

Introduction: The EU as a Regional International Organization

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Abstract

This introductory chapter canvasses out some general thoughts on the broader topic of ‘the EU as a Regional International Organization (RIO)’ thereby setting out the context and framework for the discussion that follows in the subsequent chapters. First, it highlights the relevance of employing the RIOS’ analytical lens in international legal discourse. The chapter argues that the RIOS’ angle offers unique insights that feed into a number of important debates in modern international (institutional) law. Against this backdrop, it continues by exploring the merits of using the ‘regional perspective’ in debates regarding the EU. It is shown that the regional framing offers a fresh vantage point of view from which to approach lingering questions of EU law. The chapter concludes by providing an overview of the contributions in the edited volume.

Keywords

European Union (EU) – Regional International Organizations (RIOS) – region – regionalism – accountability – international organizations – International Law Commission (ILC) – regional integration

1 Introduction: RIOS in International Law

The rise and proliferation of Regional International Organizations (RIOS) has been one of the most salient features of modern international law. Nowadays, RIOS play an active and important role in a wide range of global governance

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fields, such as migration, security, health, or climate change mitigation. Despite their increasing significance as global governance actors, RIOS have largely remained at the margins of scholarly attention – at least as far as international legal literature is concerned.² By way of contrast, regions, regional actors and regionalism have long been a focal point in international relations research.³ It is only recently that international legal scholarship has started tackling in earnest the multifaceted questions that regional ordering poses for international law. Acknowledging the relevant gap in international legal literature, a Study Group (SG) on the *International Law of Regional Organizations* was established under the auspices of the International Law Association (ILA) in 2020 with the explicit aim to explore the law and practice of RIOS with a view to understanding the relevance and impact of this practice on international law.⁴ The SG issued its final report in 2024.⁵ In parallel and as an academic companion to the SG's work, the co-chairs of the ILA SG edited a Special Issue on the topic of 'The International Law of Regional Organizations' addressing a number of further conceptual, normative, historical and institutional issues pertaining to RIOS.⁶

These developments attest to the need to study RIOS and to pay closer attention to their significance for international law. Finally, there are some inherent difficulties to doing so. First, one must contend with the fact that no widely accepted definition of RIOS exists. Often, these entities are simply defined negatively by reference to universal international organizations (IOs).⁷ In lieu of a common definition, the existing discussion focuses on two central elements: (i) the nature of RIOS as international organizations; and (ii)

2 Notable exceptions are Laurence Boisson de Chazournes, *Interactions between Regional and Universal Organizations: A Legal Perspective* (Brill/Nijhoff, 2017); Damian Chalmers, 'Regional Organizations and the Reintegrating of International Law' (2019) 30 EJIL 163.

3 Tanja A. Börzel, 'Theorizing Regionalism: Co-operation, Integration, and Governance', in Tanja A. Börzel, Thomas Risse (eds.), *The Oxford Handbook of Comparative Regionalism* (Oxford University Press, 2016) 41–63. For an overview, see Samantha Besson, Eva Kassoti, 'Introduction to the Special Issue: The International Law of Regional Organizations – Mapping the Issues' (2024) 21 IOLR 1, 7–13.

4 https://www.ila-hq.org/en_GB/study-groups/international-law-of-regional-organisations.

5 Fernando Bordin, Jed Odermatt, Samantha Besson, Eva Kassoti, 'International Law Association Study Group on the International Law of Regional Organizations, Final Report' 2024, available at https://www.ila-hq.org/en_GB/documents/ila-study-group-regional-organisations-final-report-may-24-1, accessed on 15 January 2025.

6 Besson and Kassoti (n 3).

7 Harry G. Schermers, Niels M. Blokker, *International Institutional Law* (6th Rev. Ed., Brill, Nijhoff, 2018), 57; Christoph Schreuer, 'Regionalism v. Universalism' (1995) 6 EJIL 477.

the element of regionalism.⁸ In the literature, regionalism is employed to con- note: (i) geographical proximity; and (ii) a social element referring to proximi- ty founded on various ‘solidarity links’ that reflect common interests and val- ues and may have economic, religious, social, cultural and political dimensions.⁹ Secondly, the diversity of RIOS complicates matters even further. Since RIOS are quite diverse in many respects, legal generalizations are not easily made in this context. What holds true for one RIO may not hold true for another taking into account the many differences that may exist among them in terms of their institutional structure, tasks, competences and rela- tions with the outside world.

These are formidable difficulties and thus, they may also explain the reluc- tance with which international legal scholarship has, until quite recently at least, approached the regional phenomenon. This reluctance is also evident in this volume. Jan Klabbers, for instance, in his chapter on ‘The Soft Phenome- nology of the RIO’, questions the value of having recourse to the concept of the RIO on the grounds that it ‘is far too elusive to be of much practical use ... Second, the law does not attach legal consequences to the quality of being a regional international organisation.’¹⁰

Difficulties notwithstanding, this book argues, and attests to the need, for more research on the ‘regional’ dimension of RIOS. It is worth recalling that the existing work on the topic acknowledges the inherent difficulties and the complexity surrounding RIOS and a number of arguments highlighting the relevance of employing the RIOS’ analytical lens have also been put for-

8 Bordin, Odermatt, Besson, and Kassoti (n 5) 12.

9 According to Boisson de Chazournes: ‘[T]wo elements can be said to characterise the regional phenomenon behind the creation of a regional organization: geographical proximity and solidarity founded on common interests and shared values.’ Boisson de Cha- zournes (n 2) 8; Samantha Besson, ‘Du Droit de Civilisation Européen au Droit Interna- tional des Civilisations: Instituer un Monde des Regions’ (2021) 31 *Swiss Review of International and European Law* 396.

