# ASPECTS ON THE INTERNATIONAL LEGAL PERSONALITY OF INTERNATIONAL ORGANIZATIONS

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**Abstract**

*An international organization is an association of states, holder of rights and duties which it acquires by the will of the founding states and which acts as an entity which is distinct and independent from the states that form it. The constituent instrument of the organization proclaims the establishment of such, as well as its character of being a subject of international law, but at the same time it delimitates the domain in which the international legal personality can manifest and also the content of its capacity.*

***Keywords:*** *Subjects of international law, international organization, legal personality in municipal law, international legal personality, Viena Convention.*

## 1. Introductory Considerations

An international organization represents a form of harmonization of efforts of certain states targeted in the direction of an international collaboration, for the achievement of which the said states have created a legal-organizational (institutional) framework - structures with permanent status.

The contemporary notion of international organization features a relatively recent origin. A precise definition of the international organization has yet to be established, especially one that is unanimously accepted.

In the definition he proposed, El-Erian (special *rapporteur* with the U.N. International Law Commission) appreciated the international organization as a legal entity created by states or international organizations with a certain purpose and which possesses a will that is expressed through its own permanent structures.

In the Comment to Vienna Convention in 1975 regarding the representation of states in their relations with international organizations with universal character, it is shown that, with regard to the international organization, was considered"*an association of states constituted through a treaty, having constituent instruments and its own structures, as well as a legal personality which is distinct from that of the member states that form it"*.

A definition of the concept of international organization is also to be found in the Vienna Convention of 1969, regarding the treaties' law, which, in article 1, paragraph 1, letter "i" stipulates that "*by the expression international organization*" it is understood "*an inter-government organization*".

In the same terms is defined the international organization in art. 2, paragraph 1, letter "i" of the Vienna Convention of 1986, regarding the law of treaties concluded between states and international organizations or between international organizations.

It is generally acknowledged that international organizations are secondary subjects of international law. The international legal order has been in place before the appearance thereof and, in theory, it can exist without it.

International organizations are defined by several elements, as follows: they have an inter-state character, they are created by states by means of international treaties, on a voluntary basis, they

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have permanent structures, they have autonomous will, they have their own competencies and pursue to achieve a cooperation between states in order to promote common interests[1].

International organizations possess certain features that allow us to distinguish them both from states and from other institutions with international status, namely: they are created by means of international treaties, they feature a functional competency, in virtue of this competency, they adopt acts that are directly attributed to them, independent from the member states, their activity is regulated to a certain extent directly by the international law[2].

At the origin of any international organization lies a conventional act, negotiated and concluded by the subjects of international law creating it.

The willful agreement for the creation of an international organization is most often expressed in a written treaty which determines the objectives and purposes of the organization, the competencies that it has in order to achieve these objectives and purposes and the structure of the organization.

Characterizing these constitutive treaties in a relatively recent advisory opinion, the International Court of Justice stated that "*instruments constituting international organizations are, furthermore, treaties of a special kind; their object is to create new subjects of law, endowed with a certain autonomy, to which the parties entrust the task of achieving common objectives"*.[3]

Treaties that represent the constituent instruments of international organizations regularly have sovereign states as parties. However, depending on the objective of the said treaties, international organizations too can become parties thereto.

International organizations receive, through the treaties through which they are created, a specific competence in various fields of activity, in order to exert determined functions. International law practice and doctrine have established the concept of functional competency of international organizations.

A series of acts adopted thereby binds them as organizations, can be attributed to them as such, independent from the member states. They have at their disposal structures that, in view of exerting their attributed competencies, adopt such acts which cannot be attributed to the member states.

The activities of international organizations are directly regulated by the international law, to the extent to which they engage in relations with other subjects of international law. This ensues directly or implicitly from their constitutive treaties.

By all means, international organizations also have their own internal order which regulates the operation of their various structures, their respective competencies, including those of the structures that bind the organization, the internal dependencies, procedures, the rights and duties of the officials thereof. The respective provisions are included in the treaty as well as in other norms, adopted based on the treaty.

