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## EXPIRED FRIENDSHIP? SOME ASPECTS OF TREATY VALIDITY

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*Abstract*

In 2012, Lithuania and Russia commemorated the 20<sup>th</sup> anniversary of bilateral relations established by the entry into force of the Treaty between the Republic of Lithuania and the Russian Soviet Federated Socialist Republic on the Foundations of Inter-State Relations signed in Moscow on 29 July 1991. It therefore seems appropriate at this time to look closer at the contents of the treaty and the controversies concerning its significance, and even validity, that have occurred during its time in force. Finally, questions concerning the interpretation of some of its provisions must be answered to ensure the continued application of the treaty.

### Introduction

Friendship and good neighbour treaties, in line with peace treaties, are the essential documents establishing the political and legal basis for interstate relations following a historic change in one of their parties and their attitudes towards each other, usually resulting from a change in a political regime or territorial settlement.

In 1991, a treaty between the Republic of Lithuania and the Russian Federation created the basis for the bilateral<sup>1</sup> relations of the two independent countries at the moment of the dissolution of the Soviet Union. The historic value of this document is hard to overestimate; it was one of the first international documents of the newly independent Russian Federation,<sup>2</sup> followed by the unsuccessful coup in Moscow, and influenced in many ways the decentralisation processes in the empire as it

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<sup>1</sup> Treaty between the Republic of Lithuania and the Russian Soviet Federated Socialist Republic on the foundations of inter-state relations. Signed at Moscow on 29 July 1991 and entered into force on 4 May 1992. 1787 *United Nations Treaty Series*, (1994), at 20–26.

<sup>2</sup> See on the negotiations: Česlovas Vytautas Stankevičius, 'Lithuanian-Russian negotiations in 1990–1993', *Lithuanian Foreign Policy Review*, 2004, Vol. 13, pp. 82–94.

was breaking up.<sup>3</sup> However, looking back at the political declarations from both sides over the 20 years of their peaceful neighbourly coexistence, one may wonder whether the polemics surrounding this document are causing a deepening divide between the two governments rather than building bridges. It seems somehow assumed that the provisions of the treaty are unbalanced and more favourable to Lithuanian aspirations and are therefore fiercely rejected by Russian officials. The culmination in the divergence over the interpretation of the treaty was reached on 29 January 2010, when an official representative of the Ministry of Foreign Affairs of the Russian Federation declared that at the time it was signed this document was an 'agreement between the two members of a federation' and therefore not able to create international legal consequences.<sup>4</sup>

It is not the intention of this paper to consider this opinion of that official of the Russian Foreign Ministry. It is understood that a treaty, concluded by two subjects of international law, will remain in force until its termination or until it is considered expired in accordance with the applicable rules of the law of treaties. The following thoughts are intended instead to provide more details on the contents and validity clauses of this very important document.

## 1. Content of the treaty

The contracting parties declared in the treaty, as in every other international agreement of this kind, the mutual recognition of each other's independence, their compliance with the principles of friendship, good neighbourliness, and equality and mutual benefit in bilateral relations in accordance with the universally recognised rules of international law and more specifically the goals and principles of the Charter of the United Nations and the Conference of Security and Cooperation in Europe. More originally and much more importantly, the preamble of the

<sup>3</sup> See Michael Mendelbaum, *Coup De Grace: The End of the Soviet Union*, *Foreign Affairs*, 1992, Vol. 71, No. 1, p. 168. The republics declared independence in the period from April through December 1991. See Chronology 1991 (Patricia Lee Dorff ed.), *Foreign Affairs*, 1992, Vol. 71, No. 1, pp. 195–206.

<sup>4</sup> 'Under international law, aggression can only be a wrongful use of armed force by one state against another, and the UN Security Council gives a legally significant act of aggression qualification, but as of January 1991, an independent Republic of Lithuania did not exist because it was not recognized by any state.' Russian Foreign Ministry's weekly briefing 29 January 2010. 'Briefing by Russian MFA Spokesman Andrey Nesterenko, 29 January 2010' in English by Russian Ministry of Foreign Affairs website on 31 January; <<http://www.accessmylibrary.com/article-1G1-218021593/russian-foreign-ministry-weekly.html>>.

