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The Legal Status of NGOs in International Governance and its Relevance for the Legitimacy of International Organizations

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ABSTRACT

This working paper introduces the concept of legal personality of non-state actors as an indicator of the democratic legitimacy of international organizations (IOs). Globalization has led to changes in statehood which are reflected in new democratic forms of participation and new expectations and attitudes towards political institutions. This also affects international politics in that international organizations are questioned with regard to their own legitimacy. In this context, normatively and empirically based policy proposals alike tend to suggest an increased role of new actors, mostly civil society organizations (CSOs) or NGOs, in overcoming the legitimacy deficit of IOs. However, if participation of non-state actors in international governance is to be effective, efficient and have a meaningful and lasting effect, it requires institutional rights and duties – and with it legal personality. Thus, legal personality of non-state actors can be taken as a minimum safeguarding clause for surmounting the legitimacy deficit of international organizations (normative approach). It can also be used as a helpful analytical framework for organizing empirical data on the participation of these actors in IOs (empirical approach). This working paper evaluates the legal rights and duties of NGOs in their cooperation with more than 30 international organizations and seeks to assess whether this implies that they have acquired legal personality and which quality this personality takes on. Such a comparative paper is a novelty in both political science and international law. By combining perspectives from two disciplines, this working paper illustrates the intrinsic empirical and theory-building value of (international) positive law in political science.

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The Legal Status of NGOs in International Governance and its Relevance for the Legitimacy of International Organizations

INTRODUCTION

Political science primarily is concerned with actors. Actors are those persons (individual actors) or organizations (collective actors) which, in the broadest sense, participate through their actions in the decision-making of a political entity, normally the State. The theory of International Relations (IR) in specific is shaped by differing focuses on the "international system" and its principal actors, namely the State, international organizations (IOs), but more recently also non-governmental organizations (NGOs), transnational enterprises or even individuals. The term of "actor" is used in a way to encompass all those agents who matter for (international) politics, and the question is about what the primary actors are in international relations, how they can be described, how they interact with each other and in which way they shape world politics. The notion of "person" rarely appears in international theory, and if, both terms are used interchangeably. In this sense, an international actor, such as the State or an international organization, is treated as if it is an individual – or a person – with some attributes this personhood would bring with it (mostly intentions, but also beliefs and desires).

This foremost realist view of actors in world politics is questioned by others, mostly liberals, who take physicalism as their starting point and argue that only individuals are real. This liberal "reductionist" view is meant to set up barriers against challenges to liberalism (fascism, genocide, etc.). However, there is a strand of social-constructivist international theorizing which tries to reconcile liberal physicalism in a non-reductive sense with the realist view of the State by grounding the latter explanatorily and normatively in real – and not "as if" – personhood. Thus, starting out from an article written by Arnold Wolfers in 1959[1], Alexander Wendt (Wendt 1987) introduced the agent-structure problem into IR theory and picked up the notion of the state as a psychological person in the late 1980s. Having investigated into state theory in social and political sciences, he developed his *Social Theory of International Politics* (Wendt 1999), in which he argues that the State is a real actor with – even though only some – anthropomorphic attributes, such as (corporate) intentionality[2]. The useful concept of state personhood is thus retained without compromising on liberalism or, in other words, by a non-metaphysical, physicalist way to justify liberalism. In sum, however, Wendt's So-

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1 Published in *Theoretical Aspects of International Relations*. This article then was made chapter one of *Discord and Collaboration* with only minor changes in 1962; see Wolfers (1965).

2 See also a round-table which took place at the 2002 Annual Meeting of the International Studies Association in new Orleans, LA, USA; Jackson (2004) and Wendt (2004).

cial Theory did not change the inter-changeability of the terms of "actor" and "person" in IR theory.

