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International Law of Regional Organizations: A Comparative Perspective

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Abstract

This article provides a comparative analysis of the law and practice of regional international organizations (RIOs). Drawing upon the International Law Association (ILA) study and individual regional reports, the article offers a cross-regional account of organizations located in Europe, Eurasia, the Middle East, Africa, Latin America and the Caribbean, and the Asia-Pacific. The article focuses on the main conceptual questions that emerged during the study and reflects on some of the main insights gleaned from the cross-cutting comparisons. The article discusses the concept of 'regional international organization' and the debates about the appropriate definition to be used in the Study. The article discusses how international law applies to, and within, regional international organizations, examining issues such as the autonomy of the organization's internal law. The article shows how regional international organizations have influenced the development of international law, by concluding treaties, contributing or catalysing relevant practice to the formation of customary international law, and producing authoritative 'subsidiary means' to identify the law. The comparative assessment allows us to offer reflections on the 'openness' of regional international organizations and the conditions under which they can shape, and be shaped by, international law. The article concludes with some starting points for further research on the place of regional international organizations.

Keywords

regionalism – regional international organizations – autonomy – customary international law – internal law – international organizations – law of treaties

1 Introduction

The Study Group (SG) *The International Law of Regional Organizations* was established in 2020 to explore the law and practice of regional international organizations (RIOs) and to understand the relevance and impact of this practice on public international law. While there has been extensive academic research on the external relations of the European Union (EU) and its impact on public international law, the SG was established with the aim of examining more broadly the role of RIOs, with regard to both their internal and external practice, in international law. The SG also responded to a perceived lack of inter-regional comparison between RIOs from a legal perspective. While there has been legal research focusing on particular RIOs and their constituent instruments and practices, there has been less research that compares RIOs with a focus on public international law issues.

The SG included experts in the fields of public international law and the law of (regional) international organizations, as well as individuals working in regional organizations and courts. SG members were also selected to represent the different geographical regions in the study, with members based in and working on Africa, Asia-Pacific, Eurasia, Europe, Latin America and the Caribbean, and Middle East and Arab World. Members of the Study Group were divided into regional groups and produced 'individual RIO reports' on each of the pre-selected organizations, responding to a common questionnaire developed by the SG co-chairs, Samantha Besson and Eva Kassoti. That allowed for cross-cutting comparisons between RIOs and for the SG to identify patterns and common issues.

This article does not seek to reproduce in detail the answers to these questions or the information contained in the individual RIO reports. Rather, it draws from the Study Group Report, which is being finalised at the time of writing, with a view to identifying some of the main conceptual questions that emerged from the study and presenting some of the main insights that the cross-cutting comparisons have allowed.[1] The next section discusses the concept of

1 In doing so, reference to the individual RIO reports, which are on file with the authors, will be made throughout this article. It is expected that those reports will be made available when the SG Report is finalised.

'regional international organization'. Section 3 examines how international law applies to, and within, RIOs, including the issue of the autonomy of RIO's internal law. Section 4 analyses the ways in which RIOs influence international law by concluding treaties, contributing or catalysing relevant practice to the formation of customary international law, and producing authoritative 'subsidiary means' to identify the law. The final section reflects on the main findings of the study and discusses some starting points for further research.

2 The Concept of Regional International Organization (RIO)

What is a 'regional international organization'? The Study Group endeavoured to articulate a definition to set out the scope of its work and determine which organizations to include in its study. The definition adopted comprises two main elements.

First, a RIO is defined as an international organization *qua* subject of international law. Following mainstream scholarly approaches, that means that a RIO, as is the case with other IOs, must be (i) based on an international agreement, (ii) possess at least one organ with its own distinct will, and (iii) be established under international law.[2] It likewise means that, as the definition adopted in Article 2 of the ILC Articles on the Responsibility of International Organizations provides, a RIO must possess 'its own international personality'.

That being the case, a RIO in the sense of the SG's study is to be contrasted with looser forms of regional collective action, such as the Bolivarian Alliance for the Peoples of Our America (ALBA) and the European Economic Area (EEA).[3] By focusing on intergovernmental entities that possess their own rights, obligations, and capacities on the international plane, and which comprise internal legal orders governing relations between organs and members (and between organs themselves), the Study Group could better reflect on the features, effects, and potential of the deployment of a distinct legal form—that of the 'formal' international organization with relative legal and factual

2 Henry G Schermers and Niels M Blokker, *International Institutional Law* (Brill Nijhoff, 6th ed, 2018) 32–45: This is also reflected in Article 2 of the *ILC Draft Articles on the Responsibility of International Organizations*, which defines an IO as an "organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in addition to States, other entities."

3 Which have, nevertheless, been covered by individual RIO reports.

autonomy from the states setting it up.[4] It does not follow, however, that there are no similarities between initiatives for regional cooperation that take that distinctive institutional form and initiatives that remain strictly inter-state in character. The cross-cutting comparisons that the SG makes may prove relevant for studies of the initiatives of that second kind.

Second, a RIO must be defined by reference to a conception of 'regionalism'. What that conception entails was the subject of some of the most interesting debates within the SG. The practice of the organizations surveyed showed that, beyond geographical space, RIOs often share cultural, ideological, linguistic, historical, and economic ties. They are also based on solidarity founded on common interests and shared values.[5]

Geography no doubt plays a crucial role in practice. While some RIOs are 'open' in the sense that they in principle allow membership from any geographical region,[6] most RIOs restrict membership in some geography-related way. Criteria relating to geography are usually defined broadly, however. For example, the African Union is open to '[a]ny African State'[7] and the Council of Europe and European Union are open to 'any European State'.[8] At the other end of the spectrum, some RIOs set out in their constituent instrument which states may join.[9] Yet the SG found few instances where a state's application for membership of a RIO was contested for failure to meet geographical criteria.[10]

While in most cases, regionalism referred to geographical space, the individual SG reports also noted that some RIOs understand 'region' as

4 In cases of doubt, where a reasonable case can be made that a regional arrangement is a 'formal' international organization even when its status remains the subject of debate (including among member states), that entity was included in the SG Report. On that basis, to give an example, the OSCE is discussed in some of the analysis that follows.

5 OSCE Report, NATO Report (citing Laurence Boisson de Chazournes, *Interactions between Regional and Universal Organizations* (Brill Nijhoff, 2017) 8).

6 CIS Report (citing *Agreement establishing the Commonwealth of Independent States*, December 8, 1991; *Protocol to the Agreement establishing the Commonwealth of Independent States*, December 8, 1991 in Minsk by the Republic of Belarus, the Russian Federation (RSFSR), Ukraine of December 21, 1991; *Charter of the Commonwealth of Independent States*, January 22, 1993).