## 2. The Legal Personality of International Organizations

### 2.1 The Legal Personality of Municipal Law of International Organizations

International organizations have their own legal personality, both with regard to the municipal legal order (in the state on the territory of which the organization is headquartered and carries on its activity), and with regard to the international legal order.

Public (inter-government) international organizations have a civil legal capacity and are therefore endowed with legal personality of municipal law.

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[1] **Ion Diaconu** ,*Manual de drept internațional public, (*"Lumina Lex" Publishing House, Bucharest, 2007), p.147,

[2] **Andrei Popescu, Ion Diaconu** , *Organizații europene și euroatlantice* **, (***"*Universul Juridic" Publishing House, Bucharest, 2009), p.19-23,

[3] Report of the ICJ, 1996, paragraph 19,

The recognition of the legal personality of municipal law of international organizations is usually established in their constituent instruments, so by means of explicit provisions.[4]

Headquarters agreements come to develop the provisions included in the constituent instruments. The act, which is opposable to the states which are parties to the treaties, whereby is established the acknowledgment of the legal personality of an international organization by the said states takes place in virtue of this act. The rule is formulated as follows: *"The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes (art. 104 of the Charter of the U.N.; art. XII of the U.N.E.S.C.O. Constitution; art. 4 of the North-Atlantic Treaty; art. 39 of the I.L.O. Constitution, etc.)".*[5]

In the constituent instruments of most international organizations, it is stipulated that the organization shall have the legal capacity as may be necessary for the exercise of its functions or, even more specific, that it shall have the legal capacity and the capacity to contract, acquire and have at its disposal movable and immovable properties and to make use of legal procedures.[6]

With regard to international organizations with legal personality of municipal law it is said that in each national legal system they must benefit from a treatment at least equal to that of foreign legal person.

The holding of a legal personality of municipal law by international organizations is not equivalent to the assimilation thereof to subjects of municipal law in these states, because international organizations have certain privileges and immunities which derogate from the common law.[7]

**2.2 The legal personality of international law of international organizations**

The notion of *"international legal personality"* is in close relation with that of *"subject of international law"*, these notions being often defined one through the other. For the identification of a subject of international law it is required to ascertain whether such subject possesses legal personality in the international legal order, in other words, whether it has the legal capacity to act internationally.

The analysis of the concept of subject of international law was made accurately by the International Court of Justice (ICJ) which, in its Advisory opinion of April 11th 1949 issued at the request of the U.N. General Assembly in the case *"Reparations for injuries suffered in the Service of the United Nations"* shows that U.N. is a subject of international law, which means that it *"capable of possessing international rights and duties and that it has the capacity to maintain its rights by bringing international claims"*.

In the same advisory opinion, the ICJ shows that U.N. enjoys functions and rights *"which can only be explained based on it possessing to a greater extent the international legal personality and the capacity to act internationally"*, and as a consequence *"The Court reached the conclusion that the organization is an international person [...] which means that it is capable of possessing international rights and duties"*.[8] Although the advisory opinion of the ICJ only refers to the United Nations, for the identity of reasons, it may also be applicable in the case of all the other international organizations which through their constituent instruments obtain rights and assume duties within the international law order.

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[4] Ion M.Anghel *„Subiectele de drept internațional, (*"Lumina Lex", Publishing House, Bucharest, 2002), p.361

[5] Dan Vătăman, *Organizații europene şi euroatlantice,(* "C.H.Beck" Publishing House, Bucharest, 2009), p.14

[6] Ion M.Anghel, *idem*, p.362

[7] Dan Vătăman, *idem*, p.15

[8] For details refer to "Reparation for Injuries Suffered in the Service of the United Nations. Advisory Opinion", in ICJ Reports, 1949, p.179

Until year 1945 there was a live controversy on whether international organizations could be deemed to have international legal personality and whether they were subjects of international law.

