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Introduction to the Special Issue: The International Law of Regional Organizations

The International Law of Regional Organizations – Mapping the Issues

Samantha Besson
Holder of the Chair *Droit international des institutions*,
Collège de France, Paris, France
Professor of Public International Law and European Law,
University of Fribourg, Fribourg, Switzerland
samantha.besson@unifr.ch

Eva Kassoti
Senior Researcher in International and European Law and
Academic Co-ordinator for the Centre of the Law of EU
External Relations, Asser Institute, The Hague, Netherlands
e.kassoti@asser.nl

Abstract

Despite their increasing significance, Regional International Organizations (RIOs) have, thus far, received scant attention in international legal literature. In order to fill this gap, the International Law Association (ILA) Study Group (SG) on *The International Law of Regional Organizations* was launched in 2021 by the two editors of this special issue. This issue is an academic emanation of the comparative international law project conducted by the ILA SG. It serves two main aims: first, present the main results of the ILA SG's comparative international law exercise in an accessible and analytical format in the first contribution of the issue; and, second, gather individual contributions to

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address further selected conceptual, normative, historical and institutional questions pertaining to the external and internal practice of international law by RIOs. The present introduction provides the necessary conceptual and theoretical background to the discussion unfolding in the remainder of the issue. It addresses the topic and scope of this special issue, maps the state of the debate and relevance of the issue, and clarifies the structure and contents of the issue.

Keywords

regional organizations – regionalism – regional law – regional groups – regional orders – autonomy – universality – legitimacy – institutional order – functionalism

This special issue is an academic emanation of the comparative international law project conducted by the International Law Association (ILA) Study Group (SG) on *The International Law of Regional Organizations* between 2021 and 2024 and chaired by Samantha Besson and Eva Kassoti.

The ILA SG's mandate has been to clarify and assess, through comparison, the practice of international law by regional international organizations (RIOs).[1] The practice at stake is both 'internal' to the RIOs (and their relationship to their Member States) and 'external' to them when they engage with third States and other international organizations (IOs) (whether universal or regional). In each case, the SG's project has been to examine how RIOs do not only apply international law (inside and outside the IO's legal order), but also contribute to developing it in return (again, inside and outside the IO's legal order). By comparing the practice of international law by different RIOs both across regions and within each of them, the SG's aim has been to get a better sense of how RIOs are shaping contemporary international law and hence of how to organise them in the future. In the long run, the hope indeed is that the ILA SG's work may pave part of the way towards an international law of RIOs, consolidating, through comparison, a common statute of international law for RIOs that could help institute them as public institutions and, hence, as institutions of law that can and should comply with the international rule of law. These different facets of the practice of international law in, by and

1 See ILA, 'International Law of Regional Organisations' *International Law Association* (Web Page, 10 August 2023) <www.ila-hq.org/en_GB/study-groups/international-law-of-regional-organisations>. The original questionnaire (2021), the regional subgroups' RIO-specific and thematic reports (2022) and the intermediary and final reports (2023 and 2024) are available on the ILA's webpage.

of RIOs are captured under the title of the ILA SG that has also become this special issue's: the 'international law of regional organizations'.

Parallel to the work of the SG, a companion academic project was launched in 2022 to showcase the comparative international law work of the group. It became clear in the course of the SG's work, indeed, that some of the general questions raised by RIOs in and for international law could only fully be answered based on the material gathered in the kind of large-scale comparative research conducted by the ILA SG. At the same time, however, it also transpired that the original material, even once compiled and presented in the ILA SG report, would still need to be curated academically before it could be published and weigh in on international law debates. Moreover, in the course of the ILA SG's work, it became apparent that some important analytical and normative questions pertaining to the controversial place of RIOs in the current institutional framework of international law could not be addressed in a collective and largely descriptive exercise of the kind pursued in the ILA SG and would still require in-depth individual scholarly contributions.

Such are the two aims of this special issue: first, present the main results of the ILA SG's comparative international law exercise in an accessible and analytical format in the first contribution of the issue; and, second, gather, in its wake, eight individual contributions to address further selected conceptual, normative, historical and institutional issues pertaining to the external and internal practice of international law by RIOs. To do so, the issue brings together articles by eleven leading international law scholars, all members of the ILA SG and familiar with the work undertaken under the SG's auspices.

This introduction sets the stage for the special issue's contributions: first, it clarifies the topic and the scope of the special issue (1.); second, it maps the debate and explains the relevance of the issue (2.); third, it provides some information about how the issue is structured and sketches out the content of its contributions (3.).

