of the case study – peacemaking, constitution making and their mutual correlation through the process of negotiation/mediation facilitated by the international community.

The research process started with a theoretical analysis of the OFA's format, comparing its key features against peace agreements concluded in cases of similar conflicts and/or context. Additionally, content analysis was conducted on the provisions of the Agreement, as well as all the constitutional amendments and the subsequent 46 laws adopted during the implementation process. The implementation process itself covers an extended period. The Agreement was concluded in August 2001, and the implementation process is ongoing as the Government claimed that the new Law on the Use of Languages proposed in 2019 is the last outstanding obligation for full implementation of the OFA. Taking this into account, different types of data were also retrieved when relevant, pointing to various changes that the Agreement introduced in the country. This includes the percentage of communities represented in public administration, indicators of public perceptions, etc. Thus, empirical legal research methods were additionally used.

The analysis placed significant attention on conducting interviews with key figures from the Republic of (North) Macedonia and the international community who were instrumental during the negotiation process and the subsequent implementation, especially relating to its most disputed/debated provisions.<sup>5</sup> Four out of the five international experts who were involved in drafting the OFA were interviewed for the first time (Arnaud Barthelemy, Fernando Gentilini, Thomas Markert and Laurel Miller). The interviews were carefully planned in order to study the needs/ interests/ positions of the parties during the negotiating process, as well as the different tools/ methods used by the mediators to reach compromise.

In addition to the individual interviews, two focus groups interviews were conducted with: (i) representatives from NGOs in (North) Macedonia on their involvement, direct or indirect, with the implementation of various provisions of the OFA; (ii) different sociological categories, but with particular emphasis on youth, regarding their perceptions of the OFA.<sup>6</sup> Statements and media reporting on issues related to the OFA were also analysed. Finally, in order to share preliminary findings and receive feedback, a backstopping visit to Skopje and Kumanovo was also implemented in cooperation with the Berghof Foundation.

Unfortunately, some of the interviewees from the Republic of (North) Macedonia, especially the ones with active political careers, rejected or did not answer the invitation for an interview. Most likely, this was because some issues analysed in the research are still considered controversial in the domestic political discourse. Nonetheless, this potential risk was foreseen at the beginning of the research process and, as such, was mitigated by conducting interviews with local and international experts involved in the negotiations and the OFA drafting process.

<sup>5</sup> See Page 33 for the list of individual interviewees.

<sup>6</sup> See Page 33 for the list of focus group interviewees.

## 2 The OFA as a peacemaking tool: process, approach and substance

The international reaction in the wake of the crisis in the Republic of (North) Macedonia, unlike the previous cases of Bosnia-Herzegovina and Kosovo, was prompt and fairly coordinated among the EU, US, NATO and the OSCE. The initial approach adopted by the international community focussed predominately on the security dimension. This was done in an effort to contain the conflict and prevent further escalation. The political dimension and the so-called dual track approach, which became an important characteristic of the international mediation attempt in the Republic of (North) Macedonia were, in fact, initiated several months later (Pieter Feith, Personal Representative of NATO Secretary General, 2018). This does not mean, however, that there was no political dialogue since the crisis started.

In the first few months of the conflict, President Boris Trajkovski organised talks among the leaders of all political parties represented in the Parliament of the Republic of (North) Macedonia. According to Stevo Pendarovski, this was an attempt by the President to establish a wider political process leading to a negotiated solution to the crisis (Stevo Pendarovski, President of the Republic of North Macedonia, former Advisor to President Trajkovski, 2018). However, although these meetings were held regularly and attended by everyone invited, they did not contribute to finding a solution. It can be argued that this was partly because the conflict was not yet ripe for a political solution, but also because there was no international mediation. At that point, the international community left the domestic political leaders to initiate and conduct the dialogue themselves. Additionally, there was the issue with the question of refusal to negotiate with the NLA (see Section 2.1). Nonetheless, although the political leaders who were part of the negotiation process described it as a mere “debate club” (Radmila Shekerinska quoted in Iliev 2011), it was clear that

the international community supported this format (ibid.). At this point, the Macedonian political leadership coined the phrase “political dialogue” to avoid using the term “negotiations” (ibid.) due to institutionalisation and legitimisation issues, explained in more detail below.

In terms of restructuring the internal political dialogue into a successful negotiation process, it is significant that the NLA also transformed its demands. Throughout the crisis, the NLA sent communiqués to the media, announcing its position on important matters. The first four communiqués were secessionist in their nature. The NLA said its goal was to “liberate” the Albanian lands from its “Slavic occupiers”. This created a serious impediment to the international effort to bring everyone to a negotiating table.

Somewhat surprisingly, the leaders of the registered ethnic Albanian political parties, especially the two largest ones, opposed the NLA. They viewed the movement as dangerous to the security of the Albanian community and a direct challenge to their personal authority (Pardew 2018, 262). Most vocal among them was Menduh Taxhi, who held the second-highest position in the DPA, and became its future leader. The ethnic Albanian political leaders also feared that they would be marginalised by this newly-emerging structure (Ljubomir Frchkoski, Adviser to President Trajkovski, 2018). However, after the fifth communiqué, the position of the NLA was transformed to a demand for increased rights for the Albanian community in the Republic of (North) Macedonia while preserving the country’s territorial integrity. It can be debated whether this was because the NLA realised on its own that secession does not serve best the interest of the Albanian community (Arie Bloed, Emeritus Professor, Utrecht University, 2018), or it was done through an intensive Track II diplomacy by the EU

and the US (Ljubomir Frchkoski 2018). Nonetheless, the effect of the changed approach of the NLA was visible since the Government, as the following section explains, ultimately accepted them as a *de facto* party in the negotiations.

## 2.1 Legitimisation of armed actors in the process

After the clashes in the Republic of (North) Macedonia intensified, the Government realised that the conflict could not be resolved by military means and that a political solution was necessary. The question which emerged was who would be represented at the negotiating table. There was strong reluctance within the Government to legitimise the NLA, especially its leader Ali Ahmeti. This dilemma, which external bystanders might find difficult to understand, was very important to the Government and some political leaders. After all, the refusal to “talk to terrorists” had emerged in many other cases such as Northern Ireland, prompting legal and political dilemmas for the public as well as the political leaders. It can have significant effects on negotiations, like creating additional impediments to the peacemakers, stopping initiatives, or sometimes even completely derailing the political process. Negotiators or mediators might also differ on this matter depending on their profile. This study shows that diplomats and security experts who were initially sent to prevent escalation of the crisis had a more rigid approach and did not consider this issue particularly relevant. Their attention was focussed primarily on parties who effectively control the situation and could deliver what has been negotiated. On the other hand, diplomats and negotiations experts who were sent afterwards, while being aware that there is no sustainable agreement “without everyone at the table” (Arie Bloed 2018; see also International Crisis Group 2001), had to pay additional attention to the political and legal/institutional implications of the process.

In the Republic of (North) Macedonia, to make matters more complicated, the international community took a strong stance on the NLA in the wake of the crisis. For example, NATO Secretary General, Lord George Robertson called the NLA “a bunch of murderous thugs whose objective is to destroy a democratic Macedonia and who are using civilians as human shields”.<sup>7</sup> He further stated, “We will starve this limited number of localised extremists from being able to carry out their mischief and we will take what measures are necessary on the military front” (Robertson quoted in Neofotistos 2012, 49). The statements of some of the ethnic Albanian political leaders in Macedonia were far from flattering. The experts in the Macedonian Government negotiating teams also strongly advised against including the NLA at the negotiating table (Ljubomir Frchkoski 2018; Popovski 2011). However, the firm rejection of the international community to negotiate with the NLA started to change in April 2001, after the NLA made new offensives and established control over several new villages (Stefan Lehne, Head of Task Force Western Balkans/Central Europe, PPEWU, Secretariat-General of the EU Council, 2018).

The situation evolved after the Albanian political leaders from (North) Macedonia and the leader of the NLA, Ali Ahmeti, signed the so-called Prizren Declaration of 22 May 2001. The Declaration not only created a unified set of demands between the leaders of the ethnic Albanian political parties in the Republic of (North) Macedonia and the NLA, but also ensured mutual coordination between the political party leaders and the rebels at the front during the negotiation process. As Arben Xhaferi, the leader of DPA stated just after the signing, “The first goal [of the Declaration] was to prevent national [Albanian] division, to find a model for coordination of [our] interests, positions and strategy on how to end this crisis in Macedonia. The other goal was to achieve peace in Macedonia and the Region” (Rexhepi 2008; translation by the author).

7 Source: BBC. Macedonia on ‘brink of abyss’. 7 May 2001. [news.bbc.co.uk/2/hi/europe/1317049.stm](https://www.bbc.com/news/europe-1317049) [accessed 10 April 2019].

The initial outcry by the Macedonian government nearly brought the process to a halt. It caused President Boris Trajkovski to summon few of the ambassadors present in the country as a sign of protest. However, it was, in fact, a turning point of the crisis because a joint agenda of the Albanian community was finally defined (Cekik 2014, 228). Ten years after the agreement was signed, even Ljubcho Georgievski, the Prime Minister at the time who maintained a more hard-line view on the matter, stated, “From today’s aspect perhaps it was a mistake that the NLA did not participate directly in the negotiations” (Lubcho Georgievski quoted in Iliev 2011). Ultimately, as Vlado Popovski, Adviser to President Trajkovski and a local expert participating in the negotiations concluded: “The international community, in my opinion, has modelled that declaration [...] and I think that it was done well, because the military forces of the NLA were [finally] put into a framework” (Popovski 2011).

