V. INGOs’ INTERNATIONAL NORMATIVE STATUS: INTERMEDIATE OBSERVATIONS

As was previously mentioned, the question of the *locus standi* of INGOs, together with their general status in their interrelations with the other two principal entities of international concern – the nation-State and the IGO – is not a novelty on the agenda of international legal discourse. Nevertheless, the relevant literature reveals that these issues remain a source of much inconvenience and there is a certain reluctance to directly confront these topics. This seems to be one of the main reasons for the extensive publication of literature, particularly in the 1990s, describing and evaluating the relevance of INGOs. Focusing mainly on the mechanisms INGOs employ, this literature bypasses the hard questions ahead. Consequently, it is only relatively recently that the question of the legal personality of INGOs has been faced squarely.

A few scholars have tried to confront the question of the acquisition of personality by INGOs. They have suggested guidelines, which assist in conceptualizing different approaches to dealing with the matter. Thus, for example, Slaughter, relying on her three models which analyze the role and relevance of INGOs, concludes that different types of INGOs engage in different types of activities. Consequently, she suggests that any proposal to formally empower INGOs, through enhancement of their rights and responsibilities, must be based on the differences arising from their functional categorization. Notably, this categorization is based on the identification of INGOs’ methods of activity. These methods are evaluated with regard to governments, international institutions, and transnational groups. Slaughter thus suggests that the acquisition of legal personality should be a corollary of the relevance of INGOs, in terms of the effect of their activities on, and interrelations with, the remaining actors on the international plane. For example, no formal recognition should be accorded to ‘enabling INGOs’ (Model I), which as a result of their function must maintain a distinct but allied position *vis-à-vis* States, because such recognition would allow them to litigate against States or formally represent global interests as distinct from State interests. Here, Slaughter explains, such status would be likely ‘to backfire or be affirmatively counter-productive’. Recalling that ‘adversarial activist INGOs’...
(Model II) represent interests directly opposing those of States, and therefore act by mobilizing change in target national governments, Slaughter concludes that the grant of any formal legitimacy to such INGOs alongside States would not promote their goals. Finally, since the influence of ‘market power INGOs’ (Model III) stems from the creation of new channels of power and political action that altogether circumvent the nation-State, and target private corporations by manipulating consumer demand while representing self-deduced interests and operating in accordance with their own rules, Slaughter concludes that ‘it is highly unlikely that they will be granted any formal status in official international law making or law enforcement processes’.

For several reasons, it is highly doubtful that Slaughter’s analysis can produce effective conclusions regarding the normative status which should properly be acquired by INGOs. Certainly, the models are helpful in providing frameworks for organizing and analyzing complicated new empirical phenomena regarding INGOs’ current methods of activity, thus facilitating acknowledgement of their changing relevancy. However, they fail to provide genuine guidelines on the question of legal standing de lege ferenda. First, in order to recognize the need for the acquisition of formal legal standing, it is necessary to concentrate on the very outcome of the activity, rather than adopt a causal theory. In that respect, acknowledging what INGOs achieve is more relevant than emphasizing how they actually do it; such an approach clearly analyzes the issue from the vantage point of the specific entity/organization rather than the overall system, and is based on an axiomatic stance that the entity’s very intervention is desirable for the international system as a whole. Legally, the latter factor (that is, mode of activity), may perhaps be helpful in the consideration of the scope or degree of personality. Politically, it can be a relevant aspect in the consideration of the urgency of the realization of personality. However, it is misleading in concluding the preliminary issue of the acquisition of legal personality. Thus, a clear distinction should be kept between two questions, each of which merits a different set of considera-

310 See ibid., p. 28. Slaughter firmly maintains that “[F]ormal ‘legitimation’ of organizations who self-consciously constitute the opposition could undermine one of their principal assets in the public eye.” see ibid., ibid. Nevertheless, Slaughter interestingly prefers to endow such NGOs with increased litigation possibilities, and access to tribunals on all levels. She finally observes that “[T]he trick is to convince states, who will be the primary defendants in such tribunals, to grant standing to a large class of potential plaintiffs.” – such remark is indeed puzzling: what can constitute more formal recognition and ‘legitimation’ than the enjoyment of increased litigation rights and access to international tribunals? Furthermore, is not the doubt raised by Slaughter as to the willingness of States to acknowledge those rights in-fact the source and the trigger for the whole discussion? – see ibid.

311 See ibid., p. 30.

312 See ibid., p. 33.