1 The Topic and the Scope of the Special Issue

The term 'RIOs' is used to refer to IOs whose geographical or personal scope is regional, and hence restricted or limited as opposed to universal. In this sense, RIOs are distinguished negatively from universal IOs (UIOs), whether the latter are general in material scope, such as the United Nations (UN), or specific, such as the Word Trade Organization (WTO).

The regional and the universal have always been a central dimension of international law and, since the late 19th century, of the institutionalisation of

IO s, albeit to a different effect at different times in history. Nowadays, however, RIO s have become key institutions of the contemporary international legal order.

In recent years, indeed, the number of RIO s has increased steadily and they have spread across all world regions. Those RIO s are not only more numerous, but have also gained in aims and powers in their external relations, albeit in a diverse fashion of course. While some RIO s have ambitious political agendas pursuing deeper regional integration (usually with a democratic or peaceful mandate, but not necessarily so, as exemplified by so-called "authoritarian" or even "imperialist" RIO s),[2] others only aim to integrate their Member States economically or financially, or merely to promote looser forms of cooperation on a variety of specific topics (for example, peace and security, terrorism, disarmament, maritime resources, dispute settlement). Whereas some RIO s claim to have developed an autonomous legal order with supranational features, others are organised as intergovernmental institutions based upon strict observance of State sovereignty and without much normative power. Some overlap with a single civilisation, religion, culture or language, while others relish in the civilisational, religious, cultural or linguistic diversity of their constituency. Certain RIO s have granted rights and duties directly to individuals, sometimes giving them 'citizen' or 'quasi-citizen' rights, while others only have States, and sometimes other public institutions such as cities or infranational regions, as members.

RIO s have not only grown in number, aims and powers, but they have also gained in international impact, including on the development of international law. On the one hand, they exercise, through their internal law, an increasing influence on their Member States' practice of international law (for example, in case of tension with those States' other duties under general or special international law). On the other, some of them have also developed their own practice of international law: both inside their legal orders (in cases where their internal law may be described as such), when receiving or interpreting international law, and outside their legal orders, when they interact with third States or other (universal or regional) IO s and impact on international law-making. As a matter of fact, some RIO s have even been instituted precisely to enable their Member States to weigh in more heavily on international

2 See, eg, Tom Ginsburg, 'Authoritarian International Law?' (2020) 114(2) *AJIL* 221; Anastassia V Obydenkova and Alexander Libman (eds), *Authoritarian Regionalism in the World of International Organizations* (Oxford University Press, 2019). See more generally, Anne Orford, 'Regional Orders, Geopolitics and the Future of International Law' (2021) 74(1) *Current Legal Problems* 149.

law-making, including in UIOs,[3] but also, more generally, on the practice of international law, be it of general international law (for example, on sources, responsibility, immunities or dispute settlement) or within specific regimes of international law (for example, international human rights law, international environmental law, international trade law or the international laws of war).

These recent developments in the diffusion of RIOs across the world and their influence on international law-making match the rise of rival visions of regional orderings since the end of the Cold War and of concurrent civilisational takes on international law and their claim to be represented. This new, globalised era in the international ordering of regions also marks, provided international lawyers seize the opportunity it presents, what could be a turning point in the organization of the international institutional order in general. To quote Damian Chalmers, 'the scale and sweep of regional organizations have made them crucibles for ascertaining the possibilities and limits of international law'[4]

At this stage, one could object that RIOs are too diverse legally and institutionally to constitute a meaningful object of international legal study and hence, given the intimate ties between legal theory and practice,[5] of international lawyering and ordering. After all, as mentioned before, RIOs are usually defined negatively and by reference to what they are not under international law (for example, either 'non-State actors' or 'non-universal IOs').

This is actually a version of a common objection in the law of IOs, and one that may be rebutted in two ways. First of all, this objection points to and confirms the very need it tries to deny, that is the need to legally order our institutionalised or organised international law-making processes. Their ability to be organised is, after all, why one refers to IOs as international 'organizations' in the first place. They are not natural kinds, but legal constructions whose diversity in legal status may be and actually should be controlled. The objection also misses the point, second, of ordering not just any organizations in this case, but 'regional' ones. Those are institutions that erode, on a daily basis, a whole range of 'binary oppositions' that have underpinned international law since the

3 See, eg, UN Security Council, *In Times of Global Crises, Collaboration between Regional Organizations, United Nations Has 'Grown Exponentially', Secretary-General Tells Security Council* (19 April 2021) UN Doc SC/14498; UN Secretary-General, *Cooperation between the United Nations and Regional and Other Organizations—Report of the Secretary-General* (15 July 2016) UN Doc. A/71/160, S/2016/621, [145]. See also Schmalenbach, in this issue; Brölmann, in this issue.

