OPINION

From Professor Darina Peeva Zinovieva, Ph.D, Faculty of Law, Plovdiv University "P. Hilendarski", Member of the Scientific Jury in competition for the occupation of the academic position "Associate Professor" of Plovdiv University "P.Hilendarski", Higher Education Area 3. Social, business and legal sciences, professional field 3.6. Law /International Law and International Relations/.

1. According to Order No R-33-3695/ 10. 07. 2019 of the Rector of the Plovdiv University "P.Hilendarski" I was appointed as a member of the Scientific Jury in a competition for the occupation of the academic position "Associate Professor" of the Plovdiv University "P.Hilendarski", published in the State Gazette No. 31/ 12. 04. 2019 for the needs of the Faculty of Law. After coming into force of Decision №11149 of 4th November 2021 issued on a.c. № 6080/2021 of the Supreme Administrative Court, there have been presented documents to the Scientific Jury by the two admitted candidates - Gergana Gozanska, Ph.D and Stoyan Memtsov, PhD for the purposes of its` new decision.

2. The candidate Gergana Gozanska presents as habilitation publication – the monograph "Bulgaria and the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice of the United Nations", 2019, P. Hilendarski University Publishing House, ISBN 978-619-202-457-4 . She also provides a list of publications, divided into publications related to the habilitation monograph and others. The requirements of art. 53, para 1 of the Regulation for Implementing ADASRB regarding the acquired scientific degree "Ph.D." and the necessary pedagogical activity are fulfilled.

In view of the candidate's interest in international law, it is impressive the activity indicated in her CV as a lawyer-assistant at the Department of Children and Families in Naples, Florida, USA.

The habilitation monograph consists of an introduction, four chapters, a conclusion and a bibliography.

The systematic of the monograph is very good - the first two chapters focus on the acts of the Permanent Court of International Justice /PCIJ/ and the next two chapters - on the UN International Court of Justice /UNICJ/. The unifying element is

that the acts are concern cases in which Bulgaria is a party. Systematic of acts of the two courts is appreciated, too. They are also separated in chapters of advisory opinions and decisions. The individual opinions of the judges have been also examined.

In the introduction, the author correctly points out the actuality of the research, which she motivates with the lack of a single in-depth study and availability of only individual publications. It is also motivated by the usefulness of such a summary analysis due to the "dynamics of international relations" and the inclusion of a jurisdictional clause in international treaties in the event of a dispute between States before the International Court
/ p.9/.

The research methods are indicated by the author also in the Introduction and they are appropriate for the purpose of the study / p.11/. Once again, she makes a brief explanation of the main object of each chapter. Also, she argues for the purpose of examining the specific decisions of the PCIJ referred to and to the United Nations International Court of Justice, and for what reason acts in other cases are included. She has pointed it as examples.

In Chapter One G. Gozanska makes a very good analysis of the advisory opinions delivered by the PCIJ in cases involving Bulgaria. For clarity purposes, a brief historical overview of establishment of the PCIJ is made. G. Gozanska has also achieved clarity by briefly presenting the procedure for adopting the two acts of the PCIJ- decisions and advisory opinions (from referral to their adoption).

Detailed analysis of the first advisory opinion of the PCIJ of July 31, 1930, is made. She writes a useful conclusion on the significance of the act, focusing on the formulation of the principle of primacy of international law over national law and the formation of the concept of "minority", related to the interpretation of the term "municipality". / pp. 42-43 /. The analysis of the proceedings rules about the advisory opinion in the dispute between Bulgaria and Greece focuses on the interpretation of specific disputable issues, related to the implementation of the 1919th year Convention. The conclusions focused on the role of the interpretative activity of the PCIJ and its subsequent practical application both in jurisprudence and in texts of international treaties, are useful.

With the same good skill, the author also analyzes the next advisory opinion of the PCIJ of 8th March 1932, which interprets issues from the implementation of the Mollov-Kafandaris Agreement. In that analysis, she skillfully focuses primarily on the specifics of procedural problems involved in referral due to a dispute between the parties. A positive assessment is worth the conclusion on the distinction between judicial and advisory functions. /p.52/.

The analysis of the problem, clarifies the issue of the existence or absence of a dispute between the parties within the meaning of the Agreement. In this regard, the differences between the presence and lack of jurisdiction of the court and the object of matter of the court's interpretative activity should also be assessed positively.

In Chapter Two, the author analyzes the decisions made by the PCIJ.