7 AU Report, (citing *Constitutive Act of African Union*, signed 11 July 2000, 2158 UNTS 3 (entered into force 26 May 2001) art 29).

8 EU Report, (citing *Treaty on European Union* (*TEU*), signed 13 December 2007, 1759 UNTS (entered into force 1 December 2009) art 49).

9 ACS Report (citing *Convention Establishing the Association of Caribbean States*, signed July 24 1994, 1895 UNTS 3 (entered into force 4 August 1995) art IV(i)).

10 ECOWAS Report (detailing Morocco's contested application to join ECOWAS).

including shared common backgrounds in terms of history, language, religion and culture.[11] In many cases, RIOs are established to promote economic integration within a region, but it is also common for RIOs to include non-economic objectives in its founding treaty, such as building a common identity and citizenship.[12]

Another way in which some international organizations were considered 'regional' was by reference to the scope of their functions. This is the case with certain regional developments banks, such as the Asian Infrastructure Investment Bank (AIIB)[13] and the African Development Bank (ADB), which, for the purpose of promoting economic development in a region, also comprise states that are geographically located outside that region. Similarly, the Organization for Security and Co-operation in Europe's (OSCE) functions relate to Europe as a region, but it has open composition.[14]

Accordingly, the SG adopted a broad and contextual understanding of 'regional' for the purposes of defining a RIO. The working definition reads as follows:

> A Regional International Organization (RIO) is an international organization whose membership consists of states (and international organizations) that share similar geographical, linguistic, cultural, economic, political, legal or other characteristics.

3 International Law as the Law of RIOs

When RIOs are approached as subjects of international law—personified entities that states establish to pursue regional values, interests, or functions—several questions of theoretical and practical relevance arise. What rules apply

11 This was noted in reference to RIOs in the Middle East and Arab World, including the Gulf Cooperation Council (GCC); Islamic Development Bank (IsDB); Organization of Islamic Cooperation (OIC), and Arab Maghreb Union.

12 ASEAN Report (citing *Charter of the Association of Southeast Asian Nations* (*ASEAN Charter*), signed 20 November 2007, 2624 UNTS 223 (entered into force 15 December 2008) art 35): ASEAN also promotes a 'common ASEAN identity and a sense of belonging amongst its peoples in order to achieve its shared destiny, goals and values'.

13 AIIB Report: Currently, the AIIB has 51 approved regional members and 54 approved non-regional Members, with regional members making 73% of the total number of votes. (See 'Governance: Members and Prospective Members of the Bank', *Asian Infrastructure Investment Bank* (Web Page, 20 December 2023) <https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html>).

14 OSCE Report (citing De Chazournes (n 5) 26).

to IOs on the international plane? To what extent are those rules applicable within the legal order of any given IO—and what are, more generally, the terms on which general international law interacts with constituent instruments and other 'internal' rules?[15] On the first question, the idea that IOs are bound by customary international law and general principles of law relevant to their practice seems to be no longer controversial.[16] It is for addressing the second set of questions that a comparative analysis of the individual RIO reports prepared for the SG is most relevant, since it sheds light on how some of them are dealt with in practice.

3.1 *Autonomy and Status of the Internal Law of RIOs*

The question of the character of the internal law of IOs—whether it forms part of international law or is somewhat autonomous from international law as is the case with domestic legal orders—is the subject of longstanding debate.[17] In its codification project on the responsibility of international organizations, the International Law Commission refrained from expressing 'a clear-cut view on the issue'.[18] Yet it seems undeniable that the internal law of IOs can be autonomous, at least to a degree, from international law. That follows from the proposition that constituent instruments and other rules of the organization form a 'specific legal order' governing the relations between organizations and

15 For an account, see Fernando L Bordin, 'General International Law in the Relations between International Organizations and Their Members' (2019) 32(4) *Leiden Journal of International Law* 653.

16 NATO Report (also citing Catherine Brölmann, *'Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt,* Advisory Opinion, [1980] ICJ Rep 73' in Cedric Ryngaert, Ige F Dekker, Ramses A Wessel and Jan Wouters (eds), *Judicial Decisions on the Law of International Organizations* (Oxford University Press, 2016).

17 By 'internal law' we mean what the 1986 *Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations*, opened for signature 21 March 1986, UNTC Chapter XXIII 3 and the 2011 *Articles on the Responsibility of International Organizations* have referred as the 'rules of the organization', namely 'the constituent instruments, decisions, resolutions and other acts of the international organization adopted in accordance with those instruments, and established practice of the organization' (*ARIO* art 2(b); similarly, VCLT 1986 art 2(1)(j)).

18 'Existence of a breach of an international obligation, Commentary' (2011) 2(2) *Yearbook of the International Law Commission* 64 [7].

19 In the *Kosovo* advisory opinion, the ICJ described the Constitutional Framework created pursuant to UNSC Resolution 1244 (1999) as part of international law, on the hand, rooted as it was in UN law, and as "a specific legal order", on the other hand, seen as it was "applicable only in Kosovo […] to regulate […] matters which would ordinarily be the subject of internal, rather than international, law", *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (*Advisory Opinion*) [2010] ICJ Rep 403, 440 [89].

Member States,[19] and from the proposition that international law is permissive as to what the content of that legal order can be.[20] As a result, international law gives IOs and their Member States a choice as to how autonomous they wish the rules of the organization to be, with only a few limitations. How have RIOs and their Member States been making this choice? Do they typically structure the rules of the organization as autonomous legal orders, distinct from that of their Member States, on the one hand, and from international law, on the other? If so, why?

A cross-cutting comparison of different RIOs reveals that the possibility of making internal law relatively autonomous has been mostly explored and asserted within RIOs that concern themselves with economic integration. The EU provides the paradigmatic example. According to the case law of the Court of Justice of the European Union (CJEU), 'the EU legal order is autonomous, and does not derive its authority from either the legal order of the EU Member States nor from international law.'[21] The Andean Court of Justice has taken a similar approach in relation to Andean Community Law.[22] The same seems to be the case with the Eurasian Economic Union (EAEU), albeit by implication.[23]

That said, not every RIO working towards economic integration adopts as strong a view of the autonomy of its internal law. In the case of the Organisation of Eastern Caribbean States (OECS), internal law 'is not construed as a body of law completely independent from international law', given that '[o]ne of the major purposes of the Organisation is to assist the Member States in the realisation of their obligations and responsibilities to the international community with due regard to the role of international law as a standard of conduct in their relationship'.[24] In the case of MERCOSUR, the Permanent

20 As the ICJ explained in *North Sea Continental Shelf*, "it is well understood that, in practice, rules of international law can, by agreement, be derogated from in particular cases, or as between particular parties", *North Sea Continental Shelf* (*Federal Republic of Germany* v *Netherlands and Denmark*) (Judgment) [1969] ICJ Rep 3, 42 [72]. The only limits are imposed by peremptory norms of general international law.