treaty assigns to the past events and actions that hindered each party from fully enforcing its sovereignty and also confirms that the Soviet Union has to annul the consequences of the 1940 annexation of Lithuania, which impaired the sovereignty of Lithuania, to create additional conditions for mutual trust between the parties.<sup>5</sup>

One of the less invoked provisions of the treaty establishes guarantees for inhabitants to freely choose and acquire the citizenship of their respective country of residence, exempt from any residential or language qualifications or other conditions. In addition, the parties agreed to negotiate an additional agreement to address the issues of citizenship, minority rights, and migration. This important aspect has been fully implemented by Lithuania, which has granted its Russian-speaking population equal rights and protection.<sup>6</sup>

The treaty also contains obligations to create favourable conditions for cultural, educational, scientific and economic cooperation and joint efforts to protect and preserve the environment, establish favourable transit conditions, and foster mutual cooperation in each of the most basic and crucial aspects of the two countries. Importantly, Lithuania undertook to contribute to the preservation and further economic and national-cultural development of the enclave of Kaliningrad.

It was stipulated that the parties would base their subsequent international agreements on the principles formulated in the treaty. Many of the agreements mentioned in the treaty have been concluded; others, not.<sup>7</sup>

According to Article 17, bilateral consultations of the parties should be held not less than once a year in matters relating to the implementation of the treaty. On 28 August 1997, a joint commission on trade, economic, scientific, technical, social and cultural cooperation was established, and it was agreed to meet annually.

The treaty between the Republic of Lithuania and the Russian Federation on the foundations of interstate relations of 29 July 1991 contains important and mutually beneficial obligations of the contracting parties, implemented subsequently through other international agreements and thus creating the legal framework for the cooperation between the signatories. It would appear obvious,

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<sup>5</sup> '[High Contracting Parties] [b]eing convinced that once the Union of Soviet Socialist Republics annuls the consequences of the 1940 annexation violating Lithuania's sovereignty, created will be additional conditions for mutual trust between the High Contracting Parties and their peoples.'

<sup>6</sup> See more in John Quigley, 'Baltic Russians: Entitled Inhabitants or Unlawful Settlers?' in *International and National Law in Russia and Eastern Europe: Essays in Honour of George Ginsburgs*, Springer, 2001, pp. 319–337; see also *Ineta Ziemele, State Continuity and Nationality: Past, Present and Future as Defined by International Law*, Brill, 2005.

<sup>7</sup> A list of bilateral treaties can be found at the Lithuanian MFA webpage <<http://www.urm.lt/index.php?928643081>>.

by reading the entirety of the provisions of the treaty, that nothing in it could be interpreted as biased and contrary to the interests of either contracting party.

## 2. Significance of the treaty

Good neighbourhood and friendship treaties usually define the principles of cooperation between states, set down the legal basis for interstate relations, and define the main spheres of cooperation. These treaties usually recognise the territorial sovereignty of both state parties, refer to the rule of law, and impose obligations to settle disputes amicably. The Treaty of 1991, together with the Peace Treaty between the Republic of Lithuania and Russian Soviet Socialist Republic of 12 July 1920<sup>8</sup> create the basis for the bilateral interstate relations between Russia and Lithuania. Curiously enough, the Treaty of 1991 in structure is almost identical to the Treaty of 1920, which raises questions about the further validity of the latter in accordance with the provisions of the Article 59 of the Vienna Convention on the Law of Treaties.<sup>9</sup>

### 2.1. State recognition

By the Treaties of 12 July 1920 and of 29 July 1991, the two countries recognised each other's sovereignty after important changes in their interdependent history. Article 1 of the 1991 Treaty reads:

The High Contracting Parties recognise one another as fully fledged subjects of international law and as sovereign states according to their state status as established by the fundamental acts adopted by the Republic of Lithuania on 11 March 1990 and by the Russian Soviet Federated Socialist Republic on 12 June 1991.

<sup>8</sup> *Vyriausybės žinios*, 1921, Nr. 53-509. *League of Nations Treaty Series*, vol. 3, pp. 106–137

<sup>9</sup> The Vienna Convention on the Law of Treaties of 23 May 1969, *United Nations Treaty Series*, Vol. 1155, 1969, p. 331. Article 59 establishes that a treaty is considered terminated if all the parties to it conclude a later treaty relating to the same subject matter and the matter should be governed by that treaty or if the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time. It can be noted in respect to the continued validity of the 1920 treaty that according to Article 60 of the convention the parties have the right to invoke the breach by one of the parties as grounds for terminating the treaty or suspending its operation in whole or in part.