For instance, when asked to present its view on what it means to be ‘European’ and where the borders of Europe lie in 1992, the Commission provided that ‘European’ in Article 237 of the Rome Treaty (now Article 49 TEU) combines: ‘... geographical, histori- cal and cultural elements which all contribute to the European identity. The shared experience of proximity, ideas, values, and historical interaction cannot be condensed into a simple formula, and is subject to review by each succeeding generation.’ Commis- sion of the European Communities, *Europe and the Challenge of Enlargement*, Brussels, 24 June 1992, para. 7, p. 11, available at <https://op.europa.eu/en/publication-detail/-/pub- lication/d94b400d-b92f-4d91-995e-5f0ad1b36abe>, accessed on 15 January 2025.

10 Jan Klabbers, ‘The Soft Phenomenology of the Regional International Organization’, in this volume.

ward.¹¹ This introduction will only briefly sketch out a few of them. First, the sheer diversity of RIOS is not a reason precluding their examination as an analytical category in the same vein that the sheer diversity of international organizations (IOs) has not precluded their study as such.¹² After all, the nature of RIOS as IOs is taken as a point of departure in the relevant discussion.¹³ Yet, merely treating them as IOs would be to ignore their specificity and their increasingly important role in global governance. Granted, positive international law may not directly vest 'regionalism' with normative effects, but this does not negate the fact that the RIOS' law and practice can offer unique insights feeding into a number of important debates in modern international (institutional) law. Second, while the term 'region' remains opaque,¹⁴ RIOS' law plays a central role in the legal construction and articulation of the regional identity, namely describing what the region stands for in legal terms.¹⁵ Thus, for instance, while the European Union (EU) has consistently portrayed itself as a legal formalist whose pursuit of interests goes hand in hand with its commitment to the ethos of multilateralism and respect for international law, the Association of Southeast Asian Nations (ASEAN) has prioritised sovereignty, the peaceful settlement of disputes and recourse to soft law as part of its mandate. Casting into legal terms the regional narrative provides a tangible yardstick against which to assess whether the RIO actually sticks to the story it has created for itself. This provides concrete tools for holding RIOS accountable as significant loci of power.¹⁶ This is no mean feat – particularly in light of the 'serious accountability deficit' that plagues IOs' law.¹⁷

11 See, for example, Besson and Kassoti (n 3); Eva Kassoti, 'The European Union and Other Regional International Organizations: Tales of Solidarity' (2024) 21 IOLR 190, 192–199; Chalmers (n 2) 163–166.

12 On the diversity of IOs, see generally, Jan Klabbers, 'Unity, Diversity, Accountability: The Ambivalent Concept of International Organisation' (2013) 14 MJIL 1, 14.

13 Apollin Koaagne Zouapet, 'States and Regional International Organizations' (2024) 21 IOLR 190.

14 Tanja A. Börzel, Thomas Risse, 'Introduction: Framework of the Handbook and Conceptual Clarifications', in Tanja A. Börzel, Thomas Risse (eds.), *The Oxford Handbook of Comparative Regionalism* (Oxford University Press, 2016) 6.

15 Damian Chalmers, *The Distinctiveness of Regional Organizations Law* (2016) 21 IOLR 43, 46.

16 On this, see further, Samantha Besson, 'The Politics of Regional Organizations: A New Dawn for the Political Legitimacy of International Law' (2024) 21 IOLR 87.

17 Jan Klabbers, Guy Fiti Sinclair, 'On Theorizing International Organizations Law: Editors' Introduction' (2020) EJIL 31, 491.

Furthermore, RIOS constitute sites where the contributions of non-Western peoples and legal traditions to international law come into sharp focus. Thus, the study of RIOS helps us to problematize what counts as ‘international’ in international law¹⁸ and provides a rich trove of source material for answering pressing questions of inclusiveness and representation in international law-making.¹⁹ In a similar vein, enquiring into the practice of RIOS provides concrete examples of the Global South’s contribution to the development of international law.²⁰ As Orford has eloquently put it: ‘Taking regional orders seriously might open up space for considering how other states and their peoples have tried to shape international law in a world in which hegemonic powers exist.’²¹

RIOS also bring into sharp relief the role of the individual in international law. A number of RIOS such as Mercosur, ASEAN, the EU and ECOWAS have developed notions of regional citizenship, a point discussed in Victoria Hooton’s contribution to this book.²² Moreover, it is no accident that regional human rights protection regimes constitute the main pillars of the international system for the protection of human rights. This reflects the privileged position of RIOS when it comes to law-making processes. As the International Law Commission (ILC) has highlighted, within a regional setting: ‘The presence of a coherent cultural community better ensures that the regulations enjoy legitimacy and that they are understood and applied in a coherent way. This is probably the reason why human rights regimes ... have always commenced in a regional context, despite the universalist claims of ideas about human rights ...’.²³