Far away from this discussion, international jurists engage in a debate around the same notions, but with a completely different meaning. In legal theory, the term of "(legal) person" or "subject" is the concept used to describe the main actors – those who matter – in (international) law. A (legal) person is an entity capable of possessing (international) rights and duties, whereas an actor does not necessarily have such a capacity. Legal personality thus is a normative concept with real-world legal consequences, rather than a metaphoric transformation of realities. We do not speak of personhood in this case, but of personality. The debate around those notions is triggered off by developments towards the emergence of new subjects in international law, such as individuals, trans-national enterprises or non-governmental organizations. The State, though, as the main subject of international law, was and unquestionably continues to be an international subject or person, without using the term of actor instead. With regard to non-governmental organizations, however, a debate evolves – though separately within different national legal systems –, around the question whether or not those organizations might qualify as legal persons in international law, or whether they might be treated as "simple" actors[3]. As one author (Dupuy 2003: 262) has recently suggested, there seems to be a dichotomy between "ancient" and "modern" international lawyers, or between Europe and America, with regard to the classification of NGOs. I would add that it also is a rift between lawyers trained in different legal systems, namely, the continental and the Anglo-Saxon (common law) tradition respectively. In continental systems in general and in the French system more specifically, on the one hand, there is a split between different disciplines, namely political science and law, whereas on the other hand, we confront a more sociologically informed English legal tradition (Mosler 1962: 12). In any case, it is not only a linguistic, generational, national, and cultural problem. Whereas "old Europe" keeps firmly attached to those agents which alone seem to qualify for legal personality (States and international organizations) at the expense of considering the increased political weight of new actors, "new America" tries to resituate international law in its social context, at the expense of striving for a sound legal analysis embedded in legal positivism. The solution may lie in a concentration on the legal statute of participation of NGOs in international organizations (Dupuy 2003: 275-277)[4].

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[3] See also below.

[4] Other proposals to forge links between disciplines are less convincing. Thus, Noortmann proposed to focus research on NGOs as a framework of reference rather than making them the subject of research itself. He suggested studying the contribution of NGOs to the legal determination of customary international norms. However, how should they contribute to the interpretation of international law in a legally authoritative way without having any

ACTORS OR PERSONS – DOES IT MATTER?

This having been said, the question remains whether, and in which sense, this legal discussion might matter for political science in general and IR theory in specific. Does it make any difference if NGOs are considered as international legal persons, as actors, or even as something in between? My point is that it does. The reason why this might be the case can be found in the debate on the (missing) legitimacy of international organizations which was instigated within the last decade. Expressed mostly in descriptive, rather than normative or prescriptive[5], terms, be it in the realms of political theory (Dahl 1994; Held 1995; Scharpf 1999) and law (Gramlich 2003), or more powerfully in the streets through "civil disobedience" and far less visible in national parliaments, this debate mainly is about societal acceptance of international organizations and the (missing) belief in their legitimacy on the part of the ruled-over. However, as Zürn, basing himself on Lipset (Lipset 1960), eloquently pointed to, "empirical belief in the legitimacy of an institution closely depends on the normative validity of a political order" (Zürn 2004: 261). Thus, an empirical or descriptive grasp on the question of international legitimacy cannot operate without being grounded in a normative judgement on the rightfulness of a social order, or at least in a prescriptive concept on the rightful grounds which help this order to be labelled "legitimate". This might be the reason for the emergence of more and more normative philosophical claims looking for alternatives to the present international state of affairs in order to resolve the legitimacy problem of international organizations (Habermas 1998; Schmalz-Bruns 1999; Höffe 2002). However, the reversed case is valid likewise, that is, an assessment of the democratic legitimacy of international organizations cannot only be philosophical, but also must be social scientific and empirical (Moravcsik 2004).

Be they exclusively normative-prescriptive or predominantly empirical-descriptive, approaches which include proposals how to overcome the legitimacy deficit in international organizations increasingly tend to refer to an increased role of new actors, first of all of civil society at large (Falk 1995; Nanz and Steffek 2004; Scholte 2004) or of international parliamentary institutions in specific (Blichner 2000; Falk and Strauss 2001; Kissling 2001). The roles assigned to those "new" actors resort to the necessity of their increased "access to" and "participation in decision-making", to their task of "monitoring compliance", of "reviewing decisions taken", and of "seeking redress for mistakes

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legal status? And in fact, Noortman rightly refers only to those entities unquestionably disposing of personality in international law. He thus unconsciously takes reference to the most rigid form of the personality concept (see below), looking at the normative power of NGOs and the assumed transformation of international law into a law of nations; Noortmann (2002: 38-39).

5 For a clarification of the terms normative, empirical, descriptive, and prescriptive, see Steffek (2003).

and harms", but also to catchwords such as the contribution of civil society and parliamentary actors to the "public transparency" or "accountability" of an IO (Held 2004; Scholte 2004: 217). Looking closer at these demands, all of them involve institutional rights on the part of these actors, if the requested procedures are intended to operate effectively, efficiently and to take a lasting effect. However, especially NGOs[6] are also challenged and examined with regard to their own legitimacy[7]. This points to the assumption that the concept of international legitimacy cannot simply refer to rights of new actors without looking for corresponding duties, at least if those actors want to play a role in the process of holding IOs accountable (Scholte 2004: 232).

