

ON THE UN'S LEGAL RESPONSIBILITY FOR THE IRREGULAR ADMISSION OF MACEDONIA TO UN

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INTRODUCTION

Macedonia's admission to UN membership in April 1993 (General Assembly (GA) Resolution 47/225 (1993)¹, pursuant to the Security Council (SC) Resolution 817 (1993)² recommending such admission) came with two conditions in addition to those explicitly provided in Article 4(1) of the UN Charter, namely the candidate's acceptance of: (i) being provisionally referred to as the 'Former Yugoslav Republic of Macedonia' (for all purposes within the United Nations) and (ii) of negotiating with another country over its name.³ These impositions are part of the resolutions, which also recognised (explicitly in SC Resolution 817) that the applicant fulfils the standard criteria of Article 4(1) of the Charter required for admission. In a recent paper⁴, we analysed the legal nature of the additional conditions imposed on Macedonia for its admission to UN membership in the context of the advisory opinion of International Court of Justice (ICJ) given in 1948 regarding the conditions for admission of a state to the United Nations.⁵ The General Assembly subsequently accepted the ICJ's advisory.⁶ There we concluded that the attachment of conditions (i) and (ii) to those specified in Article 4(1) of the Charter for the admission of Macedonia to UN membership is in violation of the Charter.

In the present article, we shall examine the legal consequences of the irregular admission of Macedonia to UN membership and the possible modes of judicial redress. Emphasis will be on the relationship between the rights of states as applicants or members of the UN as derived from the Charter, other general UN documents and UN legal practices on the one hand, and the duties of the UN relating to those rights (i.e. its adherence to the provisions of the Charter) on the other. The analysis in the following sections will show that the advisory jurisdiction of the ICJ provides an adequate framework for juridical redress of the problem.

Before analysing in more depth the illegal character and legal effects of the UN's breaches in the process of admitting Macedonia to membership and the means of re-instituting the proper legal status of Macedonia as a UN member, we shall give a brief account of the problem of legal responsibility of international organisations (in particular the United Nations) for their unlawful acts (or omissions). We shall give special attention to those acts that are committed in their relations with their member states and other international legal persons.

UNITED NATIONS' LEGAL RESPONSIBILITY FOR ACTS INVOLVING RELATIONS WITH MEMBER STATES

The question of the legal responsibility of international organisations for their illegal acts has been a subject of discussions among legal scholars since the forties and fifties.⁷ The main interest has been on the legal effects of such acts and the possibilities of their judicial redress. In the absence of developed legal practice in the area of international institutional life, the past discussions on the subject were of a predominantly doctrinal character. With the lapse of time, accumulation of a considerable body of relevant legal practice has taken place during the last

five decades, which, coupled with the development and consolidation of certain legal concepts of international law (such as the legal personality of international organisations, etc.), laid the foundations for the development of a fairly consistent theoretical framework for the treatment and redress of the illegal acts of international organizations.⁸ An international organisation, as an international legal person, derives its powers (expressed or implied) from its constitutional source and is bound to act only within the limits and in accordance with the terms of the grant made to it by its members. The most obvious illegal acts that an organisation can commit in exercising its powers and functions are: breach of the constitutional provisions (e.g. by exceeding its powers), error in the interpretation of constitutional provisions, assertion of competence by an incompetent organ, improper exercise of a discretion on the basis of inaccurate or incomplete knowledge or for wrong reasons or motives, implementation of a decision adopted by a majority but inconsistent with the constitutional provisions, suspension or expulsion from the organisation in absence of proper justification, wrongful apportionment of expenses among the members, breach of the staff rules and regulations, etc.⁹ Unless there are specific provisions in the constitutional instrument of the organisation (such as in the case of European Communities¹⁰), the effects of the illegal acts of the organisation are governed by the general principles and practice of international law.¹¹ The United Nations possesses an international legal personality and the capacity to bring international claims¹², but the Charter does not contain provisions that explicitly address the question of its responsibility for unlawful acts of its organs and the judicial redress of their consequences. The juridical responsibility of the UN for its own acts is, however, a correlative of its legal personality and the capacity to present international claims. In the well known *Reparation*¹³ case, the ICJ, affirming the international legal personality of the United Nations, pointed out, "...the rights and duties of an entity such as the [UN] Organization must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice,"¹⁴ thereby affirming that this organisation has certain duties related to its purposes and functions. Although the ICJ may, according to Article 65(1) of its Statute, give an advisory opinion on any legal question at the request of the General Assembly and Security Council, and of any UN organ or specialised agency within the UN system upon authorisation by the General Assembly (Article 96 of the Charter), the Court still does not have any juridical control over the legal effects of the acts of the organisation. The advisory opinions of the Court have no binding power themselves, but may be (and normally are) accepted by the organs requesting them as they induce "moral consequences which are inherent in the dignity of the organ delivering [them]."¹⁵ Exception to this rule is the General Convention on the Privileges and Immunities of the United Nations of 1946 which provides that the opinion given by the Court (upon the request of the organisation) regarding differences which could arise between the organisation and a signatory state shall be binding to the parties.¹⁶

In the advisory jurisdiction of the Court, there have been only a few cases involving UN-state relations. In the *Reparation and Mazilu*¹⁷ cases the UN initiated and brought to the Court the request for an advisory opinion. In the *IMCO*¹⁸ and *Certain expenses*¹⁹ cases, the request for the Court's opinion was initiated by the member states (of the IMCO and the UN, respectively). For the purposes of our further discussions, we shall outline some of the characteristic features of these and a two other cases.