Since the international community accepted the view of the ethnic Macedonian political parties that federalisation would be a very dangerous and difficult process to control, the Prizren Declaration came somewhat as a relief because the Albanian political leaders stood behind the country’s unitary character, demanding instead enhanced rights for their community (Stefan Lehne 2018).

With this, it can be argued that a creative solution was found, ensuring four things. First, all relevant parties in the conflict were heard while, at the same time, the Albanian community had a unified set of demands. Second, it provided assurance to the mediators that the ethnic Albanian party leaders’ requirements would be delivered, i.e. any possible solution would be reflected on the ground. Third, the Government could *de facto* negotiate with the rebels, saving face by continuing to claim that it did not “legitimise” them. Fourth, the conflict was “institutionalised”, meaning that the Government could claim that the existing institutions of the Republic of (North) Macedonia had the capacity to find a solution to the conflict. This was important to the country from the point of rule of law and as an aspirant for EU membership.

However, after the initial dilemma on how to “institutionalise” the process, other challenges remained. These included maintaining communication and mutual trust between the rebels and the political parties. Another challenge was ensuring complete demobilisation of the rebels and their re-socialisation and re-integration in the system, especially taking into consideration the dilemmas posted by Bell (2008), and Jarstad and Sisk (2008). With the latter, the situation was particularly controversial as the rebels ultimately transformed into a political party, the Democratic Union for Integration (DUI), which won among the ethnic-Albanian electorate in the first post-conflict elections and entered the Government in 2002. In fact, with a brief discontinuity between 2006 and 2008, DUI has been in power ever since. This led to the other ethnic Albanian parties revolting. They eventually started criticising DUI’s underlying motives during the crisis, claiming that it was seizing power, and not improving the positions of the Albanians. Menduh Tachi, the leader of DPA after Arben Xhaferi, was among the most vocal critics (see, for example, Tachi 2016).

## 2.2 Negotiating and adopting the constitutional and legislative Changes

As previously mentioned, constitutional amendments were integral part of the OFA and were included in its Annex A. The Agreement, however, did not put them into direct effect from the moment it was signed. Instead, the signatory parties committed that they would “take all measures to assure adoption of these amendments [in the Parliament] within 45 days of signature [...]” (OFA 2001, pt. 8.1). This had two implications. First, it maintained the internal process for constitutional change which attempted to preserve the country’s institutional infrastructure. Second, and more importantly, although the text of the proposed amendments included in the Annex A was pre-drafted, their adoption went through the regular procedure in the Parliament. This included public discussions both within the appropriate parliamentary committees and at

plenary session(s), leaving open the possibility of modifying the amendments.

This approach, if used carefully, can help to rally the support of other, usually smaller, non-signatory parties. It can also allow certain changes to be inserted on issues that the mediators and their expert teams might have overlooked. These changes are usually minor, although not always necessarily so. Obtaining the support of the non-signatory parties can provide a broader sense of ownership, especially for smaller groups with the potential to eventually turn into spoilers. Moreover, the opportunity to amend certain provisions of a peace agreement through a transparent institutional process, if done in good faith, can help overcoming possible inconsistencies and/or avoid potential loopholes.

In the case of the OFA, this approach was intentionally adopted after being previously discussed among the international experts, including constitutional experts and experts in negotiation, thus the provisions of the Agreement were structured “very purposely and consciously” in a way as “to try avoiding undermining the existing constitutional amendments procedure and to respect the constitutional structure” (Laurel Miller, international expert, 2018). However, that entailed a process in the Parliament afterwards in which the parties that were not part of the negotiations needed to be brought along. Therefore, in a diplomatic effort to smooth the implementation and to ensure that the amendments would pass, multiple extensive discussions were held by the international mediators Ambassador James Pardew on behalf of the US and former French Minister François Leotard representing the EU (ibid.). Accompanied by some of the international experts, they met the President of the Parliament and MPs from the smaller political parties who were dissatisfied for not being included in the negotiation process (ibid.).

According to Laurel Miller (2018), this is a potentially useful model for other cases because it balances between conducting constitutional changes in a relatively fast and effective manner

on the one hand, while ensuring that there is space for debate about those changes on the other hand. It can also provide wider support for the Agreement, including support from smaller political parties (ibid.). The result is successfully avoiding “substantive loose ends which can sometimes unravel peace agreements” (ibid.). This can even be applied to cases like Afghanistan, where, based on the Macedonian model, constitutional language can be used in a prospect peace agreement (ibid.).

In other words, the experience of the Republic of (North) Macedonia with the OFA can provide some insights into the nexus between constitution making and peacemaking. Provisions of peace agreements – although more applicable to comprehensive peace agreements than framework agreements – are often more detailed and forward-looking when it comes to peace-related issues. Constitutions, on the other hand, take other factors into consideration and, as such, are more general and neutral in the terminology they use. With the OFA, this process overlaps, although not entirely. The OFA and the constitutional amendments in its Annex A allowed certain flexibility, albeit minimal, as well as an opportunity for parliamentary oversight. Nonetheless, in the case of the Republic of (North) Macedonia this process was closely monitored internationally to ensure its prompt implementation and prevent any possible derailing. Additionally, it is important to underline that compliance of all parties was also achieved due to the fact that the OFA became the necessary precondition for the country’s EU and NATO integration process, which was an assumption that the international experts were operating upon when drafting the Agreement (ibid.). This also provided significant leverage to the international community in the implementation phase (Erwan Fouéré 2018).

However, two issues were re-negotiated and redrafted during the implementation process in the Parliament. The first one was relatively simpler: Article 19 of the Constitution separates the Macedonian Orthodox Church from the other religious communities. The OFA, instead, only lists the bigger religious communities in the country,

guaranteeing the country's secular character, i.e. separation of religion from the State (OFA 2001, Annex A, Article 19). It also allows those religious communities to open faith schools and charitable organisations in accordance with the law. These changes were part of the proposed Annex VII to the Constitution. Following pressure from the Macedonian Orthodox Church, which started gaining support among the ethnic Macedonians as a dominant community, in order to distinguish the Church from the other religious communities, the Amendment VII was not only re-drafted in a way as to mention the Macedonian Orthodox Church first, but also, before continuing enlisting the other religious communities, the words "as well as..." (in Macedonian: "како и...") were inserted (Constitution of the Republic of Macedonia 1991, Annex VII). Although to an outsider this might seem as a question of simple semantics, the Macedonian Orthodox Church was extremely sensitive to this issue in a context where its autocephalous status was, and still is, denied by the churches of neighbouring states. Considering the overwhelming religious sentiment among the ethnic Macedonians, it could have significantly increased the negative perception of the OFA in that fragile period.

The second, much more complex issue to be re-negotiated was the Preamble of the Constitution itself. It highlights the importance of identity issues being incorporated into peace agreements. Section 2.5.2 goes into further detail on this.

### 2.3 Dual track approach and interplay between the political process and the security component

As it was already mentioned, during the beginning of the crisis, the primary focus of the international community was put on containing and de-escalating the conflict (Pieter Feith, Personal Representative of NATO Secretary General, 2018). With this priority, the first international representatives who arrived in the country had security backgrounds. The late US Ambassador

Robert Frowick, an expert on East-West security issues, served as a Personal Representative of the OSCE Chairman-in-Office Mircea Geoana. Dutch diplomat Pieter Feith was appointed as the Personal Representative of NATO Secretary General, Lord George Robertson. The political negotiation process facilitated by the international community, i.e. the second component of the dual track approach – which, as this study argues, was an important characteristic ensuring the successful resolution of the conflict in (North) Macedonia – was established after the fighting in Arachinovo, and after the clashes started spreading in the urban areas of the western part of the Republic of (North) Macedonia (Ljubomir Frchkoski 2018).

These diplomats were, in fact, the first ones to meet Ali Ahmeti and the command of the NLA. They needed three preconditions to successfully start the political negotiations. First, it was important to make sure that there is a chain of command within the NLA, and Ali Ahmeti's orders were being listened to. Second, that some type of confidence can be established between the Macedonian police forces and the NLA, which would mean that, if, for example, a ceasefire or peaceful withdrawal is agreed in the short term, it will be upheld by both parties. This would, on the longer run, ensure that the processes of demobilisation and disarmament will be successful in case a peaceful solution is ultimately reached. Third, that Ali Ahmeti, as the leader of the NLA, has communication with the ethnic-Albanian party leaders and that his views were being listened to (Pieter Feith 2018). According to the same source, what was of particular importance for successfully ending the crisis in the country was also the fact that Ali Ahmeti was more interested in political progress than the military one, and that his ultimate goal was to become a political leader/figure in the Republic of (North) Macedonia (ibid.).

The security component within this dual track approach was also important to the political mediators because, when the political process was finally established, the mediators, James Pardew and François Leotard, expressed reservations

about whether Ali Ahmeti will deliver what has been agreed upon. It was at that point that Pieter Feith was able to convince them that this will be the case (Iliev 2011). In that direction, the NLA's withdrawal from Arachinovo was a crucial confidence-building exercise (Stefan Lehne 2018). The confidence that the mediators established with the NLA also reflected among the Macedonian negotiators and the experts, ensuring them that what was being negotiated will also be accepted by the NLA (Ljubomir Frchkoski 2018). This was especially the case after Pieter Feith presented a document, which stated that, pending a conclusion of a political settlement, the NLA will be "disarmed" and "disbanded", which came as both a surprise and a relief to the negotiating teams (Stevo Pendarovski 2018).