21 EU Report (citing *Opinion of the Court 2/13* (Court of Justice of the European Union, ECLI:EU:C:2014:2454, 18 December 2014)). Similarly, EEA Report (citing *Erla María Sveinbjörnsdóttir v The Government of Iceland* (*Advisory Opinion*) (EFTA Court, E-9/97, 10 December 1998) [59]).

22 CAN Report (discussing case ACJ. Case 3-AI-96 (1997).

23 According to the EAEU Report, "[a]lthough the EAEU Court has not made any express references to the autonomous or distinct character of EAEU law, its consistent development of EAEU law properties such as primacy, direct applicability and direct effect, on the one hand, and the creation of "general principles of EAEU law", on the other hand, indicate that it considers EAEU law as an autonomous legal order".

24 OECS Report.

Review Court has suggested that internal law 'has and should have sufficient autonomy from other branches of law';[25] yet, that 'sufficient autonomy' seems to be relatively modest, with academic commentators referring to MERCOSUR law as 'a special legal order within the broader framework of international law, but still rather dependent upon it'.[26] An example of an African economic integration RIO that seems to adopt a relatively weak notion of autonomy is the Eastern African Community (EAC). On the one hand, the EAC Treaty 'specifically establishes an autonomous dispute settlement regime for its interpretation and application, complete with a Treaty-established court', the Eastern African Court of Justice (EACJ), comprising also 'a firm proclamation that only that Court has jurisdiction to interpret the EAC Treaty';[27] on the other hand, 'the EACJ characterises EAC law primarily as international law', so that the 'EAC law's fundamentally international character' is not seriously contested.[28]

What seems to distinguish economic integration RIO s making a stronger claim of autonomy from economic integration RIO s making a weaker claim of autonomy is the extent to which the rules of the organization are viewed as 'supranational'.[29] RIO s where doctrines of 'supremacy' and 'direct effect' of internal law are accepted (EU, CAN, EAEU) tend to perceive themselves as more autonomous from international law and domestic legal systems than RIO s where those doctrines are not asserted (CARICOM, OECS and MERCOSUR). The outlier seems to be the EAC, where supremacy and direct effect have been affirmed but a strong self-perception of autonomy does not seem to have emerged.

In addition to a RIO's own self-understanding of the character of its internal law, it is also important to consider the stances adopted by other stakeholders, in particular third States and other IO s. The two perspectives may not always

25 MERCOSUR Report (citing María Belén Olmos Giupponi, 'Sources of Law in MERCOSUR' in Marcílio Toscano França Filho, Lucas Lixinski and María Belén Olmos Giupponi (eds), *Introduction to the Law of MERCOSUR* (Hart Publishing, 2010) 64–65).

26 MERCOSUR Report (citing María Belén Olmos Giupponi, 'International Law and Sources of Law in MERCOSUR: An Analysis of a 20-Year Relationship' (2012) 25(3) *Leiden Journal of International Law* 707, 709, 732).

27 EAC Report.

28 EAC Report (citing *Henry Kyarimpa v The Attorney General of the Republic of Uganda* (*Judgment*) (East African Court of Justice (EACJ), No. 3 of 2013, 29 November 2013), above n 1; *Prof. Anyang' Nyong'o & 10 Others v The Attorney General of the Republic of Kenya* (*Judgment*) (EACJ, No. 1 of 2010 & No. 2 of 2010 (arising from appeal of Nr. 1 of 2009), 22 June 2010), above n 3; and *The Attorney General of the Republic of Uganda v Tom Kyahurwenda* (*Judgment*) (EACJ, No. 1 of 2014, 31 July 2015), above n 120).

29 The relevant individual RIO reports do not provide details of positions that Member States or third parties have taken as regards the issue of autonomy.

match. For example, while the EU considers its internal law as autonomous, third States 'tend to treat the EU merely as a subsystem of international law, i.e. a regional organization of economic integration' that is essentially 'derived from the two international treaties that are the EU's constituent instruments'.[30] At the same time, there is some ambiguity in the practice of third States and third IO s, which have hesitated to take a clear position on whether EU law should be treated as international law applicable between EU Member States or rather in a manner analogous to domestic law.[31] All in all, third States and other IO s have not shown, in practice, an appetite to pronounce on the legal status of the internal law of RIO s.

Outside the context of RIO s pursuing economic integration, there seems to be little, if any, engagement with the question of autonomy of internal law. The participants in the SG covering organizations pursuing other forms of international cooperation have either indicated that the question of autonomy was not relevant,[32] or offered the intuitive assessment that the internal law of those organizations is not autonomous from international law.[33]

3.2 *International Law as a Source of RIO Internal Law*

What rules of international law typically apply within RIO s? Do RIO s consider themselves bound by customary international law, treaties to which they are party, and general principles of law? The practice of some RIO s suggests an affirmative answer. The CJEU has interpreted Article 3(5) TEU to mean that the "when [the EU] adopts an act, it is bound to observe international law in its

30 EU Report: This view is supported by the awards of ICSID arbitral tribunals in *Electrabel S.A. v Republic of Hungary* (*Decision on Jurisdiction, Applicable Law and Liability*) (ICSID, Case No ARB/07/19, 30 November 2012) [4.124], where it was held that "the fact that EU law is also applied within the national legal order of an EU Member State does not deprive it of its international legal nature"; and *Eskosol S.p.A. in liquidazione v Italian Republic* (*Decision on Italy's Request for Immediate Termination and Italy's Jurisdictional Objection Based on Inapplicability of the Energy Charter Treaty to Intra-EU disputes*) (ICSID, Case No ARB/15/50, 7 May 2019) [181], where EU law was described as a 'sub-system within the international legal order' existing alongside that of the Energy Charter Treaty.

31 EU Report.

32 ACS Report; CELAC Report; OLDEPESCA Report; APEC Report, AMU Report; SAARC Report.

33 Cf ALADI Report; OAS Report; UNASUR Report; ASEAN Report; PIF Report; SPC Report; CIS Report; CSTO Report; OESC Report; NATO Report; OIC Report; IsDB Report; as well as the reports compiled in the African RIO s General Report. But compare the SCO and AIIB Reports ('[considering] their internal law as distinct from that of their Member States' or a 'partly self-contained legal order that is distinct from international law').