The IMCO case is illustrative in several respects. It is the first case in the history of international organisations, and of the Court itself, when the Court was requested to give its opinion on a question of breach of a constitutional document (the Convention for the establishment of IMCO) made by the plenary organ (the IMCO Assembly) of the

organisation. Another feature of this case is that the question of legality of the committed act (the election of the Maritime Safety Committee at the first session of the IMCO Assembly in 1959) was put before the Court by the IMCO Assembly itself (authorised by the UN General Assembly for such an action) on request by two member states of the organisation (Liberia and Panama), who contended that in the course of the elections their constitutional rights were violated (namely, to be automatically elected to Committee membership in accordance with the explicitly prescribed criteria in Article 28 of the IMCO Convention, which they fulfilled). What happened was that during the elections, most of the voting members of the organisation took as a basis for their vote additional criteria, not expressly provided for in Article 28 of the Convention, to which they attached a greater relevance than to those laid down explicitly in that article. The Court delivered the opinion “that the Maritime Safety Committee of the IMCO which was elected on January 15, 1959, [was] not constituted in accordance with the Constitution for the establishment of the Organization.”²⁰

The IMCO Assembly accepted the opinion of the Court at its next session. The Assembly resolved that the previously elected Committee should be dissolved and decided “to constitute a new Maritime Safety Committee in accordance with Article 28 of the Convention as interpreted by the International Court of Justice and its Advisory Opinion.”²¹

Without going into a more subtle analysis of the IMCO case²², we would like to point out that the character of the illegal act (breach of a procedural constitutional provision by the plenary organ of the organisation) in the IMCO case is identical to that of Macedonia’s admission to UN membership. As we shall see later, the legal consequences in the Macedonia case are, however, much more complex. Nevertheless, the IMCO case may serve as a model for juridical redress of the Macedonia case as well.

In the Certain expenses case²³, the question put before the Court resulted from the largely divided views of the UN members regarding the constitutional basis of the expenditures authorised by a number of General Assembly resolutions for the operation of the UN Emergency Force (UNEF) in the Middle East and for UN operations in the Congo (UNOC). The division of the UN members in this case was essentially related to the question of the legality of the mentioned operations under the terms of the Charter, i.e. regarding the validity of the corresponding GA resolutions. The Court’s opinion was given in the affirmative and was based on arguments that the decisions of the General Assembly are made in accordance with the mission of the United Nations (for the maintenance of world peace and security). This case illustrates that the decisions of the General Assembly that are of binding nature represent acts of the organisation. According to Article 18 of the Charter, such acts are of binding nature on the General Assembly and are related to the budget of the organisation and to the legal status of its members (e.g. admission, suspension and expulsion of members).

The earlier mentioned Reparation case²⁴ elucidates the legal relationship between the United Nations and its members. The question put before the Court at the General Assembly’s request for an advisory opinion was whether the UN, as an organisation, had the capacity to bring an international claim against a state responsible (de jure or de facto) for injuries suffered by a UN agent in the performance of its duties with a view to obtaining reparation in respect to the damage caused (a) to the UN and (b) to the victim (or to persons entitled through him). In the derivation of its affirmative response to these questions, the Court first established that the UN possesses the international legal personality necessary for discharging its functions and duties on the international plane, that the Charter defines the position of the member states in relation to the organisation (requiring their assistance in the discharge of the

organisation's functions (Article 2(5)), acceptance to carry out its decisions (and those of the Security Council) and giving the organisation the necessary privileges and immunities on their territories (Articles 104, 105)), and that the rights and duties of the UN are closely related to its functions and purposes as specified or implied in the Charter. From the facts that (a) the question of the capacity of the UN to bring an international claim against a member state was put in the context of the legal liability of that state (to pay reparations), and that (b) the Court's opinion was given in the affirmative, it follows that the Charter is an international treaty to which the organisation effectively is a party and which, by defining the mutual rights and responsibilities of the parties, establishes a contractual relationship between them.²⁵ This is further reinforced by the fact that in deriving its opinion the Court also invoked the General Convention on the Privileges and Immunities of the United Nations which, in an explicit way, establishes the rights, duties and mutual responsibilities between the signatories (the member states) and the UN, and even defines (Section 30 of Article VIII) the mode of judicial settlement of the disputes between the different parties (by an ICJ advisory opinion of binding character). It can be concluded that both the Charter and the Convention on Privileges and Immunities establish a relationship between the legal responsibility and the legal status of the international persons involved (the UN and its member states).

The Mazilu case²⁶ provides a typical example of when the legal status of the UN (as represented by one of its agents) was violated by a member state.

In contrast to the Reparation and Mazilu cases, the Effects of Awards case²⁷ is an example of when the organisation was found liable for violating the legal status of its staff members. The question the General Assembly put before the Court was whether there was any legal ground for refusing to effect a compensation award made by the UN Administrative Tribunal in favour of a UN staff member whose contract of service had been terminated without his assent. The Court's opinion was negative. This opinion was based on the arguments that a contract of service, concluded between a staff member and the UN Secretary-General, acting on behalf of the organisation, engaged the UN's legal responsibility as a juridical person with respect to the other party, and that, in accordance with Article 10 of the Tribunal's Statute, the judgement of the Tribunal was binding on the parties, final and without appeal. This case illustrates that, when the organisation violates the legal status of its elements (including that of its staff members as defined by the contract of service), the organisation becomes responsible as a legal person. Since the UN Charter possesses also features of contractual character, through which it appears as a party, particularly in matters related to the legal status of its members, it can be concluded that the violation of any aspect of the legal status of either of them by the other leads to the legal responsibility of the former and involves the legal personalities of both parties.

From the above briefly analysed cases on which the ICJ has given its opinion, several conclusions can be drawn:

- 1) In discharging its constitutional functions, the UN has both rights and duties, expressed in or derived from the constitutional provisions, and has a legal responsibility for their lawful implementation;
- 2) The UN Charter, as a multilateral treaty, enables the UN with an international legal personality to carry out its duties and functions and, in the matters that involve relations between the UN (as a legal person) and its members, it acquires features of a contractual character (engaging the liability of the parties);

3) Breaches of constitutional provisions by the plenary organ of the UN, related to the rights and legal status of its members, represent unlawful acts of the organisation (with respect to another international person), for which the organisation is legally responsible;

4) For the UN's violations of the constitutional provisions, particularly the rights related to the legal status of its member states, the advisory opinion of the ICJ may serve as an instrument for settlement of the disputes (as exemplified by the IMCO and Effects of Award cases).

