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INTERNATIONAL LEGAL PERSONALITY

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International Legal Personality

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Series Preface

Open a newspaper, listen to the radio or watch television any day of the week and you will read or hear of some matter concerning international law. The range of matters include the extent to which issues of trade and human rights should be linked, concerns about refugees and labour conditions, negotiations of treaties and the settlement of disputes, and decisions by the United Nations Security Council concerning actions to ensure compliance with international law. International legal issues have impact on governments, corporations, organisations and people around the world and the process of globalisation has increased this impact. In the global legal environment, knowledge of international law is an indispensable tool for all scholars, legal practitioners, decision-makers and citizens of the 21st century.

The Library of Essays in International Law is designed to provide the essential elements for the development of this knowledge. Each volume contains essays of central importance in the development of international law in a subject area. The proliferation of legal and other specialist journals, the increase in international materials and the use of the internet has meant that it is increasingly difficult for legal scholars to have access to all the relevant articles on international law and many valuable older articles are now unable to be obtained readily. These problems are addressed by this series, which makes available an extensive range of materials in a manner that is of immeasurable value for both teaching and research at all levels.

Each volume is written by a leading authority in the subject area who selects the articles and provides an informative introduction, which analyses the context of the articles and comments on their significance within the developments in that area. The volumes complement each other to give a clear view of the burgeoning area of international law. It is not an easy task to select, order and place in context essays from the enormous quantity of academic legal writing published in journals – in many languages – throughout the world. This task requires professional scholarly judgment and difficult choices. The editors in this series have done an excellent job, for which I thank and congratulate them. It has been a pleasure working with them.

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Introduction

The Wa people of Thailand, China and Myanmar; Royal Dutch Shell; the African Diamond Producers Association; Mexico City; the *Sequoia Sempervirens* or California Redwoods: which of these, if any, may act in its or their own right on an international legal stage? Literature regarding the possession, recognition or realization of 'personality' in international law bears the mark of the term's classical Latin etymon, *persona*: a mask used by a player in a dramatic role or the part played by a person in life. Writings on international legal personality are broadly concerned with who or what may play a distinct role in international legal life – that is, who or what enjoys the privilege of acting, and being recognized, as a distinct bearer of international legal rights and duties. Why particular entities, groups or agents might aspire to wear the mask of personality, and the implications for the international legal order of their doing so, are among the conundrums with which this literature is concerned.

Personality is not, of course, the sine qua non of entry into international legal relations. As is frequently observed, groups and agents regarded as lacking international legal personality have proven capable of making submissions to international tribunals and of being attributed with criminal responsibility, among other capacities and burdens.[1] Nonetheless, the conferral of personality implies the attribution of autonomous status and wide-ranging entitlements and duties in the international legal order. The assertion or bestowal of international legal personality therefore carries with it powerful legal and political implications, many of which are explored in this volume.

This volume includes essays that probe the significance and workings of international legal personality across various dimensions: historical, theoretical, doctrinal and pragmatic. It presents a series of identities that have most regularly or controversially laid claim to international legal personality. This configuration provides ready points of access to a divergent array of approaches. There are, however, some significant omissions due to constraints of space. For example, it is regrettable that no feminist critique of legal personality in international law is included (see further Charlesworth and Chinkin, 2000) or essays on the topic from the vantage point of Third World approaches to international law (see further Chimni, 2003). Likewise, Marxist critique is limited to Oleg Tiunov's brief summation of Soviet international legal theory in Chapter 3 (see further Feldman, 1985).[2]

Before providing an overview of those essays that are included, this introduction will consider some of the tendencies by which international legal literature on this topic has been marked.

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[1] For discussion of the entitlement of non-governmental organizations to appear before international tribunals, see Lindblom (2005, pp. 218–45). Regarding liability of non-state actors under international criminal law, see Cherif Bassiouni (1999, pp. 243–49 and 274–75).

[2] Critiques of legal personhood have also been extensively developed outside the field of international law; see, for example, Smart (1992); Bottomley (1996); Naffine and Owens (1997); and Lacey (1998).