34 *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change* (C-366/10) [2011] ECR-SC I-13833, I-13885 [101].

entirety, including customary international law".[34] Customary rules have also been applied by the East Africa Court of Justice[35] and by the Caribbean Court of Justice.[36] The political organs of the Collective Security Treaty Organization (CSTO) and the Community of Independent States (CIS) have both indicated the respective organizations' commitment to 'universally recognised principles and norms of international law'.[37] Even in the case of RIO s where the question has not yet been posed in practice, customary international law is applicable in the assessment of the participants of the SG.[38]

The practice of those RIO s that conclude treaties with their Member States and/or third parties unsurprisingly confirm that those treaties are accepted as binding on the relevant organizations. Sometimes that is expressly provided in constituent instruments.[39] But even when there is no express provision of internal law to that effect, the conclusion that the RIO is bound by the treaties it concludes is easily reached.[40]

As a general rule, RIO s are not bound by treaties to which they are not party.[41] In some cases, however, rules of internal law may subject a RIO to treaties concluded by the members but not by the RIO itself. For example, the African Continental Free Trade Area (AfCFTA)'s internal law expressly incorporates the GATT 1994 and WTO Agreement.[42] Likewise, the commitment expressed in Article 7(2) EAC Treaty to "the maintenance of universally accepted standards of human rights" has been construed by the EACJ Appellate Division as incorporating the African Charter on Human and People's Rights into EAC law.[43] In the case of the EU, a doctrine of 'functional succession' has been

35 See EAC Report and the discussion below.

36 See CARICOM Report.

37 See CSTO Report and CIS Report.

38 NATO Report; OAS Report; SAARC Report.

39 CSTO Report: Article 2 of the Charter of the CSTO prescribes that "the international treaties and resolutions of the Council for Collective Security of the Treaty adopted thereunder shall be binding for the Member States of the Organization [...] and the Organization itself". Similarly: EAEU Report.

40 See, eg, CoE Report.

41 *VCLT* 1986 art 34. In the words of the Andean Court of Justice, "international treaties concluded by Member States on their own initiative [...] do not bind the Community, nor have direct effect in the Community, without prejudice to the binding force that such instruments have in relations between the said Member States and third countries or international organizations". ACJ, Case 01-AI-2001.

42 African RIO s General Report.

43 EAC Report (citing *Democratic Party v The Secretary General to the East African Community & 4 Others* (*Delayed Declarations*) (*Judgment*) (EACJ, No. 2 of 2012, Appeal No. 1 of 2014, 28 July 2015) 22 [69]).

adopted to the effect that in a very narrow set of circumstances the Union is viewed as having succeeded to the legal obligations of the EU Member States.[44] This doctrine has also been upheld by the EAEU Court.[45]

Once international law is incorporated into the legal order of a RIO, what rank does it enjoy? Does it prevail over constituent instruments, or do the latter take precedence in the case of conflict? In the case of RIOs where 'secondary law' adopted by the organization's political organs is applied alongside the 'primary law' of the founding treaties, what is the position whenever there is a conflict with international law? As is often the case with domestic constitutions, the constituent instruments of few RIOs engage with those questions, and the participants in the SG have not been able to report on much relevant practice. But among the RIOs where the question has been posed, the most common approach appears to be that while RIO 'primary law' prevails over customary and conventional rules of international law, those rules prevail over 'secondary law'. That is the case with the EU[46] and EAEU[47] and EAC.[48] In contrast, the individual RIO report on the Collective Security Treaty Organization (CSTO) reads into the preamble of the CSTO Charter the proposition that 'obligations under the UN Charter, resolutions of the UN Security Council, and the universally recognised principles of international law [prevail] over obligations deriving from the membership in the CSTO'.[49]

A different but related question concerns what happens in the case of conflict between the internal law of a RIO and other international obligations of the Member States. A couple of the constituent instruments surveyed seemingly

44 EU Report.

45 EAEU Report (citing *CJSC General Freight v Eurasian Economic Commission* (Court of Justice of the EAEU, C-6). The Court ruled that "international agreements concluded by Member States are binding for the EAEU bodies if all of the EAEU Member States are parties to it and the competence belongs to the field of common policy (exclusive competence) of the EAEU".

46 EU Report ('[i]nternational law that is binding on the Union (e.g. a treaty to which the EU is party) sits between primary and secondary law; it cannot be used to override primary EU law but may be used to set aside conflicting secondary legislation').

47 Article 6 of the *EAEU Treaty* providing that "[i]n case of conflict between international agreements within the EAEU and the present Treaty, the present Treaty shall have a priority", while specifying that "[r]esolutions and orders of the EAEU shall not be inconsistent with [...] international agreements within the EAEU".

48 EAC Report (*East African Civil Society Organization Forum* (*EACSOF*) *v Attorney General of Burundi & 2 Others* (*Judgment*) (East Asian Court of Justice, No. 1 of 2020, 25 November 2021) (n 146) 18 [43]. It was noted, however, that those conflicts are likely to be rare given that 'the EAC Treaty itself requires its Partner States to respect their international obligations'.

49 CSTO Report.

establish the primacy of the international obligations of the Member States. The first is Article II of the South Asian Association for Regional Cooperation (SAARC) Charter on Principles, where it is stated that cooperation within the framework of the SAARC shall neither be 'a substitute for bilateral and multilateral cooperation' nor 'be inconsistent with bilateral and multilateral obligations'.[50] The second is Article 6 of the CSTO Charter, according to which the Charter 'shall not affect the rights and obligations of the Member States under other international treaties they are parties to'.[51]

3.3 *The Relevance of International Law for the Functioning of RIOs*

The individual RIO reports confirm the truism that not all rules of international law are relevant for the functioning of RIOs. For one, the degree to which RIO action is likely to trigger customary international law rules depends, in practice, on the types of action that the RIO is in a position to take in fulfilling its functions. The same is true for the types of treaty that RIOs conclude. Moreover, the way in which international law is received and applied in the RIO's legal order may vary depending on the substance of the rule or regime in question. In the case of the EU, it was reported that the CJEU is more likely to give direct effect to international agreements that replicate or extend rights under EU law (for example Association Agreements).[52] In the case of RIOs involved in economic integration or trade, compliance with WTO law is often required even when the organization is not a member of the WTO.[53] In the case of the Islamic Development Bank (IsDB), described as a 'development financing' organization, the relevance of environmental rules and standards is emphasised through the Bank's adherence to the 'UN sustainable development goals (SDGs) and the new agenda for comprehensive and sustainable human development encompassing the social, economic and environmental dimensions of development'.[54]

Given the systemic importance of the 'secondary rules' of general international law stemming from the law of treaties and the law of international responsibility, it comes as no surprise that RIO practice offers various examples of their application. That is the case, in particular, with the 'rules of interpretation' found in Articles 31-33 of the 1969 Vienna Convention