THE UNLAWFUL CHARACTER OF MACEDONIA'S ADMISSION TO UN MEMBERSHIP

As mentioned in the Introduction, GA Resolution 47/225 (1993)²⁸ admitted Macedonia to UN membership subject to the acceptance of the following points: (i) Macedonia was to be referred to by the provisional name 'the Former Yugoslav Republic of Macedonia' for all purposes within the United Nations, and (ii) it was to negotiate with Greece over its name. These two conditions for Macedonia's admission to UN membership are additional with respect to those laid down explicitly in Article 4(1) of the Charter, which the recommending SC Resolution 817 (1993)²⁹ recognises to be fulfilled by the applicant. In characterising the legality of the imposition of the above two conditions on the applicant for effecting its admission to UN membership, three questions should be analysed:

(a) Are the conditions (i) and (ii) indeed additional to those laid down in Article 4(1) of the Charter, or are they only part of them, or contained in them?

(b) Do the conditions provided in Article 4(1) of the Charter form an exhaustive set of necessary and sufficient conditions for admission of a state to UN membership, or can this set be expanded by additional conditions?

(c) Are the UN political organs (the Security Council and the General Assembly) legally entitled to expand the admission criteria of Article 4(1) of the Charter on the basis of political considerations?

To analyse these questions we need to remember that Article 4(1) of the Charter provides: "Membership in the United Nations is open to all other [i.e. other than the original UN members] peace loving states which accept the obligations contained in the present Charter and, in the judgement of the Organisation, are able and willing to carry out these obligations." The conditions for admission to UN membership, as expressly provided in this Article, require that the applicant (1) be a state, (2) be peace-loving, (3) accepts the obligations of UN Charter, (4) be able to carry out these obligations, and (5) be willing to do so. The applicant's fulfilment of these conditions is a prerequisite for recommending (by the Security Council) and effecting (by a decision of the General Assembly) the admission, i.e. they have to be satisfied, in the judgement of the organisation, prior to the act of admission. The SC Resolution 817 (1993), recommending the admission, recognised that Macedonia had fulfilled the above conditions at the time of its application for UN membership.

To identify the nature of the conditions (i) and (ii) SC Resolution 817 (1993) and the GA Resolution 47/225 (1993) imposed on Macedonia, one should look first into their functional role, i.e. whether they determine the suitability of the applicant for membership. The conditions (i) and (ii), however, are imposed as requirements on the applicant at the moment

of its admission to UN membership, and they transcend in time the act of admission. Such requirements do not serve the purpose of criteria that the applicant should fulfil before admission (like those in Article 4), but they are, rather, conditions that the applicant should accept to carry on and fulfil after its admission to membership. Macedonia's strong objection³⁰ to the inclusion of such conditions in SC Resolution 817 (1993) was completely ignored and admission to UN membership was subjected to their acceptance. The conditions for admission imposed on the state by the act of its admission and which transcend that act in time, cannot be evidently regarded as part of, or contained in, those enumerated in Article 4(1), the fulfilment of which is required prior to the act of admission. In absence of the institute of 'conditional admission' to UN membership, conditions (i) and (ii) must be regarded as conditions transcending their cause, i.e. as being additional to those contained in Article 4(1). The additional character of these conditions with respect to those laid down in Article 4(1) is also obvious from the fact that, as it has been mentioned earlier, SC Resolution 817 (1993) explicitly recognises that the applicant satisfies the conditions for admission prescribed in Article 4(1) and recommends admission. The very fact that the conditions (i) and (ii) transcend in time the act of admission indicates that their character is not legal, but rather of political nature. We shall discuss in more detail the legal consequences of these conditions somewhat later. At this point, we would like to emphasise that the imposition of additional conditions (i) and (ii) in SC Resolution 817 (1993) creates an internal logical inconsistency in this resolution. Apparently, the motivation for imposing conditions (i) and (ii) on the admission of Macedonia to UN membership was the Security Council observation, "A difference has arisen over the name of the State, which needs to be resolved in the interest of the maintenance of peaceful and good-neighbourly relations in the region."³¹ This provision implies that the applicant state is unwilling to carry out the obligation in Article 2(4) of the Charter that requires that the "[m]embers shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations." On the other hand, the recognition contained in SC Resolution 817 (1993) that the applicant state fulfils the admission criteria of Article 4(1) means that the Security Council affirms that the applicant state is a peace-loving state, able and willing to carry out the obligations in the Charter (including Article 2(4)). Therefore, the two statements in SC Resolution 817 (1993) are mutually contradictory.

The questions (b) and (c) put forward at the beginning of this Section have been answered by the advisory opinion of the ICJ in the Admission case.³² This opinion provides an interpretation of Article 4(1) of the Charter and has been accepted by the General Assembly.³³ The advisory opinion states that a "member of the United Nations that is called upon, by virtue of Article 4 of the Charter, to pronounce itself by vote, either in the Security Council or in the General Assembly, on admission of a state to membership in the Organisation, is not juridically entitled to make its consent dependent on conditions not expressly provided in paragraph 1 of that article."³⁴ This opinion of the Court was based on the arguments that the UN Charter is a multilateral treaty whose provisions impose obligations on its members, that Article 4 represents "a legal rule which, while it fixes the conditions for admission, determines also the reasons for which admission may be refused"³⁵, that the enumeration of the conditions in Article 4(1) is exhaustive since, in the opposite, "[i]t would lead to conferring upon Members an indefinite and practically unlimited power of discretion in the imposition of new conditions"³⁶ (in which case Article 4(1) would cease to be a legal norm). The conclusion of the Court was that the conditions set forth in Article 4(1) are exhaustive: they are not only the necessary but also the sufficient conditions for admission to membership of the United Nations.³⁷

The Court specifically addressed the question whether from the political character of the organs responsible for admission (the Security Council and the General Assembly, according to Article 4(2)) or for the maintenance of world peace and security (Security Council, according to Article 24 of the Charter), one can derive arguments which could invalidate the exhaustive character of the conditions enumerated in Article 4(1). The Court rejected this possibility and held, “[t]he political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgement.”³⁸ Thus, according to the Court’s opinion, the Charter limits the freedom of political organs and no political considerations can be superimposed on, or added to, the conditions prescribed in Article 4(1) that could prevent admission to membership.