Nowadays, however, it is generally accepted that all public international organizations have a certain international legal personality, limited, of course, to the domains in which they have the competency to act and in practice almost all international organizations make acts governed by the international law. Despite all that, there are few constitutive texts which explicitly establish the legal personality of international organizations.[9]

The only multilateral regulations in which the international legal personality is *expressis verbis* recognized are the provisions of art. 10 of **The International Fund for Agriculture Development** ("The Fund shall possess international legal personality") and art. 18 of the **Convention on the Settlement of Investment Disputes between States and Nationals of Other States** (Washington, 1965), where it is stipulated that the Center shall enjoy "full international legal personality". The **Treaty of Rome** by which was instituted the **European Economic Community** also explicitly states that the respective organizations possess international legal personality (art. 250; idem, art. 6 of E.C.S.C.). The acknowledgment of the international legal personality is explained in the case of E.C.S.C., E.E.C and EURATOM (The community possesses legal personality - art. 210 of the C.E.E.)

Lately, constituent instruments have been increasingly explicit (the **U.N. Convention on the Law of the Sea** (1982) - art. 176; W.T.O., art. VIII); the **Rome Statute of the International Criminal Court** ("*The Court shall have international legal personality*"); in the **Treaty of Lisbon** it is stated that the European Union possesses legal personality (art. 47).

It must be said that not any international organization has the quality of being a subject of international law and that the simple establishment of an international organization is not equivalent obligatorily with the appearance of a new subject of international law. In some cases, states establish an international organization on which they confer the quality of subject of international law - at least implicitly. In other cases, states can only confer on it attributions and competencies, but not the quality of subject of international law.[10]

The international legal personality of different international organizations is not identical, but it is different not only depending on the quality of the subject (state or international organization), but also on the character of the competencies established through the constituent instruments and it varies from one organization to another or, at the least, from one category of organizations to another. Being derivative subjects of international law, they cannot have a personality identical to that of states and in any case, their capacity is limited to what indicates the purposes and functions of the respective organization; in other words, the coverage of the personality varies from one organization to the next. [11]

The concept of international legal personality appears to be firmly established, but infinitely variable, and the ultimate criterion of control is constituted by the provisions in the constituent instruments of each organization.

The international legal personality of an international organization is essential for the proper operation of such. The constituent instruments of several international organizations establish such organizations with rights and duties that confirm that the said act at least confers on it a limited degree of international personality.

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[9] Ion M.Anghel, *Dreptul diplomatic şi dreptul consular, (*„Universul Juridic" Publishing House, Bucharest, 2011), p.394

[10] Ion M.Anghel, *Subiectele de drept internațional,(* "Lumina Lex" Publishing House, Bucharest, 2002), p.366

[11] Ion M.Anghel , *Dreptul diplomatic şi dreptul consular, (*„Universul Juridic" Publishing House, Bucharest, 2011), p.397

The international legal personality of international organizations is characterized by two fundamental elements: - the existence of attributes - the legal rights and duties the organization is mainly entitled to in its relation with the member states; - the existence of its own structures within the organization by means of which it carries on its official activity as a subject of international law.[12]

**2.2.1 Forms of manifestation of the international legal personality of international organizations**

International organizations have a capacity limited to what constitutes their personality. They have the right to conclude treaties, the right of legation (active and passive), the right to bring international claims, the right to recognize other subjects of international law, financial autonomy and the capacity to have their own budget at their disposal.

**A) The capacity to conclude treaties**

International organizations have the capacity to conclude treaties with states, with each other and with other subjects of international law.

In the Vienna Convention on the law of treaties between states and international organizations or between international organizations (1986), it is stated that: *"The capacity of an international organization to conclude treaties is governed by the rules of that organization"* (art. 6), while the expression *"rules of the organization"* is defined as *"in particular the constituent instruments, decisions and resolutions adopted in accordance with them and the established practice of the organization"* (art. 2.1, letter j).

The treaties concluded by international organizations generally refer to their administrative operation and to the activity they can carry on, either on the territory of the states, or in the relations between them, in order to attain their purposes and objectives. This category includes headquarters agreements, agreements regarding the privileges and immunities the organization and its officials enjoy, as well as the agreements concluded with other organizations regarding the cooperation between them or the coordination of their respective activities.[13]

With regard to the headquarters agreements, it should be stated that it is considered not only the agreement with the state in which the main headquarters is located, but also the agreements with the states on the territories of which are established secondary headquarters or headquarters of structures belonging to the respective organizations. This category includes the agreements regarding regional headquarters, headquarters of offices, of administrative or information centers, or even of legations found on territories of certain states for temporary missions.

