

# Lesson 2

## LEGAL PERSONALITY OF IOs

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# Legal personality

An entity or an individual may be deemed to be a subject of a given legal system, if capable of independently bearing rights and obligations under that legal system

# Legal personality

- 1) Each legal system defines independently which entities or individuals enjoy legal personality within that system.
  - Legal personality under domestic law
  - Legal personality under international law
  - *Legal personality under EU Law*
- 2) Even within 1 single legal system, not all subjects of the law are the same.
- 3) Legal systems may evolve.

# Legal personality under domestic law

What does it mean?

- OI may conclude contracts
- may bring claims before domestic courts
- is called to respect domestic laws
- may be sued in domestic courts (*but* it might be immune from jurisdiction)

# Legal personality under domestic law

## 1) Legal personality in the Member States

- *Relevance of constituent treaty's provisions*

### **Article 104 UN Charter**

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

### **Article 335 Treaty on the functioning of the European Union (TFEU)**

In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

**Such provisions are binding on States, but are they also directly applicable within domestic legal orders?**

# Legal personality under domestic law

## 1) Legal personality in the Member States

- *When an express provision in the constituent treaty is lacking?*

2 solutions are possible:

- 1) Rely on the domestic law of each member state
- 2) Theory of implied powers

# Legal personality under domestic law

## 2) Legal personality in the Third States

- *Treaty provisions only bind States Parties*

### **Art. 34 Vienna Convention on the Law of Treaties (VCLT)**

“A treaty does not create either obligations or rights for a third State without its consent”

- *It depends on the domestic law of each Third State!*



**Comity**

House of Lords, *Arab Monetary Fund v. Hashim and others*, 21 February 1991

# Legal personality under international law

## What does it mean?

- Capacity to conclude international treaties
- Capacity to bear rights and obligations under customary international law
- capacity to contribute, with its practice, to the creation of customary rules
- capacity to bring an international claim against a State (or IO)
- capacity to be held accountable for any violation of international law it has perpetrated



# Legal personality under international law

- States
- Other legal persons
  - IOs
  - Insurgents
  - National Liberation Movements
  - Individuals

# Legal personality under international law

## - **“Subjective theory” (or “will theory”)**

It is the will of the founders that decides whether an IO has international legal personality or not

- because the constituent treaty provides so

## - **“Objective theory” (Prof. Seyested)**

As long as an IO is given by Member States the power to express a will of its own (e.g. of taking binding decisions by a majority vote), it is a legal person under international law

# Legal personality under international law

## - “Presumptive personality” – Prof. Klabbers

As soon as an organization performs acts which can only be explained on the basis of international personality, such organization will be presumed to be a legal person (pragmatic approach)

the international personality of international organizations derives from the emergence of 'an entity materially able - in certain matters - to act and to manifest a will in such condition of independence as to distinguish itself from any other international person' (**Prof. Arangio-Ruiz**)

# Legal personality under international law

## *The case of the EU*

- Maastricht Treaty 1992
- Amsterdam Treaty 1997
- Nice Treaty 2001
- Lisbon Treaty (Art. 47 TEU) 2007
- Since 2001, the EU has concluded several treaties on its own name

# Legal personality under international law

## *The case of OSCE*

- CSCE created by an international conference in 1975
- It has increasingly been given a formal structure (Charter of Paris 1990)
- In 1994, at the Budapest Summit name was changed into OSCE, but MS should continue to be named “participating states” and not Member States.
- No capacity to conclude treaties, no immunity from jurisdiction
- No express provision in the founding instrument, granting the Organization legal personality

# Legal personality under international law

## *The case of NATO*

- 1) The Washington Treaty is silent on the international legal status of the Alliance
- 2) Decisions are adopted by unanimous vote
- 3) It has treaty-making power
- 4) Its forces enjoy privileges and immunities in the legal system of member States
- 5) Responsibility???

# Legal personality under international law

*The case of the UN???*

*ICJ, Reparation for Injuries Suffered in the Service  
of the United Nations, advisory opinion of 11  
April 1949*

# Legal personality under international law

Functional personality

- 1) Treaties (Vienna Convention 1986)
- 2) Custom (Case of human rights/occupation law)