My assessment of the analysis of Decision No 3 of 1924 and the Decision No 4 of 1925 is positive. Positive assessment is made on the author's conclusions on procedural questions relating to the admissibility of the claims. Conclusions on a number of substantive matters and their interpretation by the court relating to the benefits of Bulgarian or Greek persons are useful.

G. Gozanska has made a thorough analysis of the Belgium v. Bulgaria case. I seem that the conclusion regarding the position of the court in the application of the two grounds in the case of Belgium v. Bulgaria is a scientific enrichment.

I consider the author's contribution to the analysis of the inividual opinions and the differences between the separate opinions and the opposite opinions / p.76 ff./.

Chapter Three contents analysis of the Advisory Opinions of the UN International Court of Justice in cases in which Bulgaria is a Party.

I positively appreciate the author's approach to compare the similarities and differences in the legal process of the two jurisdictions - the Permanent Court of International Justice and the International Court of Justice of the UN. For example, G. Gozanska has discussed the similarities in the rules of procedure of the two jurisdictions (number of judges, duration of a mandate, etc.). It provides statistics on differences in the activities of the two jurisdictions, such as contesting of jurisdiction. It then analyzes in detail the very contestation of this competence / e.g. types of

reserves and their procedural realization/.The analysis of individual opinions given by judges and their particularities is of high evaluation.

At the end of section 3.1 of this monograph work, the author summarizes the existence of "continuity" between the two courts. Of scientific interest are the specific differences in the legal framework of the advisory opinions.

It is a good approach for the author to examine in detail the advisory opinions of the International Court of Justice of the United Nations in cases to which Bulgaria is a party. Such an analysis has been made by the court's advisory opinion on the interpretation of the peace treaties with Bulgaria, Hungary and Romania. Important for the study are the reasons sought which have led to a request for interpretation and analysis of the provisions of the Peace Treaty with Bulgaria of 1947, and which are subject to an interpretation by the court.

The analysis of the court's arguments regarding the objections to give an advisory opinion from the court or the court's principled refusal to give advisory opinions should be evaluated positively. It is a good approach of the author to analyze the procedural issues related to the advisory opinions in this part of monograph. / eg. on the third member of the Commission/.

In Chapter Four G. Gozanska, with this good skill and depth, analyzes the decisions and orders, made by the International Court of Justice of the United Nations in cases involving Bulgaria. At the beginning of the chapter, she points as a matter of analysis the decision made on the aircraft incident of 1955, as well as the orders of the same court. The author achieves a good balance between the presentation of the facts and circumstances, the positions of the states, the procedural problems and the substantive conclusions in the enacted acts.

Of practical and doctrinal importance are the author's conclusions regarding the use of case decisions in subsequent cases of the International Court of Justice of the United Nations.

At the end of this chapter, G. Gozanska questions and answers whether Bulgaria's legal defense in the cases analyzed is of high legal quality. The author's categorically positive opinion is important in view of the evaluation of the doctrine and

practice in our country in the field of public international law. This idea is also appreciated.

My **critical remarks** relate to the technical formulation of the text, as cases are cited occasionally that underpin arguments of a particular thesis of the author, and instead of being placed in the main text, they are presented as a footnote. / see p.83 /. This is an author's discretion , but in my opinion the monograph would be easier to assimilate if the editorial approach were to change.

It may also be recomended to the author to make a proposal to improve the interpretive activity of the applicable national public law by looking for a useful element from the international jurisdictions analyzed.

In summary, Gergana Gozanska presented a monograph, which has characteristics of an up-to-date research, which enriches a science. The author has demonstrated analytical skills as well as ability to summarize voluminous material from which to draw the necessary conclusions and arguments for them. The bibliography published in the monograph is of impressive volume and variety. Also important is the ability to have good systematic skills, which she has achieved.

Other publications by the author besides the topic of the monograph show that she is able to find useful issues for current doctrine and practice. Such is the example of her scientific interest in the application of ”soft law” as a source in international law and jurisprudence.

The author has presented a record according to which his publications have been cited by other authors. The author`s research work is of his own scientific contribution. The data from the scientific-metric indicators are considered.

My assessment of the paper on the grounds of art. 26 of ADASRB is entirely positive.

3. The candidate Stoyan Memtsov presents as habilitation publication the monograph “Armed humanitarian intervention: International legal aspects”, as well as 11 other research articles. The requirements of art. 53, para 1 of the Regulation for

Implementing ADASRB regarding the acquired scientific degree “Ph.D” and the necessary pedagogical activity are fulfilled.