Thus, (legal) rights and duties, and consequently legal personality, of these new international actors do matter. They can be taken as a minimal safeguarding clause for overcoming the legitimacy deficit of international organizations, be it under the normative claim or with regard to prescriptive policy proposals stemming from empirical research. This even is valid in connection with a specific normative postulate within deliberative theory, namely, legitimate governance through the mediation of a public sphere. Without access of the public to information, without some interaction between civil society and decision-making bodies, a discursive public sphere cannot be informed through the transmission belt of civil society networks – and hence cannot constitute a legitimizing force for international organizations. Thus, Nanz rightly acknowledges that for this legitimizing postulate to work out, institutional arrangements are necessary in order to ensure the accountability of democratic decision-making bodies (Nanz 2003: 78).

In consequence, "[o]fficial rules of engagement can have [...] enabling [...] effects for civil society activities" (Scholte 2004: 226), but also disabling ones in the case of prohibitions or non-existence of rules. If non-governmental organizations or interparliamentary assemblies could be said to have a certain legal stand in international law, some minimal preconditions for legitimate governing might be guaranteed. This does not mean that legal rights and duties would dispense with the necessity of them being applied or implemented (on the part of the rulers), nor of them being accepted as binding and generally being respected (on the part of the ruled-over), but without their mere existence, there is no guarantee for a non-arbitrary involvement of civil society or parliamentarians, hence an equal opportunity for all. The door would be open to inconsis-

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[6] NGOs are often seen as representing civil society at large or are taken as a proxy for measuring civil society input in international fora. In some contexts, the notion of civil society organization (CSO) is used instead, often with a somewhat larger meaning. In the following, I apply the term of NGOs in its proxy function, encompassing as such also CSOs; see also note 10.

[7] Beisheim (1997), Edwards (2000), Kovach, Neligan, et al. (2003), Held (2004: 385).

tency, subjectivity, chance, and the undermining of the weak, in short, to arbitrariness[8]. Thus, rights and duties here are a *de jure* safeguarding clause for equal *de facto* legitimizing capabilities of both, the legitimizing new international actors and the organization which searches for legitimacy of its international order through according these rights and duties. Therefore, we might take the personality concept as a starting point for operationalizing normative legitimacy claims or prescriptive policy proposals in order to juxtapose them to empirical real world settings. At the same time, the concept might provide a helpful minimal framework of analysis for empirical data on the participation of new actors in international organizations. This points to an intrinsic empirical and theory-building value (international) positive law can take on in political science.

The research project in the context of which this paper has been elaborated has a normative concept of deliberative democracy at its outset[9]. Deliberation, it is claimed, can enhance the legitimacy of rule making in international organizations. The focus here is on the increasing role of civil society in international policy-making and its influence through the mediating function of NGOs[10]. In order to assess the existing democratic quality of decision-making within IOs, the normative concept is operationalized and made accessible to empirical research. Four criteria are proposed in this context, namely, access (of NGOs to deliberation and decision-making), transparency (of the policy-making process), responsiveness (of decision-makers and their agendas to concerns of NGOs) and inclusion (of all relevant NGO concerns) (Nanz and Steffek 2005). The first two as well as in some way also the fourth criteria hinge upon formal institutional procedures, and thus on legal rights and duties, whereas the third, responsiveness, introduces an element of institutional learning through deliberation. The first two procedural criteria are defined as *sine qua non* condition for the third criterion, *i. e.* for institutional learning, and thus constitute a sort of "safeguarding clause" for a full account of democratic legitimacy.

The project's design foresees - as the last methodological step of what is essentially a qualitative research approach - simple ordinal scaling of the different empirical findings.

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8 This is specifically valid for informal ways of influencing international decision-making. I do not preclude that those ways, *e. g.* lobbying, sometimes might even be more successful; Paech (2001: 11). However, they are open only to the strong and powerful, which discards the democratic postulate of equal opportunity.