The parties also recognised each other's right to independence and to full sovereignty of legislative, executive and judicial power and undertook to refrain from the use of force or threat thereof and interference in internal affairs and to respect the inviolability of state borders. Even before the treaty was drafted, the adherence to the principles of democracy and peaceful settlement of disputes and the assurance of mutual assistance in case of threat to sovereignty had been established by a joint declaration of 13 January 1991 of the heads of states of Russia (then a part of the USSR itself), Estonia, Latvia and Lithuania, which also condemned the Soviets for the use of force in Lithuania and the other Baltic States.<sup>10</sup>

The continuity of the Lithuanian state, reaffirmed in the Act on the Reestablishment of State Independence of 11 March 1990,<sup>11</sup> is considered a basis for the existence of the Republic of Lithuania in January 1991. In Article 1 of the 1991 Treaty, Russia recognised the status of Lithuania as described in the basic acts of 11 March 1990, which include the Declaration of the Supreme Council of the Republic of Lithuania on the Recognition of the Powers of the Delegates of the Supreme Council of the Lithuanian SSR,<sup>12</sup> Law on the State Name and Coat of Arms,<sup>13</sup> Act On the Re-establishment of the State of Lithuania,<sup>14</sup> Law on the Reestablishment of the Application of the Constitution of 12 May 1938,<sup>15</sup> and the Provisional Basic Law of the Republic of Lithuania.<sup>16</sup>

These documents contain all the elements of the international and constitutional legal status of today's Lithuania. They confirm the Soviet aggression against the

<sup>10</sup> A Chronicle of the Events of January 1991 and Later Months. Information Analysis Department of the Office of the Seimas of the Republic of Lithuania, [http://www3.lrs.lt/pls/inter/sausio\\_13?p\\_r=4111&p\\_k=2&p\\_d=62825](http://www3.lrs.lt/pls/inter/sausio_13?p_r=4111&p_k=2&p_d=62825).

<sup>11</sup> 'The Supreme Council of the Republic of Lithuania, expressing the will of the nation, decrees and solemnly proclaims that the execution of the sovereign powers of the State of Lithuania abolished by foreign forces in 1940, is re-established, and henceforth Lithuania is again an independent state.' The Act of Independence of 16 February 1918 of the Council of Lithuania and the Constituent Assembly decree of 15 May 1920 on the re-established democratic State of Lithuania never lost their legal effect and constitute the constitutional foundation of the State of Lithuania."

<sup>12</sup> О признании полномочий депутатов Верховного Совета Литовской ССР, <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=73755](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=73755)>.

<sup>13</sup> О наименовании и гербе государства, <[http://www3.lrs.lt/pls/inter3/dokpaieska.susije\\_l?p\\_id=13&p\\_rys\\_id=14](http://www3.lrs.lt/pls/inter3/dokpaieska.susije_l?p_id=13&p_rys_id=14)>.

<sup>14</sup> Act On the Re-establishment of the State of Lithuania <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=50850](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=50850)>.

<sup>15</sup> О восстановлении действия Конституции Литвы от 12 мая 1938 года <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=73782](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=73782)>.

<sup>16</sup> The Provisional Basic Law of the Republic of Lithuania <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc\\_l?p\\_id=21108](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=21108)>.

Republic of Lithuania in 1940, the continuity of statehood during the occupation, the identity of the re-established republic of the state that had been created in 1918, independence as of 11 March 1990, with no transition or conditions, and the constitutional powers of the Supreme Council of the Lithuanian SSR. Accepting this status of the Republic of Lithuania makes it difficult to affirm that in 1991 the state was not a subject of international law.<sup>17</sup>

## 2.2. Recognition of occupation

Lithuania consistently relies on the treaty confirming the illegality of Soviet occupation.<sup>18</sup> Russia, in turn, rejects this interpretation or argues that the annexation, mentioned in the preamble, could not amount to occupation. It appeared clear in 2005 that Russian officials do not question the annexation of Lithuania mentioned in the treaty; according to Russia's deputy foreign minister, 'Russia does not question the 1940 Soviet annexation of Lithuania, but refuses to see its subsequent incorporation into the Soviet Union as occupation'.<sup>19</sup> As the Russian State Duma international affairs committee deputy chairperson explained in this regard, 'One could not speak about occupation regime during Soviet times because Russians and Balts had equal rights in the Soviet Union'.<sup>20</sup>