The advisory opinion of the Court also emphasised the functional purpose of the conditions: they serve as criteria for admission and have to be fulfilled, in the judgement of the organisation, before the recommendation and the decision for admission.³⁹ Further, once the competent UN organs have recognised that these conditions had been fulfilled, the applicant acquires a (unconditional) right to UN membership.⁴⁰ This right follows from the openness to membership enshrined in Article 4(1) and from the universal character of the organisation. In the words of Judge Alvarez, “[t]he exercise of this right cannot be blocked by the imposition of other conditions not expressly provided for by the Charter, by international law or by convention, or on grounds of a political nature.”⁴¹

As mentioned earlier, the General Assembly, by Resolution 197 (III, A) of 1948, accepted the Court’s interpretation of Article 4(1) of the Charter and recommended, “each member of the Security Council and of the General Assembly, in exercising its vote on the admission of a new Member, should act in accordance with the foregoing opinion of the International Court of Justice.”⁴² Moreover, in the parts C, D, E, F, G, H, I, of the same GA Resolution 197 (III)⁴³ of 1948, the General Assembly has implemented the Court’s interpretation of Article 4(1) of the Charter by requesting the Security Council to provide recommendations for admission of a number of states to UN membership, the delivery of which was blocked by certain Security Council members on the basis of arguments (of a political nature) not strictly related to the conditions set forth in Article 4(1).

In view of the Court’s interpretation of Article 4 of the Charter as a legal norm (which should be observed also by the UN political organs) and the General Assembly’s (GA Resolution 197 (III, A)) acceptance of this interpretation, it is obvious that the imposition of additional conditions on Macedonia for its admission to UN membership is in clear violation of Article 4(1) of the Charter. From the fact that the additional conditions transcend in time the act of admission (with no strictly specified time limit), it follows that their imposition did not serve the purpose of admission conditions (which should be fulfilled before the act of admission), but rather a specific political purpose. This indicates that the additional conditions imposed on Macedonia for its admission to UN membership have no legal character and, by their nature, are extraneous to those contained in Article 4(1).

The violation of Article 4(1) of the Charter by the General Assembly’s Resolution 47/225 (1993) is not a mere *ultra vires* act. The imposition of additional conditions on Macedonia for its admission to UN membership means denial of its right to admission once it had been recognised that it fulfilled the exhaustive conditions set forth in Article 4(1). This right is enshrined in the Article 4(1) itself (“Membership in the United Nations is open to all [other] peace-loving states....”) and is implied by the principle of universality of the United Nations.

For the UN itself, the principle of its universality and the provision for its openness to membership create a duty to admit an applicant to UN membership when it has been recognised that it fulfils the criteria set forth in Article 4(1). Thus, the imposition of additional conditions on a state that fulfils the prescribed admission conditions violates the right of that state to become a UN member and, at the same time, one of the fundamental principles of the UN. The UN's duty to admit to membership states that fulfil the conditions of Article 4(1) without imposing additional conditions has been recognised by the General Assembly in its Resolution 197 (III, parts C, D, E, F, G, H, I), as mentioned earlier.

LEGAL IMPLICATIONS AND CONSEQUENCES OF THE IMPOSED ADMISSION CONDITIONS

We shall now turn to a more substantive analysis of the additional conditions imposed on Macedonia by the UN organs for its admission to UN membership. We need to remember at this point again that they include acceptance by the applicant (i) of "being provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the state"⁴⁴, and (ii) of negotiating with Greece over its name (implied in the second part of the above cited text common to both GA Resolution 47/225 (1993) and SC Resolution 817 (1993) and from the provision in the SC Resolution 817 (1993) by which the Security Council "urges the parties to continue to co-operate with the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia in order to arrive at a speedy settlement of the difference)."⁴⁵ The reason for imposing these conditions was given in the preamble of SC Resolution 817 (1993) in which the Security Council, after affirming that the applicant state fulfils the conditions of Article 4, observes, "a difference has arisen over the name of the State, which needs to be resolved in the interest of the maintenance of peaceful and good-neighbourly relations in the region."⁴⁶ This observation of the Security Council, which has generated the imposition of the mentioned additional conditions for the Macedonian admission to the UN membership, was apparently based on the Greek allegation that the name of the applicant implies territorial claims against Greece.⁴⁷ Without examining the legal basis of the Greek allegation (see later for details on this aspect), the Security Council, in accordance with its responsibility for the maintenance of world peace and security provided for in Article 24 of the Charter, has used the above political consideration as a sufficient basis for imposing the additional conditions on Macedonia for its admission to UN membership. We have already seen that this is not in accordance with the GA Resolution 197 (III, A) and the Court's interpretation of Article 4(1). However, there are other, and perhaps even more important, legal implications of the imposed additional conditions. They are related to the inherent right of states to determine their own legal identity, to the principles of sovereign equality of states⁴⁸ and the inviolability of their legal personality⁴⁹, and to the legal status (including the representation) of the member states.

By imposing conditions on Macedonia regarding its name, the Security Council and the General Assembly have essentially denied the right of Macedonia to choose its own name. The inherent right of a state to have a name can be derived from the necessity that a juridical personality must have a legal identity. In the absence of such an identity, the juridical person, such as a state, could –to a considerable degree, or even completely– lose its capacity to interact with other such juridical persons (conclude agreements, etc) and independently enter into and conduct its external relations. The name of a state is, therefore, an essential element of its juridical personality and, consequently, of its statehood. The principles of sovereign equality of states and the inviolability of their juridical personality lead to the conclusion that

the choice of a name is a basic, inherent right of the state. This right is not alienable, divisible or transferable, and it is a part of the right to self-determination (determination of one's own legal identity), i.e. it belongs to the domain of jus cogens. External interference with this basic right is inadmissible. If this were not true, i.e. if an external factor is allowed to take part in the determination of the name of a state, under the assumption that the subject state has at least a non-vanishing influence on this determination, it can easily be imagined that the process of determination of the name of that state (e.g. via negotiations) may never end. The state may never acquire its name, which would create an extraordinary political and legal absurdity in the international arena. It is also fairly obvious that if such external interference with the choice of name of a state would be allowed, even through a negotiation process, it might easily become a legally endorsed mechanism for interference in the internal and external affairs of the state, i.e. a mechanism for degradation of its political independence. From these reasons, the choice by a state of its own name must be considered an inherent right of the state, which belongs, *stricto sensu*, in its domestic jurisdiction. In exercising this right, the states have, therefore, a complete legal freedom.