9 For the project proposal, see http://www.staatlichkeit.uni-bremen.de/download/de/forschung/B5_2003_projekt antrag.pdf.

10 In the research project, we use the term NGOs in a wider sense, encompassing civil society organizations (CSOs) in general. By those CSOs we mean non-governmental, non-profit organisations that have a clearly stated purpose, legal personality (in national law), and pursue their goals in non-violent ways; Nanz and Steffek (2005: 2).

However, scaling has to be done for each criterion or indicator separately in order to avoid distortions through computing. This paper proposes to examine the procedural preconditions altogether[11] by taking on a legal analytical approach. This might have the disadvantage of not being able to attribute NGO rights and duties to different normative criteria. However, it could provide an alternative methodological approach, which delivers an encompassing and fine-tuned picture of the empirical existence of preconditions for legitimacy within different IO settings whilst preventing it at the same time from falling into the pitfalls of misinterpretation ensuing from quantitative measurements. Moreover, it adds the criterion of NGO legitimacy through the inclusion of NGO duties. One further clarification yet has to be made: this alternative approach does not cover the criterion of responsiveness of international organizations to NGO concerns, *i. e.* the actual impact of NGO input, including the justification of IOs with regard to acceptance or dismissal of NGO claims. Thus, I do not claim to draw conclusions in relation to the legitimacy of international organizations, but rather concerning the existence of minimal safeguards for the fulfilment of such legitimacy by IOs. What I propose is hence an analysis of empirical data with regard to the degree of international legal status of NGOs within different IOs - comparable to investigations of the status of inter-parliamentary assemblies in international law (Kissling forthcoming: chap. 2.2) - as an analytical framework for answering the question of existence of minimal procedural safeguarding clauses for the legitimacy of international organizations.

CRITERIA OF NGO PERSONALITY

Lawyers in general tend to approach a certain subject by first defining precisely the terms used in their analysis. So do international lawyers when speaking about international personality[12]. What is meant is "das Bezogensein eines Subjektes auf eine bestimmte Rechtsordnung" (Anzilotti 1929: 89). A subject of international law then is an addressee of international legal norms of a specified positive legal order[13]. However, here the definitional consent of international lawyers ends. Even though criteria of international personality have been singled out and precisely formulated especially with

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[11] To some extent, I also include rights and duties in this study which relate to the fourth element, *i. e.* inclusion (positive empowerment of most disadvantaged stakeholders), when it comes to an IO's proactive NGO policy, *e. g.* with regard to financing of NGOs. However, since those rights and obligations do not constitute preconditions for democratic legitimacy *per se*, this approach is not implemented *in extensu*; see below.

[12] Whereas the concept is usually referred to as "personality" ("personnalité", "Rechtspersönlichkeit"), the addressee of the concept preferably is named a "subject" ("sujet", "Rechtssubjekt"). For the distinction between subjects and persons see below.

[13] Inductive approach (prevailing opinion). For a distinction between deductive and inductive approaches, see Hempel (1999: 56-71).

regard to new, non-State subjects in subsidiary sources of international law, such as judicial decisions[14] and teachings of prominent international lawyers, legal doctrine has never agreed upon the exact combination of criteria which would sketch out the scope of the concept. *Grosso modo*, we can distinguish five different criteria which are proposed alternatively or cumulatively. When I speak of the legal status of an entity in international law in this paper, I refer to one or more of those criteria, without, however, being bound by a certain combination. For some, for example, it suffices for an entity to be called a legal subject to be the addressee of one or more rights[15]. In this view, every human person would be a subject of international law in the sense that it is the addressee of international human rights norms. Others proffer to add alternatively or additionally legal duties to the requested criteria (Hailbronner 2001: 169; Epping 2004: 55). However, in both cases, rights and duties alike have to be conferred directly (Nguyen Quoc, Daillier et al. 2002: 403), *i. e.* not through the transmission belt of an intermediary, such as the legal order of a State[16]. Another version is to include in the above-mentioned list of criteria that of having the capacity to maintain the accorded rights by bringing international claims (Brownlie 2003: 57)[17]. *Lato sensu*, the procedural extension of this capacity to defend its own rights encompasses a capacity to act in its own

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[14] See the *Reparations for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports* 1949: 174. With regard to the United Nations, the Court used the criteria of "capable of possessing international rights and duties" and the "capacity to maintain its rights by bringing international claims"; 179.