Context

The logic of aggregation – whereby '[a] Multitude of men, are made One Person' (Hobbes, [1651] 1991) – has long been a topic of jurisprudential focus (see further Bourdieu, 2004). Civil and common lawyers of the late nineteenth and early twentieth century took particular interest in the juridical concept of personality, especially in relation to corporations and associations. Scholars in Germany (Gierke, 1900), England (Maitland, 1911; Geldart, 1911 and 1924; Laski, 1915; Duff, 1938)), the United States (Freund, 1897; Deiser, 1908; Machen, 1910–11; Vinogradoff, 1924; Dewey, 1926), France (Michoud, 1924) and elsewhere devoted countless pages to theorizing the nature of the group or corporate person in law. Participants in these jurisprudential debates often oriented their arguments to a tripartite distinction between conceptions of corporate or group personality as 'fictitious', 'real' or 'concessional' (Maitland, 1900): a distinction rooted in divergent political claims about the proper location of authority (Bouckaert, 1991).

By 1953, however, H.L.A Hart had pronounced controversy over corporations' legal personality 'dead' (Hart, 1953). More recently, Janet McLean has claimed that debates about the nature of legal personality are 'out of fashion' (1999, p. 124). Corporate persons now tend to be thought of pragmatically as a 'nexus of contracts', regardless of their 'reality' (Eisenberg, 1998–99, pp. 820–22). Other legal persons have similarly been emptied of enduring substance. To Richard Tur, the legal person is 'wholly formal ... an empty slot that can be filled by anything that can have rights or duties' (1987, pp. 121–22). Feminist scholars have protested such assertions of vacuity, recalling the devastating historical implications and continuing political salience of the modern idea of legal personhood. Even so, most feminist work broadly accedes to the notion of legal personality as a contingently constructed sociolegal complex (Naffine, 2002, p. 72). Accordingly, contemporary legal scholarship tends to be concerned less with the metaphysics of group existence per se than with the political and economic effects of populating the social landscape with particular types of legal person, and the role that the concept of the person plays in legal decision-making.[3] Scholarly inquiry along the latter lines has proceeded in various modes.[4]

In international legal scholarship, studies of legal personhood initially revolved around theorization of the legal status of the state, vis-à-vis other states, as a compound or composite 'person' (Pufendorf, [1688] 1934; Nijman, 2004, pp. 29–84). By the *fin de siècle*, however, as mechanisms of multilateral diplomacy became increasingly institutionalized, scholarly attention turned to the legal personality of international organizations (Hickey, 1997). With the creation of the European Commission of the Danube (in 1856) and the League of Nations

[3] See, for example, Cotterrell (1992, pp. 123–24):

> The concept of the legal person or legal subject ... is the foundation ... of all legal ideology. It allows legal doctrine to spin intricate webs of interpretation of social relations, since the law defines persons in ways that empower or disable, distinguish and classify individuals for its special regulatory purposes.

[4] See, for example, Webb (1958); Radin (1981–82); Nedelsky (1989); Solum (1991–92); Zahraa (1995); Runciman (1997); Blumenthal (2006–7).

(in 1919–20), questions emerged concerning the scope of these entities' powers and their legal character.[5]

Discussion of these questions reached a crescendo in the International Court of Justice's (ICJ's) 1949 Advisory Opinion, *Reparation for Injuries Suffered in the Service of the United Nations*. In that opinion, the ICJ broached the question of the international legal personality of the United Nations (UN) in the course of deciding whether the UN had capacity to bring an international claim to obtain reparation for injuries suffered by its agents at the hands of a non-Member State. International legal personality was, the ICJ concluded, 'indispensable' to the exercise of the rights and performance of the functions vested in the UN. On that basis, the Member States of the UN were deemed to have brought into being an 'entity possessing objective international personality, and not merely personality recognized by them alone, together with capacity to bring international claims' (ICJ, 1949, p. 185). In the wake of *Reparation*, international lawyers more or less reached agreement concerning the juridical status of major international organizations, even across the Iron Curtain (Osakwe, 1971). Accordingly, by the end of the twentieth century, this was not the subject of great controversy (Amerasinghe, 2005, pp. 66–104). Instead, scholars interested in international bodies' legal personality tended to focus on the legal status of that idiosyncratic hybrid the European Union, as well as its precursors and cousins (Hahn, 1958; Shachor-Landau, 1985; Paasivirta, 1997; Klabbers, 1998).[6]