4 Damian Chalmers, 'Regional Organizations and the Reintegrating of International Law' (2019) 30(1) *EJIL* 163, 163. See also Besson, in this issue; Orford (n 2) 191.

5 See Samantha Besson, 'International Legal Theory *qua* Practice of International Law' in Jean d'Aspremont, André Nollkaemper and Tarcisio Gazzini (eds), *International Law as a Profession* (Cambridge University Press, 2017) 268–284.

19th century, and especially its seminal distinction between international and national law.[6] These include, as we will see, all the related oppositions between the universal and the domestic, between the functional and the territorial, between the technical and the political and, ultimately, between not yet fully institutionalised and legalised IOs and institutionalised States. The irritating role of RIOs in international law and their development make the need to re-order those regional orderings even more urgent in international law.

Clarifying whether there is or should be such a single notion of 'regional' ordering in international law and what should be the content of a common international public law statute of RIOs is at the core of many of this special issue's contributions.[7] A minimal working definition of RIOs is needed at the outset of this special issue, however, even if it may be refined conceptually and normatively and adapted to the argument proposed in each article later on. That definition should indeed be both legal enough to enable a study of RIOs' contribution to international law of the kind proposed in this special issue, on the one hand, and specific enough to enable a comparative international law analysis between RIOs, on the other.

This definition corresponds to the one adopted for the purposes of the ILA SG.[8] It is two-pronged.

First, the concept 'international organization' is understood here along the lines used by the International Law Commission, that is 'an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality' (Article 2(a) Draft articles on the responsibility of international organizations). One of the consequences of relying on this definition of 'organization' is that the contributions in this special issue do not pertain to forms of regional cooperation such as regional trade agreements, military alliances or security pacts with no legal personality or, at least, without an organisational identity or autonomy distinct from that of its members and hence a capacity to apply and make international law. Each RIO may have States, IOs and other public institutions (for example, infranational ones) as members. Its being organised also implies that it should have its own organs and that its members should share a common project or goal.

Second, the term 'regional' is understood broadly here so as to include all IOs with restricted, for example, non-universal, membership, as mentioned before. That scope may be defined by reference to geographic criteria,

6 See, eg, Janne E Nijman and André Nollkaemper (eds), *New Perspectives on the Divide between National Law and International Law* (Oxford University Press, 2007).

7 See Chalmers, in this issue; Besson, in this issue.

8 See Bordin and Odermatt, in this issue.

but not only since the geographical bond between their Member States is usually a placeholder for another cultural or political bond that distinguishes them from other groups of States in the international legal and institutional order. Those other criteria may be linguistic, religious, historic, economic, cultural or civilisational.[9] Determining whether a given RIO is regional in this respect depends on self-identification by the law of the RIO itself and, more specifically, by the terms of its founding instrument, its membership and/or its goals and mandate.

2 The State of the Debate and the Relevance of the Special Issue

Despite their increasing importance in and for international law, RIOs have received scant attention in international legal literature. By contrast, RIOs have been the object of intense debates in political science, international relations theory, history or global economy for the last twenty years or so.[10] So

9 See on the relationship between regions and civilisations and their sharing three features in particular, eg, plasticity, normativity and non-reducibility to geography, Samantha Besson, 'Le droit international des civilisations—Ou comment instituer leur concertation' in Vinciane Pirenne-Delforge and Lluís Quintana-Murci (eds), *Civilisation(s). Questionner l'identité et la diversité* (Odile Jacob, 2021) 345–370. See further Chalmers, in this issue; Laurence Boisson de Chazournes, *Interactions between Regional and Universal Organizations: A Legal Perspective* (Brill|Nijhoff, 2017) 8.