Occupying the intermediate level between States and IOS, RIOS challenge the traditional binary of territory/function, thereby posing awkward questions about the relevance and accuracy of the very tools through which interna-

18 Anthea Roberts, *Is International Law International?* (OUP, 2017) 254–256.

19 Besson and Kassoti (n 3) 193; Besson (n 16); Chalmers (n 2) 165; Kassoti (n 11) 193.

20 For example, the predecessor of the African Union, the Organization of African Unity played a prominent role in the formulation of the concept of the Exclusive Economic Zone in the law of the sea. Abdulqawi A. Yusuf, ‘Pan-Africanism and International Law’ (2014) 369 *Recueil des cours* 1, 141–148.

21 Anne Orford, ‘Regional Orders, Geopolitics and the Future of International Law’ (2021) 74 *Current Legal Problems* 149, 193.

22 Päivi J. Neuvonen, ‘Transforming Membership? Citizenship, Identity and the Problem of Belonging in Regional Integration Organizations’ (2019) 30 *EJIL* 229–255.

23 Report of the Study Group of the International Law Commission finalized by Mr M. Koskenniemi, *Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law*, 13 April 2006, UN Doc. A/CN.4/L.682 and Add. 1, para. 205.

tional lawyers cognise the social reality on the ground of practice.²⁴ RIOS invite us to rethink the geographies of international law and to explore alternate spatial arrangements therein. In this sense, enquiring into the regional can feed into broader debates regarding the meaning of ‘territory’ in international law. There is, for instance, a growing body of public international law literature that advocates in favour of abandoning the understanding of ‘territory’ as a physical, geographical space since it no longer reflects the complexities of modern-day global governance and the rise of non-State entities, such as IOS and RIOS, with a wide array of public powers traditionally exercised by States.²⁵ Instead, authors of this school of thought have re-imagined ‘territory’ as a ‘socially and legally bounded space’,²⁶ a construct that allows us to consider non-State entities as also creating legal space through their social practices.

Finally, one should remain alert to the fact that the unease towards RIOS could also be attributed to the fact that these entities call into question dominant narratives about the universalist nature of the international legal order as well as the vision of IOS as politically neutral bodies working towards the public good. This has been aptly captured by Brölmann, who notes that: ‘Regional organizations by their very existence challenge certain ideological underpinnings of international law, notably those connected to the universality of the law and to the ‘neutrality’ of organizations ... So it is the case that ... in the ideology of international law RIOS do not fit’.²⁷ Klabbers has also noted that RIOS disrupt the vision of IOS as entities that essentially work in the public interest and perform public tasks.²⁸ These concerns should not lead us to shy away from scrutiny of these ‘misfits’. Quite to the contrary. The RIOS’ strain on the universalist paradigm as well as on the ideal of IOS as neutral, apolitical and essentially benevolent creatures, confirms that they are important reference points in the debate on the nature of the international (institutional) order.

24 Catherine Brölmann, ‘Review of L. Boisson de Chazournes (2017) Interactions between regional and universal organizations: a legal perspective’ (2020) 114 AJIL 335; Besson and Kassoti (n 3) 5–6.

25 See for example Gail Lythgoe, *The Rebirth of Territory* (CUP, 2024) 208; Saskia Sassen, ‘When Territory Deborders Territoriality’ (2013) 1 TerrPolGov 21.

26 Jure Vidmar, *Territorial Status in International Law* (Hart Publishing, 2024) 22–25.

27 Catherine Brölmann, ‘Regional Organizations in International Law: Exploring the Function-Territory Divide’ (2024) 21 IOLR 132, 144–145.

28 Klabbers (n 12) 18–22.

2 The EU as a RIO

Against this backdrop, the next question that needs to be addressed at this juncture is the value of using the ‘regional lens’ in debates regarding the EU – probably the most well-known (and well-studied) example of a RIO. The ‘regional’ perspective is largely absent in debates about the EU’s identity and external posture, as are reflections about how this perspective relates to that of other RIOS. What does the ‘regional’ lens offer to the study of EU law and how is it weaved in the legal and political imaginary of the Union? How is the regional dimension reflected in EU policy-making and how does it impact norm production? How does this dimension interact with regional solutions found in other RIOS and in other regional orders? These are some of the overarching questions that this edited volume sets out to address.

The RIO label remains a relevant identity-descriptor for the EU on the international stage. The term RIO is a common topos in the EU’s discursive practice. Not only are RIO or regional economic integration organization (REIO) clauses common in the EU’s international treaty practice,²⁹ the term is still, to date, often perceived as ‘a code-name for the EU’.³⁰

One forum where such dynamics – and the relevance of the descriptor – can be witnessed is the UN Sixth Committee and the debates therein on the work of the International Law Commission (ILC).³¹ Here, EU legal advisers seeking to vindicate the relevance of EU practice for the ILC’s work of codification and progressive development of international law, have relied on the REIO or RIO descriptor both to distinguish the EU from other IOs but also, perhaps inadvertently, to promote and advocate for the recognition of (R)IOs as relevant actors in the fabric of international law.