Debates concerning group personality in international law have also long been concerned with the placement of minority groups in the international legal order. Since minorities became the target of regulatory initiative in the wake of the First World War, international legal scholars have worried about the internal and external dimensions of minority personhood and minorities' relationship to the nation-state (Stone, 1931; Ramcharan, 1987; Capotorti, 1990; Rodley, 1995; Fottrell and Bowring, 1999). Equitable and redistributive concerns have partially underpinned these debates. Limited conceptions of international legal personhood are sometimes identified with practices of exclusion and structures of hierarchy (Barsh, 1994). Commensurately, expanded conceptions of international legal personality often are equated with the extension of symbolic capital, institutional access and other resources to previously disenfranchised or vulnerable parties (Sellers, 2005). Paul Keal has observed, for instance, that 'many individuals and sub-state groups seek international legal personality as a defence against the states in which they are encased' (2003, p. 36). An argument for international legal personality is thus an acutely political claim: a plea for recognition of certain political activities and relations, and possibly for protection against assimilation into an encompassing or overlapping political unit.

A further preoccupation of modern international legal scholarship has been the subjectivity of individuals in international law. From the interwar period onwards, this emerged as an

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[5] The Permanent Court of International Justice (1927) discussed the character of the European Commission of the Danube as an 'international institution' that had 'been treated as forming a necessary unit' in its Advisory Opinion. Early analysis of the status of the League of Nations is exemplified by John Fischer Williams (1929, pp. 477–500). For a further example of writing in the vein, see Williams (1930).

[6] Also worthy of note is a long and ongoing (if relatively marginal) body of writing concerned with the international legal status of *sui generis* entities such as the Holy See and the Order of Malta: see Lissitzyn (1968); Arangio-Ruiz (1996); Acquaviva, (2005, pp. 353–77); Lindblom (2005, pp. 63–67).

important domain of scholarly disagreement. Writers such as Jacques Dumas (1916), James Brown Scott (1930), Hans Kelsen (1952) and Georges Schelle (1953) maintained, with varying degrees of insistence, that international law ought to address and bind individuals directly. These critics opposed, on logical, practical, ethical and/or political grounds, the 'dominant' doctrine that states are the exclusive or primary subjects of international law (Manner, 1952 p. 428). Against this, Cold War era Soviet scholars were among those who argued that individuals did not possess any international legal status apart from the state (Feldman, 1985). Debates surrounding attempts to wrest from states their supposed monopoly on international legal personality for the benefit of individuals have continued ever since, even as individuals have gained greater acceptance into the international legal order (Sohn, 1982–83; Janis, 1984; Menon, 1994; Orakhelashvili, 2001; Ochoa, 2007).[7]

Even as the personhood of individuals has been recognized by authoritative arbiters, questions remain as to which particular competences the individual enjoys as an international legal person. As Oliver Lissitzyn observed (citing D.P. O'Connell), 'the term "personality" is merely a short-hand symbol which denotes that an entity is endowed by international law with *some* legal capacities, but does not tell us what particular capacities it has' (1968, p. 15). All personalities are not made equal in the international legal order. Individuals' limited access to international tribunals exemplifies the variable entitlements attendant upon personhood in the international legal order (Brownlie, 1962).

By the latter third of the twentieth century, discussion surrounding the variable capacities of legal persons and the further expansion of legal personhood could most readily be found in literature regarding indigenous peoples and that concerned with transnational corporations, as well as in the introductory passages of general international law texts. Arguments for the international legal personality of indigenous, colonized and/or insurgent peoples *qua* peoples have been advanced periodically, with reference made to records of treaty-making and other activity on the international plane (Okeke, 1974; Feldman, 1985; Barsh, 1994). Meanwhile, international lawyers, particularly specialists in international human rights law, have debated at length the merits and demerits of elevating transnational corporations to international legal personhood (Vagts, 1970; Rubin, 1971; Charney, 1983; Ratner, 2001).

Literature of recent decades has also probed the possibility of international legal personality being conferred on non-human beings and inanimate life-forms. Influenced in part by the seminal writings of Christopher Stone (1972), international lawyers have considered the prospect of the natural world attaining some form of legal personality – that is, the prospect of animals, plants or nature as a whole being regarded as right-bearing (Taylor, 1997–98). Challenges of comparable magnitude are posed by the prospect of electronic agents performing legally significant functions customarily regarded as the prerogative of human decision-makers (Tamashiro, 1984; Allen and Widdison, 1996; Weitzenboeck, 2001).