The denial by the UN political organs of the inherent right of Macedonia to choose its name, implied by the additional conditions imposed for its admission to UN membership, is, therefore, in violation of Article 2 (paragraphs 1 and 7) of the Charter. The respect for the principles embedded in this article are equally applicable to the organisation as is to its members (e.g. Article 2(7) explicitly forbids the UN from intervening in matters which are essentially within the domestic jurisdiction of the states), and their violation by the UN directly involves its legal responsibility.

The violation of Article 2(1) of the Charter and of the principle of inviolability of the legal personality of states in the process of Macedonia's admission to UN membership has immediate consequences for its legal status within the United Nations as a member. With respect to other UN member states, Macedonia is obliged to bear within the UN system an imposed, provisional name (reference) and to continue to negotiate with Greece over its name. These additional obligations on Macedonia as a UN member distinguish its position from that of the other UN members and define a discriminatory status. Membership, as a legal status, contains a standard set of rights and duties, which are equal for all UN members ("sovereign equality of the Members", Article 2(1)) and derogation or reduction of these membership rights and duties for particular states is inadmissible, particularly in areas which are related to, or involve, the legal personality of member states. It follows that the additional obligations imposed on Macedonia as a UN member are again in violation of Article 2(1) of the Charter.

The discriminatory status of Macedonia as a UN member manifests itself in a particularly clear manner in the area of representation. In all acts of representation within the UN system, and in the field of UN relations with other international subjects, the provisional and not the constitutional, name of Macedonia is to be used. This is in violation of the right of states to non-discrimination in their representation in organisations of universal character (i.e. the UN family of organisations) expressed in an unambiguous way in Article 83 of the Vienna convention on representation of states.⁵⁰ That article of the Convention provides, "[i]n the application of the provisions of the present Convention no discrimination shall be made as between states."⁵¹ The right to equal representation of states in their relations with the organisations of universal character is only a derivative of the principles of sovereign equality of the states within the UN and inviolability of their juridical personality. The representation on a non-discriminatory basis, however, has a particular significance in the exercise of the

legal personality of states in their relations with other states or organisations since it involves in a most direct and explicit way the legal identity of the states.

There is another viewpoint from which the legal status of Macedonia in the United Nations could be looked at. It can be questioned whether a state admitted to UN membership under conditions (or obligations) that extend in time with no specified limit and which degrade its legal personality can be considered a full member (in the sense of the principle of sovereign equality of the members), despite the fact that the state possesses all other rights (and duties) provided by membership status, or, can such a state be considered rather, *de facto*, conditionally admitted to UN membership? Suppose that the negotiating process may extend indefinitely. What would be the legal status of such a member carrying out a permanent obligation? Should it be expelled from the organisation's membership for not complying in an efficient way with the obligation (or for its obstruction)? Should the other negotiating party also be expelled from the organisation for the same reason (assuming that in the negotiations the parties have equal negotiating status)? But, expelling the state from UN membership for failing to fulfil the obligation imposed by the act of its admission would only prove that the state had been conditionally admitted to UN membership and that it had the legal status of a conditional member of the United Nations (a status which is not provided for by the Charter). If, to avoid this conclusion, expulsion from membership is not effected, then the UN tolerates a permanent factual non-compliance of one of its members with an obligation. It may also be possible that the obstruction of the settlement of the dispute is caused by the other negotiating party (e.g. by insisting to enter into matters from the domestic jurisdiction of the first party, or for other –for instance, political– reasons or motivations). The fulfilment of the imposed obligation could, thus, depend not solely on the good will of the party carrying the obligation, but also on the other party, i.e. on a factor, which is outside of its control. This introduces another component to the legal status of Macedonia in UN membership, which is related to its independence in carrying out its membership obligations.

By denial of the right of the state to free choice of its name, and by imposing on it a provisional name for use within the UN system (i.e. as an attribute to its membership), the UN has essentially suspended the legal identity of one of its members at the moment and by the act of its admission to membership.⁵² The suspension of the legal identity of a member state by the act of admission defines a legal status for that state within the UN characterised by a derogated legal personality and reduced (contractual) capacity for conducting its international relations both within and outside the UN system. This specific status of Macedonia as a UN member is clearly different from that of all other member states and is in violation with Article 2(1) of the Charter.

All the above contradictions and inconsistencies regarding the legal status of Macedonia's UN membership have their origin in the violation of Articles 4(1) and 2(7) of the Charter by the Security Council and the General Assembly resolutions related to, respectively, the recommendation for and effecting of the admission of Macedonia to UN membership. We shall now reveal the source of these violations.

As indicated earlier, the imposition of additional conditions in SC Resolution 817, recommending Macedonia for admission to UN membership, was based on concerns regarding "the maintenance of peaceful and good-neighbourly relations in the region,"⁵³ triggered by the Greek allegation that the applicant's name implies territorial claims⁵⁴ against Greece. Greece also advanced claims that the right of use of the name 'Macedonia' belongs, for historical reasons, only to Greece. There is, however, no legal basis for linking the

conditions for admission of a state to UN membership, as specified explicitly in Article 4(1) of the Charter, with allegations based on assumptions regarding possible future (political) developments. Indeed, based on the principle of separability of domestic and international jurisdictions, the name of the state, which is a subject of domestic jurisdiction, does not create international legal rights for the state that adopts the name, nor does it impose legal obligations on other states, which would be a negation of the basic idea and purposes of international law. Clearly, the name, per se, does not have an impact on the territorial rights of states.⁵⁵ Furthermore, from the inherent right of a state to determine its legal identity, and from the principle that all states are juridically equal, it follows that all states have an equal legal freedom in the choice of their names. For this reason, the Greek claim that Greece has an exclusive right to the use of the name 'Macedonia' has "no basis in international law and practice."⁵⁶ Greek opposition to the admission of Macedonia to UN membership under its constitutional name is not only without legal basis, but it is also in violation of international law by interfering in matters which are essentially within Macedonia's domestic jurisdiction.⁵⁷ Thus, by ignoring the principles of separability of domestic and international jurisdictions in the case of Macedonian admission to UN membership, the Security Council has opened the door for violation of several articles of the UN Charter and for creation of an unusual membership legal status that is not instituted by the Charter and is for one UN member.