## 2.4 Role of mediators and their expert teams

Several months after the conflict started, it became clear that the country's political leadership could not find solution to the conflict on its own. The international mediation process began at the end of May 2001. As it was already mentioned, it was facilitated by the US and the EU, represented by Ambassador James W Pardew and the former French Minister François Leotard, respectively. The main partner of the international mediators was President Boris Trajkovski. All interlocutors interviewed for the purpose of this study, without exception, praised President Trajkovski for his leadership in finding a negotiated solution, as well as his patience and dedication to the peace process. As Pardew remarked, "His energy and commitment to negotiations established him at the focus of attention in Washington and Europe" (Pardew 2018, 264).

However, although Trajkovski viewed himself as a neutral, the ethnic Albanian parties did not share this view (ibid., 265). From a constitutional perspective, even though his position was relatively weak (he was a president with limited powers in a hybrid system, which, nonetheless, inclined more towards parliamentary democracy),

it is important to underline that he was elected on direct elections, thus his formal legitimacy to impose himself as mediator in the peace process was never challenged. In fact, he insisted that, at least formally, he was the central negotiator, while Pardew and Leotard were to be mere facilitators, or as Pardew concluded, "[W]e were not to be mediators in what Trajkovski saw as his negotiation, although *in practice* our influence increased as the negotiations progressed" (ibid., 281; emphasis added).

Besides being "adamant" about not including Ali Ahmeti directly in the negotiations, Trajkovski rejected the British idea of moving the negotiations outside the country. Pardew understood this position (ibid.). This example shows that the intention of the international community was not to undermine the Macedonian political structure (Craig Jenness, former OSCE Ambassador to Skopje, 2018). It was also important that the OFA was seen as a domestic agreement, adopted within the institutions of the country (Arnauld Barthelemy, international expert, 2018). The fact that the institutional infrastructure of the country did not fall apart proved to be instrumental afterwards when it came to implementing the Agreement (Craig Jenness 2018). International development assistance, as Pardew concluded, was not a significant incentive during the negotiations, but foreign aid became important leverage in the implementation process. During negotiations, the parties were focussed on the talks, not on the long-term political benefits (Pardew 2018, 283-284).

The enhanced role that the experts, both local and international, played in the negotiating process is particularly interesting. The international experts from the EU and the US, as Pardew observed, "coalesced into a unified team and worked with a great deal of autonomy" (Pardew 2018, 283). They "conducted the initial phase of talks with their counterparts", i.e. the local experts working with the political parties or the President of the country, in order to "gather competing positions and to reduce to the most important those issues to be discussed with the primary negotiators" (ibid.). In other words, "the discussions between



the experts were more substantive and avoided the verbal fireworks of the discussions between the negotiating principles” (ibid.). They were additionally aided by other experts who visited the country. These included the French Constitutional Court Judge Robert Badinter, who wrote a non-paper that was used, to some extent, as a starting point for the Agreement. Another expert, the OSCE High Commissioner for National Minorities, Max van der Stoel, had an important input on education issues.

Additionally, the expert team had a more active role than it might have had in other similar situations. Considering the complex technical issues, the political leaders could not always envisage the concrete legal effect of a particular provision in the agreement. As a result, they sometimes distrusted the international mediators because they were afraid that they might have been “manipulated” into agreeing to something which they would not have normally accepted (Ljubomir Frchkoski 2018). Thus, the experts were there to explain the wording of the agreed provisions and their practical effect when implemented or, in other words, help the leaders overcome those fears (ibid.). Therefore, it can be argued that the experts, particularly local ones, were a vital link in what negotiation theory calls “framing” and “reframing” of the negotiation process (see, for example, Spangler 2003; Mayer 2000, 132). They ensured that the parties shared a common understanding of the issues being negotiated. With this in mind, the international mediators often consulted them beforehand or asked them to informally examine the positions of the leaders before a new proposal was even officially put on the table (Ljubomir Frchkoski 2018).

Because of the complexity of the process and the issues covered, the substantive part of the negotiation process was actually conducted within working groups after the initial plenary session.<sup>8</sup> The proposals coming from the parties were written in the form of non-papers. As such, they were communicated to the mediators who, after considering both of them, produced a compromise document, which was also presented as a non-paper (ibid.). Taking into account the recollection of the local experts involved in the process, it can be argued that the approach of the international mediators, right from the start of the process, was to carefully outline the “needs” and the “interests” of the parties in order to differentiate them from the “positions” they have initially expressed.

In this instance, it is interesting to mention that, at the start of negotiations, the international experts had asked both sides to list their priorities during the peace process (ibid.; Pardew 2018, 290). Based on the priorities outlined together by the two ethnic Macedonian political parties and their expert teams, it can be concluded that the ethnic Macedonian parties expressed their “needs” right away throughout the first priority they put on the list: preserving the unitary character of the country (ibid.). This is because, due to the regional historic context, any form of federalisation has been, and still is, perceived by the public as leading to further polarisation of the society, and renewal of the conflict and violence (Focus Group A). It can be argued that the rest of the priorities listed, i.e. the use of languages; state administration and preserving the one-degree decentralisation system; and education rights (Ljubomir Frchkoski 2018), represented the parties’ “interests”, i.e. what they needed to secure during the negotiation process in order to protect the already mentioned “needs”. In other words, when it came to the constitutional dimension of the peacemaking process, preserving the country’s unitary character while allowing enlarged collective, especially language rights, was at the core of the negotiations.

8 There is apparently no record of the composition of the working groups. The information from the interviews is that there were no permanent working groups, but that they were created on an *ad hoc* basis depending on the issue being discussed. However, they always included representatives from all political parties who were part of the negotiation process, the experts working with the President, and the international experts.

However, this was not to be done at the cost of creating what Frchkoski called “a linguistic federation” (Ljubomir Frchkoski quoted in Iliev 2011).

On the other hand, the priorities of the ethnic Albanian parties were focussed on changing the Constitution in order to achieve a higher degree of self-governance, including implementation of mechanisms for preventing majorisation; changing the Preamble of the Constitution; extended use of the Albanian language, including in the educational system; and extensive rights to use flags and national emblems (Nasser Zyberi, local expert to the ethnic Albanian political parties, 2018). Based on this, it can be concluded that the “needs” of the ethnic Albanian political parties were preserving the Albanian identity, as well as advancing the political rights of the Albanian community, while protecting those rights from being voted out by the ethnic Macedonians.

## 2.5 Constitutional issues and approaches of dealing with them

The mediation process leading to signing the OFA entailed negotiating both resource- and identity-based issues. The former dealt with granting rights and allowing communities to have or expand their access to local and/or national resources, effectively creating a redistribution of wealth. Here, the word “resources” is considered in the broad sense of the term as it refers to anything that can be ultimately quantified, no matter if it relates to issues like decentralisation, employment and fair representation, financial support for the preservation of culture, language and education, as well as the creation and composition of particular institutions. These issues include larger part of the corpus of the Agreement.

The primary focus of the identity-based issues is the demand for acknowledgement and, as such, they cannot be quantified because they touch upon questions regarding culture, language and, interestingly for the case of the Republic of

(North) Macedonia, demand for granting status of constitutive people. However, these issues are interrelated because the ethnic conflict often includes “resurgence of latent feelings or dormant grievances when a group perceives itself as deprived of some social benefits because of its ethnic identity” (Zartman 2007, 173). This creates what Shapiro (2016, 9) calls “emotionally charged” conflicts, which, as such, “often hinge on such values-laden differences” such as religion, politics or any other issue which human beings feel strongly about, “imbuing it with deep importance”.

### 2.5.1 Territorial and ethnic issues

The mediators understood the first priority underlined by the ethnic Macedonian political parties because of the international community’s experience in Bosnia-Herzegovina. In that case, the territorial solution for ethnic demands adopted by the Dayton Agreement created a situation in which the Bosnian Constitution has probably become the only one in the world that “establishes incentives for the local ethnic group to segregate themselves politically and territorially” (Slye 1996, 460). According to one expert familiar with the negotiation process, when the ethnic Albanian political leaders presented their first demand – territorial autonomy for the Albanian community in the Republic of (North) Macedonia – one of the international mediators commented that the country was too small to create “a new Republic of Srpska out of it” (Stevo Pendarovski 2018). As a result, the requests for a two-degree local self-government and locally elected/organised police forces were also rejected from the start (Nasser Zyberi 2018). It seems that the attempted approach was to reconcile the two aspects: to provide a higher degree of self-governance for the Albanian community, but simultaneously detach the process of accommodation of ethnic rights from territory and/or territorial claims. This resulted in incorporating a provision in the Agreement stating that “[t]here are no territorial solutions to ethnic issues” (OFA 2001, pt. 1.2), while, at the same time, establishing a complex power-sharing mechanism between the communities.

Analysing the international mediation involvement in the Republic of (North) Macedonia through the dual lenses of peacemaking and constitution making, two questions are particularly important to examine. The first one is how the mediators were able to juxtapose the demands for territorial rights with the need for enhanced individual and collective rights. The second one is if, and to what extent, they were able to differentiate between resource-based and identity-based issues, as well as whether they not only addressed these issues separately, but also negotiated them in a different manner.