50 SAARC Report.
51 CSTO Report.
52 EU Report.
53 EAEU Report; APEC Report; and African RIOs General Report.
54 IsDB Report.
55 EAC Report (citing *Henry Kyarimpa v The Attorney General of the Republic of Uganda* (*Judgment*) (EACJ, Appeal No. 6 of 2014, 29 February 2016).

on the Law of Treaties (VCLT),which have been relied upon by the EACJ,[55] by the EAEU,[56] and by the European Court of Human Rights.[57] A body that has made use of various provisions of the VCLT is the Economic Court of the CIS, to identify 'the principles of international law applicable to treaties' and deal with questions relating to reservations, treaty-making capacity, treaty amendment, procedure for the entry into force an agreement, and ratification and accession.'[58] The CJEU also applies VCLT rules to questions relating to international treaties concluded by the EU, though it does not apply them when interpreting and applying the EU's own internal law.[59]

Practice also shows that the law of international responsibility, codified in the *2001 Articles on State Responsibility for Internationally Wrongful Acts* and the *2011 Articles on the Responsibility of International Organizations*, has played a residual role in the internal law of some RIOs. That is partly because the internal law of RIOs tends, on the whole, not to specify in detail what the legal consequences of breaches of internal law or the corresponding mechanisms for enforcement are. In certain cases, internal rules are silent on the issue,[60] while in others only rudimentary mechanisms for dealing with non-compliance are provided.[61] In the case of organizations such as Asia-Pacific Economic Cooperation (APEC), Pacific Islands Forum (PIF), Pacific Community (SPC), and Union of South American Nations (UNASUR) the question of responsibility for violations of internal law may not even arise due to the absence of 'primary rules' that can be realistically breached.[62]

56 EAEU Report.

57 CoE Report (citing *Golder v United Kingdom* (European Court of Human Rights, Plenary, Application No. 4451/70, 21 February 1975) [29]).

58 CIS Report (citing *Decision about interpretation at the request of Arbitration of the Republic of Moldova* (Economic Court of the Commonwealth of Independent States (Economic Court of the CIS), No. 11/95/C-1/4-96, 25 March 1996); Advisory opinion of 15 May 1996 No. 06/95/C-1/1-96; Decision about interpretation of some agreements of the CIS regarding determination of their objects and purposes and compatibility with them of the clauses formulated by the states when signing documents (Economic Court of the CIS, No. 01-1/1-98, 22 June 1998); Advisory opinion of November 9, 2007 No. 01-1/3-07; Decision of September 10, 1996 No. C-1/13-96; and Review of the judicial practice of the Economic Court of the CIS on the interpretation of agreements concluded within the framework of the Commonwealth of Independent States, acts of the CIS bodies for their compliance with the norms and principles of the law of international treaties).

59 EU Report.

60 See ALBA Report; APEC Report; CAN Report; MERCOSUR Report; NATO Report; and PIF + SPC Report.

61 See, eg, UNASUR Report.

62 See APEC Report; PIF + SPC Report; UNASUR Report.

The practice of the EAC provides an illuminating example of the relevance of the general law of international responsibility for the functioning of a RIO. Faced with 'the absence of an explicit list of remedies for breach of the EAC Treaty', the EACJ has applied customary international law as the 'entry point into the issue of remedies', and noting that 'a breach of a treaty obligation by a contracting State is an internationally wrongful act of that State [which] entails its international responsibility'.[63] The EACJ has also turned to the law of state responsibility to decide on issues of attribution of conduct, and to the law of IO responsibility to make a decision on remedies in a case brought by a former speaker of the East African Legislative Assembly to complain about her allegedly unlawful dismissal.[64]

That all said, the internal law of several RIOs comprises at least some provisions dealing with violations of internal law. The constituent instruments of the CSTO, the Shanghai Cooperation Organisation (SCO), the Asian Infrastructure Investment Bank (AIIB) and the Organization of American States (OAS) all provide for rules on suspension and expulsion from membership.[65] Other constituent instruments articulate different sanctions schemes.[66] In the EU, there is an intricate legal regime to tackle the various possible ways in which EU law can be breached,[67] so much so that EU law is

63 EAC Report (citing *Kyarimpa v Uganda* (n 55) 49 [104]).

64 EAC Report (citing *Manariyo* Desire *v The Attorney General of the Republic of Burundi* (*Judgment*) (EACJ, No. 8 of 2015, 2 December 2016); and *Hon. Dr. Margaret Zziwa v The Secretary General of the East African Community* (*Judgment*) (EACJ, Appeal No. 2 of 2017, 25 May 2018).

65 See the respective reports. In the case of the AIIB, a violation of internal law can also lead to a reduction of number of share votes (AIIB Report).

66 AU Report (referring to *African Union Constitutive Act* art 23(2)). The AU Constitutive Act prescribes in Article 23(2) that "[a]ny Member State that fails to comply with the decisions and policies of the African Union may be subjected to sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly". ECOWAS Report. Likewise, in 2012 ECOWAS 'enacted the Supplementary Act on Sanctions against member states that fail to comply with their obligations under Community Law'.

67 EU Report (citing Matthias Ruffert, 'Art. 17 para. 7 and Case 181/73 R. & V. *Haegeman v Belgian State*, EU:C:1974' in Calliess/Ruffert (eds), *EUV/AEUV mit Europäischer Grundrechtecharta—Kommentar* (C.H. Beck, 6th ed, 2022). Should a Member State violate the Treaties, the Commission may establish proceedings before the ECJ given the prerequisites set out in Art. 258 TFEU. The Commission is thus often referred to as the 'guardian of the treaties'. Further, each Member State may also initiate proceedings before the ECJ if it considers that another Member State has failed to fulfil an obligation under the TEU/TFEU, *TFEU* art 259. Within the Union, a breach of an international obligation deriving from an agreement concluded between the EU and a third State does

viewed as comprising a 'complete system of remedies'. It has been understood as constituting *lex specialis* in the sense of Article 64 of the ARIO, and debarring the Member States from '[resorting] to public international law as a way to enforce compliance with EU law', in particular the law of countermeasures.[68] Other examples of RIOs that comprise comparable, albeit less 'complete', system of remedies are the EAEU, the EEA and the OECS.[69]

3.4 *Indirect Ways in Which International Law Influences the Legal Orders of RIOs*

The individual RIO reports provided details of more indirect ways in which international law permeates the legal order of RIOs, in particular as an aid for the interpretation of internal rules. For example, in the context of the Andean Community (CAN), the Andean Court has emphatically rejected the argument that because the Member States are all members of the WTO it followed that WTO agreements were part of community law. Yet, it recognised 'an interest in preferring, whenever possible and necessary, an interpretation of [Andean Law] that is compatible with [WTO law], particularly if the international rule has been the source of the Community rule'.[70] It has, in a similar vein, 'accepted that the TRIPS agreement can be a "source" for interpreting community IP law, and that international law has "indirect effect" and can be a "supplementary means of interpretation" of Andean Community Law'.[71] The same is the case with the EU, where international law 'has been adopted to aid interpretation of EU law', '[e]ven in instances where [it] is not directly binding'.[72]

There is also the case of RIOs that rely, for inspiration, on international rules that are neither formally binding on them nor on (all of) their member states. The EAEU Court, for example, 'uses international law and the case law of international courts to strengthen its interpretation of EAEU law using the doctrine of persuasive precedent', including references to judgments given by the CJEU, the European Court of Human Rights, and international

also constitute a breach of internal law, since the agreement forms part of the *acquis ommunautaire* (*TFEU* art 216(2)). A variety of other mechanisms exists, eg, infringement procedures before the Commission or the imposition of fines by the Commission for breaches of competition law.