10 See, eg, Louise Fawcett and Andrew Hurrell (eds), *Regionalism in World Politics: Regional Organization and International Order* (Oxford University Press, 1996); Andrea Ribeiro Hoffmann and Anna van der Vleuten (eds), *Closing or Widening the Gap? Legitimacy and Democracy in Regional Integration Organizations* (Routledge, 2007); Finn Laursen (ed), *Comparative Regional Integration: Europe and Beyond* (Routledge, 2010); Tanja A Börzel, Lukas Goltermann and Kai Striebinger (eds), *Genesis, Design, and Effects of Regional Organizations, Roads to Regionalism* (Routledge, 1st ed, 2012); Philippe de Lombaerde, Francis Baert and Tânia Felicio (eds), *The United Nations and the Regions* (Springer, 2012); Philippe de Lombaerde and Fredrik Söderbaum (eds), *Regionalism* (SAGE Library of International Relations, 2013); Fredrik Söderbaum, *Rethinking Regionalism* (Palgrave Macmillan, 2015); Tanja A Börzel and Thomas Risse (eds), *The Oxford Handbook of Comparative Regionalism* (Oxford University Press, 2016); Thomas Meyer, José Luis de Sales Marques and Mario Telò (eds), *Regionalism and Multilateralism: Politics, Economics, Culture* (Routledge, 2019); Diana Panke, Sören Stapel and Anna Starkmann, *Comparing Regional Organizations: Global Dynamics and Regional Particularities* (Bristol University Press, 2020); Elisa Lopez-Lucia and Frank Mattheis (eds), *The Unintended Consequences of Interregionalism. Effects on Regional Actors, Societies and Structures* (Routledge, 2021); Tobias Lenz, *Interorganizational Diffusion in International Relations. Regional Institutions and the Role of the European Union* (Oxford University Press, 2021).

have 'regionalism' more generally, and the related projects of 'regional worlds', 'world of regions', or 'regional councils' that have been discussed for even longer in the history of international relations.[11]

When RIOs have been addressed by international lawyers, this has been done mostly in French or by French-speaking scholars.[12] True, recent publications in English reflect a renewed interest in regionalism and regional law in international law.[13] However, they have focused to a lesser extent on RIOs[14] and

11 See, eg, Joseph S Nye, *Peace in Parts. Integration and Conflict in Regional Organizations* (University Press of America, 1971); Rajni Kothari, *Footsteps into the Future* (MacMillan, 1974); Peter J Katzenstein, *A World of Regions. Asia and Europe in the American Imperium* (Cornell University Press, 2005); Amitav Acharya, *The End of American World Order*, (Oxford University Press, 2nd ed, 2018).

12 See, eg, Georges Scelle, *Une crise de la SDN* (PUF, 1927); José Ramon de Orúe y Arregui, 'Le régionalisme dans l'organisation internationale' in *Recueil des cours de l'Académie de droit international de La Haye,* vol. 53 (Brill|Nijhoff, 1935) 7–94; Michel Virally, 'Les relations entre les organisations régionales et organisations universelles' in SFDI (ed), *Régionalisme et universalisme dans le droit international contemporain* (Pedone, 1977) 147–165; Mathias Forteau, 'Regional International Law' in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2006); Mathias Forteau, 'Regional Co-operation' in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2007); Mathias Forteau, 'International Organizations or Institutions, Regional Groups' in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2008); Laurence Boisson de Chazournes, 'Les relations entre organisations régionales et organisations universelles' in *Recueil des cours de l'Académie de droit international de La Haye,* vol. 347 (Brill|Nijhoff, 2011) 76–406; Stéphane Doumbé-Billé (ed), *La régionalisation du droit international* (Bruylant, 2012); Samantha Besson, 'Du droit de civilisation européen au droit international des civilisations: instituer un monde des régions' (2021) 31(3) *Swiss Review of International and European Law* 373.

13 See, eg, Mariano J Aznar and Mary E Footer (eds), *Select Proceedings of the ESIL, Fourth volume: Regionalism and International Law* (Hart Publishing, 2015); Jan Klučka, *Regionalism in International Law* (Routledge, 2018); Apollin Koagne Zouapet, 'Regional Approaches to International Law (RAIL): Rise or Decline of International Law?' (2021) 46 *KFG Working Paper Series* 1; 'General International Law and the Challenges of Regionalism before the International Law Commission' (Questions of International Law, 30 November 2021) <http://www.qil-qdi.org/category/zoom-in/general-international-law-and-the-challenges-of-regionalism-before-the-international-law-commission/>; Orford, 'Regional Orders' (n 2); Mads Andenas, Freya Baetens, Emanuel Castellarin, Johann Ruben Leiss and Paolo Palchetti (eds), *Regionalism in International Law* (forthcoming).