Considering the first question, the OFA was carefully crafted to balance the elements of a consociative system with those of the integrative one. For example, on the one hand, the OFA implements the so-called “double majority” or, as it is commonly known in the Republic of (North) Macedonia, “the Badinter majority” because it was first proposed by the French Constitutional Court judge Robert Badinter in the non-paper he presented during the negotiations. This type of majority is reflected in the OFA as such: “Laws that directly affect culture, use of language, education, personal documentation, and use of symbols, as well as laws on local finances, local elections, the city of Skopje, and boundaries of municipalities must receive a majority of votes, within which there must be a majority of the votes of the Representatives [of the Parliament] claiming to belong to the communities not in the majority in the population of Macedonia” (OFA 2001, pt. 5.2). Subsequently, as it will be elaborated in more detail below, a list of laws requiring a double majority was made. It contained 46 laws. In case of opposing views on whether a particular law should be voted by a double majority, the dispute is to be resolved by the Inter-community Relations Committee.

On the other hand, the OFA did not change the existing constitutional solution according to which the President of the country is directly elected, and moreover, does not impose a formal requirement that the Government has to be multi-ethnic.

It is important to note that since the Republic of (North) Macedonia became independent, all its governments have been multi-ethnic. It has become an integral part of the political culture. This system was ultimately tested in 2008 when the right-wing coalition led by VMRO-DPMNE won an absolute majority in the Parliament, technically allowing the party to create a government without an ethnic Albanian coalition party. However, this question was never even debated in the public, as an invitation was extended to the ethnic-Albanian party DUI, the party that emerged from the disarmed and dissolved NLA.

In addition to this, after the 2016 elections, it was the leader of VMRO-DPMNE, Gruevski, who offered the leader of SDSM, Zaev, a coalition between the two major ethnic Macedonian parties. This was under the condition that a possible coalition with the ethnic Albanian parties was rejected because of their endorsement of the so-called “Albanian Platform”, which would redefine the country and lead to its destabilisation.<sup>9</sup> Although this would have enabled SDSM to have a 2/3 majority in the Parliament, the offer was not accepted and a coalition with ethnic Albanian parties was made, resulting in a change of government.

The double majority system serves as a protective mechanism against the dominant ethnic group outvoting the smaller communities on matters affecting their cultural identity and local self-government. As such, it has a character of a suspensive veto. It is defensive in its nature, and its restricted application has ensured that in the 17 years since the OFA has been implemented, it has never been abused (Ljubomir Frchkoski 2018).

<sup>9</sup> Source: Sitel. Груевски: Заев нека удри по мене само нека ја остави државата [Gruevski: Zaev can come after me, just to leave the state alone]. 26 February 2017. [www.sitel.com.mk/gruevski-zaev-neka-udri-po-mene-samo-neka-ja-ostavi-drzhavata](http://www.sitel.com.mk/gruevski-zaev-neka-udri-po-mene-samo-neka-ja-ostavi-drzhavata) [accessed 10 April 2019].

Considering all of this, it can be argued that it was clear to the mediators that, notwithstanding the protection of the country's unitary character, the "spirit" of the OFA lies in the fact that "for the strategic issues, there must be at least a minimum binational consent" (Stevo Pendarovski quoted in Iliev 2011), or, in other words, that everyone is heard in a meaningful way (Arie Bloed 2018). From the aspect of *lex pacificatoria*, this approach is what Christine Bell would call a law of "hybrid self-determination" (2008, 219).

It was, however, the second question, which is a bit more difficult to answer.

### 2.5.2 Negotiating identity issues

In the case of the Republic of (North) Macedonia, the identity issues were more important than the access to resources and, as such, tougher to negotiate (Thomas Markert, international expert, 2018). Therefore, being aware of how these issues are interwoven, the expert team adopted a pragmatic approach (Laurel Miller 2018). The most interesting example here is the question of the Preamble to the Constitution, the only provision of the OFA that was substantially renegotiated.

As previously mentioned, the change of the Preamble was one of the initial demands of the ethnic Albanian political parties. The Preamble to the Constitution of the Republic of Macedonia from 1991 defined the country as a national state of the Macedonian people. The Albanian community considered this discriminatory (Nasser Zyberi 2018). On the other hand, the majority of ethnic Macedonians were sensitive to this issue because some of the neighbouring countries have historically denied their separate identity. As a result, the ethnic Macedonians wanted their distinctiveness acknowledged, *inter alia*, by strengthening their "ownership" of the country (see, for example, Holliday 2005, 139-166). This was the reason why the Preamble to the 1991 Construction

referred to the "Macedonian people" and its "historic struggle" for creating its own state.

The text of the Preamble, which is part of the OFA's Annex A, i.e. the version signed in Ohrid, does not mention any community. Although it does elaborate on the historic context of the creation of the Republic of (North) Macedonia, it refers only to "the citizens of the Republic of Macedonia".

According to Professor Vlado Popovski (who was not only involved in the negotiations process as an adviser to the President, but also drafted the Preamble to the 1991 Constitution of the Republic of Macedonia, and the text of the Preamble as part of the OFA), the compromise for not referring to any ethnic community in the new Preamble was for the Parliament to later adopt, with consensus, a declaration explicitly mentioning the Macedonian people and their historic struggle (Vlado Popovski 2018).

According to him, all parties, including the international mediators, agreed to this (*ibid.*). However, after the process went to the Parliament, there was a public outcry about not including the Macedonian people in the Constitution. The most vocal protester was Stojan Andov, the then President of the Parliament, who was dissatisfied at being left out of the negotiations. The ethnic Albanian parties' position was that if the Macedonian people were mentioned, the Albanians must be included as well and moreover, be given the status of "constitutive people" (Nasser Zyberi 2018).

The public pressure resulted in pushing even the ethnic Macedonian parties who signed the OFA to retreat from their positions. As a response, the ethnic Albanian parties started submitting new amendments, which were also contradictory to what had been negotiated in Ohrid. This created a gridlock in the Parliament, and threatened to undermine the Agreement at the very start of the implementation process.<sup>10</sup>

<sup>10</sup> See, for example, Рамковниот договор виси во воздух [The Framework Agreement hangs in the air], 2 October 2001, [www.time.mk/arhiva/?d1=01&m1=01&y1=1991&d2=31&m2=12&y2=2012&all=0&a1=1&fulltext=2&timeup=2&show=1&q=рамковниот+договор+виси+во+воздух&read=30b366557652bc9](http://www.time.mk/arhiva/?d1=01&m1=01&y1=1991&d2=31&m2=12&y2=2012&all=0&a1=1&fulltext=2&timeup=2&show=1&q=рамковниот+договор+виси+во+воздух&read=30b366557652bc9) [accessed 10 April 2019].

The new crisis raised the alarm among the international community. The new version of the Preamble was renegotiated in a highly polarised atmosphere in Skopje, in a closed meeting of the highest political representatives, signatories of the OFA, and the EU High Commissioner for Common Foreign and Security Policy, Solana himself (Vlado Popovski 2018). According to Popovski, a compromise solution was ultimately reached at this meeting and promptly submitted to the Parliament for voting, thus unlocking the OFA implementation process (ibid.). Namely, in the text, after “citizens of the Republic of Macedonia”, the new version added “...Macedonian people, as well as *the citizens who live within its borders* [of the Republic of Macedonia] who are *part of* Albanian people, Turkish people, Vlach people, Serbian people, Roma people, Bosniak people and other” (Constitution of the Republic of Macedonia 1991, Amendment IV; emphasis added).

The distinction that the new Preamble makes between the phrases “people” i.e. Macedonian people, and “part[s] of people” when it comes to the other communities, intends to underline that the Macedonian people do not have any other national state except the Republic of (North) Macedonia. “Part[s] of people” suggests that those communities, with the exception of the Roma, already have their national states.

The new solution does not use the word “minority”, a term that was unacceptable to the ethnic Albanian parties. The rest of the OFA uses the phrase “community”, which was also a compromise on itself. However, some space was left for dual interpretation because, while the ethnic Albanian political parties would claim that the Albanians have been given status of “constitutive people”, this view would not be supported by the ethnic Macedonian parties referring to the phrase “part of [...] people”. The fear among the ethnic Macedonians was that granting full-fledged status of “constitutive

people” to other community creates a pretext for secession (Vlado Popovski 2018).

The text of the Preamble was changed again on 11 January 2019. As part of the implementation of the Prespa Agreement, which the Republic of (North) Macedonia signed with the Hellenic Republic resolving their name dispute, another set of constitutional amendments was adopted. A smaller ethnic Albanian political party that provided the critical votes for ratifying the Agreement and the constitutional changes it entailed demanded its change. This time, Amendment XXXIV of the Constitution deleted the phrase “the citizens who live within its borders [of the Republic of (North) Macedonia] who are...”. The new text only states “...Macedonian people, part of Albanian people...”.<sup>11</sup> The argument was, as elaborated by the Prime Minister, that the deleted phrase created sentiment among the other communities that they only temporarily live within the borders of the Republic of (North) Macedonia.<sup>12</sup> Nonetheless, the distinction between “people” and “part of [...] people” remained and can still be regarded as an important compromise essentially tied with the OFA. It is also important to mention that the same Amendment added the OFA as one of the fundamental legal documents of the Republic of (North) Macedonia.

The resolution of two other identity issues is significant for this study. The first was the use of “emblems”, i.e. flags and symbols, of the ethnic communities, for which constructive ambiguity was used. The second was negotiating the language, an issue for which a so-called “dual interpretation” was allowed. The latter is still polarising the country. The question of the use of Albanian language turned out to be the most difficult to negotiate and, as such, after the initial deadlock, it was left to be discussed at the end of the process (Nasser Zyberi 2018). These two issues are elaborated in more detail below.