Unlawful action under international law that aims to change the status of territories continues to be a subject to further study.<sup>21</sup> However, both doctrine and state practice seem to accept the illegality of the forceful incorporation of the Baltic States into the Soviet Union.<sup>22</sup> Lauri Mälksoo established the unlawfulness

<sup>17</sup> See the reasoning of Dainius Žalimas in D. Žalimas. SSRS okupacijos žalos atlyginimo įstatymas ir Rusijos Federacijos atsakomybės tarptautiniai teisiniai pagrindai, *Politologija*, 2006/4 (44), pp. 3–53, <[http://www.leidykla.eu/fileadmin/Politologija/44/Dainius\\_Zalimas.pdf](http://www.leidykla.eu/fileadmin/Politologija/44/Dainius_Zalimas.pdf)> ; D. Žalimas. Rusijos URM: Back To The USSR? 2 February 2010 <<http://www.delfi.lt/news/ringas/lit/article.php?id=28515391>>, D. Žalimas: Rusijos URM pareiškimas šiuurkščiai pažeidžia dvišalę sutartį, 29 January 2010, <<http://www.delfi.lt/news/daily/lithuania/dzalimas-rusijos-urm-pareiskimas-siurksčiai-pazeidžia-dvisale-sutarti.d?id=28389557>>.

<sup>18</sup> See correspondents' reports on Lithuania, *Yearbook of International Humanitarian Law*, as from 2001.

<sup>19</sup> Russia's deputy foreign minister interview of 18 July 2005, 'Russia appeals to Baltic countries to make difference between annexation and occupation', *Baltic News Service*, 18 July 2005, 'Russia admits annexation, denies occupation — Russia's deputy foreign minister'. *Baltic News Service*, 19 July 2005.

<sup>20</sup> 'Russian MP denies Soviet occupation regime in Baltic States', *Baltic News Service*, 19 July 2005.

<sup>21</sup> Eyal Benvenisti, *The International Law of Occupation*, Princeton: Princeton University Press, 1993. 241 p.

<sup>22</sup> Lauri Mälksoo, *Illegal Annexation and State continuity: The Case of the Incorporation of the Baltic States by the USSR, a Study of the Tension between Normativity and Power in International Law*. Leiden: The

of the Soviet annexation, finding that it actually constituted occupation under the laws of war. A similar evaluation of the events in 1940 can be found in the interpretations of Lithuanian scholars.<sup>23</sup> One way or another, the treaty declares that the Union of Soviet Socialist Republics is responsible for the consequences of the 1940 annexation and that this annexation violated Lithuania's sovereignty. This declaration is applicable directly to the Russian Federation, successor to the rights and obligations of the USSR.<sup>24</sup>

As referred to above, endorsement of the Act on the Re-establishment of the State, which in turn relies on the fact that the occupation occurred, amounts to the endorsement of the latter qualification itself.

### **2.3. Validity of the treaty**

In order to be implemented in accordance with international law, any agreement must be concluded in written form between states and governed by international law. The manner and date that a treaty enters into force may be specified in the treaty or as the negotiating states may agree in any case upon the expression of the consent of its parties to be bound by it.<sup>25</sup> Every treaty that enters into force is binding upon the parties to it and must be performed by them in good faith until it has been terminated or expired.

The treaty signed at Moscow on 29 July 1991 between the Republic of Lithuania and the Russian Soviet Federated Socialist Republic on the creation of bilateral relations came into force on 4 May 1992 and continues to be valid.

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Erik Castrén Institute of International Law and Human Rights, Martinus Nijhoff Publishers, 373 p.; Rytis Satkauskas, *Etats baltes : succession ou identité*, Mémoire DEA Paris 1 – Pantheon Sorbonne, 2000, < [http://edi.univ-paris1.fr/travaux/00Satkauskas\\_M.pdf](http://edi.univ-paris1.fr/travaux/00Satkauskas_M.pdf)>.