All the papers are written after obtaining an educational and scientific Ph.D. degree. In addition, it must be pointed out that the candidate has also submitted a monograph based on his Ph. D. degree thesis which according to the scientific-metric system is awarded with more indicator points.

The structure of the monograph is well chosen – it consists of an introduction, two parts with chapters in each of them, and a conclusion with bibliography included. In the introduction the author outlines the main scientific aims of his research and makes an overview of the paper.

In Chapter One, Part 1 St. Memtsov, PhD analyses the historic background to the creation and ratification of the United Nations Charter /further in the text “the UN Charter”/, I asses in a positive way.

There are presented various doctrines in their historical aspect as well as the criteria for initiating and conducting a state of war according to them – e.g. the doctrine of the canonical law /p.18/, the characteristics of the Medieval “just war” theory /p.22/ and so forth. As this historical analysis goes further Memtsov examines in detail the specifics of the legal concept of “state of war” /p.26/. The author continues his analysis with a review of gradually established forms of use of force and coercion such as – reprisals, blockades of peace, demonstrations of naval power” which principially have not been recognized as acts creating state of war /p.33/. This retrospective helps the author to distinguish the period until which there have not been established any regulations of war by the international public law and there to analyse the first codification efforts throughout the plenary sessions of the so-called Hague conferences /p. 35 ff./. I evaluate positively and find as of scientific merit that throughout the course of exploration of the historical development of the “Just War” doctrines the author has succeeded in highlighting the new elements which serve as indicators of the new concepts. In this way S.Memtsov proceeds his analysis exploring the attempts at law codification of ius ad bellum during the Interwar period and its milestone – the idea of the League of Nations.

Worthy of positive assessment is the in-depth analysis of the legal framework of the new order after the Second world war codified in the UN Charter ratified by a

majority of the signatories on 24th October 1945. S. Memtsov examines in detail the ambiguous interpretation of the provisions of art.2, para. 4 of the Charter /p. 54 ff./.

Of particular interest in this scientific paper is the statement about the so-called "economic force". The author elaborates on the essence of "threat action or use of force" proposing different doctrinal views and analyzing decisions from the legal practice of the International Court of Justice (ICJ). In a systematic manner St. Memtsov makes a summary of the earlier conclusions expressing his view - that "the prevalent practice of the countries stands for an absolute character of the prohibition stipulated in Article 2, para.4 of The UN Charter thus narrowing its` scope down to some particular purposes." /p. 66/.

In the next part of the paper, St. Memtsov explores the exceptions to the prohibition of force under the UN Charter which is an appropriate systematic decision. He continues with analysis of the right of self-defense permitted under Article 51 of the Charter outlining the legal concept of "armed attack", exploring the cases in which it cannot be considered to be valid grounds for self-defense in the sense of the Charter. The author stresses on the subjects of the Charter`s provisions who, when dully authorized, act in accordance with instructions issued by the countries (contracting parties) /p.71 ff./. I find that the broad analysis of the so-called right of the members "to take an action in self-defence" is especially useful in respect of the chosen topic. Furthermore, the author discusses various conditions for the lawful exercise of the right of self-defence, accompanied by examples from the case law /e.g. The Oil Platforms Case of 2003/ p. 74 ff./.

The author`s consideration of the two main principles - Necessity and Proportionality in the field of the right of self-defence in international law is of main significance to the legal doctrine. In this part the author examines relevant case law which refers to these two principles while giving a brief overview of some actions which either lead to completion of the principles or breach them. The examples are predominantly taken from the international legal practice, for instance Nicaragua v. United States of America of 1986, the conflict between Democratic Republic of the Congo (DRC) v. Uganda) of 2006, etc. Of particular interest in this part of the paper is the exploration of Judgments, Advisory Opinions and Orders of the International Court of Justice which the author summarizes and in this respect receives my positive evaluation /p.81 ff./.

The author examines in details the concept of “burden of proof” putting an emphasis on this duty in those cases in which a state claims self-defense.

I would like to highlight as being useful for the legal doctrine the analysis of the functions and powers of the Security Council, more specifically – the right to investigate any given dispute or situation which might lead to an international complication. In this line of thinking the author sums up that only in a very few cases in its history the Security Council has determined the existence of an act of aggression by one State against another while it has determined a breach of the peace only in situations involving the use of armed force. /p.88/.