11 Source: Official Gazette of the Republic of Macedonia, 12 January 2019, [vlada.mk/sites/default/files/dokumenti/odluka\\_zaproglasuvanje\\_novi\\_amandmani.pdf](http://vlada.mk/sites/default/files/dokumenti/odluka_zaproglasuvanje_novi_amandmani.pdf) [accessed 10 April 2019].

12 Source: Makfax. Усвоен амандманот на „Алијансата за Албанците“ [Amendment proposed by the ‘Alliance for Albanians’ adopted]. 11 January 2019. [makfax.com.mk/makedonija/усвоен-амандманот-на-алијансата-за-ал](http://makfax.com.mk/makedonija/усвоен-амандманот-на-алијансата-за-ал) [accessed 10 April 2019].

### 2.5.3 Constructive ambiguity and dual interpretation

This research differentiates between constructive ambiguity and dual interpretation. While constructive ambiguity refers to the entire process, dual interpretation is used on the outcome. Constructive ambiguity is a technique in which vague language is used in order to allow the negotiating parties to resolve particular issue(s) at a later stage. However, these issues are not completely casted aside, but only the agreement over them is postponed. On the other hand, dual interpretation, in its narrow meaning, refers to the end result of the peace process. In this case, the provisions of the agreement allow both parties to save face and declare victory by developing their own understanding.

One of the OFA's most important characteristics is that it reduces the use of constructive ambiguity. The mediators and the expert teams involved in the process tried to be as precise as possible when drafting the Agreement and its annexes (Thomas Markert 2018). There was, however, one exception to this approach. Constructive ambiguity was used when it came to the provisions stipulating the use of flags by the communities. This question was important to the ethnic Albanians who, in fact, have often used the Albanian national flag in communities where they are the majority. This caused frictions with the ethnic Macedonians and, on one particular occasion on 9 July 1997, violent clashes with the police, resulting in four deaths, numerous injuries and imprisonments of the ethnic Albanian mayors of Tetovo and Gostivar.

Nonetheless, the word “flag” was not used in the Agreement. Instead, the OFA refers to “emblems”: “With respect to emblems, next to the emblem of the Republic of Macedonia, local authorities will be free to place on front of local public buildings emblems marking the identity of the community in the majority in the municipality, *respecting international rules and usages*” (OFA 2001, pt. 7.1; emphasis added). It can be argued that constructive ambiguity was used in this provision considering the fact that there are no particular international

standards on the use of emblems and flags (Thomas Markert 2018; Laurel Miller 2018). Adopting this approach, this issue was left to be resolved later during OFA implementation. This was also a question upon which different views among the mediators and the expert teams were expressed, with the Europeans holding a more restrictive position about the use of Albanian flag than their US counterparts (Thomas Markert 2018).

The so-called dual interpretation of certain parts of the Agreement is another issue. Two examples illustrate this.

The first one deals with the use of the word “minority”. As elaborated in Section 2.5.2., the ethnic Albanian parties wanted to have the status of the ethnic Albanians in the country acknowledged to the level of constitutive people. The ethnic Macedonian parties opposed this, stating that the main purpose of the negotiations was, in fact, expanding minority rights (Ljubomir Frchkoski 2018). As a compromise, the Agreement uses the neutral term “community” instead (Arnauld Barthelemy 2018), which did allow different interpretations (Laurel Miller 2018). It can be argued that, based on the terminology used and the fact that the initial proposal did not mention any ethnic group, the OFA drafters wanted to avoid a discussion about “constitutive people”. However, as already elaborated, this issue was reopened in the Parliament during the Preamble renegotiation.

The second example concerns the provisions regulating the use of languages (OFA 2001, pts. 6.4-6.8; and Annex A, Article 7). Here, it was stipulated that “[t]he official language throughout Macedonia and in the international relations of Macedonia is the Macedonian language” (OFA 2001, pt. 6.4), further adding that “[a]ny other language spoken by at least 20 percent of the population is also an official language, as set forth [in the Agreement]” and that “[i]n the organs of the Republic of Macedonia, any official language other than Macedonian may be used in accordance with the law, as further elaborated [...]” (ibid., pt. 6.5).

The OFA also prescribed that “[a]ny official personal documents of citizens speaking an official language

other than Macedonian shall also be issued in that language, in addition to the Macedonian language, in accordance with the law” (ibid., pt. 6.3). This point of the Agreement, however, focuses mainly on expanding the use of the Albanian language at the local level. It states that in “the units of local self-government where at least 20 percent of the population speaks a particular language, that language and its alphabet shall be used as an official language in addition to the Macedonian language and the Cyrillic alphabet” (ibid., pt. 6.6), granting the right that every person who “is living in a unit of local self-government in which at least 20 percent of the population speaks an official language other than Macedonian may use any official language to communicate with the regional office of the central government with responsibility for that municipality”, as well as when communicating with a main office of the central government (ibid., pt. 6.4).

However, the OFA leaves the question about the use of Albanian, i.e. language spoken by at least 20 percent of the population, to be, in fact, regulated by law. Annex B of the OFA, which lists the legal modifications necessary for implementing the Agreement, states the areas where the expanded use of languages will be applied, providing that “The Assembly shall adopt by the end of the term of the present Assembly new legislation regulating the use of languages in the organs of the Republic of Macedonia” (ibid., Annex B, pt. 8). It further adds that this legislation shall provide that the language spoken by at least 20 percent of the population can be used in the following instances: (i) by representatives when addressing plenary sessions and working bodies of the Assembly; (ii) the adopted laws shall be published in this language; (iii) and all public officials may write their names in the alphabet of any language referred to in Article 7,

paragraphs 1 and 2 of the Constitution, as amended in accordance with Annex A of the OFA, on any official documents.

Recalling his time in Ohrid, the US mediator James Pardew said, “the Macedonians made a major concession by accepting the concept of Albanian as ‘an official language in Macedonia’ for the first time.<sup>13</sup> The [future] debate centred on defining what was meant by an official language in the draft settlement” (Pardew 2018, 302). However, it seems that this dilemma was not resolved and the issue was open to dual interpretation.

According to Ljubomir Frchkoski, who was involved in the negotiations, two different narratives exist among the ethnic Macedonians and ethnic Albanians considering the OFA provisions regulating the use of language. For Macedonians, the use of the Albanian language was technical and secondary to the Macedonian language. Ethnic Albanians claimed that with the OFA, Albanian became the second official language in the country (Ljubomir Frchkoski 2018). Like the international community, the Government accepted this dual interpretation, in hopes that the victory declared by both sides would ease the tensions (ibid.). However, when it came to implementing this part of the OFA and actually adopting a Law on Languages, this has proved not to be the case.

The first Law on the Use of Language Spoken by at least 20 Percent of the Citizens of the Republic of (North) Macedonia and in the Units of Local Self-government was adopted on 13 August 2008, after an intense Parliamentary debate, and amended on 25 July 2011. An externally conducted analysis commissioned by the Government found the Law to be inconsistent with the “intention” of the OFA (Ohrid Framework Agreement Review on Social

<sup>13</sup> During the process of constitutional changes, an argument was presented in the public that the Constitution of SFRY of 1974 and the subsequent Constitution of the Socialist Republic of Macedonia (SRM) from the same year, in fact, have already promoted the Albanian language as an official language of the country, and that the demands of the ethnic Albanian parties were just about reinstating the rights that have been previously acknowledged. However, although SFRY and SRM constitutions promoted extended identity rights, they leave the implementation of language rights to be done by law, and even that in a very vague and undefined manner. In that regard, the practice of extended use of Albanian language was just that – a mere practice by certain state institutions. Nonetheless, it is correct that this practice was restricted after the country declared independence. In other words, although there are elements indicating that the SFRY and the SRM constitutions were a step forward when it came to language rights, it is too far-fetched to argue that they promoted Albanian as a second official language. In this regard, Pardew’s comment is completely accurate.

Cohesion 2015, 253). The same document also proposed expanding the language rights of the other, non-Albanian, communities. However, the biggest controversy came with the adoption of the latest Law on Use of Languages, voted on twice, on 14 March 2018 and 11 January 2019, because the President of the country did not want to sign it. He stated that the Law goes well beyond what was envisaged with the OFA because it expands the use of Albanian language on every level of central and local government (the only exception being the external relations and the army). According to him, it is unconstitutional and will create many problems during the implementation phase.<sup>14</sup> The Law has also been severely criticised by the opposition leader,<sup>15</sup> who argued that it has *de facto* federalised the country.<sup>16</sup> Its supporters, on the contrary, claim that it is closing the only remaining chapter of the OFA, which was unimplemented.<sup>17</sup>

The Government has stated that the new Law on Use of Languages will be given to the Venice Commission for assessment instead of the Constitutional Court. Moreover, there were conflicting statements from Government officials about whether the entire Law or just parts of it were submitted to the Commission.<sup>18</sup> This cast doubt on whether the domestic institutions are capable of implementing the Agreement on their own without international assistance, even after 18 years. Additionally, this only fuels nationalistic narratives on both sides. Without discussing the constitutionality of the Law on the Use of Languages, as it is not relevant for the purpose of this study, this episode illustrates that allowing dual interpretation for vital issues associated with peace processes, if not subsequently mediated, can still cause significant polarisation in society.