International organizations also conclude other types of agreements, more directly related to the attainment of their objectives and purposes, namely technical assistance agreements regarding the attainment of economical and social development projects, of certain public works, of feasibility studies regarding the evaluation of natural resources, granting of loans, organizing conferences, assemblies and others, depending on the specificity and objectives of each organization. The Charter of the U.N. explicitly stipulates that member states can make available to it armed forces, assistance and facilities, based on special agreements, in order to contribute to maintaining international peace and security (such agreements were concluded in connection with the peace maintaining operations in Cyprus and Congo).

The conventions concluded by international organizations are subjected to the same rules as the conventions concluded by states. This clearly ensues from the fact that the text of the Convention adopted in 1986 on the law of treaties concluded between states and international

[12] **Ibidem,** p.398
[13] **Ion Diaconu** – *idem*, p 150

organizations or between international organizations is almost identical to that of the 1969 Vienna Convention on the Law of Treaties.[14]

**B) The capacity to establish diplomatic relationships (the right of legation)**

International organizations possess what is traditionally referred to as "right of legation". They receive and send diplomatic representatives from and to other subjects of international law. Thus, member states usually send permanent missions to the main organizations they are part of.

Although there are many similarities between embassies to states and permanent missions to international organizations, one fundamental difference requires emphasizing. If the embassy represents a state and acts on its behalf in relation with another state, the permanent mission ensures not only this representation within the respective international organization, but it also participates in fulfilling its functions. Thus, the diplomats of permanent missions represent, together with delegates in the country of origin, their state within structures of the organization which adopt decisions and act on behalf of the organization.

Even certain states which are not members are represented by permanent missions within organizations (Switzerland within the U.N., New York, until year 2002 when it became a member), and numerous states are represented by separate permanent missions within the European Union or within NATO.

The representation of states in their relations with international organizations of a universal character is regulated by the 1975 Vienna Convention bearing the same title.

In turn, international organizations send representatives within other international organizations. Most specialized institutions are represented by permanent offices within the U.N., in New York, in order to attend the activities of the U.N. and, if needed, to coordinate common schedules of activity. The U.N., the International Labor Organization and the European Council are represented at Brussels within the European Union.[15]

The U.N. and specialized institutions also have representatives in numerous states. The United Nations Development Program, a structure of the U.N., disposes of more than 100 representatives in various countries, some providing representation in several states. In order to coordinate various development and assistance programs, performed by several structures of the U.N. and by specialized institutions, the U.N. General Assembly decided in 1997 to create the position of resident coordinator.

According to the Charter of the U.N., the representatives of U.N. member states and the officials of the organization enjoy the privileges and immunities as are necessary for the independent exercise of their functions in connection with the organization. The organization itself enjoys on the territory of the member states the privileges and diplomatic immunities as are necessary for the fulfillment of its purposes (art. 105).

**C) The capacity to bring international claims**

The right to bring international claims for damages suffered by the organization, as a distinct entity, or by its agents, is not explicitly provided in the Charter of the U.N. or the constituent instruments of other organizations. However, in order to fulfill its functions and to protect its agents (who can suffer damages in the exercise of their attributions), international organizations must benefit from the possibility to regulate their differences which may ensue from their activity and which could make them opposable to states or to other international organizations.[16]

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[14] **Andrei Popescu, Ion Diaconu** – *idem*, p.32-33

[15] **Ibidem**, p.34

[16] **Raluca Miga-Beşteliu,** *Organizaţii internaţionale interguvernamentale, (*"C.H.Beck" Publishing House, Bucharest, 2006), p.45-46

These objective determinations caused the International Court of Justice to show in its advisory opinion related to the case regarding the Reparation for Injuries Suffered in the Service of the United Nations, with reference to the issue of determining whether the U.N. could bring a claim in international law: *"the competence to bring an international claim is... the capacity to resort to the customary methods recognized by international law for the establishment, the presentation and the settlement of claims. Among these methods may be mentioned protest, request for an enquiry, negotiation and request for submission to an arbitral tribunal or to the Court"*. On the same occasion, the ICJ recognized the right of the U.N. to bring international claims regarding the suffered damages, even against states which were not members, also stating that the U.N. can bring claims for the damages incurred to its agents.