The dynamics of scholarship on international legal personality thus reveal a successive clustering of attention around particular persons or would-be persons as candidates for entry or repositioning within the international legal order. Over the course of the long twentieth century, states, international institutions and individuals gave way to minorities, corporations and other non-state, substate or multistate agents as the 'persons' of greatest interest to

[7] On 'the strength of the dogma that individuals could not be subjects of international law', see Spiermann (2007, p. 795).

international lawyers (Klabbers, 2004). International lawyers of this era seem broadly to have accepted the idea of a legal person as a 'unity of a complex of legal obligations and rights' (Kelsen, 1967, p. 173). Yet these contingent unities have nonetheless been vested with will, judgment, even 'feelings' (Jessup, 1947, p. 395). The discipline's apparent sense of the necessary character of legal persons thus exerts powerful normative force. One scholar, for instance, describes as the 'keystone' of personality the requirement for an 'organ [that] express[es] a will of its own detached from that of [its] member[s]' (Rama-Montaldo, 1970, p. 145). International legal personality thus congeals into 'particular and patterned forms', the influence of which overflows the formal criteria of personhood and invariably complicates would-be persons' claims to equality of treatment (Naffine, 2003, p. 367).

Most recently, however, the sorts of dilemmas and controversies that have customarily been pursued through the attribution, assertion or recognition of international legal personality seem to have been taken up elsewhere. Rather than concerning themselves with the 'what' and 'who' of international law as a whole, many scholars of the discipline seem more inclined to worry about the 'how' of international legal action in particular topic areas. The terrain of international law is increasingly being conceived in terms of networks, patterns and probabilities, rather than in terms of the stagecraft of an exclusive pantheon of permanent players. Contemporary international lawyers tend to address the distribution of authority and responsibility in international law less through questions of international legal personhood than through particularized programmes of institutional and regulatory reform. In recent years, the question of whether this or that entity is an international legal person in general terms has mattered less, it seems, than what can be made to happen on pressing issues through a dispute resolution process, a global conference, an advocacy project or a treaty initiative, participation in which may be diverse, shifting and informal.[8]

Scholarly concern with international legal personality nevertheless remains alive, as the essays in this volume indicate.

Personhood and Personality in International Law

This volume begins with two essays exploring the concept of international legal personality in general terms. In 'The Concept of Legal Personality' (Chapter 1), Jan Klabbers elegantly showcases the pragmatism with which much recent scholarship on international legal personality is inflected, while at the same time commenting on the same. Klabbers asks the question '[w]hat is the point of legal personality' in international law (p. 6)? The notion, Klabbers maintains, is an ambivalent one, exhibiting a degree of circularity ('one needs to be

[8] See, for example, Higgins (1995, pp. 49–50): '[T]he whole notion of "subjects" and "objects" [of international law] has no credible reality, and, in my view, no functional purpose … It is more helpful, and closer to perceived reality, to return to the view of international law as a particular decision-making process. Within that process (which is a dynamic and not a static one) there are a variety of participants, making claims across state lines, with the object of maximizing various values … Now, in this model, there are no "subjects" and "objects", but only *participants*' (emphasis in original). See also Crawford (2002, p. 21), where Crawford suggests '[i]t may be that the system is so open [with respect to the involvement of non-state actors] that the former threshold concept [of legal personality] has ceased to have much significance'.

a person to have a right, yet having a right implies that one is a person': p. 17). Yet personality may nonetheless 'help to shield [a] group from outside interference' (p. 31). As legal persons, groups assert the legitimacy of their affiliation in and through international law. A plea for personality is, accordingly, 'fundamentally political' in Klabbers' reading (p. 33).

Writing in 1943, in 'Personality in International Law' (Chapter 2) Hans Aufricht likewise regarded international legal personality through a political lens. His objective was, however, less pragmatic than scientific: he aspired to 'an exact description of the legal experience' (p. 52). In this essay Aufricht highlights the centrality of the state within analyses of international legal personality. This imbues international law with 'hierarchic structure', according to Aufricht, both with respect to the state's internal composition and in relation to other composite persons and individuals (p. 40). Navigating this structure, Aufricht draws attention to the variability of legal status evident within the range of persons populating the international legal order. Together, Klabbers' and Aufricht's essays introduce many of the questions and concerns around which the scholarship of international legal personality revolves.