14 Source: Radio Free Europe. Иванов: Од заробена станавме уценета држава [Ivanov: from captured we became a blackmailed state]. 28 December 2008. [www.slobodnaevropa.mk/a/29681531.html](http://www.slobodnaevropa.mk/a/29681531.html) [accessed 10 April 2019].

15 The leader of the opposition and President Ivanov come from the same political party.

16 Source: Netpress. Мицковски: Македонското општество никогаш не било поподелено отколку сега [Mickovski: Macedonian society has never been as divided as now]. 28 January 2019. [www.netpress.com.mk/mickovski-makedonskoto-opstestvo-nikogas-ne-bilo-popodeleno-otkolku-sega](http://www.netpress.com.mk/mickovski-makedonskoto-opstestvo-nikogas-ne-bilo-popodeleno-otkolku-sega) [accessed 10 April 2019].

17 Source: Radio Free Europe. Заев очекува неделав да се донесе Законот за јазиците [Zaev expects the Law on Languages to be adopted this week]. 12 March 2008. [www.slobodnaevropa.mk/a/29093908.html](http://www.slobodnaevropa.mk/a/29093908.html) [accessed 10 April 2019].

18 There were contradictory statements coming from Bujar Osmani, Vice President of the Government, who publicly stated that only certain parts of the law will be submitted to the Venice Commission. The next day, a relatively short press release from the Government claimed that the entire law will be submitted to the Commission, see Владата контра Османи, Венецијанската да го чешла цел Закон за јазици [The Government contradicts Osmani, the Venice Commission will assess the entire Law on Languages], [www.plusinfo.mk/владата-контра-османи-венецијанска-д](http://www.plusinfo.mk/владата-контра-османи-венецијанска-д) [accessed 10 April 2019]. Moreover, this does not address the criticism of the opposition that the Law is unconstitutional, i.e. it goes out of the OFA as part of the Constitution, because the Venice Commission can only assess the adherence of the new law to international standards, but not its constitutionality.



#### 2.5.4 Tying rights to percentages

The OFA uses neither the term “Albanian language” nor “Albanian community”. Instead, it uses the phrase “language[(s)] spoken by at least 20 percent of the population [on national and/or municipal level]” (OFA 2001, pts. 6.2 and 6.5; Annex A, Article 7(2)) and “community [, which] comprises at least 20 percent of the population [on national and/or municipal level]” (ibid., pt. 6.6). It can be hypothesised that the use of these “neutral” phrases was proposed by the ethnic Macedonian parties refusing to have the Albanian language and nation clearly mentioned in the Constitution because they feared it would lead to federalisation and eventual disintegration of the country (Stevo Pendarovski 2018). However, it was the international mediators and the expert teams who undertook this approach in order to avoid using explicitly ethnically-based terminology in the Agreement (Laurel Miller 2018). In other words, this type of wording was purposely and intentionally inserted in the OFA by the international experts, as they did not want to “ethnicise” the Agreement, but put “emphasis on citizenship” (Arnauld Barthelemy 2018). It was also followed by the effort to partially strengthen the country’s multicultural character, or at least balance against the bi-national character of the Agreement. In other words, not to rely on rigid ethnic categorisation.

As Thomas Markert concluded, negotiations were conducted in a situation close to civil war, thus it was normal that the primary aim was to have an agreement between the two sides.

Nevertheless, the experts attempted not so much to keep the multicultural component, but rather not to put too much focus on the notion of ethnic identity (Thomas Markert 2018). This was visible, for example, when establishing the system for the double majority. The exact phrase used in eight places in the OFA to describe the non-ethnic Macedonian members of the Parliament is “representatives *claiming to belong* to the communities not in the majority in the population of Macedonia” (for example: OFA 2001, pt. 4.3; emphasis added), implying, in this way, that nationality is a question of choice (Thomas Markert 2018). Interestingly, this was, in fact, tested in the implementation phase, when the EU and the US ambassadors to the country had to serve as subsequent mediators in order to keep the process going. This episode will be explained in the following chapter.

## 3 International and local efforts in the OFA and its aftermath

### 3.1 International community as a subsequent mediator

The international community continued to act as a mediator every time there was a crisis in the OFA interpretation (i.e. after the Agreement was adopted and the constitutional amendments were passed). In that regard, its involvement was instrumental in at least two cases. The first one was during the implementation of Law on Territorial Organisation of the Local Self-government of the Republic of (North) Macedonia.<sup>19</sup> “Revisiting” the municipal boundaries was an essential precondition for implementing the OFA provisions on decentralisation (OFA 2001, pt. 3.2). However, the law on territorial administration was challenged by a relatively small NGO called World Macedonian Congress, which gathered the signatures necessary to initiate a referendum. Less than a week before the voting, in a situation where all polls were suggesting that the referendum would succeed, thus derailing the Agreement’s implementation process, the US decided to recognise the country under its constitutional name at the time – the Republic of Macedonia, as opposed to “the former Yugoslav Republic of Macedonia” it used earlier. The name issue was highly sensitive for the ethnic Macedonians. Because of this, the recognition, as Western officials in Athens and Skopje suggested, and the New York Times reported, “was intended to ease tensions before a referendum”<sup>20</sup>, which it did, as the referendum failed.

The second example is particularly relevant for this study. VMRO-DPMNE won the national elections held in 2006, and it got the mandate to create the Government. However, within the ethnic Albanian electorate, DUI had the majority of votes. VMRO-DPMNE refused to invite DUI into the Government, but went instead with DPA, the smaller ethnic Albanian political party.

The problem for the new government was not upholding the absolute majority in the Parliament, but the double majority, i.e. the so-called Badinter majority, necessary for voting the laws that were to be adopted as part of the OFA implementation process. According to the Constitution (as amended according to the OFA), a dispute within the Parliament regarding which laws to adopt using the double majority rule must be resolved by the Committee on Inter-Community Relations (OFA 2001, Annex A, Article 69) by a majority vote within the Committee itself (ibid., Annex A, Article 78(6)). Considering that at the time there was no list stating which laws were supposed to be adopted using the Badinter majority system, having a majority within the Committee was of utmost importance for the parties.

The Committee consists of seven members each from the ranks of the Macedonians and Albanians within the Parliament, and five members from among the Turks, Vlachs, Romanies and two other communities. Each of those five members has to be from a different community. If fewer than five other communities are represented in the Parliament, the Public Attorney, after consultation with relevant community leaders, is

<sup>19</sup> Official Gazette of the Republic of (North) Macedonia, N. 55, 16 August 2004.

<sup>20</sup> Source: New York Times. U.S. to Recognize Ex-Yugoslav Republic as Macedonia. 5 November 2004. [www.nytimes.com/2004/11/05/world/europe/us-to-recognize-exyugoslav-republic-as-macedonia.html](http://www.nytimes.com/2004/11/05/world/europe/us-to-recognize-exyugoslav-republic-as-macedonia.html) [accessed 10 April 2019].

supposed to propose the remaining members from outside the Parliament (ibid., Annex A, Article 78(2)). According to the political composition of the Parliament, the ruling coalition between VMRO-DPMNE and DPA was one vote short of the required Constitutional majority within the Committee. It was here that the phrase “representatives claiming to belong to the communities not in the majority in the population of Macedonia” became particularly important. Anita Kiparizova-Krstevska, a VMRO-DPMNE Member of the Parliament, initially declared herself an ethnic Macedonian, but subsequently changed her statement and claimed to belong to the Vlach ethnic community, thus providing the swing vote for the ruling coalition. This prompted a political crisis, which resulted in DUI boycotting the Parliament and the political processes in (North) Macedonia. Considering the statements made by the representatives of the international community in the country, it can be argued that they were aware that there was no particular rule that the Government had to be formed by the winners within ethnic Macedonians and ethnic Albanians, and that it was up to the ruling party to decide whom to invite to the governing coalition. However, they also understood that the implementation of the Agreement required consent between the two biggest communities. For example, the EU Ambassador, referring to the DUI’s withdrawal from Parliament, called on the Government to make every possible effort to engage with all political parties in order to construct and promote consensus, as well as for an end of the boycott of the democratic institutions (EU – former Yugoslav Republic of Macedonia Joint Parliamentary Committee 2007, 3). He travelled back and forth between the offices of VMRO-DPMNE and DUI, trying to persuade DUI to remain in the political process (Erwan Fouéré 2018).

The boycott brought the political process in the country to a halt. Worried about the OFA implementation, the international community established facilitated dialogue, with emphasis on the relations between VMRO-DPMNE and DUI. The EU and the US ambassadors attended the talks. The main issue of the discussions was the restructuring of the Committee on Inter-

Community Relations (ibid.). This ended with an agreement between the parties according to which: VMRO-DPMNE would withdraw Kiparizova-Krstevska from the Committee; the parties would re-compose its structure; and adopt a new Parliamentary Rulebook (Agreement of 29 May 2007, para. 2; document on file with the author). Additionally, the list of laws, which can be adopted according to the double majority voting system, was set at 46 (ibid., para. 1). It contained a provision on addressing the issue of providing material and social support to the victims of the 2001 conflict and their families (ibid., para. 3), the wording of which was broadly structured so that it can include the members of the former NLA. There was also an agreement on drafting a Law on Languages (ibid., para. 4). What is particularly interesting, however, is that the last paragraph of this document stated that “[u]pon DUI’s return in the Parliament, the parties agree to the continuation of the working group on the issue of *electing the Government with Badinter majority*” (ibid., para. 5; emphasis added”).