Examples of such reliance are recurring in UN Sixth Committee ILC-related debates. The most emblematic of such examples concerns the well-known drafting history of the Articles on the Responsibility of International Organisations (ARIO), where EU legal advisers sought, to little avail, to see codified special rules of attribution of conduct or of responsibility for REIOS and their

29 Jed Odermatt, *International Law and the European Union* (CUP 2021), 70–74; Tamas Molnar, Ramses A. Wessel, *Interactions between EU Law and International Law: Juxtaposed Perspectives* (Edward Elgar, 2024) 150–151.

30 Esa Paasivirta and Pieter-Jan Kuijper, ‘Does One Size Fit All? The European Community and the Responsibility of International Organizations’ (2005) 36 *Netherlands Yearbook of International Law* 169, 211.

31 On this, see generally, Teresa Cabrita, ‘The Integration Paradox: An ILC View on the EU Contribution to the codification and development of rules of general international law’ (2021) 5 *Europe and the World: A Law Review* 1.

member states.³² Special Rapporteur Gaja, initially open to the idea of establishing different rules for different types of organization, also advanced a proposal recognising the right of REIOs to adopt countermeasures on behalf of their members '[w]here an injured State or international organization has transferred competence over certain matters to a regional economic integration organization of which it is a member'.³³ Granted, all such attempts at carving out a special legal place for R(E)IOs were soon rejected either by States or ILC member or both,³⁴ who were against codifying rules which they perceived as tailored to the 'special case' of the EU.

At the same time, the importance of RIOs has significantly grown in codification efforts that move from classic topics of international law to emerging issues of global governance such as the protection of persons in the event of disasters and the protection of the environment. In this context, it is expected that the EU will have a greater role to play as a RIO with significant practice in such new and emerging fields.³⁵ At the same time, EU practice also draws attention to the relevance of IOs practice more broadly. Take, for instance, the ILC's work on the protection of persons in the event of disasters, where EU legal advisers repeatedly requested that RIOs be expressly mentioned in the draft.³⁶ This request was heeded by Special Rapporteur Valencia-Ospina in

32 ILC, 'Responsibility of international organizations: Comments and observations received from Governments and international organizations', 2005 (A/CN.4/556), 31; Paasivirta and Kuijper (n 30) 216; Jed Odermatt, *International Law and the European Union* (CUP 2021) 201–204.

33 ILC, 'Sixth report on responsibility of international organizations, by Mr Giorgio Gaja, Special Rapporteur', 2008 (A/CN.4/597) para 66. Two chapters of the present edited volume deal with countermeasures. See the contributions by M. Veber and P. Stejskal.

34 With respect to a rule on countermeasures by REIOs, for instance, Jamaican ILC member Vasciannie objected to the idea that 'an entity denominated a [REIO] should be given a special status'. Statement by Mr Vasciannie, ILC, Summary record of the 2964th meeting, 16 May 2008, YBILC 2008 vol I (A/CN.4/SER.A/2008) 53, para 42.

35 Molnar and Wessel (n 29) 163.

36 See Statement by Mr Gussetti (Observer for the European Union), Sixth Committee, Summary record of the 21st meeting, 27 October 2011 (A/C.6/66/SR.21) para 57: '... the reference in those draft articles to the United Nations, other competent intergovernmental organizations and relevant non-governmental organizations might raise the question as to whether the provisions also included regional integration organizations, such as the European Union. In order to dispel any doubts on that score, [the EU] suggested that regional integration organizations should be expressly mentioned in the draft articles or that their inclusion should be made clear in the commentaries'. See also, Statement by Mr Gussetti (Observer for the European Union), Sixth Committee, Summary record of the 18th meeting, 1 November 2012 (A/C.6/67/SR.18), para 73; Statement by Ms Cujo (Observer for the European Union), Sixth Committee, Summary record of the 23rd meeting, 4 November 2013 (A/C.6/68/SR.23), para 32.

the commentary to the articles' draft text.³⁷ As it has been stressed: 'Through its observations to the Commission's work, the EU has championed the cause of international (regional) organizations as actors in their own right and has left a small but not negligible mark on the final outcome of the discussions in a number of topics'.³⁸

In this context, it is important to note that the term 'RIO' has arguably been used in legal discourse both to *exclude* and to *include*. At first sight, the use of the RIO descriptor, in the sense of regional *integration* organization, seems mostly aimed at distinguishing (by justifying special rules), excluding (by carving out exceptions), or emancipating (by promoting) the relevance of the EU, and of EU integration, to the codification and progressive development of international norms. In doing so, however, this process also emancipates and includes other RIOS, at differing degrees of integration, into international codification processes. RIO clauses create a space for treaty accession and membership, and the use of the RIO descriptor opens up the debate about the relevance of international organizations' practice to the identification of rules of custom, to the protection of persons in the event of natural or man-made disasters, or to the conclusion of treaties.

The regional framing also allows us to move beyond the analytically unhelpful label of the EU as a 'sui generis' entity since it encourages comparisons with other RIOS, thereby providing a useful background for assessing the EU's claim to specialness. Despite the EU-centrism in research on regional citizenship, for instance, many other regional entities have developed these regimes³⁹ – with regional citizenship in the Economic Community of West Africa States (ECOWAS) predating that of the EU.⁴⁰ Furthermore, the East African Community (EAC), the Andean Community and the Eurasian Economic Union (EAEU) have developed notions of 'supremacy' and 'direct

37 ILC, Draft articles on the protection of persons in the event of disasters, 2016 ILC Report (A/71/10) chapter IV, para 48, commentary to draft article 1, para 3.