68 EU Report.

69 See the respective reports.

70 CAN Report (citing ACJ, Case 07-AI-1998 and ACJ, Case 35-AN-2003).

71 Ibid (citing cases ACJ, Case 2-AI-96 and ACJ, Case 1-AI-97).

72 EU Report.

administrative tribunals.[73] In the case of international banks such as the Islamic Development Bank (ISDB) and the AIIB, a certain degree of 'openness' to international law is demonstrated in their adherence to relevant UN resolutions and international standards set out by other IO s.[74]

4 RIO Influence on International Law

IO s have no doubt had a massive impact on the development of international law. Not only did their emergence change the way international lawyers think about what kind of subjects the international legal system can accommodate, they have also been very active in the making and shaping of international rules and regimes.[75] The cross-cutting comparison enabled by the present study reveals some of the ways that RIO s have influenced international law more widely.

Given the differences between RIO s, the degree to which they are capable of leaving a mark is bound to vary. Indeed, some of the RIO s surveyed are unlikely to have any meaningful impact on international law. That is the case with organizations like UNASUR, which is 'an institutional space for political dialogue on topics of regional interest',[76] or organizations that are inward-looking in that they neither maintain extensive external relations with third parties (by, for example, concluding treaties) nor engage in promoting their rules in the outside world.[77] Yet, other RIO s have been active in concluding or facilitating the conclusion of influential agreements, and show a greater willingness and potential to contribute to the development of customary international law.

A caveat is that RIO influence is difficult to measure empirically. While a reasonable case of influence can be made whenever, say, a RIO court cites another as authority, in other contexts evidence of influence will be more circumstantial. More than tangible influence, the SG has sought to identify a potential, or capability, to influence, which a RIO may or may not wish to fulfil in its practice (and do so with mixed results).

73 EAEU Report (citing *Tarasik K.P. v Eurasian Economic Commission* (Court of Justice of the EAEU, C-4/15); *Request for clarification on the restriction of the work of professional athletes, Eurasian Economic Commission* (*Professional Athletes case*) (Court of Justice of the EAEU, P-3/18, 2018); *CJSC "Trans Logistics Consult" v Eurasian Economic Commission* (*Professional Athletes case*) (Court of Justice of the EAEU, C-2/19).

74 See ISDB Report and AIIB Report.

75 See, eg, José E Alvarez, *International Organizations as Law-Makers* (Oxford University Press, 1st ed, 2005).

76 UNASUR Report.

77 See, eg, CAN Report; OLDEPESCA Report; SAARC Report.

4.1 *RIO Treaties*

There are at least three categories of RIO treaties with a potential influence on international law: (i) treaties concluded by RIOs themselves; (ii) treaties concluded by Member States but drafted under the auspices of the RIO; and (iii) RIO constituent instruments themselves.

As regards the first category, the RIO whose treaty practice has been singled out as most capable of influencing international law is the EU. That is evidenced by the human rights clauses that are added to agreements that the EU concludes, and by the impact of agreements such as the EU-Canada Comprehensive Economic and Trade Agreement on forms and standards of international dispute settlement in the field of investment law.[78] In contrast, the EAEU has so far only entered into bilateral trade agreements, which are unlikely to result in contributions to the development of international law.[79]

As regards the second category, the Council of Europe, the OAS, and the African Union (AU) have all been singled out as organizations that have successfully procured the conclusion of influential treaties. For one, the human rights conventions concluded under their auspices—the 1950 European Convention on Human Rights, the 1969 American Convention on Human Rights and the 1980 African Charter on Human and Peoples' Rights—have been crucial for the development, consolidation and practice of the international law of human rights. Also of note are treaties adopted within RIOs to which states from outside the region are invited to accede, such as the 2001 Convention on Cybercrime concluded by the members states of the Council of Europe but later joined by member states of the OAS. The potential to facilitate the conclusion of treaties that may influence the development of international law was also noted in relation to the SCO (through the 2009 Agreement among the Governments of the SCO Member States on Cooperation in the Field of Ensuring International Information Security')[80] and the Association of Southeast Asian Nations (ASEAN).[81]

Turning to RIO constituent instruments, their influence is most felt in institutional borrowing among RIOs. The individual RIO reports revealed that RIOs pursuing economic integration possess certain traits that are similar to the European Union. Several of them use the EU as a blueprint, including the Andean Community, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the

78 EU Report.
79 EAEU Report. Similarly: CARICOM Report.
80 SCO Report.
81 ASEAN Report.

Caribbean Community (CARICOM) and the EAEU. As noted above, it is not uncommon for those RIOs to incorporate certain institutional features of the EU, as well as phrases and concepts which have evolved in EU law such as the concept of direct effect of RIO rules in the domestic legal systems of the Member States. There is also overlap and institutional borrowing in the field of international economic development and financial organizations. For example, both the AIIB and the IsDB borrow legally and institutionally from other multilateral development banks.[82]

4.2 *The Practice of—and within—RIOs and the Development of Customary International Law*

RIOs can be the source of practice that may have an impact on the development of customary international law in at least two ways: as platforms for state practice and through their own practice.

By providing institutional frameworks where member states cooperate, RIOs can serve as a focal point for state practice and thus catalyse the emergence of general or special rules of customary international law.[83] It was reported that APEC, for example, was a place where States found common positions that were later brought into organizations such as the World Trade Organization, and served as 'an incubator of ideas'.[84] Similarly, ASEAN was described as facilitating the emergence of state practice which may be impactful for the development of rules relating to the rights of persons with disabilities and action taken in response to the haze resulting from the burning of forests.[85]

In its 2018 Conclusions on the identification of customary international law, the International Law Commission observed that, '[in] certain cases, the practice of international organizations also contributes to the formation, or

82 AIIB and IsDB Reports.

83 OAS Report. The OAS Report brings the example of how 'the influence of regional conceptions of the continental shelf and the exclusive economic zone discussed at length at the 10th Inter-American Conference in Caracas in 1954, but also in agreements and declarations made by member states of the regional IO, contributed to the development of the law of the sea and the codification of certain rules on the subject in the 1982 Montego Bay Convention'.