<sup>23</sup> Dainius Žalimas, 'Legal Issues on the Continuity of the Republic of Lithuania', *Lithuanian Foreign Policy Review*, Hawaiian Journal of Law and Politics, 2006, Vol. 2, pp. 73–96.

<sup>24</sup> Letter to the Secretary General of the United Nations from the President of the Russian Federation, Moscow, 24 December 1991, UN.Doc S/RUSSIA. Subsequent practice of the world community and doctrine take the view that the Russian Federation continues the legal personality of the former Soviet Union, and this status has never been questioned by Russia.

Yehuda Z. Blum, 'Russia Takes over the Soviet Union's Seat at the United Nations', *European Journal of International Law*, 1992, Vol. 3, pp. 354–361.; The Union of Soviet Socialist Republics was formally dissolved on 26 December 1991 by declaration № 142-H of the Soviet of the Republics of the Supreme Soviet of the Soviet Union. See more in Brigitte Stern, *Dissolution, continuation, and succession in Eastern Europe*, The Hague: M. Nijhoff. 1998.

<sup>25</sup> Article 24 of the Vienna Convention on the Law of Treaties.

### 2.3.1. Status of the treaty

A treaty by which two countries declare recognition of each other's independence leaves little space for interpretation concerning its status. In the case of the Lithuanian-Russian treaty of 1991, its status has been expressly confirmed by subsequent procedures.

Article 20 of the treaty provides for its ratification by the contracting parties and establishes its entry into force on the day of the exchange of the instruments of ratification. The Supreme Council of the Republic of Lithuania ratified the treaty on 19 August 1991 (Resolution No. I-1683), and the Supreme Council of the Russian Federation ratified it on 17 January 1992 (Resolution No. 2201-01); the exchange of the instruments of ratification took place in Vilnius on 4 May 1992.

A treaty is considered concluded on the day when all its parties have expressed their consent to be bound by it.<sup>26</sup> At the time of the exchange of the instruments of ratification and the treaty entered into force, the Soviet Union had been officially dissolved, and both the Republic of Lithuania and the Russian Federation were full members of the United Nations. Even though the title of the treaty indicates a different name for one contracting party, on the day of its conclusion it created international rights and obligations for the Russian Federation, the actual party to it.

In accordance with Article 102 of the Charter of the United Nations, the treaty was registered as deposited by Lithuania, including its unofficial translation into English and French.<sup>27</sup>

### 2.3.2. Validity and application

The treaty was published in Lithuania and Russia in accordance with the respective constitutional requirements of both countries;<sup>28</sup> it entered into force and remains applicable. It is worth mentioning that national legal databases indicate its continuous validity.<sup>29</sup> Both parties consistently apply its provisions. Some of them have been transferred into national legal acts, for example, those concerning

<sup>26</sup> *Ibid.*

<sup>27</sup> Treaty Between the Republic of Lithuania and the Russian Soviet Federated Socialist Republic on the Basis for Relations Between States. Signed at Moscow on 29 July 1991; came into force on 4 May 1992. United Nations Treaty Series, Vol. 1787, 1994, p. 20–26.

<sup>28</sup> Бюллетень международных договоров. Издательство “Юридическая литература”, 01 января 1994, N 1, стр. 29-35.

<sup>29</sup> <<http://www.law7.ru/base29/part2/d29ru2260.htm>>; <<http://russia.bestpravo.ru/fed1991/data01/tex11398.htm>>.



the acquisition of citizenship (Article 4), the creation of favourable conditions for national minorities (Article 5), and the exchange of diplomatic representations (Article 19). In concluding the subsequent agreements, the parties invoked the principles formulated in the treaty. Direct reference to the treaty may also be found in several agreements, such as the Agreement between the Government of the Republic of Lithuania and the Government of the Russian Federation on Trade and Economic Relations, the Air Services Agreement, the Agreement on Merchant Navigation, the Agreement on International Road Transport, all four signed on 18 November 1993, the Treaty between the Republic of Lithuania and the Russian Federation concerning the State Border between Lithuania and Russia, the Treaty Concerning Delimitation of the Exclusive Economic Zone and the Continental Shelf in the Baltic Sea of 24 October 1997, Agreement on Cooperation in Environmental Issues, Agreement on Long-term Cooperation between the Regions of the Republic of Lithuania and the Kaliningrad Region of the Russian Federation, and the Agreement on the Cooperation in the Field of Fishing of 29 June 1999.