38 Teresa Cabrita, The EU's Contribution to the Development of International Law at the UN International Law Commission: Little Effort or a Tough Crowd?, UACES Graduate Forum, 2018, 20, available at https://www.researchgate.net/publication/341214733_The_EU%27s_contribution_to_the_development_of_international_law_at_the_UN_International_Law_Commission_Little_Effort_or_a_Tough_Crowd_Uaces_Graduate_Forum, accessed 15 January 2025.

39 Amelie Weinrich, 'Varieties of Citizenship in Regional Organizations: A Cross-Regional Comparison of Rights, Access and Belonging' (2021) 24 International Area Studies Review 255.

40 ECOWAS, 'Protocol A-P.3-5-82 Relating to the Definition of Community Citizen', 1982, available at <https://citizenshiprightsafrika.org/wp-content/uploads/2016/06/ecowas-Protocol-Relating-to-the-Definition-of-Community-Citizen.pdf> accessed 15 January 2025.

effect' of their internal laws.⁴¹ In a similar vein, a number of other RIOs have claimed autonomy from the international legal order – albeit in varying degrees.⁴²

41 Bordin, Odermatt, Besson, and Kassoti (n 5) 25–27.

42 In relation to Mercosur law and international law for instance, a Mercosur ad hoc arbitration tribunal has stated: '[T]he aforementioned concurrence of elements ... justify the invocation of the [international] law principles of estoppel ... However, it should be noted that, ..., the fact that the issue in question arose within an integration process such as the one MERCOSUR intends to carry out, should facilitate the application of legal principles that promote trust and therefore prohibit 'venire contra factum proprium' ... The application of the [international law] principle of estoppel theory to relations between States linked by economic integration treaties such as those that constitute and develop MERCOSUR cannot ignore the special relationship that such treaties create between their signatories. The existence of this relationship ... must be taken into account when considering the possibility of applying the estoppel theory to a particular situation ...' [Translation by the author]. Mercosur, ad hoc arbitration panel, Arbitral Award of 9 January 2002, *Import Ban on Remolded Tires* (Uruguay v Brazil), available at <https://jsumundi-com.translate.google.com/document/decision/es-import-ban-on-remolded-tires-uruguay-v-brazil-laudo-arbitral-wednesday-9th-january-2002>. Furthermore, the Mercosur Permanent Tribunal, for instance, has stressed that Mercosur law 'has and must have sufficient autonomy from other fields of law. Denying this always contributes, in a negative way, to the development of MERCOSUR normative institutions.' Mercosur, Permanent Review Tribunal, Award No. 1/2005 on the motion for review submitted by Uruguay against the 25 October 2005 arbitral award of the ad hoc Tribunal concerning the dispute 'Prohibition of the Remoulded Tires Imports from Uruguay', 20 December 2005, as quoted in Martha Lucia Olivar Jimenez, 'The Law of MERCOSUR and International Law: The Struggle for Independence' in Marcilio Toscano Franca Filho, Lucas Lixinski, María Belén Olmos Giupponi (eds.), *The Law of MERCOSUR* (Hart Publishing, 2010), 204–205. The Court of Justice of the Andean Community has also highlighted the autonomous nature of Andean Community Law vis-a-vis international law. 'By virtue of its autonomy, it is confirmed that the Community legal order, both primary and secondary, is neither subordinate to domestic law nor to the international sources of such countries.' Court of Justice of the Andean Community, Preliminary Ruling 158-IP-2006, part C, as quoted in Karen Alter, Laurence Helfer, *Transplanting International Courts: The Law and Politics of the Andean Tribunal of Justice* (OUP 2017), 107. On the emerging autonomous legal nature of the Eurasian Economic Union, see the Dissenting Opinion of Judge Chaika in the *Kaliningrad Transit* Judgment, Court of the Eurasian Economic Union, Case SE 1-1/1-16-BK *Russia v Belarus (Kaliningrad Transit)*, judgment of 21 February 2007. 'By creating the Eurasian Economic Union of unlimited duration, which is an international organization of regional economic integration, vested with international legal personality according to Article 1(2) of the Treaty of the Union, and having its own system of institutions, Member States of the Union have transferred real powers, have limited their sovereign rights in strictly specified fields and created an autonomous totality of legal norms, which are binding upon all Member States.' As quoted in Maksim Karliuk, *The Emerging Autonomous Legal Order of the Eurasian Economic Union* (CUP, 2023), 154. In a similar vein, the Caribbean Court of Justice has stated in relation to the

In the same vein, the focus on the ‘region’ brings to the fore issues of collective identity. While, arguably, such issues have always mattered⁴³ – principally, in the fields of enlargement and European neighbourhood policy – recent developments such as Brexit and Russia’s invasion of Ukraine have accentuated the importance and relevance of regional identity (narratives) in the EU’s response thereto. Recourse to notions of collective identity and shared values is also part of the EU’s response to internal challenges, such as the rule of law backsliding in Hungary and Poland.⁴⁴ Issues of identity are important in the context of other RIOS too. In her contribution to this volume, Eleonora Frasca underlines the importance of migration for the regional identity of Regional Economic Communities in Africa and African integration in general.