States, Peoples and Cities

The three essays in Part II highlight the importance of 'stateness' and 'non-stateness' as twin poles of much literature on international legal personality (a theme also taken up in Part V). Alongside the essays in Part I, these essays also exhibit the stylistic range of this literature. Oleg Tiunov's 'The International Legal Personality of States: Problems and Solutions' (Chapter 3) is noteworthy as the only piece of writing in this volume that tackles directly the question of states' personality in international law. Elsewhere states are mostly the foil for the exposition of other entities' subjectivity in international law. Tiunov's essay is also important as one of two in this volume by scholars from what was formerly known as the Eastern Bloc (the second being by Budislav Vukas (Chapter 4)). Writing in blunt, unadorned sentences, Tiunov characterizes the personality of states in international law as expressive of a social relationship, or rather a number of 'intertwined' social and economic relationships (p. 66). Supreme among these in the international arena are relations between states, each of which is conceived as an independent, self-authorizing entity participating in legal relationships that 'correspond[ ] to its will' (p. 68). Tiunov observes that individuals' possession of international legal rights is growing, a phenomenon expressive of 'new political ideologies ... [that] guarantee the primacy of individual rights in politics' (p. 77). In Tiunov's view, however, this does not displace states' relations with other states as the primary material of international law. The creation of international legal norms and the bearing of responsibility for their violation 'remain the tasks of the state' (p. 77).

Part II also includes an extract from Budislav Vukas' Hague lectures on states, peoples and minorities (Chapter 4: 'States, Peoples and Minorities as Subjects of International Law'). The portion appearing here concerns which entities possess international legal personality, and how they have come to do so. Noting a lack of definitive international legal rules in this area, Vukas adopts a survey approach, considering developments in international practice and scholarly opinion, primarily since the end of the First World War. In Vukas' account, assertions of international legal personality by indigenous peoples and other minorities have triggered 'phobia[s]' in some quarters (p. 101). Nevertheless, Vukas contends that 'scholars must get used to the reality in which ... a group of people or an organization recognized as a

subject of international law can be spread through two or more States' (p. 87). Vukas suggests that developments in this regard are attributable not only to the decisions of states, but also to the influence of international and regional organizations. '[T]he supremacy of States is an illusion', Vukas contends, 'which may only temporarily conceal the reality' of states' 'fragility in comparison with the groups of human beings who compose their population' (p. 509). Even so, Vukas underlines the resilience of the idea that the state is the model of what an international legal person should be.

Yishai Blank's essay 'The City and the World' (Chapter 5) draws attention to the role played by cities in the international legal order. In a richly detailed account of the city or 'locality' as both vehicle and agent of normative change in international law, Blank emphasizes the 'double-edged sword of acquiring the status of legal person ... in the global arena' (p. 111). Localities are, Blank suggests, both empowered by global processes of decentralization and subjected to new modes of supervision through those processes. Yet despite their 'rise' (p. 110), Blank observes that classical texts of international law do not recognize localities as possessing legal personality. Blank's essay seeks to explain international law's differential treatment of cities as opposed to subnational entities that make up federal states. In so doing, it draws attention to the role that doctrines of legal personality play in maintaining 'a normative conception of a desirable hierarchy between various sub-national political divisions' (p. 124). At the same time, Blank shows that lack of personhood may not be an obstacle to the exercise of authority or an impediment to the attraction of regulatory attention in the international legal order. '[D]uring the past fifty years ...', Blank writes, 'international law began accommodating localities in various manners that are in clear opposition to the doctrinal lack of personality' (p. 129). Localities have emerged, Blank claims, as 'nodal points for radically distinct governance projects' directed towards transformation of the global legal order in ways independent of the agendas of states (p. 129). Their 'singular political potential' arises, in Blank's account, from their 'dualism', as both 'state agents' and 'voluntary human associations' (p. 166). It is this, Blank speculates, that might equip them to 'turn globalization from a top-down governance project into a radically democratic project' (p. 166). Personality matters in the global legal order, but it may also be, at times, beside the point.