Four conclusions can be drawn from the episode with the so-called May Agreement which, interestingly enough, was not formally signed by the two parties’ leaders. First, the introduction of double majority voting to elect the Government effectively expanded the initial scope of the OFA, adding a federal element to the equation through the “winner with winner” rule – i.e. the winner within the ethnic Macedonian political campus must make a coalition with the winner from the ethnic Albanian electorate. It can also be said that this significantly decreased the possibility of creating a pre-electoral coalition between an ethnic Macedonian and an ethnic Albanian political party. This is illustrated by the fact that, to date, more than 18 years after the OFA was signed, no such pre-electoral coalition has been created. Second, it enhanced the element of an elite buy-in versus local ownership and inclusiveness, something that was constantly demonstrated when it came to implementing the more difficult provisions of the Agreement. Third, it formalised the role of the international community as a subsequent mediator, and established a practice of out-of-institutional negotiations between the

political parties. Fourth, and probably the most important conclusion, is that the behaviour of the parties to bypass OFA provisions by interpreting them in a way that undermines its spirit has always resulted in a renegotiated solution, which only pushed the country one step further towards the federal model.

Interestingly enough, the DUI was the party that denounced the Badinter double-majority system for electing the government. After the elections of December 2016, DUI's votes were decisive in creating the new government. The party was able to choose whether to make a coalition with VMRO-DPMNE, which won 51 seats out of the 120, or SDSM, which had 49 members of the Parliament. However, DUI's vice president Arifi said that the principle that the winning parties in each ethnic bloc should form a government together is not even mentioned clearly in the May 2007 deal. According to her, "that deal has five points and in the fifth it is stated that after the overcoming of the crisis [at the time] and the DUI's return to parliament, the formulations for assembling a government will be discussed. This means it [the May Agreement] is not precise".<sup>21</sup> Considering this, it can be argued that the principle for creating the Government with Badinter majority has, in fact, been revoked.

In addition to this, it should be mentioned that, assessing the overall OFA implementation process in the light of institutional support, the solution with the Secretariat for Implementation of the OFA (SIOFA) that works as part of the Government has proven to be bureaucratic and insufficient.

The implementation of the Agreement should have been an overall task of all Government bodies and institutions. In that direction, the Ministry for Political System and Inter-community Relations, which was newly created with the intention to take over the OFA implementation process from SIOFA, has yet to prove whether the same practice will not continue only this time as a part of another institution. Additionally, the lack of integration policies implemented by the Government has been wrongly attributed to the OFA, causing negative perceptions among part of the public.

### 3.2 Civil society in negotiation and implementation: Preventing future conflicts and facilitating dialogue

Throughout the OFA drafting process, i.e. during the Skopje and Ohrid round of negotiations, the local NGO sector was occasionally consulted, although in a more informal and indirect manner. This consultation was not initiated by the President, under whose auspices the negotiation process was conducted, nor by the negotiating parties themselves. Instead, the international experts contacted members of the civil society and considered their views. According to one of the biggest donor INGOs in the Republic of (North) Macedonia, the Foundation Open Society Institute Macedonia (FOSIM), a permanent line of communication was established by FOSIM and Axel Dittmann, one of the international experts involved in drafting the Agreement.<sup>22</sup>

21 Source: Alsat. Теута Арифџ: Принципот „победник со побеник“ не е спомнат во Мјскиот договор [Teuta Arifi: the “winner with winner” principle is not mentioned in the May Agreement]. 25 January 2017. [www.alsat-m.tv/mk/Теута-Арифџ-Принципот-победник-со-поб](http://www.alsat-m.tv/mk/Теута-Арифџ-Принципот-победник-со-поб) [accessed 1 April 2019]. Teuta Arifi's comment should be put within the argument made in public that the aim of the May Agreement was to protect the non-majority communities from majoritisation, and not vice versa. The fact that there was a fierce debate within DUI leadership about the application of this provision of the May Agreement in the process of post-electoral coalition building after the 2016 elections illustrate that a significant section of DUI's leadership did not consider it only a “one-off”, but rather as an established principle for composing (any) government in the country – a principle from which the Party (DUI) retreated. In that direction, Bujar Osmani, a high ranking DUI official and current Deputy Prime Minister of the Government, stated that: “The main argument ‘pro’ and probably *the only reason* why we [i.e. DUI] are still negotiating about possible coalition [with VMRO-DPMNE] is right because of this *important* principle, [i.e.] ‘winner with winner’ (quote from above mentioned source; emphasis added; translation by the author).

22 Source: A FOSIM internal/unpublished report from 2001; copy on file with the author.

This is particularly significant as, at the time, FOSIM financed and/or coordinated the largest network of NGOs in the country.<sup>23</sup>

Another method of consulting civil society was through internationally funded conferences, which were organised on a few occasions during the conflict period. At these events, representatives of different NGOs discussed various issues important to the peace process, and made suggestions on issues to be covered in the prospective agreement itself (Albert Hani, Director, RYCO Skopje, 2018). The civil society members were being previously told that the international representatives attending the conferences would communicate their views and conclusions to the international mediators and their expert teams (ibid.).

There were several civil initiatives during the conflict. Besides the Citizen's Appeal for ending the crisis, most of activities focussed on creating a platform for citizens to freely express their opinions and concerns about the ongoing crisis. This was all an effort to oppose the fearmongering and ethnic stereotyping propelled by the political parties and predominant in the public discourse at the time. As a result, a campaign called "Dosta e! [Enough is Enough!]" was subsequently launched.

One local project was particularly important for preventing further escalation of the conflict. This was the Citizen's Informator, providing important practical information to people in the municipalities/areas of the clashes, which was not available through the state-controlled media. This included news about roadblocks, open or closed shops, different local services available, etc. It not only helped keep people out of harm's way, but also encouraged them to resume their daily activities. This was particularly important as there were several occasions when, in the aftermath of the conflict, a neutral and trusted third party intervention helped avoid serious

misinformation/misunderstandings among the ethnic Macedonians and Albanians, which could have otherwise easily sparked violent incident(s) and undermined the fragile peace (Joseph Brinker, former Head of OSCE Confidence Building Unit, OSCE Mission to Skopje, 2018). For example, in the immediate post-conflict period, a victory of the Macedonian national representation in handball was celebrated among the ethnic Macedonians in Tetovo by firing shots in the air. The local ethnic Albanians, unaware about this, thought that they were being attacked. This could have triggered new violence. Fortunately, the OSCE Monitors and their local partners had established sufficient level of trust with the local population. After being consulted, they informed the local Albanian community about the situation, and helped avoid possibly serious incident (ibid.).

After the OFA was signed, civil society played a role in informing the public about the Agreement. For example, after the OFA was adopted in the Parliament, it was FOSIM, and not the Government, which printed 200,000 copies of the Agreement and distributed them throughout the country (Adrijana Lavchiska, Senior Programme Coordinator, FOSIM, 2018).

Most civil society activities, including those of the international donor organisations, focussed on supporting the decentralisation process as well as developing projects on interethnic dialogue. This was especially the case in the period until 2006 (ibid.). However, NGO activities supporting the OFA were overall insufficient and inadequate (Albert Hani 2018), the main shortcoming being the lack of the civil society oversight of the OFA implementation process (Adrijana Lavchiska 2018; Sunchica Kostovska-Petrovska 2018). This especially refers to the monitoring of the work of the Government's Secretariat for the Implementation of the Government, as well as raising awareness about the reconciliation and transitional justice issues (ibid.).

<sup>23</sup> For example, during 2001, the Foundation had a budget of almost 6.000.000 EUR, making it the biggest civil society organisation in the country by far. It financed almost 1,000 projects of more than 400 different NGOs and institutions (Source: see previous footnote), while the Citizen's Appeal for peace they initiated in the wake of the conflict was supported by 470 NGOs (Sunchica Kostovska-Petrovska, Programme Director, FOSIM, 2018).

Since the OFA drafting and implementation was a significantly elite-driven and top-down process, not much has been done in the field of insider mediation. There was an attempt to conduct insider mediation by civil society activists after several violent incidents in a high school in Kumanovo in 2002. After these incidents, classes in Macedonian and Albanian languages were split into separate buildings. This situation still exists, exacerbating the level of segregation in the largest multi-ethnic municipality in the country. Unfortunately, this insider mediation process failed, mainly because of political interferences by both ethnic Albanian and ethnic Macedonian political parties. Additionally, the Ministry of Education did not want to include the mediators' recommendations (Albert Hani 2018).

The other insider mediation conducted in 2009 in Struga, also in a high school and in a situation very similar to the one in Kumanovo, was successful. However, the Ministry did incorporate the recommendations of the mediators, and this time, there was less political pressure and political meddling (ibid.). As a result, this school is still multi-ethnic and there has not been a reported incident since. The insider mediator in this case, Albert Hani, attended a training on this type of mediation. In his view, this training was a significant help, especially when it came to mapping the stakeholders and developing strategies to gain their support (ibid.).

Regarding the youth and its role in the peacebuilding process, it is important to mention that, with international funding and support, several youth activities were launched in the immediate period after the crisis. For example, OSCE Ambassador Craig Jenness and Joseph Brinker from the OSCE Mediation Support Unit initiated an informal group of young leaders. These young people attended capacity-building trainings and were supported in developing their own projects. The idea was to gather a group of young influencers and help them overcome their ethnic differences/barriers, in the hope that they might eventually create a spillover effect into their local communities (Joseph Brinker 2018).