The intimate link between regional identity and the RIO shows that the RIO is essentially a relational concept.⁴⁵ The regional ‘we’ acquires its meaning when compared and juxtaposed to ‘others’ that do not share the same identity and values. In this sense, the RIOS’ lens helps us not to lose sight of the complex, yet significant, questions of ‘us’ and ‘otherness’ that the construction of a European identity inevitably brings.⁴⁶ The triggering of the Temporary Protection Directive in relation to Ukrainian refugees⁴⁷ illus-

Caribbean Community (CARICOM) that: ‘Implementation of the very idea and concept of a Community of States necessarily entails as an exercise of sovereignty the creation of a new legal order and certain self-imposed, albeit perhaps relatively modest, limits to particular areas of State sovereignty.’ Caribbean Court of Justice, *Shanique Myrie v Barbados and Jamaica* [2013] CCJ (OJ), para. 69.

- 43 Daniel C Thomas, *The Limits of Europe: Membership Norms and the Contestation of Regional Integration* (OUP, 2021).
- 44 See, for example, Case C-157/21 *Poland v European Parliament and Council of the European Union*, ECLI:EU:C:2022:98, paras. 140–145; Case C-156/21 *Hungary v European Parliament and Council of the European Union*, ecli:EU:C:2022:97, paras. 124–127. On the role of values in the EU legal order more broadly see also the Opinion of Advocate General Ćapeta in Case C-769/22, *Commission v Hungary (Valeurs de l’Union)*, ECLI:EU:C:2025:408, paras. 155–163.
- 45 Guy Fiti Sinclair, ‘Between Functionalism and Hegemony: Regional International Organizations in the History of International Law’ 21 *IO LR* 65 (2024).
- 46 Violeta Moreno-Lax, ‘Solidarity’s Reach: Meaning, Dimensions and Implications for EU (External) Asylum Policy’, 24 *Maastricht J. Eur. Comp. L.* 740 (2017).
- 47 Council of the EU, *Ukraine: Council Unanimously Introduces Temporary Protection for Persons Fleeing War*, 4 March 2022, available at <https://www.consilium.europa.eu/en/press/press-releases/2022/03/04/ukraine-council-introduces-temporary-protection-for-persons-fleeing-the-war/>, accessed 02 May 2025.

trates this point well.⁴⁸ Arguably, the way in which the EU reacted towards Ukrainian refugees stands in stark contrast to other people fleeing war. There is evidence to suggest that the showing of solidarity towards Ukrainian people fleeing from their country in the aftermath of the Russian invasion is due to the fact that most Europeans view Ukraine as part of the ‘European family’.⁴⁹ This could raise questions of double standards and selectivity.

The RIO perspective also offers a new vantage point from which to approach lingering questions of EU law. It has been argued in the literature that the concept of the ‘EU territory’ remains underexplored and undertheorized.⁵⁰ The regional framing could contribute to a deeper understanding of the EU’s legal spatiality. For instance, in a recent article Toni Marzal explores the EU Court of Justice’s case-law on the (extra)territorial scope of EU law from the point of view of the ‘local community’.⁵¹ Marzal argues that a principal consideration guiding the Court’s exercise of drawing the boundaries of EU law is who belongs within that particular political community.⁵² This perspective also allows us to reflect on how the ‘region’ is constructed and thus, lays bare sub-regional tensions within the EU and brings into sharp focus how the EU handles questions of social justice and re-distribution.⁵³ The migration and European debt crises have shown that internally, there are inequalities and asymmetric burdens which the Union does not necessarily have the tools to systematically deal with – thereby putting to the test the assumption that

48 Eva Kassoti, Narin Idriz, ‘The Kindness of Strangers’ - Solidarity in International and EU Law: An Introduction’ in Eva Kassoti, Narin Idriz (eds.), *The Principle of Solidarity: International and EU Law Perspectives* (Springer, T.M.C. Asser Press, 2023) 8–9.

49 European Commission, ‘Eurobarometer: Europeans approve EU’s Response to the war in Ukraine’ May 2022, available at <https://europa.eu/eurobarometer/surveys/detail/2772>, accessed 02 May 2025.

50 Gail Lythgoe, ‘Distinct Persons; Distinct Territories: Rethinking the Spaces of International Organizations’ (2022) 19 *IOLR* 365, 380. See also, generally, Eva Kassoti, ‘The EU and Questions of ‘Territory’ under Public International Law’ ASSER Research Paper 2025–02, forthcoming in Lucia Leontiev, Artur Simonyan (eds.), *Territory and Territoriality in Eurasia: Law and Geopolitics* (Edward Elgar, 2026) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5204973, accessed 2 May 2025. Floris De Witte, ‘Here Be Dragons: Legal Geography and EU Law’ (2022) 1 *European Law Open* 113, 116–118.

51 Toni Marzal, ‘The Territorial Reach of EU Law: A Private International Law Enquiry into the European Union’s Spatial identity’ (2024) 73 *ICLQ* 29.

52 *Ibid.*, 32.