A dispute between the international organization and a state, an international organization or a private party on the one side, regarding the coverage of the competencies, the modification of a decision made by such and so on, could not be settled except using the ways and modalities provided in its constituent instruments.[17]

Thus, in the case of the U.N., the 1946 Convention on the privileges and immunities of the United Nations (art.VIII) stipulates that for dispute settlement, the Organization shall have to establish appropriate settlement methods. With regard to any appeal regarding the interpretation or application of the Convention, such is to be submitted to the ICJ. If a dispute arises between the U.N. and a member of the organization, there shall be a request, according to art. 96 of the Charter and art. 65 of the Statute of the Court, for an advisory opinion on any legal question. The Charter of the U.N. stipulates that the General Assembly or the Security Council may request an advisory opinion from ICJ. Similar provisions are also to be found in the case of the specialized institutions of the U.N., and other international organizations also drew inspiration from these models, to a greater or lesser extent.

**D) The right to recognize other subjects of international law**

The right to recognize new subjects of international law constitutes, basically, a prerogative of states. However, international organizations too can recognize new subjects of international law, for instance by admitting new states as members. In practice, the admission of a state as a member of an inter-government organization is much more important than the recognition by individual states, as it operates as a decision of the bodies formed by the representatives of those states. States would not vote for the admission of a member they are not willing to recognize. At least for most of them, the admission in the organization also means the recognition as subject of international law. Certainly, for the organization admission also means recognition.[18]

**E) Other aspects regarding the legal personality of international law of international organizations**

In some cases, international organizations constituted, on their own behalf, armed forces and undertook peace maintaining operations. Thus, armed forces bearing the flag of the U.N. participated in military operations in Egypt (1956), in Congo and in Cyprus, and more recently in Somalia and Bosnia-Herzegovina. In some cases, the U.N. concluded agreements with the countries involved in the conflict (with Egypt in 1957, with Congo in 1961, with Cyprus in 1964) and adopted regulations for the respective armed forces. These acted as a body of the United Nations, under the authority of the organization which assumed the duties arising from this situation. [19]

In many cases, international organizations are depositories of international treaties, fulfilling attributions specific to a depository. According to the Charter of the U.N., international

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[17] **Ion M.Anghel**, *Subiectele de drept international, (*"Lumina Lex" Publishing House, Bucharest, 2002), p.381
[18] **Ion Diaconu** – *idem*, p.152
[19] **Andrei Popescu, Ion Diaconu** – *idem*, p.35;

treaties and agreements concluded with member states must be registered with the Secretariat of the U.N. and are to be published by such (art. 102).

A special case is represented by organizations that tend to achieve the economical, even political integration of member states, especially with regard to the **European Union**, which currently comes in succession after the three communities created in the Western Europe after World War II - the Coal and Steel Community, the European Economic Community and EURATOM.

By the **Treaty of Lisbon** for amending the Treaty on the European Union and the Treaty Establishing the European Community (signed on December 13th 2007), was instituted the European Union which is based on the T.E.U. (amended) and the Treaty on the Functioning of the European Union. This treaty signals a new stage in the process of creating an increasingly profound Union, a lead forward, indispensable and unavoidable, bearing a political significance.

According to the **Treaty of Lisbon**, disposing of an adequate institutional structure - and the member states, by the transfer of some of their attributes of sovereignty, conferring competencies on it (based on the principle of attribution), the European Union has **legal personality** (art. 47) By this short provision, it is stated comprehensively and in a non-differentiated manner that the E.U. has a **general legal personality** in the international, community and municipal law order.