Many of these young people proceeded with careers in the NGO sector, and several organisations were established/registered along the way. The Center for Intercultural Dialogue from Kumanovo is one such organisation. After the armed incident in Kumanovo in 2015 that could have easily initiated a new spiral of violence, it was the only NGO that initiated multicultural activities in the open, right in the area where the incident occurred. This helped restore normal daily life.

More than 18 years after the Agreement was signed, young people in the Republic of North Macedonia today do not critically assess the OFA. Instead, they see it as a type of *modus operandi* for the country, something that should be considered as it is (Focus Group B). This does not mean, however, that they are not aware that interethnic relations still needs to be improved, and that segregation and integration issues continue to exist (Focus Group A).

However, from the perspective of young people from the Albanian and the other non-majority communities, the OFA contributed in raising awareness about demanding accountability from the political parties, the ruling ones in particular, for improving their living standards. This especially refers to the ethnic political parties that claim to represent them. They are less likely to believe the "justifications" of some ethnic Albanian political leaders that they cannot resolve a particular problem because they do not have the power or have been denied the necessary tools by their ethnic Macedonian counterparts (Focus Group B). On the other hand, the OFA implementation process made young ethnic Macedonians less susceptible to the narrative that the ethnic Albanian parties are precluding or blocking all major reforms in the country (ibid.). This certainly is encouraging, especially since there is evidence of increased activism by young people. Whether that is sufficient and powerful enough to cut across the ethnic barriers is yet to be seen.

## 4 Concluding reflections

Having examined the nexus of peacemaking and constitution making in the case of the Republic of (North) Macedonia, eight lessons learned can be pointed out for international mediators engaging in peace processes in culturally fragmented societies.

*First*, a peace process has to adopt a coordinated approach encompassing both political and security components. Cooperation between the key actors, both diplomats and experts, was pointed out by all interlocutors as paramount for successful international engagement in the Republic of (North) Macedonia.

*Second*, it is important to keep the political structure of a country from dissolving during the negotiation process, because it can be instrumental during the implementation phase. In this instance, formalities do play an important role. The experience with enabling the NLA to be a *de facto* negotiating party despite the Government's reluctance shows that institutionalising the peace process does not have to come at the price of finding a pragmatic approach in which all sides are adequately heard.

*Third*, it is important to differentiate between identity-based and resource-based issues, and approach them differently during the negotiations. However, as this study has pointed out, the approach of the experts not to rely on the notion of ethnicity on the one hand, clashed with an identity-based component of the conflict on the other. The Albanian community wanted to have their identity acknowledged in the Constitution, including the Preamble. To make matters even more complicated, this is further juxtaposed with the fact that the ethnic Macedonians fear that certain elements of the identity-based demands (for example, granting the status of constitutive people or explicitly mentioning Albanian as a second official language) would lead to federalisation of the country and its gradual disintegration.

*Fourth*, the role of experts can be much more important than initially envisaged, providing that coordination is successfully established. The experts can help in “framing” and even “reframing” of the issues pertinent to the negotiation process. In addition, their cooperation, as the experience with (North) Macedonia points out, contributed in avoiding what Pardew called “verbal fireworks” (Pardew 2018, 283) at the plenary sessions during the negotiations in Ohrid.

*Fifth*, terminology used in an agreement is extremely important, but allowing constructive ambiguity and/or dual interpretation without additional international support (in terms of mediating subsequent issues) can potentially derail the implementation process. When it came to the provisions of the OFA subject to dual interpretation, there was no one from the original team of mediators to interpret them. The political crisis, which emerged in the country over the use of languages, is a clear illustration of this.

*Sixth*, it is important that constitutional changes proposed as part of a peace agreement are adopted through an as inclusive procedure as possible, so that the proposals can be modified, if needed. However, this option should only be used if the process is closely monitored and cannot be derailed. The OFA included the constitutional amendments in a pre-drafted form, but allowed certain degree of flexibility, as they had to be adopted through the Parliament. For instance, two provisions of Annex A were re-negotiated during the Parliamentary procedure. Still, these “modifications” were also mediated by the international community. However, as Miller concluded, this shows that “using a peace process to change the constitution does not seem to have had deleterious effects”, although this might be also attributed to the fact that the international involvement has had an added weight due to the fact that the Republic of (North) Macedonia was a “small, weak state dependent on the goodwill of the international community” (Miller 2010, 644).

*Seventh*, even if a peace agreement is concluded through elite negotiations, its implementation has to go through state institutions and, moreover, obtain wider support from all relevant stakeholders. If this precondition is met, any possible crisis regarding its implementation can be resolved within the system itself. Although the initial elite buy-in process was necessary during the OFA negotiation process, as this study has pointed out, the implementation process needed to be conducted in an incisive and transparent manner. This refers especially to the period after the political crisis in 2006-2007 and the series of so-called leadership meetings that resulted in the Agreement of 29 May 2007. They not only formalised the role of the international community as a subsequent mediator, but also established a practice of out-of-institutional negotiations between the political parties. As a result, the element of elite buy-in was enhanced over local ownership and inclusiveness. This was constantly demonstrated when it came to implementing other, more difficult provisions of the Agreement. Generally, the results of the several “crises” regarding the OFA implementation process led to the conclusion that the behaviour of the parties to bypass the Agreement or interpret its provisions in a way that undermines its spirit has always resulted in a renegotiated solution which, as such, has only pushed the country closer to a federal model.

*Finally*, additional reconciliation aspects need to be deliberated upon during the implementation process, even if they are not explicitly mentioned in a peace agreement. The OFA implementation period did not put much attention to broader reconciliation efforts and initiatives. These could have included, for example, addressing the issues of: (i) resettlement of internally displaced persons; (ii) outstanding transitional justice issues, which still have not been resolved; (iii) building a joint interpretation of the conflict (in particular) and the Macedonian-Albanian historic relations (in general) as part of a broader reconciliation initiative (Ljubomir Frchkoski 2018). In addition to this, enhancing cooperation with the NGO sector on key issues of the OFA, especially when it comes to developing youth integration policies, should be paramount in the following period.



# Interviews

## Individual interviews by author in person or over voice call

**Barthelemy, Arnaud** (International expert involved in drafting the OFA), 10 October 2018.

**Bloed, Arie** (Emeritus Professor, Utrecht University), 29 August 2018.

**Brinker, Joseph** (former Head of Confidence Building Unit, OSCE Mission to Skopje), 13 September 2018.

**Feith, Pieter** (Personal Representative of NATO Secretary General Lord George Robertson on preventive conflict management in Southern Serbia and in the Republic of Macedonia during the conflict in 2001), 14 August 2018.

**Frchkoski, Ljubomir** (Faculty of Law, Skopje; former Adviser to President Boris Trajkovski during the OFA negotiation process), 31 August 2018.

**Fouèrè, Erwan** (former EU Ambassador to Skopje), 10 September 2018.

**Gentilini, Fernando** (International expert involved in drafting the OFA), 4 October 2018.

**Hani, Albert** (Director, Regional Youth Cooperation Office – RYCO, Office in Skopje), 11 November 2018.

**Jenness, Craig** (former OSCE Ambassador to Skopje), 14 September 2018.

**Kostovska-Petrovska, Sunchica** (Programme Director, Foundation Open Society Institute – Macedonia), 27 December 2018.

**Lavchiska, Andrijana** (Senior Programme Coordinator, Foundation Open Society Institute – Macedonia), 27 December 2018.

**Lehne, Stefan** (Head of Task Force Western Balkans/Central Europe, PPEWU, Secretariat-General of the EU Council, Brussels), 18 September 2018.

**Markert, Thomas** (International expert involved in drafting the OFA), 20 September 2018.

**Miller, Laurel** (International expert involved in drafting the OFA), 24 September 2018.

**Popovski, Vlado** (Faculty of Law, Skopje; former Adviser to President Boris Trajkovski during the OFA negotiation process), 12 October 2018.

**Pendarovski, Stevo** (President of the Republic of (North) Macedonia; former Adviser to President Boris Trajkovski during the OFA implementation process), 9 September 2018.

**Reka, Blerim** (Vice-Chancellor, University of Southeast Europe), 13 October 2018.

**Zyberi, Nasser** (Expert to the ethnic Albanian political parties during the OFA negotiation process), 11 November 2018.

## Focus Group interviews by author in person

**Focus Group A:** Seven participants from different socio-economic categories

*Majority of participants wished to remain anonymous.*

Kumanovo, Republic of (North) Macedonia, 30 August 2018.

**Focus Group B:** Members of the Center for Intercultural Dialogue

**Alksovski, David**

**Josifovska, Mila**

**Rexhepi, Florim**

**Rexhepi, Lindita**

**Stojchevska, Ivana**

Kumanovo, Republic of (North) Macedonia, 13 October 2018.

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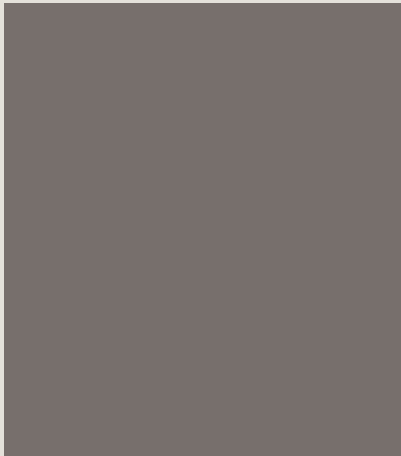
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