53 Loïc Azoulay, ‘Editorial Comments: A Jurisprudence of Distribution for the EU’ (2022) 59 *Common Market Law Review* 963; Floris De Witte, ‘Finding Space in EU Law, Transnational Legal Theory’ (2024) 15 *Transnational Legal Theory* 543.

participation in the European project is, at the end of the day, beneficial to all.⁵⁴ While the RIOS' lens does not offer ready-made answers, it is a promising avenue for understanding how EU law affects people in different parts of Europe as well as distant strangers.

3 The Structure of This Volume and Overview of the Contributions

From the outset it is worth stressing that in this edited volume different views on 'regionalism' have been put forward. **Telford and van Wageningen** argue for a 'relational' understanding of regions, criticizing the notion of regions as static territorial units, in line with the work of human geographers advocating for a 'new regional geography'. In this context, regions are conceptualised as 'contingent bundles of geographical, political and historical relations' rather than being pre-defined spaces. They are socially constructed and feature porous and shifting boundaries. On the other hand, **Veber** calls for a revision of a primarily geographical, binary (regional-universal), and membership-oriented understanding of 'the regional' in favour of a co-constructed concept grounded on the mutual influence between the regional and the universal. **Delgado Casteleiro**, in turn, draws our attention to the limited value of inter-RIO comparative exercises, notably where regional features are pitted against EU integration, and focuses on the imminently political – rather than geographical – nature of the idea of region in Latin America and its impact on the volatile features of Latin American RIOS.

At the same time, a number of chapters manifest similarities in method, theme or approach towards the regional phenomenon. At least three contributions – **Klabbers**, **Krapohl** and **Delgado Casteleiro** – challenge the idea that the EU might operate as a valid model for regional integration or remain the archetypical prototype of a RIO. Beyond the colonial undertones of such assumptions, these authors either draw attention to the unique and non-replicable constellation of circumstances that explain EU regional integration (Krapohl) or underline how such comparative practice tends to obfuscate the unique legal and political dynamics that underpin other RIOS and other conceptualizations of RIOS (Delgado Casteleiro).

Perehudoff, **Veber** and **Stejskal**, in turn, all highlight the EU's potential, as a RIO, to shape international law, either by projecting its regional interests onto a co-constructed universal general interest or by contributing to (or

54 Azoulay (n 53), 958–959.

compromising) RIOs overall compliance with international rules on, for instance, countermeasures and international cooperation.

Turning to the structure of this volume, **Jan Klabbers'** contribution opens this book with a challenge. In his view, the RIO label is, at best, 'elusive' and useless – from it derive no specific rights nor obligations. Instead, this concept creates the *pretention* that the EU might work as a model, which is questionable at best. Beyond indicating that Member States share a set of common values or characteristics or interests and are geographically close, Klabbers considers that this category adds little to debates about the EU. In his view, what makes the EU 'unique' – its enforcement powers, supranational decision-making features, provisional application practices, disconnection clauses, multilateralism or other – stems from the fact that the EU *is* the EU and enjoys a broad breath of competences, not from any regional features of the EU's design.

Contesting less the concept but more its application, **Sebastian Kraphol** then pursues the inquiry into what the regional adds to an understanding of the EU (or the EU adds to the understanding of regionality) by challenging the idea that the EU is a credible model of regional integration. He argues that the dynamic of European integration can be ascribed to 'the interaction of two very specific conditions' that are not met by any other region in the world. These conditions are the existence of a high degree of intra-regional economic interdependence and the lack of a regional hegemon. No other region is able to come close to the EU's level of economic interdependence (40% in the early 1960s, and more than 60% at present). Similarly, even if replicated elsewhere, no other institutions of a RIO elsewhere in the world have acquired the strength and (supranational) powers the EU institutions have over the years. Kraphol explains that this unique development was possible due to the existing demand in Europe for economic integration and a strong regional market, coupled with the lack of a strong hegemon seeking to impose its own rules. Examining other examples of regional integration, from North America to South America, Africa and East and Southeast Asia, he demonstrates the validity of his argument, and concludes that 'the EU is more an exception than a role model for regional integration'.

Andrew Telford and Anne van Wageningen argue that to understand what the EU as a RIO means one needs to examine how the 'region' is utilized in EU policy-making and law. They claim that regions, as socially constructed, politically contested and relational constructs, play an important role in EU policy-making. They rely on two case studies to demonstrate their claim: the EU's Just Transition Mechanism (part of its broader 'European Green Deal'), and the European Higher Education Area. The examination of these two case stud-

ies provides insights into the EU's 'regional thinking', that is how the EU constructs 'regions' at different levels and across different policies.

The chapters that follow unpack some of the challenges raised in Part 1 of the book by turning our attention to the concrete application of 'the regional' in specific EU policy areas.

Katrina Perehudoff's contribution opens this section with an examination of examines the EU's practice of international cooperation with respect to pharmaceuticals and its impact on global health law. Relying on an analysis of three distinct EU instruments in this field – the Health Threats Regulation and Joint Procurement Agreement, the EU Trade Diversion Regulation, and the European and Developing Countries Clinical Trials Partnership – Perehudoff argues that the EU is able to leverage its regional market power to shape companies' extraterritorial trade activity, in line with international human rights standards and international law. Testing the practical application of this potential, Perehudoff concludes that while EU practice is generally aligned with international human rights law, it has at times waived in its coherence when faced with global health emergencies such as the Covid-19 pandemic.