In a Separate part of the monograph the author analyzes the relevant measures which the UN Security Council can impose on the grounds of Chapter VII of the UN Charter. Those are necessary either to be prevented the international peace or avoided use of armed force, due to an act of aggression.

I admire the idea of the author - to put focus on the correlation between an act of adopting certain measures and the reasons why the Security Council opts for an exact measure. Subsequently, the author discusses a specific measure under Article 41 of the Charter, or the attempt of the Council to develop the so-called “smart” sanctions as he points out a list of such which have already been imposed.

Profound is the analysis made on the legal notion when a State consents to the use of force by another State in its territory. The author has paid attention to some challenges in the context of Administrative and Constitutional Law – like which governmental authority could give a valid consent. It is indisputable that Constitutional regulation must determine and empower an exact administrative body. In a skillful manner the author analyzes the exceptions to the prohibition of use of force in international relations based on both treaty law and customary international law which consists of rules that come from "a general practice accepted as law" /p.96/.

Very interesting is the hypothesis of a peacekeeping intervention in an internal conflict which the author supports with an example – a case in which two domestic groups claim to be official government organizations, each of them requesting an intervening power for its assistance.

In a proper fashion he examines important issues such as – which state government is lawfully authorized to request an intervention and whether a caretaker government is allowed to request such before the regular government comes into powers. The author makes a summary of the conclusions made so far with an

emphasis on the difference between providing military assistance at a governmental request and giving support to an armed opposition, which has been made clear by the International Court of Justice (ICJ) in the case concerning Nicaragua of 1986 /p.101/.

Particularly interesting is the research work on the customary laws of war known as “the rules of war” examined as a source of international humanitarian law prompted by the armed conflict in the territory of the former Yugoslavia. Thus, the author`s arguments shed a light on the legal evaluation /the advantages and disadvantages / of the military operations conducted in the Federal Republic of Yugoslavia. He makes an in-depth analysis on the reasons why armed forces were used without the authorization by the Security Council for humanitarian purposes p.120 and next/.

The author continues the monograph with worthy analysis of the legal concept of “humanitarian intervention” and convincible reasoning on the matter whether it can be considered as an institute of the international positive law. The same refers to the legal conception “humanitarian motifs”.

The explanation of ius cogens, is very well developed - with reference to the interpretation of the Vienna Convention on the law of treaties but also in connection with other sources of international law. Concise and clear is the author`s summary on the appropriate place of the customary law as a source of the international law with respect to the so-called armed humanitarian intervention. In the part of the monograph where the author examines the issue relating to the positive right of armed humanitarian intervention without approval by the Security Council, the exploration of the different doctrinal concepts stands out and I evaluate it positively.

I express my approval of the author`s focused reasoning in the rest of the paper. He points out the particular legal grounds on which “the right of armed humanitarian intervention” is based –in both the UN Charter and customary law. In a like manner the author uses various methods of legal interpretation, holding to the so-called rule that “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty” /p.151/. Subsequently, the author concludes that he does not support the „a contrario interpretation” of Article 2, para.4 of the UN Charter /p. 155 ff./.

The author has carried out very satisfactory exploration of the juxtapositions between clause of a treaty, customary international law and customary rule in connection with a permit of an armed intervention /p. 156 ff./.

Here the author has made a reasoned statement related to resolution of normative conflicts between a treaty and a custom explaining why in case of such “the applicable law is defined by principles either derived from national legal systems or formed within the international legal system.” /p. 156/

In the final part of the monograph St. Memtsov explores the legal notion of customary international rule, and armed humanitarian intervention and their customary law nature. There is an illustration with a few actual legal cases /Bangladesh, Cambodia etc./ which outline the dominant understandings of both international community and empowered public bodies.

The conclusions made by the author are incorporated into the last part of the paper and include proposals de lege ferenda related to the topic. /p. 202 ff./.

My critical remarks on the monograph are in connection with the chosen line of exposition - the opinions and doctrinal conclusions expressed in this scientific publication are mainly by others` authors. I would recommend the author to develop and present more pointed reasoning from which to draw his own inferences about the chosen topics. The scientific paper gives an accurate overview of doctrines and relevant practice which usefulness would be evaluated in the fields of Political Science, but not so in the law. Principially, scientific research has a direct aim – to be investigated a legal problem as a matter of an exploration. The key point is to find out a scientific solution with respect to the historical correlation – it would have been to the benefit of the monograph, had it been done.