The legal personality of the E.U. is one of unique complexity, it is heterogeneous (a mixture of stability and international structures, with a community, above-state segment, for governing and a inter-government segment for the policies of cooperation).[20]

The **treaty of Lisbon** brings important changes with regard to the legal and institutional standing of the U.E., as well as with regard to the mode of functioning thereof. Becoming for the first time a subject of international law, but not being a legal-political entity, which is a state, but at the same time more than an international (inter-government) organization and impossible to include in any of the existing patterns, the E.U. appears as a *sui generis* institution, a player of a new and atypical kind on the contemporary international stage.

Thus, the **European Union** enters the category of international organizations, having the typology thereof; an association of states, done with a certain purpose, constituted as an entity which is distinct and independent from the states that form it - with its own legal order, established based on a multilateral international treaty (the institutive treaty) -, disposing of its own bodies ordered following a certain organization and functioning structure and being conferred legal personality, the E.U. does not constitute, however, an international organization in the classic sense of the concept (inter-government), but it is a supranational one, with substantial supranational attributes that change its essence of association of states into a union of states that share a part of their sovereignty - by transferring sovereignty attributes from states to the E.U., all to way to complete fusion (pursuing their integration).[21]

The **European Union** is becoming a full and reckoned player of the international scene. It has at the basis of its legal capacity the attributes of a subjects of international law: capacity of representation in view of establishing and maintaining relations with the other subjects of international law; capacity to participate in international conferences; a certain capacity to conclude treaties on its own behalf, as well as on the behalf of its member states; capacity to stand trial; capacity to bind itself to be liable according to the international law; the capacity to enjoy privileges and immunities.

In the **Treaty of Lisbon** there is a special set of regulations by which is considered the external side of its legal personality, pertaining to its legal capacity as a participant to the international life, meaning its external actions. Thus, the E.U. is developing a common foreign policy and security policy, it concludes agreements with one or more international organizations, it

[20] **Ion M.Anghel** – *Dreptul diplomatic si dreptul consular, (*"Universul Juridic" Publishing House, Bucharest, 2011), p.438

[21] **Ibidem,** p.438-439

concludes treaties on behalf of the member states, it establishes any form of cooperation useful within the U.N. and within its specialized institutions with the European Council, it develops privileged relations with neighboring countries, the delegations of the Union in third party countries or in international organizations ensures its representation and others. Moreover, the European Union concludes those legal acts of international law that are adequate for the attainment of its objectives and for its functioning, it earns rights and assumes duties, it has the capacity to make claims and ask for damages. The duties assumed by the E.U. bind both itself and its member states.[22]

In the **Treaty** (art. 6) it is provided that *"The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg on 12 December 2007, which shall have the same legal value as the treaties"* and that *"The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms".*

In accordance with art. 343 (former art. 291 T.C.) of the Treaty on the functioning of the European Union, the **Union** enjoys on the territories of its member states the privileges and immunities as are necessary for the fulfillment of its mission, in the conditions defined by the 1965 Treaty on the privileges and immunities of the European Community. This provision of principle is transposed and developed in the Protocol (no. 7) on the privileges and immunities of the European Community (annex to the Treaty on the European Union, pursuant to the amendments made by the **Treaty of Lisbon**). Subsequently, the buildings of the European Union shall be inviolable, and shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorization of the Court of Justice. The archives of the Union shall be inviolable and the official correspondence and other official communications shall not be subject to censorship. The Union, its archives, revenues and other property shall be exempt from all direct taxes.

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each member state the treatment accorded by that state to diplomatic missions.

**Conclusions:**

International organizations, subjects of international law, with functional legal capacity, remain instruments of inter-state cooperation, the activity and even existence of which depend constantly on the cooperation between states and consequently on their will.

The requirements of international cooperation and interdependence determined the increasing growth of the competencies of organizations, and so the extension of their capacity as subjects of international law to new domains and activities, especially with regard to the conclusion of treaties. They represent a path to conciliate the sovereignty of states with the requirements of a permanent and institutionalized cooperation.

Currently, there is a constant tendency of adaptation of international organizations to the new requirements of international relations, to the changes that occur in the world. These reflected into preoccupation for modifying the statutes, as well as the organization and functioning of international organizations.

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[22] **Ibidem**, p.439

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