Eleonora Frasca takes one of the fundamental freedoms of the EU internal market, namely the right to free movement of persons, and investigates to what extent this integration objective is also promoted in EU cooperation in the area of migration with third countries members to other RIOS. The focus in this chapter is on policies and funding devoted to EU-Africa cooperation, and more specifically, Regional Economic Communities (RECs) with similar free movement ambitions. Frasca demonstrates how the EU, disregarding global developments pleading for 'advancing a common understanding of migration' and promoting regional mobility, focuses almost all its efforts on preventing irregular migration from Africa to the EU. By focusing on bolstering African states' border control and migration management capacities, the EU hinders the development of regional free movement objectives within African RECs. She characterizes EU policies in this area as 'counter-productive and short-sighted' and calls on the EU to live up to its commitments to facilitate mobility, as taken in the context of the Global Compact on Migration.

Building on the appraisal of EU practice and its potential to shape international practice and international law, **Maruša T. Veber** turns the focus to EU sanctions as an instrument through which the EU, much like other RIOS, projects its own regional interests externally, influencing the notion of 'general interest' under international law. In her view, 'when adopting sanctions against third States ... RIOS engage in the construction of the understanding of the generally posited interest in international law, that is, *erga omnes* obli-

gations'. Through their sanctioning practices RIOs both 'project regional interests to the universal level' in a hegemonic fashion and contest or legitimise so-called universal interests. Veber therefore calls for a revised understanding of regionalism, wherein the regional and the universal are co-constructed realities instead of a static binary and hierarchically disposed categories.

Finally, **Petr Stejskal** also picks up on the EU's sanctioning practice and its broader impact – here not on international interests but instead on the rules of responsibility under international law. He examines the implications of the EU's toolbox against economic coercion – namely the EU's new Anti-Coercion Mechanism (ACI) – on the understanding of the principle of non-intervention and the prohibition of third-party countermeasures under international law. Stejskal approaches the ACI as a manifestation of the EU's operation as a regional block regulating its own interests against international economic threats, and argues that the EU's practice has the potential to shape how the legality of third-party countermeasures is understood in international law. He questions the compatibility of economic countermeasures with WTO rules and the legality of suspending EU obligations in response to economic coercion against individual EU Member States, positing that EU practice as a RIO has both the potential to develop but also to further fragment international law.

The aim of the contributions in the last part of the book varies from establishing whether or not the concept of Union citizenship denotes the existence of a cohesive regional identity, to establishing current trends in the context of the EU's response to current geopolitical realities and Latin American RIO's approach to climate change.

Victoria Hooton in her contribution looks at EU citizenship through the prism of regionalism. More concretely, she examines the extent to which Union citizenship as a legal construct aligns with the concept of regionalism. To that end, she explores the internal and external dimensions of this 'fundamental status' with a view to establishing the issues or obstacles that challenge its characterization as a 'regional' status. Internally, she establishes that in addition to its derivative nature, its link to free movement makes it irrelevant for large parts of the population of Member States, namely, immobile and economically inactive citizens and third-country nationals. Externally, citizenship-by-investment schemes and 'the inclusion of overseas territories in certain applications of EU citizenship law' are some of the obstacles in front of the concept being imbued with 'a cohesive regional identity'.

Joris Larik identifies an important trend, namely, the geopolitical awakening of the EU, and more interestingly, its 'geopoliticization through law'. He acknowledges the existence of this trend prior to Russia's invasion of Ukraine

but demonstrates how this event has amplified it further. He identifies the plethora of instruments adopted in this context as the EU's emerging *acquis* of 'geopolitical law' and clusters them in two categories: security and defence instruments, and foreign trade and investment instruments. He provides an overview of these instruments by placing them in context, discussing their legal basis as well as the institutional implications flowing from that choice. Next, to establish whether this trend goes beyond the EU, he examines the responses of two other RIOS, namely, the East African Community (EAC) and the Association of Southeast Asian Nations (ASEAN) to find out that the responses of the latter two do not go beyond acknowledging the current geopolitical realities in a few policy documents. After explaining the possible reasons underlying this stark contrast, Larik proposes a research agenda for the future study of RIOS, geopolitics and the law.

Finally, **Andrés Delgado Casteleiro** examines the specific case of Latin American RIOS' approach to climate change as an alternative approach to regional cooperation within the EU. He argues that this approach, the unique features of which stem from the imminently political – rather than geographic – idea of 'the region' in Latin America, combines managerial coordination based on the sharing of best practices with strategic litigation aimed at advancing common regional standards on climate change. Drawing attention to the heterogenous character of RIOS in general, and of Latin American RIOS, in particular, Delgado Casteleiro sheds light on both the strengths and weaknesses of regional integration in Latin America, notably in response to climate change. He argues that while the region's formalist tradition and sovereign concerns explain the reliance on informal coordination rather than legally binding cooperation among RIOS with respect to environmental threats, the reconceptualization of climate change as a human rights issue and its slow yet growing judicialization may gradually change the managerial paradigm of Latin American RIOS.

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