It is worth noting that neither contracting party has taken any measure to terminate the treaty. Consequently, in accordance with international treaty law, the treaty should be considered to be in force despite the repetitive declarations of Russian officials.<sup>30</sup> The validity of the treaty is confirmed on the internet page of the Russian Embassy in Lithuania.<sup>31</sup>

It can be assumed therefore that the subjective interpretation of the parties to the treaty supports its continued application.

### **2.3.3. Issue of expiration**

In accordance with Article 20, the treaty is concluded for the duration of 10 years, with the exception of Article 1, which is valid indefinitely. The same article further notes that the validity of the treaty is automatically renewed 'for the same term' in absence of notification to the contrary.<sup>32</sup>

<sup>30</sup> In a document of 7 November 2011, РОССИЙСКО-ЛИТОВСКИЕ ОТНОШЕНИЯ, the Russian Foreign Ministry bases the relations between the two countries on the 1991 Treaty, <<http://www.mid.ru/bdomp/ns-reuro.nsf/348bd0da1d5a7185432569e700419c7a/58a7f3f65d1aa09ec325758200330e25!OpenDocument>>

<sup>31</sup> <[http://www.lithuania.mid.ru/ros\\_lit.html](http://www.lithuania.mid.ru/ros_lit.html)>

<sup>32</sup> 'The Treaty shall be valid for ten years, with the exception of Article 1 of this Treaty, which shall be valid indefinitely. The validity of this Treaty shall at that time be automatically renewed for same term, if

This provision creates doubt about the possibility of further tacit 10-year periods of validity. The issue of such interpretation grows even stronger if the wording of Article 17, '[e]ach High Contracting Party retains the right, through consultation, to initiate negotiations concerning the suitability of extending the term of validity of this Treaty or any of its individual articles' is taken into account.

It would be logical to argue that if the validity of the treaty (except Article 1) is not limited by the second 10-year period, the foregoing provision of Article 17 is at least partly unnecessary.

In the absence of clarity on this issue, the rules of the interpretation of treaties must be invoked in order to determine the meaning of this provision. The interpretation technique of the legal norm contained in a treaty may require various methods of interpretation:<sup>33</sup>

- Grammatical interpretation, referring to a legal standard in interpretation of the rules of grammar on syntax, morphology, and vocabulary in international agreements;

- Systematic interpretation, which involves establishing the content of a provision by its relation to the whole text of the treaty, to the legal institution, or other provisions of international law;

- Historical and teleological interpretation, which consists of clarifying the content of a treaty by taking into account the historical, social and political conditions; the needs that led to the adoption of the document in question; and the purpose pursued by the parties, in particular the preparatory work for drafting the text of the treaty, the debates leading to the adoption of it, exchanges of notes on the interpretation of the treaty, etc.;

- Logical interpretation, a method that leads to the clarification of the content of a treaty by the use of reasoning and arguments of formal logic.

The scope of the paper does not allow for an exhaustive study on the contents of the provisions on the validity of the treaty, but it is nevertheless worth mentioning several aspects of it. First is must be accepted that grammatically it is not clear whether the periods of validity defined in Article 20 are indefinite, as the singular is used in describing them. On the other hand, the interpretation of Article 20

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neither of the High Contracting Parties, no later than six months before its expiration, informs the other in writing of its desire to not renew the Treaty or to introduce revisions.'

<sup>33</sup> See M. Fitzmaurice, O. A. Elias and Panos Merkouris (eds), *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years On* (Martinus Nijhoff Publishers 2010); Richard K. Gardiner, *Treaty Interpretation* (Oxford University Press 2008); Alexander Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press 2008).

of the treaty, which has to do with whether the tacit prolongation of its validity is limited to only one 10-year period, should be linked to similar wording in the treaty practice of the two parties.<sup>34</sup> In terms of this, one could note the very similar treaty of 12 January 1991 between the Republic of Estonia and the Russian Soviet Federal Socialist Republic on the creation of bilateral relations; this treaty is listed on the treaty list of the Foreign Ministry of the Russian Federation.