UN'S LEGAL RESPONSIBILITY AND POSSIBLE MODES OF REDRESS

In the preceding two sections of this study we have provided a number of arguments that clearly show the inclusion of the two additional conditions in SC Resolution 817 (1993) and GA Resolution 47/225 (1993), related to Macedonia's admission to UN membership, violates the provisions of Articles 4(1), 2(1) and 2(7) of the Charter and constitutes an ultra vires act of these organs. Since the admission to membership, effected by a decision of the General Assembly, expresses the legal capacity of the UN to admit a state to membership, and since a state also has a legal capacity to become a UN member, it follows that the act of admission engages the legal personalities of both the UN and the applicant state, and that the admission is a legal act of the UN.⁵⁸

As argued in Section 3, above, the UN's responsibility related to the unlawful admission of Macedonia into membership derives from the right of the applicant to admission when it fulfils the prescribed criteria laid down in Article 4(1) of the Charter, and the UN's duty to admit such an applicant to membership, flowing from the openness of the organisation and its mission of universality.⁵⁹ In this context, the provisions contained in Article 4(1) should be interpreted as a legal norm of an international treaty that governs the admission to UN membership.⁶⁰

Observance of this legal norm is as compulsory for the UN as it is for the applicant state. The violation of Article 4(1) in the process of admission of Macedonia to UN membership constitutes, therefore, a breach of the Charter and violation of applicant's right to such membership, as guaranteed by the Charter. The specific content of violation of Article 4(1) is the UN political organs' extension of the admission criteria beyond those enumerated exhaustively in that article, i.e. an inappropriate and politically motivated interpretation of Article 4(1), contradicting the interpretation of that article given by the ICJ in the Admission case and accepted (in 1948) by the General Assembly. In this sense, the UN's breach of Article 4(1) of the Charter in the case of Macedonia's admission to membership is similar to the IMCO case⁶¹ discussed in Section 2, in which the IMCO Assembly's breach of Article 28

of the IMCO Convention was committed similarly because of an inappropriate interpretation of the provisions of that article (resulting in additional criteria for election to the IMCO Maritime Safety Committee).

As argued in Section 4, the determination of the legal identity of a state is an inherent right of that state, falling strictly within its domestic jurisdiction. This right, being strongly correlated with the right to self-determination, belongs to the domain of jus cogens. On the other hand, legal identity is an essential element of the legal personality of a state, the inviolability of which has again the character of a jus cogens norm. The denial of the right of a state to determine its own name is, therefore, in violation with the norms of jus cogens, reflected in the provisions of Articles 1(2), 2(1) and 2(7) of the Charter and in the Declaration on Principles of International Law.⁶² The UN, as any other subject of international law, has a duty to respect these norms. Articles 2(7) specifically and expressly limit the UN's powers over matters relating to the strict internal jurisdiction of states. The breach of this article in the case of Macedonia's admission to UN membership, by interfering in the inherent right of this state to choose its own name, is certainly an ultra vires act on the part of the UN. Since the basic principles embodied in the Charter are mutually interrelated and consistent with each other, breach of one principle (or legal norm) leads, usually, to violation of other principles (or norms). Thus, the violation of Article 2(7) leads also to violation of the principle enshrined in Article 2(1), as generalised by the Declaration on Principles of International Law ('sovereign equality of states'⁶³), and vice versa. Furthermore, the violation of Articles 4(1) and 2(7) during the process of admission leads to a discriminatory legal status for Macedonia as a UN member, i.e. to violation of Article 2(1) of the Charter. (Indeed, *ex injuria jus non oritur*.) As we have argued in the preceding section, the breach of this article results effectively in suspension of the legal identity of the member state, inflicting thus grave damage on its legal personality (e.g. by reducing its contractual capacity, its capacities in the domains of legation and representation, etc), and on its external political and economic relations. The UN's responsibility for violating Article 2(1) derives from its duty to strictly observe this treaty provision (principle of the UN), and from its mission to promote legal justice and the rule of international law.⁶⁴

The violations of Charter provisions contained in Articles 4(1), 2(1) and 2(7) may each serve as a sufficient legal basis (*ultra vires* acts) for requesting judicial redress, i.e. for removal of the conditions imposed on Macedonia during its admission to UN membership and its resulting discriminatory UN member status. On the substantive level, however, they are all closely interrelated (as argued above) since the violation of Articles 2(1) and 2(7) underlines the violation of Article 4(1). On the other hand, the breach of Article 4(1) (which implies violations of Articles 2(1) and 2(7)) appears to be the source of the problems related to the specific legal status of Macedonia in UN membership. Further, the breach of Article 4(1) appears to be most obvious, since the admission of Macedonia to UN membership has not followed (in its substantive part) the standard admission procedure. Moreover, and most importantly, this breach is in direct discord with General Assembly resolution 197 (III, A) regarding the interpretation of Article 4(1) given by the ICJ in the Admission case.⁶⁵

As a mechanism for judicial redress of legal consequences generated by the violation of Article 4(1) in GA Resolution 47/225 (1993) and SC Resolution 817 (1993), the advisory jurisdiction of the ICJ appears to be the most appropriate in this case. The question of the legality of these resolutions in their parts related to the imposition of additional conditions on Macedonia regarding its name for its admission in UN membership (i.e. their compatibility with the provisions of Article 4(1) of the Charter) could be put before the Court by the