Individuals

Turning from the collective personhood of the state and substate units, Part III contains two essays that address the personality of individuals in the international legal order. It is to the realm of 'actual practice' (p. 176) that Hersch Lauterpacht's 1947 essay 'The Subjects of the Law of Nations' (Chapter 6) looks for guidance as to the subjects of international law. Here, among the laws of war and elsewhere, Lauterpacht finds 'decisive refutation of the view that States only, and not individuals, are subjects of international duties' (p. 177). A range of bodies and persons other than states are shown by Lauterpacht to have been made subjects of international legal rights and duties: insurgents, pre-independence British dominions and international organizations among them. Their investiture with personality has not undermined the structure of international law. Indeed, the range of subjects acting in the international legal order attests, in Lauterpacht's view, to the 'developing needs of international society' (p. 185). 'Once the cobwebs of ... antiquated doctrine have been swept aside', Lauterpacht suggests, 'the procedural incapacity of individuals is deprived of its logical foundation' (p.

192). Dispensing with such illogicalities would, in Lauterpacht's view, pave the way for a 'truly revolutionary change' (p. 194): namely, conceiving individuals' rights as originating in international law rather than solely in the legal orders of their states of nationality. Thus the question whether individuals enjoy, or might yet enjoy, international legal personality is answered by Lauterpacht in 'a pragmatic manner' (p. 179). It is this disposition, as well as Lauterpacht's prescience concerning developments in international human rights law, that make the essay such a bellwether piece of writing with respect to analyses of international legal personality in the post-Second World War era.

If Lauterpacht approaches the prospect of individuals attaining personality in international law as a revolutionary project, the second essay in Part III figures this as a 'problem' with which international law has long grappled and an 'experiment' in which the discipline has occasionally engaged (p. 197). Writing in 1956 (Chapter 7: 'The Problem of the International Personality of Individuals'), Marek St. Korowicz is particular intrigued by the 'surprising legal innovations' of the German-Polish Upper Silesian Convention of 1922 (p. 197), above all its vesting of individuals with the capacity to assert their rights directly before an international tribunal. Tracking trends in international legal literature since the sixteenth century, St. Korowicz shows how persistent has been the scholarly 'struggle' to have individuals vested with international legal personality, whether alongside states or to states' exclusion (p. 202). Nonetheless, St. Korowicz concludes that '[t]he extent to which international law recognizes individuals as its subjects is at the present moment very restricted' (p. 213). An experiment along the lines of the Upper Silesian Convention would, St. Korowicz suggests, be 'impossible ... to imagine' in the mid-century context; all the more so because of its 'negative results' (p. 223). Even so, St. Korowicz ventures that individuals should be vested with rights to proceed directly before international bodies 'if that is necessary or even useful to their interests and not harmful to the interests of their own country' (p. 223). It is of concern to St. Korowicz that individuals not, through this means, be 'school[ed] ... [in] disloyalty' towards the states of which they are nationals (p. 223). In this way, St. Korowicz's essay is important both as a measure of scholarly preoccupation with individuals' international legal personality and as an indicator of the sorts of anxieties provoked thereby.

International Organizations

Moving on from the aspirations and challenges associated with individuals' personhood in international law, Part IV focuses on those triggered by the proliferation of international organizations in the global legal order. The first of the essays in this part, Chapter 8 'The Legal Personality of International Organizations', was published in 1945 by Clarence Wilfred Jenks, an international lawyer with the International Labour Organization (later its director-general), during a flurry of post-war institution building activity on the international plane. It is a fine example of doctrinal analysis in pursuit of 'firm affirmative answer[s]' to the questions surrounding the personality of international organizations, to the end of facilitating international practice by organizations and their members (p. 233). Its author is attuned to the fact that international organizations' legal status in particular cases may be 'inspired by political preoccupations rather than by any coherent legal doctrine' (p. 232). Nonetheless, Jenks' objective is to clarify the position of international organizations in international law with a view to 'avoid[ing] the practical inconvenience of an anomalous legal status' (p. 230).

Jenks is particularly concerned to prevent international organizations' status in the international legal order being determined by the laws of individual member states, a prospect he decries as unnecessarily complex, 'defective', even 'inherently fantastic' (pp. 232 and 233). Instead, Jenks looks to international treaty provisions (that is, international bodies' constitutive instruments) and 'principles of international administrative law', while acknowledging the practical necessity of national legislation to ensure 'effective recognition' of the personalities so created (pp. 234 and 235).