The systematic approach is not without controversy either, when Article 17 mentioned above is taken into account. It can however be asserted that the possibility of the extension of the term of validity of the treaty or any of its individual articles exists even if an unlimited number of periods in force is applied to the whole treaty. In case of such extension, the possibility of unilateral termination of the articles added to Article 1 at the end of the current period of validity is limited. In other words, in such a case, the provisions agreed to under Article 17 could be terminated only by mutual consent of the parties.

Teleological arguments also support the continued prolongation of the treaty. Even if Articles 2 to 19 are not of a declaratory nature but rather a list of priorities, they too contain the main principles of continuous cooperation. It would be illogical to claim that these guidelines alongside other basic engagements have changed or are no longer applicable.<sup>35</sup> The references to the treaty in subsequent bilateral agreements would also support this interpretation.

Finally, and without prejudice to what has been mentioned above, in relation to the clearly established indefinite validity of Article 1 of the treaty, it can be argued that in the case of the expiration of the last period of validity of the treaty, only part of it expires, that is the application of Articles 2–19, and the treaty itself continues in force with the remaining provision of Article 1.

#### **2.4. Possibility to terminate**

A treaty can be terminated by application of its provisions or at any time by the agreement of all the parties to it. The treaty between Russia and Lithuania concerning bilateral relations provides for the possibility to terminate the application of Articles 2 to 19 at the end of any 10-year period of validity in case

<sup>34</sup> Article 31 of Vienna Convention on the Law of Treaties describes means of interpreting treaties.

<sup>35</sup> Except, probably, the questions on the acquisition of citizenship, which were addressed promptly after the entry into force of the treaty.

of prior notification to that effect, but the validity of Article 1 is not limited. It can only and certainly be terminated by the mutual consent of the parties.

It should be also noted that Article 1 has a declaratory nature; once established, the official recognition of the legal situation creates international obligations and continues to be valid, whatever the nature of it is or the name of the source in which it has been published and whether its period of validity is mentioned or not.<sup>36</sup> In the same light, the recitals of the treaty, the declaratory statements of which would remain valid despite the eventual termination of the document itself, should be interpreted. Of course, in such a case, the last date of a statement so expired would be the last day of the validity of a treaty.

It is symbolic that nowhere else but in Article 1 of the treaty it is established that the contracting parties recognise each other's international legal status as defined in the basic documents adopted by Russian SFSR on 12 June 1990 and by the Republic of Lithuania on 11 March 1990; that is, this article in fact endorses the qualification of the 1940 events as occupation.

## Conclusion

A text, legal or otherwise, means what its author or authors intend. If both Lithuania and the Russian Federation agree on the continuous application of the Treaty between the Republic of Lithuania and the Russian Soviet Federated Socialist Republic on the Foundations of Interstate Relations, signed at Moscow on 29 July 1991, no further question about its continued validity should arise.<sup>37</sup> Politically it is hard, if not impossible, to deny the application of a basic text of international bilateral relations such as a peace, good neighbour or friendship treaty, or a treaty concerning interstate relations. It is even harder to claim that the heads of two neighbouring states, when signing such a document, intended to place time limits on its application.

<sup>36</sup> See Hans Kelsen, Recognition in International Law: Theoretical Observations, *The American Journal of International Law*, Vol. 35, No. 4, Oct., 1941, (pp. 605–617); Iain MacGibbon, 'Estoppel in International Law', *International and Comparative Law Quarterly*, Volume 7 – 03, 1958, pp 468-513.

<sup>37</sup> See the congratulation from the president of the Republic of Lithuania on the occasion of the 20-year anniversary of signing the treaty <<http://ria.ru/politics/20110729/408932953.html>>, full text in Russian available at <[http://www.president.lt/ru/dejatelnost\\_prezidenta/pozdravlenija/pozdravlenie\\_prezidenta\\_litovskoi\\_respubliki\\_dali\\_gribauskaite\\_prezidentu\\_rossiiskoi\\_federacii\\_dmitriju\\_medvedevu\\_po\\_slutchaju\\_jubileja\\_dvustoronnich\\_otnosenii.html](http://www.president.lt/ru/dejatelnost_prezidenta/pozdravlenija/pozdravlenie_prezidenta_litovskoi_respubliki_dali_gribauskaite_prezidentu_rossiiskoi_federacii_dmitriju_medvedevu_po_slutchaju_jubileja_dvustoronnich_otnosenii.html)>.