In conclusion Stoyan Memtsov, PhD has presented a monograph which has a characteristics of a contemporary research of scientific merits to the doctrine. The author has demonstrated ability to process doctrinal information and to represent it in a systematic way. The bibliography used for the monographic work includes a wide range of publications of both national and international authors. Apart from the presented monograph I find and appreciate the scientific merits of the critical analysis on the statehood criteria law in the bespoken publication.

Among the presented scientific works of Memtsov, I would like to highlight the publication “Traditional statehood criteria”, “Legal thought” law journal, issue № 1, 2018,41-58, ISSN 1310-7348. In this work the author analyzes doctrinal opinions

related to each criterion and at the end he expresses his own view about the application of the criteria perfectly. Particularly concise and clearly reasoned is the “government” criterion and the governance opportunities it suggests.

The author has presented a record according to which his publications have been cited by other authors.

The author`s research work is of his own scientific contribution. The data from the scientific-metric indicators are considered.

My assessment on the grounds of art. 26 of ADASRB is **entirely positive.**

4. FURTHER INFORMATION ABOUT THE TWO CANDIDATES

On the grounds of art. 27, para.1 of ADASRB and taking into consideration that they have equivalent overall scores, it is necessary the indicators stipulated in art.27, para. 4 of ADASRB to be analyzed.

As noted above, G. Gozanska, Ph.D has considerable teaching experience and it is in a few courses. G. Gozanska, Ph.D has been lecturing International Public Law, International Treaty Law, International Diplomatic Law and Consular Law, International Relations, European Union law, Family and Inheritance Law, Intellectual Property Law at the Law Faculty of the Plovdiv University. For the period 2008-2019 she has had 11 years of teaching activity. The total number of study hours, according to the relevant documents, is much higher than that of S.Memtsov.

Stoyan Memtsov, PhD has led training courses in International Private Law– 180 study hours in total in the period 2016-2017. For the academic year 2017-2018 he has been teaching 150 study hours in the same training course, as well as 36 study hours of lecturing in International Treaty Law, which summed up in total makes 2 years of teaching experience. When it comes to the students - professors relationship it must be said that both of the candidates – Gozanska, PhD and Memtsov, PhD have been teaching extracurricular learning courses. Gozanska, PhD also reports participation in an scientific research project, which is an additional argument for her scientific merits. St. Memtsov has presented 1 /one/ publication more which exceeds the quantity of required scientific research works and has also presented a published paper based on his doctoral degree thesis. This is taken into account in my overall evaluation of St.

Memtsov`s scientific-research achievements and reworking recommendations pointed at Section 3 of this opinion.

When it comes to community participation – G. Gozanska, Ph.D is a member of the United Nations Association and member of the Bulgaria Bulgarian Association of Comparative law which must be taken into consideration.

Generally, I find that additional criteria groups- pedagogical and educational competence and scientific research activity are satisfied most completely by the score of G. Gozanska, Ph.D.

5. CONCLUSION

In view of the above said I think that both of the candidates – Gergana Gozanska and Stoyan Memtsov meet the requirements stipulated in art. 24, para.1 of ADSARB and art.53, para.1 of the Regulation for Implementing ADSARB and art. 65 and 66 of the RDASPU, as well as those of Section. 4 of The Additional criteria for awarding academic degrees and occupying faculty positions of the Law Faculty of Plovdiv University.

Taking into consideration the additional indicators for fulfillment of all national requirements, applicable given the positive assessment for both of the candidates expressed in Sections 2, 3 and 4 of the Opinion, on the grounds of art. 27, para. 4 of ADASRB, art. 57a, para. 2 of the Regulation for Implementing ADASRB, and art. 69, para. 2 of the RDASPU, I propose the following ranking of the candidates in the competition procedure:

First place - Gergana Kostadinova Gozanska, PhD;

Second place - Stoyan Pantaleev Memtsov PhD.

Given the above, on the basis of art. 26, para. 3 and art. 27, para. 4 of the ADASRB, art. 57, para. 3 and art. 57a, para. 1 and 2 of the Regulation for Implementing ADASRB and art. 68, para. 3 and art. 69, para. 1 and 2 of the RDASPU and my positive assessment on her achievements in scientific-research and pedagogical activity I recommend that the Faculty Union of the Law Faculty of Plovdiv University propose Gergana Kostadinova Gozanska, PhD to be appointed to the academic position "Associate Professor" of Plovdiv University "P.Hilendarski", Higher Education Area 3.

Social , business and legal sciences, professional field 3.6. Law / International Law and International Relations /.

12.02.2022. Professor Darina Zinovieva, PhD…….