[15] Some distinguish here between the capability ("suitable candidate") of an entity to possess legal rights (and duties) and the *de jure* conferment of those rights to the corresponding entity; see Brownlie (2003) or the Advisory Opinion of the I.C.J., *ibid.*). I do not insist on this distinction since capability is hardly acknowledged for nascent cases of personality and what - in my view - counts in the end from a legal viewpoint is the definite conferment of rights (and duties). Capability may thus only be helpful when distinguishing between general subjects of international law and those with a limited personality.

[16] Here the dispute starts with regard to human rights: Are they directly conferred or only through inclusion in a national legal order? I suggest that they are directly conferred, but what mostly deprives the addressed individuals of a certain level of international personality is the missing possibility to bring international human rights claims; see below.

[17] See also note 14. It has to be added that there is a doctrinal controversy about the necessity of existence of certain legal capacities (minimal functions) in order to claim international personality. Thus, some argue *e. g.* that the capacity to conclude international treaties, the capacity to establish diplomatic relations, and the capacity to be held responsible are minimal conditions for legal status; Dominicé (1996). As this seems to be a minority position; Mosler (2000: 714), I take the stand that the only minimal capacity for the quality as person is that of bringing international claims since otherwise, there is no way to meaningfully enforce rights and duties and to possess full capacity to act; differing Hempel (1999: 70-71).

favour, not only before a court, but also before administrative instances in charge of controlling the implementation of international norms (Dupuy 2003: 265-266). Another strand adds another criterion, namely the necessity of an entity to be hold to account before an international court, corollary of the existence of international duties (Cahier 1985: 93-94). The Restatement of the Law Third, The Foreign Relations Law of the United States seems to take this second group of criteria as a condition for calling the entities concerned international persons. Entities that "have only rights and obligations" ought to be called subjects (The American Law Institute 1987: 70-71). I will use this linguistic distinction in the following when elaborating on a gradual legal approach to international personality. Finally, a minority of international lawyers assume that to speak about personality, an entity has to possess the capacity to create international law, or at least to participate decisively in its creation - directly or indirectly through representatives -, and thus to dispose of so-called "normative power" (Stoecker 2000: 90)[18].

Turning to the specific case of NGOs, most authors of law (Verdross and Simma 1984: 251; Klein 2001: 279; Dupuy 2002: 27-28) and politics (Martens 2003) reject the idea of legal status of those groups. However, dismissal of legal personality of those entities often occurs prematurely, failing any in-depth legal-empirical evaluation. First of all, we have to keep in mind the *dictum* of the International Court of Justice that "[t]he subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community"[19]. Moreover, the question of whether NGOs possess international personality intrinsically is linked to the comprehension we have of the term (Stoecker 2000: 89). Having taken a decision about which concept of personality we apply, a careful investigation has to search for its correspondence to real world settings with regard to the life and activities of NGOs. This is the basis on which some authors recently took the stand that NGOs have acquired legal status in international law. Thus, some, mostly German speaking lawyers begin to talk about partial personality[20]. Others admit a certain international legal status without attributing international personality[21].

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[18] Legal status hence in no way depends on the existence of a legal definition or on a general circumscription of rights and duties of an entity in, or its creation through international law; Mosler (1962: 41 and 45), even though those circumstances undoubtedly would do away with some uncertainties and would greatly enhance general application of the concept to a specific entity. With regard to NGOs, attempts have been made - so far unsuccessfully - to progressively develop the legal status of NGOs through treaty law; see Dahm, Delbrück, et al. (2002: 233), and Wiederkehr (1987: 753).

[19] *I.C.J. Reports 1949*: 178.

[20] Hobe (1999), Nowrot (1999: 614, 631, and 635), Bleckmann (2001: 518), Riedinger (2001: 320-321), Dahm, Delbrück, et al. (2002: 240-242), Hummer (2004: 241) Hempel classifies the personality of NGOs as derived per-

However, further clarifications have to be made with regard to NGO international personality. It is clear that NGOs, in the case we attribute legal personality to them, can never be considered original subjects - a status which solely is reserved to States. Since they derive their personality - if ever - from other international subjects (States or IOs), they can only take on the status of **secondary - or derived - subjects**. Moreover, as Martens rightly acknowledges (Martens 2003: 19), there is no general (global) recognition of NGOs (of their rights/duties and of their legal status in general) in international law, that is in treaty or customary international law[22]. Instead, the status of NGOs differs from IO to IO. In this sense, we can speak of a legal status of NGOs solely within a partial - or functional - international legal order or of **functional personality** targeted towards NGO tasks in relation to a specific IO. In this context, it might make a difference if IOs recognize NGOs through primary international law which sets up their legal order (*i. e.* their founding treaty or other primary international law sources) or through corresponding secondary international rules, namely, their derived legal order (mostly statutes and resolutions). The latter would bestow NGOs with simply **indirect international personality**, whereas the first also would give them **direct international personality**. However, indirect personality might become a direct one when it is contained in soft law which gradually evolves into customary international law through practice reaffirmed by *opinio iuris*[23]. Moreover, since they in no way are the main subjects

