Several current international legal issues are related to the concept of legal personality, including the determination of international rights and duties of non-state actors and the legal capacities of transnational institutions. When addressing these issues, different understandings of legal personality are employed. These conceptions consider different entities to be international persons, state different criteria for becoming one and attach different consequences to being one.

Roland Portmann systematizes the different positions on international personality by spelling out the assumptions on which they rest and examining how they were substantiated in legal practice. He puts forward the argument that positions on international personality that strongly emphasize the role of states or effective actors rely on assumptions that have been discarded in present international law. The principal argument is that international law has to be conceived as an open system, in which there is no presumption for or against certain entities enjoying international personality.

Roland Portmann is a Scientific Collaborator at the Swiss Ministry of Foreign Affairs, Directorate of International Law, Berne, and a Lecturer in Public International Law at the University of St. Gallen, Switzerland.
Established in 1946, this series produces high quality scholarship in the fields of public and private international law and comparative law. Although these are distinct legal sub-disciplines, developments since 1946 confirm their interrelation.

Comparative law is increasingly used as a tool in the making of law at national, regional and international levels. Private international law is now often affected by international conventions, and the issues faced by classical conflicts rules are frequently dealt with by substantive harmonization of law under international auspices. Mixed international arbitrations, especially those involving state economic activity, raise mixed questions of public and private international law, while in many fields (such as the protection of human rights and democratic standards, investment guarantees and international criminal law) international and national systems interact. National constitutional arrangements relating to ‘foreign affairs’, and to the implementation of international norms, are a focus of attention.

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the accuracy of such information thereafter.
To Fabia
When convictions have been accepted for a long time in doctrine it is easy to lose sight of their derivation from certain assumptions; they therefore continue to be regarded as truths, even when these assumptions have been discarded.

Roberto Ago, *Positive Law and International Law*, 1957

A study of the history of opinion is a necessary preliminary to the emancipation of the mind. I do not know which makes a man more conservative – to know nothing but the present, or nothing but the past.

John Maynard Keynes, *The End of Laissez-Faire*, 1926

We require to know of each rule of international law how it originated and developed, who first established it, and how it gradually became recognized in practice.

Lassa Oppenheim, *The Science of International Law*, 1908
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FOREWORD

The topic of legal personality in international law is pervasive yet mysterious. What does it add to the modern law of human rights, for example, to affirm or deny that individuals are ‘subjects of international law’? The provisions of the human rights treaties, and their implementation mechanisms, continue despite such affirmations or denials. Yet if we say, with Rosalyn Higgins, that the question is not one of formal personality but of actual participation, we may seem to capture an element of the crowded international scene, but at the expense of another; for how far we can participate may well be affected by issues of status – whether one is eligible to chair the drafting committee, or entitled to sit in the delegates’ lounge, or none of the above. In practice, issues of status do not go away, even in smoke-filled rooms, and even if the latter are fortunately less common than they used to be.

As Roland Portmann points out in this splendid, lucid work, ‘there is little comprehensive literature on legal personality in international law, at least in recent times’. Writers have rather concentrated on statehood or on international organisations, or (for those not fixated on either topic) on denying the value of any concept of legal personality in a ‘globalising’ legal order. The now substantial body of work on non-governmental organisations, and the (largely distinct) studies concerning international law and ‘transnational’ corporations, generally fall into this latter category. This work, aiming to offer a comprehensive analysis of legal personality in international law, thus fills a real gap.

In a systematic analysis, Roland Portmann spells out the assumptions upon which many conceptions of international legal personality lie. He tests his theory on a broad range of legal scenarios, including the application of treaties to individuals, the rights and duties of non-state actors, and the law of state contracts; effectively arguing that

international law is an open system of legal rules and principles in which no entity is necessarily excluded from participating.

By so clearly tracking the historical and practical development of the individual in international law, this work effectively attacks the myth of the unitary State as the actor on the international stage. In place of the myth is an open casting call, in which the legal order assigns roles for states, entities and individuals on the stage based largely on performance, and where status is only a prima facie criterion.

James Crawford
Lauterpacht Centre for International Law
14 May 2010
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This book is a revised version of a thesis submitted to the University of St. Gallen, Switzerland, in May 2008. The topic and the general approach towards it were mainly elaborated in discussions with my supervisors, Professor Roland Kley of the University of St. Gallen and Professor Robert Kolb of the University of Geneva. In the course of our regular meetings, both of them offered many knowledgeable insights without forcing them upon me, a rare quality in academic teachers and one that I appreciated very much. I especially benefited from their insistence on analytic clarity as well as from their comments on my writing. They also strongly supported my plans for a research stay at the Lauterpacht Centre for International Law at the University of Cambridge.

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Special thanks go to my parents, Marlène and Rolf, as well as to my sister Nadja. This book is dedicated to Fabia, whom I thank most.

Roland Portmann
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ABBREVIATIONS

AJIL American Journal of International Law
AJIL Supp. Supplement to the American Journal of International Law: Official Documents
Ann. IDI Annuaire de l’Institut de Droit International
AöR Archiv des öffentlichen Rechts
ARSIWA The ILC’s Articles on the Responsibility of States for Internationally Wrongful Acts
ASIL Proc. Proceedings of the Annual Meeting of the American Society of International Law
ATCA Alien Tort Claims Act
AVR Archiv des Völkerrechts
BIS Bank for International Settlements
BYIL British Yearbook of International Law
ECHR European Court of Human Rights
ECJ European Court of Justice
ECR European Court Reports
EJIL European Journal of International Law
EPIL Encyclopedia of Public International Law
HILJ Harvard International Law Journal
HLR Harvard Law Review
IACHR Inter-American Court of Human Rights
ICC International Criminal Court
ICJ International Court of Justice
ICJ Reports International Court of Justice, Reports of Judgments, Advisory Opinions and Orders
ICLQ International and Comparative Law Quarterly
ICRC International Committee of the Red Cross
ICSID International Centre for Settlement of Investment Disputes
ICSID Reports Reports of Cases Decided under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States
ICTR International Criminal Tribunal for Rwanda
ICTY International Criminal Tribunal for the former Yugoslavia

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ABBREVIATIONS

ILA
ILC
ILM
ILO
ILR
JDI
LNTS
NILR
NJIL
PCIJ
RAI
RCADI
Rdi
RDI
RGDIP
UNC
UNTS
VCCR
VCLT
YILC
YLJ
ZaöRV
ZöR

International Law Association
International Law Commission
International Legal Materials
International Labour Organization
International Law Reports
Journal du Droit International (Clunet)
League of Nations Treaty Series
Netherlands International Law Review
Nordic Journal of International Law
Permanent Court of International Justice
Recueil des Arbitrages Internationaux (de la Pradelle/Politis)
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