84 APEC Report.

85 ASEAN Report (referring to Hao Duy Phan, 'Promotional versus protective design: the case of the Asean intergovernmental commission on human rights' (2019) 23 *International Journal of Human Rights* 915, and to the ASEAN Agreement on Transboundary Haze Pollution (2002).

expression, of rules of customary international law'.[86] That recognises the role that IOs may play, *qua* subjects of international law operating on the international plane, in the creation of general international law. Turning to RIOs more specifically, the question arises of what the demonstrated or potential capacity of regional organizations is to contribute to the emergence of universal or special customary rules.

The main example of a RIO viewed as capable of contributing to the development of customary international law *qua* RIO is the EU, as acknowledged by the ILC itself in its Conclusions.[87] Likewise, it was reported that 'African RIOs can make significant contributions in areas like the right to development, self-determination and human rights',[88] and that AIIB initiatives such as the Environmental and Social Framework and Policy on Prohibited Practices 'may contribute to the development of customary international law in terms of environmental and social protection and anti-corruption'.[89] Even RIOs like NATO, where the distinction between action by the organization and action by the members may be hard to draw, a potential influence on the development of rules governing issues such as military operations in the cyberspace may be discerned.[90]

RIOs are especially well positioned to make contributions to the emergence of special rules of 'regional custom'. This point was noted in relation to ECOWAS, described as an 'evolving' organization which 'in the future could contribute to regional customary law'.[91] The EACJ has already had the occasion of hearing an interesting argument on the existence of a regional customary rule. The argument was that when a Deputy Secretary General is required to forfeit their post upon the election of a Secretary General of the same nationality,[92] the Member State of which the leaving Deputy Secretary General is a national was

86 'Identification of customary international law' (2018) 2(2) *Yearbook of the International Law Commission* 89, 96, Conclusion 4(2). See further, Jed Odermatt, 'The Development of Customary International Law by International Organizations' (2017) 66(2) *International and Comparative Law Quarterly* 491.

87 'Identification of customary international law' (2018) 2(2) *Yearbook of the International Law Commission* 89, 97 [7]. See also EU Report (citing 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(1) *Europe and the World: A law review* 1). In particular, the EU has 'contributed to the development of customary international law concerning the rights and obligations of international institutions', including through its 'distinctive treaty practice' (EU Report).

88 AU Report.

89 AIIB Report.

90 NATO Report.

91 ECOWAS Report. See also OAS Report.

92 As required by the *EAC Treaty*.

under an obligation to reimburse the Secretariat with the funds deployed to compensate them for the forfeited years. In its *Advisory Opinion to the Council of Ministers* (*on Compensation for Forfeiture*),[93] the EACJ concluded that the practice of reimbursing the Secretariat, from which both Kenya and Rwanda had recently deviated, 'lacked the necessary consistency, frequency and "near-universality" amongst the Partner States required to properly be recognised as a state practice within the Community for purposes of customary international law'.[94] Though the rule argued was ultimately rejected, the case illustrates the potential for the relations between RIOs and its members to give rise to regional customary law.

4.2.1 RIOs and Subsidiary Means to Identify International Law

RIOs may also have an influence on international law by generating authoritative 'subsidiary means for the determination of rules of law' in the sense of Article 38(1)(d) of the ICJ Statute.

On the one hand, RIOs that comprise courts may issue judicial decisions that shed light on the content of general or special rules of international law. For example, the ILC has cited CJEU case law 'as subsidiary evidence for identifying general rules of international on several occasions when other practice was lacking or unavailable'.[95] Other RIO courts have also had the occasion to deal with issues of customary international law.[96]

And then there are the human rights courts under the auspices of the CoE, the OAS and the AU. The authority of those courts in the interpretation of the human rights treaties under which they were constituted was recognised by the International Court of Justice in the *Diallo* case. In its merits judgment, the Court said that whenever it is "called upon [...] to apply a regional instrument for the protection of human rights, it must take due account of the interpretation of that instrument adopted by the independent bodies which have been specifically created, if such has been the case, to monitor

93 *A Request by the Council of Ministers of the East African Community for an Advisory Opinion* (*Advisory Opinion*) (EACJ, Request No.1 of 2015, 19 November 2015).

94 EAC Report.

95 EU Report (citing *Report of the International Law Commission Seventy First Session*, UN GAOR, 74th sess, Supp No 10, UN Doc A/74/10 (20 August 2019) and *Yassin Abdullah Kadi v Council of the European Union and Commission of the European Communities* (Court of First Instance (Second Chamber), ECLI:EU:T:2005:332, 21 September 2005). See also Odermatt, 'The European Union's Role in the Making of Customary International Law' in Bordin, Muller and Pascual-Vives, *The European Union and Customary International Law* (Cambridge University Press, 2022).

96 See sections 3.3 and 4.2 above.

the sound application of the treaty in question".[97] Moreover, in applying their respective human rights conventions, those courts may have the opportunity to pronounce on issues of customary international law. An example from the European Court of Human Rights concerns the rules of State immunity as discussed in the *Al Adsani v United Kingdom* case, where the Court "applied a method consistent with that of the International Court of Justice, and with that described in the ILC's draft conclusions on the determination of customary international law, which consists in reflecting, as best as possible, State practice".[98] The *Al Adsani* case, together with the European Court's judgment in *Kalogeropoulou and Others v Greece and Germany*, were cited by the ICJ in the *Jurisdictional Immunities of the State* case as authority for the proposition that "under customary international law as it presently stands, a State is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law or the international law of armed conflict".[99] As regards the African system, the African Commission of Human and Peoples' Rights' pronouncements on the right to life, the exhaustion of local remedies rule, conditions of detention, protection of property in armed conflict, statelessness, and amnesty are also noteworthy.[100]

97 *Ahmadou Sadio Diallo* (*Republic of Guinea v Democratic Republic of the Congo*) (*Merits*) [2010] ICJ Rep 664 [74].

98 CoE Report (discussing *Al-Adsani v United Kingdom* (European Court of Human Rights, Grand Chamber, Application No. 35763/97, 21 November 2001) 101.