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sonality; Hempel (1999: 190-192). See also note 23. For an early expression of this view see Kaiser (1961: 614), and more carefully also Mosler (1962: 25 and 45 (indirect inclusion of NGOs in the international legal order)). The latter also gives a detailed analysis of the principal capacity of the international legal order to include other international subjects, *e. g.* what is today called NGOs (esp. 3-5 and 39). For a more extensive view on NGO personality see Lador-Lederer (1963).

21 Lagoni (1991: 869-870), Rechenberg (1997: 617), Stoecker (2000: 98).

22 As States try to avoid conferring group rights in general, they all the more circumvent speaking of NGOs rights and duties in hard and even soft law. Thus, the recent Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Annex to UN GA Res. A/RES/53/144 of 9 December 1998) perpetuates the old language of former human rights law by bestowing rights and duties only to "everyone", that is the individual, and acknowledges NGOs merely with reference to their important role and responsibility in the human rights context. On the other hand, the only general (regional) treaty dealing with NGO status, namely, the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations of 24 April 1986 (CETS No. 124), merely regulates mutual State recognition of legal personality of NGOs in national law; see Wiederkehr (1987).

23 For international NGOs at UN Conferences and ECOSOC, Willet acknowledges international personality in form of customary international law; Willets (2000: 205-206).

within that IO's legal order, NGOs see rights and duties attributed in only a limited fashion and not in an all-embracing manner (*in toto*). We may thus conceive of those attributes as **partial personality**. A corollary of NGOs' functional personality – contrary to that of international organizations[24] - finally is its missing objectivity, *i. e.* the absence of opposability *erga omnes*. This means that NGOs may enjoy personality merely with regard to the members of the respective IO's legal order. In order to benefit from it also in other circumstances, they would need to be recognized as subjects by the members of other international organizations or by other subjects of international law. In this way, NGO **personality** can only be **relative**[25]. A last question concerns the role of recognition of an individual NGO within an IO's legal order. In order to obtain relative personality, does an NGO have to be recognized explicitly or implicitly by the IO in question (and/or its members) even though the selection criteria for acquiring a certain status are *prima facie* fulfilled? On the face of it, any single NGO attains legal status when the respective IO admits it to its legal order, mostly by majority vote through general accreditation, by single case decisions or in the way its legal order foresees it. In this way, the corresponding IO's decision functions as an at least implicit recognition of an NGO. Beyond that, no additional recognition (*e. g.* by State members of the IO) seems to be required for rights and duties of an NGO to take effect. Thus, the old quarrel about the constitutive or declaratory function of recognition with regard to States in international law takes on another complexion here. For any single NGO, **IO – but simply IO**[26] **– recognition is constitutive** for acquiring legal status at all.

DO INTERNATIONAL ORGANIZATIONS ASSIGN LEGAL PERSONALITY TO NGOS? – A GRADUAL LEGAL APPROACH

Since there is no general international law, *i. e.* treaty or customary law, detectable with regard to the legal status of NGOs, I propose to look at the rules concerning the rights and duties of NGOs and their legal situation in each international organization or treaty regime[27] separately (Dahm, Delbrück et al. 2002: 238)[28]. As regards legal status within

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[24] See *I.C.J. Reports 1949*: 185.

[25] In this sense Mosler (1962: 32).

[26] Which, however, is substituted again by States in cases where we do not deal with an international organization in a legal sense; see note 27.

[27] For convenience, I only will speak of international organizations in the following, even though our case studies also encompass treaty regimes, State groupings, or organs/bodies (UN) and policy fields (EU) of international organizations. With regard to law-making power, this does not matter since for those cases which legally do not qualify as an international organization *per se*, State representatives which dispose of law-making power are the main actors. An exception constitutes the OSCE whose IO quality still is controversial, but whose documents also explicitly have only political, rather than legal value.