Fifty years after Jenks' essay was published, another international civil servant, Chittaranjan Felix Amerasinghe (then Director of the World Bank Administrative Tribunal Secretariat), revisited the question of international organizations' legal personality in light of a dramatic increase in the number and range of functions of international organizations (Chapter 9: 'International Legal Personality Revisited'). In this context, international organizations' personality had, Amerasinghe suggests, 'evolved ... as necessary' rather than being the subject of deliberate modification (p. 242). Accordingly, to analyse the personality of an international organization would not be 'as simple an exercise as identifying certain objective criteria that confer personality in general international law' (p. 245). Instead, Amerasinghe proposes utilizing a combination of doctrinal and functional analysis to delineate the contours of an international organization's personality, mindful always that the nature of rights and duties in the international legal order will vary from person to person. As with the essays in Part III, the comparison to statehood is a key touchstone for this inquiry.

Much twentieth-century work on the status of international organizations exhibits the ontological and political concerns that emerge from these two essays, albeit while addressing these in different ways. Dr Manuel Rama-Montaldo's 1970 essay on the implied powers of international organizations is a case in point, in so far as it sought to 'undertake an examination of the legal foundation and content of the personality of international organizations and of their nature as subjects of international law' (1970, p. 111). Critical for this writer (as for Jenks and Amerasinghe) was the sense in which doctrines of personality worked to delineate and patrol the boundaries of the international legal discipline: 'to affirm that a certain international entity enjoys international personality leads to the need to define the legal criteria which typify those entities' (Rama-Montaldo, 1970, p. 144). Finn Seyersted's argument for the objective personality of international organizations similarly generated a sense of the international legal order as all-encompassing, self-sustaining and broadly uniform. International organizations were not, Seyersted maintained, 'so different from States as has been generally assumed' provided that one 'look[ed] more to general international law ... and less to the constitution and practice of the particular Organization concerned' (Seyersted, 1964, p. 112).

The final essay in Part IV departs from the orientation of those international lawyers working in international organizations and presents a much broader range of insights surrounding the legal personality of international organizations. David Bederman's essay 'The Souls of International Organizations: Legal Personality and the Lighthouse at Cape Spartel' (Chapter 10) is important both for the sophisticated historical account it offers of scholarly trajectories surrounding the question of international institutions' personhood, and its distinct contributions to that scholarship. Bederman's concern is with the 'transformation of ideas into institutions' and so into an entity possessing 'a life separate from its *raison d'être* ... and a life apart from the will of the individual states that formed' it (pp. 263 and 265). Of this process, now repeated so often on the international plane, Bederman asks: how did this come to be? His response is

advanced through a close study of the history of a 'truly protozoan international institution' (p. 264): the International Commission for the Cape Spartel Light, established in 1865 and disbanded in 1958. In the record surrounding this Commission, Bederman finds the idea of the international organization as a juridical person to be 'a powerful legal trope' (p. 319). Confronted with the 'moral dilemma of personhood' in international law, publicists and jurists of the modern era have, Bederman suggests, 'recoiled' into an embrace of relativism and an uneasy coalition of empiricism and abstraction (p. 364). International lawyers also bring to bear upon such claims a subtle blend of public law and private law modes of analysis. Out of this, Bederman discerns a more recent trend towards thinking of international institutions less as personalities and more as 'communities'. In Bederman's account, the Commission created for the Cape Spartel Lighthouse is one such community: at once a 'community of interest' and an 'epistemic community' (p. 361).