99 *Jurisdictional Immunities of the State* (*Germany v Italy: Greece intervening*) (*Judgment*) [2012] ICJ Rep 99 [90–91]. That said, one must be careful not to overestimate the influence that the European Court of Human Rights has in the identification of custom. The EU Report quotes Georg Nolte for the proposition that neither the reports of the Special Rapporteur on identification of customary international law, nor the commentaries to the 2018 conclusions of the ILC on this topic contain many references to the case law of the European Court (Georg Nolte, 'The European Court of Human Rights and the Sources of International Law', *The contribution of the ECtHR to the development of Public International Law* (Web Page, 23 September 2020) <https://rm.coe.int/the-european-court-of-human-rights-and-the-sources-ofinternational-la/1680a05733>). It also points to a doctrinal debate about the extent of the Court's competence, with former Judge Ineta Ziemele arguing that 'the Court does not have the competence, in a strict sense, to establish the existence of a customary law rule as such', and William Schabas arguing the opposite (Cf Ineta Ziemele, 'Customary International Law in the Case Law of the European Court of Human Rights—The Method' (2013) 12(2) *The Law and Practice of International Courts and Tribunals* 243, and William A Schabas, 'Le droit coutumier, les normes impératives (jus cogens), et la Cour européenne des droits de l'homme', (2020) *Revue québécoise de droit international* 681.).

100 AU Report.

On the other hand, RIOs may carry out studies, similar to those of the International Law Commission in the context of the United Nations, that result in relevant examples of 'teachings of the most highly qualified publicists of the various nations' and serve as an authoritative aid for the determination of treaty rules and customary rules. The most striking example is provided by the Inter-American Juridical Committee of the OAS, which comprises 11 jurists, acting in a personal capacity, to 'serve the Organization as an advisory body on juridical matters; to promote the progressive development and the codification of international law; and to study juridical problems related to the integration of the developing countries of the hemisphere and, insofar as may appear desirable, the possibility of attaining uniformity in their legislation'.[101] The Committee's work may have an impact on international law to the extent that it focuses 'mainly on the exclusive evaluation of the practice of American states in a certain field of international law, as was done in its recent work on State Immunity', and proposes rules that may become custom 'by a later reaction on the part of the American states'.[102] In the context of the Council of Europe, a Committee of Legal Advisers on Public International Law (CAHDI) has been set up with the goal 'to examine questions relating to public international law, to exchange and coordinate the points of view of the member States, to give opinions at the request of the Committee of Ministers'. This Committee 'organises a meeting with the President of the International Law Commission every year in order to exchange views on the evolution of international law', making it 'all the more likely' that it will contribute to the interpretation and development of international law.[103]

5 Conclusion

This article has discussed some of the questions that arose in the Study Group's inter-regional comparison of regional international organizations and their relationship with international law. Although regionalism and regional organizations has an influence on international law, the SG did not identify an 'international law of regional organizations' to have emerged. Just as there are challenges in locating a law of international organizations, it would be

101 *Statutes of the Inter-American Juridical Committee* (entered into force April 1972), as amended by *Resolution AG/RES. 2974 (LI-O/21)* (entered into force November 12 2021).

102 OAS Report (citing Lucas C Lima, 'O Comitê Jurídico Interamericano da OEA e a codificação do direito internacional regional' (2019) 16(2) *Brazilian Journal of International Law* 296–298).

103 CoE Report.

difficult to identify a legal regime that applies specifically to RIOs as a category of international legal persons. Yet the Study reveals the importance of RIOs in the application and development of international law. Whereas there has been a focus on the role of the EU, especially in its external practice, in the development of international law, the Study reveals the multiple ways in which other RIOs have operated within, and interacted with, the international legal order.

While the Study Group found RIOs to be important and influential actors in international law, it is not clear to what extent they have contributed to the 'regionalisation' of international law. Some RIOs act as political groups within the UN system and prioritise issues related to their region. Yet, the Study Group found few examples of particular ways in which international law is practised regionally. The individual RIO reports showed how RIOs often interact with and support multilateral organizations, particularly the UN system. The practice of RIOs does not appear to pose a threat to the coherence or unity of international law.

Another highlight from the Study was that RIOs engage with the 'external world' in various ways. This reveals a multiplicity of patterns of legal influence, stemming from a broad range of heterogeneous legal entities, from regional development banks to regional security organizations. At the same time, there are four key areas where RIOs can be further compared in future research endeavours.

The first is how 'outward-looking' or 'inward-looking' the relevant RIOs are. The relevance of international law to the functioning of a RIO and the potential that a RIO demonstrates to influence international law may depend, at least to an extent, on whether its member states have intended and equipped it to carry out external relations with third states and other international organizations.

The second is how the ways in which international law applies to RIOs on the international plane (that is, in external relations with third states and other IOs) compares to the ways in which international law applies within RIOs on the institutional plane (that is, in relations between RIO organs and between RIOs and their members). That distinction sheds light on the ways in which member states may seek to use the legal form of RIO to shield their relations from the rules of general international law—in other words, on the purposes that creating relatively 'autonomous' legal systems may serve. The more 'autonomous' the legal order of a RIO is, the less it will be required to give precedence to international law in its internal decision-making, and the more it may show the potential to push for legal change, thus raising a series of legitimacy questions.

The third is how the contributions of RIOs to international law resulting from their own institutional practice compare to those resulting from the fact

that they provide a platform for states to exchange views, take collective action *qua* states, and conclude agreements inter se. A related question is how the use of RIOs as platforms for state interaction differs from the use of looser forms of regional cooperation for state interaction. Does relying on the legal form of RIO puts a group of states in a better, or stronger, position to influence the development of international law?

The fourth concerns the significance of regionalism as an analytical lens. As noted above, the members of the Study Group worked in subgroups divided by the geographical regions of Africa, Asia and Asia-Pacific, Eurasia, Europe, and Latin America and the Caribbean, and Middle East and the Arab World. While individual RIO reports highlighted regional values, institutional patterns, and policy preferences, cross-cutting comparisons also reveal significant similarities between subcategories of RIOs, such as economic integration organizations and regional development banks, operating from different geographical regions of the world.[104] The question that arises, then, is whether it is more helpful to compare existing RIOs by reference to regions, or by reference to other criteria, such as whether they pursue economic integration, are geared towards looser forms of political cooperation, or possess similar technical functions. In other words, is it more fruitful to study the Inter-American Development Bank alongside other Latin-American RIOs, or to study it alongside development banks of other regions? One lens does not exclude the other, of course, and it may be that focusing on geographical regional criteria and functional criteria in parallel is the most fruitful approach.

As it leaves some questions for further reflection, the core contribution that the Study Group makes is to highlight the importance of including RIOs in the study of the law of international organizations and international law more generally.

104 In contrast, organizations from the Asia and Asia-Pacific region seem to favour relatively looser forms of institutionalisation.