General Assembly on request by Macedonia (possibly jointly with a group of member states that have already recognised Macedonia under its constitutional name). Since this question is of a purely legal nature, the General Assembly may request an advisory opinion from the Court (Article 96(1) of the Charter). The General Assembly cannot obstruct such a request for an advisory opinion because the requested opinion is related to the legality of its own act. Such an obstruction (based on whatever reasons) would essentially mean that the General Assembly, as a political organ, was imposing its own response to the question regarding the legality of its own act, or, imposing its own judgement in a case in which it is itself a party (representing the UN).⁶⁶ This would be incompatible with the basic legal principles of juridical equality and bona fide, and with the mission and the duty of the UN regarding respect for international law.⁶⁷ Moreover, the IMCO case⁶⁸ provides an example in which the UN has not obstructed the request for a Court's advisory opinion regarding the compatibility of the IMCO plenary organ's decision with the provisions of its constitutional document. On the other hand, since the question regarding the legality of imposing additional conditions on Macedonia for its admission to UN membership is essentially a special case of the more general question (of the same character) already considered by the Court in the Admission case,⁶⁹ there cannot be any uncertainty about the Court's competence for its consideration. For the same reason, and from the obvious incompatibility of the additional conditions for Macedonia's admission to UN membership with the exhaustive character of the conditions set forth in Article 4(1) of the Charter, the Court's advisory opinion in this case cannot be different from its opinion already given in the Admission case. Similarly, the position of the General Assembly with respect to the Court's opinion in the Macedonian case cannot be different from its position⁷⁰ taken with respect to the Court's opinion in the Admission case. In fact, the Macedonian case is only a specific example of the general issue considered by the Court in the Admission case, created by the non-observance (or neglect) of the already adopted Court's interpretation of Article 4(1) of the Charter.⁷¹

The mode of redress via the advisory jurisdiction of the Court includes also the subtler problem of the legal consequences of the legally defective GA Resolution 47/225 (1993). Apart from its preamble (referring to the recommendation of the Security Council for admitting the applicant to UN membership with additional conditions and to the application of the candidate), GA Resolution 47/225 (1993) contains a decision which includes two parts: (a) to admit the applicant state to UN membership and (b) "this State being provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the State."⁷² Part (a) of the GA Resolution reflects the Security Council's assessment that "the applicant fulfils the criteria for membership laid down in Article 4 of the Charter"⁷³ and follows the Security Council recommendation for admission of the applicant state to UN membership. Part (b) of the GA Resolution contains the imposed additional conditions related to the name of the applicant (and future UN member) without the acceptance of which part (a) could not have been effected. Only part (b) of the GA Resolution is ultra vires and only this part can be considered void. From the requirement of legality, the unlawful part (b) of the GA Resolution should be considered as void ab initio. However, practical consideration (within the General Assembly, after the favourable Court's advisory opinion is received and presumably adopted) may render the determination that part (b) of the Resolution is void ex nunc.⁷⁴ In either case, according to the principle of severability,⁷⁵ the invalidation of part (b) of the resolution should not affect the validity of part (a). Obviously, the invalidation of part (b) of GA Resolution 47/225 (1993) can be done by a new GA resolution, which would also affirm the use of the constitutional name 'Macedonia' within the UN system.

Another basis for judicial redress in the Macedonia case via the advisory jurisdiction of the ICJ could be based on the violation of Article 2(1) of the Charter in GA Resolution 47/225 (1993) by which the legal personality of the state is severely derogated (through suspension of its legal identity and imposing a discriminatory membership status). The question of derogation of legal personality of Macedonia by this GA Resolution, in the context of Article 2(1), has an obvious legal character and is, therefore, a legitimate subject for the Court's advisory jurisdiction. Since some of the basic principles of international law are involved in the subject (related, e.g., to the inherent rights of states, inviolability of legal personality, equality of states, etc), the Court cannot formulate its opinion in a manner inconsistent with those principles. Nor could the General Assembly ignore the Court's opinion based on such principles.

CONCLUSIONS

The presented detailed and logically consistent analysis of the legal aspects of SC Resolution 817 (1993) and GA Resolution 47/225 (1993), related to the admission of Macedonia to UN membership, and the legal effects of these resolutions on the membership status of Macedonia in the UN lead to the conclusion that these resolutions are in clear violation of the Charter. The imposed additional conditions for Macedonia's admission to the UN directly violate Article 4(1) and are contradictory to the accepted interpretation of this article as a legal norm. The denial of a sovereign state's right to free choice of its own legal identity (name) by these resolutions, and imposing an admission and membership condition on that state to negotiate over its own name with another state, violates Articles 2(1) and 2(7) of the Charter. The imposed admission and membership conditions on Macedonia define a discriminatory legal status of this state as a UN member, again in violation of Article 2(1). The legal responsibility of the United Nations for violation of the Charter's provisions derives from the UN's duty to respect the basic rights of states (either as applicants or UN members), which are protected by the principles of international law enshrined in the mentioned articles of the Charter. The character of these violations is of ultra vires type with respect to the legal norms of the Charter as a multilateral treaty. The violations of Articles 4(1), 2(1) and 2(7) involve the legal personalities of both the UN and Macedonia. This provides a basis for instituting judicial redress, based on the use of the advisory jurisdiction of ICJ, of the legal consequences resulting from the breach of constitutional provisions. The violation of Article 4(1) (imposition of additional admission conditions) has an obvious character in view of the explicit and extremely clear Court's interpretation of Article 4(1) in 1948, and its acceptance and legal implementation by the General Assembly the same year. In fact, from a legal point of view, the case of irregular admission of Macedonia to the UN is only a particular case of the most general and already resolved Admission case,⁷⁶ and resolution by legal means should be regarded as the most logical and straightforward option.

1 GA Res. 47/225, 8 April 1993 (hereinafter GA Res. 47/225 (1993)).

2 SC Res. 817, 7 April 1993 (hereinafter SC Res. 817 (1993)).

3 After a reference in the preamble to the SC recommendation for admission of the applicant to UN membership, GA Res. 47/225 (1993) states that the GA "[d]ecides to admit the State whose application is contained in document A/47/876-S/25147 [i.e. the Republic of Macedonia] to membership in the United Nations, this State being provisionally referred to for all purposes within the United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the State." The

imposed condition for negotiation with Greece over the name of the applicant is implied in the last part of the decision. Note that this condition imposes at the same time an obligation on the applicant when admitted to UN membership.

4 I. Janev, 'Legal Aspects of the Use of a Provisional Name for Macedonia in the United Nations System', 93, *American Journal of International Law*, 1999, p. 155.

5 Admission of a State to the United Nations (Charter, Art. 4), ICJ Reports (1948), 57 (hereinafter, Admission).

6 GA Res. 197 (III, A), 8 December 1948 (hereinafter GA Res. 197 (III, A) (1948)).

7 R. Guggenheim, 'La Validité et la Nullité des Actes Juridiques Internationaux', 47 *Hague Recueil*, 1949, pp. 195-263; see also the volumes of *Annuaire de l'Institut de Droit International*, 44-I (1952), 45-II (1954), 47-I (1957), 47-II (1957).

