PART THREE

PUBLIC INTERNATIONAL LAW
In Part Two we have seen that all intergovernmental organizations exercise legislative, administrative and judicial jurisdiction over their organs and the members thereof as such, and that this jurisdiction is inherent in all IGOs which do not have contrary provisions (e.g. organizations of the type dépendant), although some writers still presume that the jurisdiction depends upon the constitution of each organization concerned and then, seeing that these normally do not contain relevant provisions, fiction it into the constitutions as powers “implied” in each specific constitution; however, they fail for good reasons to give examples of organizations which would lack this “implied” power and in what respects\(^1\) – indeed, such examples would be hard to find.

This conflict between doctrine and practice exists also with regard to the capacity to act externally as a subject of law on an equal basis. We shall here concentrate upon the question of international personality, i.e. the capacity to act as a subject of public international law – in relations with States, other IGOs and other self-governing communities.

### 8.1 Constitutional provisions only for legal personality of national law

Many and most of the larger IGOs have express provisions in their constitutions and/or conventions on privileges and immunities and headquarters agreements for “legal personality”, “legal capacity” or “juridical capacity”. By this is meant legal personality in national law. This is probably true also

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\(^1\) See above chapter 5 with regard to internal powers. Van der Molen: Subjecten van Volkenrecht, the Hague 1949, spoke of legal personality in international law with regard to the UN (“De rechtspersoonlijkheid van de organisatie der V.N. lijdt naar internationaal recht dan ook geen twijfel”), but of limited (“beperkte”) or certain (“zekere”) legal capacities (“rechtbegoegdheden”) with regard to the specialized agencies and the international river commissions.