Non-humans and Non-state Actors

Bederman's account of the partial decomposition of personhood in international legal thinking provides an apt backdrop for the two essays in Part V, both of these taking as their starting point the negative space of doctrines of international legal personality, or that which has been excluded from the ambit of those doctrines. The first of these, 'Reconceptualising International Legal Personality of Influential Non-state Actors: Towards a Rebuttable Presumption of Normative Responsibility' (Chapter 11) by Karsten Nowrot, is included here to exemplify a still powerful if rather overworked theme of contemporary scholarship on international legal personality: namely, the preoccupation with non-state actors drawn from the ranks of civil society or the private sphere, whether for their redemptive or for their pernicious potential. As Hersch Lauterpacht's essay (Chapter 6) made apparent, such a preoccupation is not new. In some ways Nowrot's essays mimics many of the gestures of Lauterpacht's 1947 work: the treatment of socioeconomic fact as the engine of change in international law, for instance, and the demand for a renewal of traditional doctrine on that basis. In Nowrot's essay, however, we witness this project becoming increasingly self-referential. The project of remaking the doctrinal edifice of international legal personality (and by extension, the international legal order) seems to have acquired its own aesthetic value, even as its purpose remains the accommodation of 'changing realities' (p. 376). Existing approaches to international law create, for Nowrot, 'intolerable gaps in the structure of the international normative order' (pp. 377–78). In place of the variegated epistemic communities of Bederman's account (or indeed Jenks'), non-state actors are in Nowrot's depiction a generic breed. So framed, they are amenable to a single, over-arching rule: Nowrot's preference is for a rebuttable presumption in favour of international legal subjection triggered by the recognition of 'a de facto influential position' (p. 380). Thus Nowrot's plea (p. 383) for a 'realistic approach' with respect to international legal personality seems to occasion international law becoming all the more obeisant to private initiative, albeit among actors festooned with international legal rules.

The second essay in Part V, 'Whales: Their Emerging Right to Life' (Chapter 12) by Anthony D'Amato and Sudhir K. Chopra, looks instead to the realm of the non-human for bodies deprived of international legal personhood. D'Amato and Chopra's concern is with the potential for whales, as sentient, intelligent beings, to possess international legal entitlements in their own right – that is, 'an emergent entitlement *of* whales ... to a life of their own' in

international law (p. 395). D'Amato and Chopra's essay is significant for the connections it draws between approaches to legal personality and Cartesian theorization of the nature and primacy of the human person. As in other instances in this volume, however, the orientation of D'Amato and Chopra's critique is towards the practical repercussions of that theory in a context of rapid technological change. 'Unless we acknowledge that sentient creatures such as whales are rights holders …', they write, 'we open the door to acknowledging the propriety of a future technological development that would assure "painless" mass slaughter of whales' (p. 400). If the future looms large in this account, the past is also redolent with possibility. D'Amato and Chopra track six 'historical-analytical stages' in international legal practice concerning whales, culminating in an 'emerging entitlement stage' (pp. 400–442). In their telling, the historical record discloses a 'progression from self-interest to altruism' and an 'increasing breadth of consciousness' in the conception of international legal subjectivity with respect to whales (p. 421). Even so, transition to a 'stage of entitlement for a nonhuman species' would be, they concede, a 'revolutionary development' (p. 422). Once again, the definition of international personality is mobilized as a vehicle for progress, even revolution. Through this doctrinal means, D'Amato and Chopra urge a movement from 'moral desirability to legal actuality' in international law's treatment of whales as right-bearing beings (p. 433).

Read together, Parts II, III, IV and V remind us of the ways in which doctrines of international legal personality and surrounding debates 'hail' those in whom personhood is vested, evoking in them a particular way of being in the world (Althusser, 1971). International law recruits some groups, entities and beings to experience themselves and others as legal persons, with all that that implies (usually, possession of a more or less coherent will as well as a relatively stable identity and systemic location). It does so from a variety of directions (Halley, 2000, pp. 43–44). The character of legal personhood remains contingent upon the mode and purposes of those hailings, as well as the identity of addressees and addressors. Yet the contingencies associated with one or more acts of hailing become harder and harder to recall over time: this is the point that Bederman's essay (Chapter 10) makes so vividly.

Short-hand examples of this hailing process abound: Article 104 of the UN Charter, for instance, states that the UN '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 fulfilment of its purposes'. Only through immersion in the expert process of interpreting the functions and purposes stipulated in the UN Charter (while determining what may be necessary to discharge those in a particular territory at a particular time) can one grasp what sort of personhood the UN possesses. The quality of the legal subjectivity so created is inevitably informed by the inflections of that expert process. At the same time, the process already presumes some incipient sense of the legal subjectivity in question: some notion of what international organizations are (and are not) like and some capacity for the UN to 'exercise … functions' that match or diverge from that expectation. The international law of legal personality is thus both declaratory and constitutive, as Klabbers argues in Chapter 1.

A further example may be gleaned from Article 6 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986, which provides that the 'capacity of an international organization to conclude treaties is governed by the rules of that organization'. An international organization becomes a distinctive international legal person through the relaying and recognition of that which has already been constructed as an address both *to* and *from* the organization (namely,