8 D. W. Bowett, *The Law of International Institutions*, 4th edn., 1982, pp. 362-365. For a more critical recent review of this issue, particularly regarding the acts of the Security Council, see Alvarez, 'Judging the Security Council', 90 *AJIL*, 1996, pp. 1-39, and references therein.

9 E. Lauterpacht, 'The Legal Effects of Illegal Acts of International Organizations', in *Cambridge Essays in International Law: Essays in honour of Lord McNair*, 1965, pp. 88-121 (see p. 89).

10 See, e.g., H. Schermers, D. Waelbroeck, *Judicial Protection in the European Communities*, 4th edn., 1987.

11 I. Brownlie, *Principles of Public International Law*, 4th edn., 1990, p. 701.

12 *Ibid.*, pp. 680-681, 688-690.

13 *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Reports (1949) 174 (hereinafter *Reparation*).

14 *Ibid.*, p. 180.

15 Judge Azevedo in *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First phase)*, ICJ Reports (1950) 80.

16 *General Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, Art. VIII, § 30.

17 *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, ICJ Reports (1989) 177 [hereinafter *Mazilu case*].

18 *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization*, ICJ Reports (1960) 145 [hereinafter *IMCO*].

19 *Certain Expenses of the United Nations (Art. 17, paragraph 2, of the Charter)*, ICJ Reports (1962) 151 [hereinafter *Certain Expenses*].

20 See above, fn. 18, p. 150.

21 *IMCO Assembly Resolution A. 21 (II)*, 6 April 1961.

22 E. Lauterpacht, *op. cit.* (fn. 9), pp. 100-106.

- 23 Above, fn. 19.
- 24 Above, fn. 13.
- 25 The treaty character of the Charter has been also strongly emphasised by the Court in the Admission case (above, fn. 5).
- 26 Above, fn. 17.
- 27 Effects of Awards of Compensation made by the United Nations Administrative Tribunal, ICJ Reports (1957) 47 (hereinafter Effects of Awards).
- 28 Above, fn. 1.
- 29 Above, fn. 2.
- 30 See UN SCOR, 48th Session, supplement April, May, June, p. 35, UN Doc. S/25541 (1993).
- 31 Above, fn. 2, preamble.
- 32 Above, fn. 5.
- 33 Above, fn. 6.
- 34 Above, fn. 5, p. 65.
- 35 Ibid., p. 62.
- 36 Ibid., p. 63.
- 37 Ibid., p. 62.
- 38 Ibid., p. 64.
- 39 Ibid., p. 65.
- 40 Ibid.
- 41 Ibid., p. 71.
- 42 Above, fn. 6, p. 30.
- 43 GA Res. 197 (III) (C, D, E, F, G, H, I), 8 December 1948.
- 44 Above, fns. 1 and 2.
- 45 Above, fn. 2, paragraph 1.
- 46 Above, fn. 2, preamble.
- 47 See UN SCOR, 48th Session, supplement April, May, June, p. 36, UN Doc. S/25543 (1993).
- 48 UN Charter, Art. 2(1).

49 'Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations', GA Res. 2625 (XXV), 24 October 1970.

50 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, UN Doc. A/CONF. 67/16 (March 14, 1975). (See also 69 AJIL, 1975, p. 730.)

51 *Ibid.*, Article 83.

52 In both SC Res. 817 (1993) and GA Res. 47/225 (1993) the name of applicant is not mentioned but the applicant is referred to as the state whose application is contained in document S/25147 (in the SC resolution), or in document A/47/876 - S/25147 (in the GA resolution). See also fn. 3.

53 Above, fn. 2, preamble.

54 Above, fn. 47.

55 The EC Arbitration Commission on Former Yugoslavia, when considering the question of recognition of Macedonia by the European Community, in its Opinion No. 6 (see 31 International Law Materials (1992) 1507, 1511) has not linked the name of the country to the Greek territorial rights.

56 L. Henkin, et al., *International Law: Cases and Materials*, 3rd edn., 1993, p. 253.

57 Above, fn. 49, p. 123.

58 The ICJ advisory opinion given in the *Certain Expenses* case (above, fn. 19) affirms that, irrespectively of the distribution of powers among the organs of the UN, the acts of these organs with respect to a third party represent acts of the UN. The decisions of the General Assembly made in accordance with Art. 18(2) of the Charter, including the decisions on admission to membership, have a binding character.

59 The correlation between the right of a state, fulfilling the conditions laid down in Art. 4(1), to admission to UN membership and the UN's duty to admit such a state into membership was elaborated in detail in the ICJ advisory opinion given in the *Admission* case (above, fn. 5). Particularly clear form of this correlation was given in the concurring individual opinion of Judge Alvarez (*ibid.*, p. 71).

60 This interpretation of Article 4(1) was given by the ICJ in the *Admission* case (above, fn. 5, p. 62) and was accepted by the General Assembly (see above, fn. 6).

61 Above, fn. 18.

62 Above, fn. 49.

63 *Ibid.*, p. 122.

64 UN Charter, preamble.

65 Above, fn. 5.

66 As we argued earlier, in the act of admission of a state to UN membership the legal personalities of both the UN and the applicant state are involved.

67 Above, fn. 64.

68 Above, fn. 20.

69 The question for which an advisory opinion of the Court was requested by the General Assembly had the form: '[i]s a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to

pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article?’ (See GA Res. 113(II), 14 November 1947).

70 Above, fn. 6.

71 Ibid.

72 Above, fn. 1. The formulation of part (b) of GA Res. 47/225 (1993) is identical to the formulation given in the recommendation of Security Council resolution SC Res. 817 (1993). The SC resolution, however, somewhat expands on the character of the difference and on its settlement by negotiations (above, fn. 45).

73 Above, fn. 2, preamble.

74 Such a determination was given, for instance, by the IMCO Assembly when accepting and implementing the Court’s advisory opinion (above, fn. 21).

75 Above, fn. 9, p. 120.

76 Above, fn. 5.