14 See, however, the special issue on RIOs edited by Chalmers (n 4); Samantha Besson, 'Reconstructing International Law starting from Regional Organizations' (2021) 2 *Revue européenne du droit* 65.

then often only from a historical perspective.[15] Moreover, they have remained limited in their ambit or are usually non-comparative. They mostly address RIOs in silos, focusing on a single RIO or on RIOs in a single region at a time.[16] As to the existing comparative international law literature in the area, it mostly pertains to date to RIOs that pursue regional economic or military integration or to RIOs active within specific functional regimes of international law.[17]

One may venture different reasons for this neglect of RIOs in international legal scholarship. The most important one lies in international law's current conceptual, normative and institutional blind spots mentioned before and that hinder the capturing and ordering RIOs in international law. Indeed, contrary to the paradigmatic universal IO that is defined by its functions, RIOs are not universal in their functions. Still, they are without a territory and do not amount to States either. This quandary due to the binary institutional framework of contemporary international law that opposes function to territory and, by extension, IO to State and seemingly excludes RIOs has been captured very aptly by Catherine Brölmann:

> Regional organizations defy both the vision of a universally applicable normative framework and the vision of a deterritorialized world in which authority is divided by issue area or 'function.' Regional organizations elude the territory-function dichotomy that some scholars have developed as a basis for explanatory models.[18]

Another related reason for the neglect of RIOs by international lawyers may lie, as mentioned before, in the sheer diversity of RIOs and the conceptual difficulties this raises when defining RIOs otherwise than negatively (by

15 See, eg, the various chapters on regional international law in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (Oxford University Press, 2012); and in Aznar and Footer (n 13). On Regional Approaches to International Law (RAIL) in history, see also Koagne Zouapet (n 13). See also Sinclair, in this issue; Fernandes Carvalho, in this issue.

16 See, eg, the book series co-edited by Joseph HH Weiler and Hsien-Li Tan (eds), *Integration Through Law: The Role of Law and Rule of Law in ASEAN Integration* (Cambridge University Press, 2015–2022).

17 See, eg, Carlos Closa and Lorenzo Casini (eds), *Comparative Regional Integration: Governance and Legal Models* (Cambridge University Press, 2016); Pasha L Hsieh, *New Asian Regionalism in International Economic Law* (Cambridge University Press, 2021).

18 Catherine Brölmann, 'Review of Laurence Boisson de Chazournes (2017) Interactions between regional and universal organisations: a legal perspective' (2020) 114 *AJIL* 335, 335. For a more nuanced account, see Brölmann, in this issue.

reference either to non-UIOs or to non-States). The various institutional forms that regional orders take under international law, besides that of an IO (for example, groups, tribunals, codification commissions, treaty regimes, etc.), are another factor adding to the complexity. Last but not least, 'regions' are the crucible or conduit of multiple types of identities and solidarities that often go, as mentioned earlier, beyond the simple geographical dimension to which they cannot therefore be reduced.[19]

Of course, there has been one major exception to this neglect of RIOs in international legal scholarship, and that is the European Union (EU). It is, indeed, the RIO whose relationship to international law have drawn most attention, both *per se* and as a basis of comparison by and with other RIOs. It has therefore been studied by EU lawyers[20] and international lawyers[21] alike, albeit usually not to the same conclusions and without much dialogue between them.

There are many reasons why the EU's role as an actor of international law has been considered so attentively, including as a basis for comparison—besides the European origins of international law and of regional international law (*jus publicum europaeum*) in history and the residual European bias prevailing in much of the literature on regional international law and generally on the international law of IOs,[22] of course.

First of all, given the breadth of the EU's competences, both internal and external, most areas of EU law are affected by international law and affect it in return. The EU's external or international relations have therefore grown considerably and, in the last ten years, what is called 'EU external relations law' has even become a separate regime of EU law. Secondly, and related to the previous point, the complex legal and institutional nature of the EU, to the extent that it presents itself as an IO with State-like or, at least, supranational

19 See on the relationship between regions and civilisations, Besson (n 9). See on regional solidarity, Kassoti, in this issue.

20 See, eg, Jed Odermatt, *International Law and the European Union* (Cambridge University Press, 2021); Inge Govaere and Sacha Garben (eds), *The Interface between EU and International Law: Contemporary Reflections* (Hart Publishing, 2020); Elaine Fahey (ed), *Framing Convergence with the Global Legal order: The EU and the World* (Hart Publishing, 2020); Dimitry Kochenov and Fabian Amtenbrink (eds), *The European Union's Shaping of the International Legal Order* (Cambridge University Press, 2014).

21 See, eg, Enzo Cannizzaro, Paolo Palchetti and Ramses A Wessel (eds), *International Law as Law of the European Union* (Brill, 2012); Jan Klabbers, *The European Union in International Law* (Pedone, 2012).

22 See on this regional and civilisational bias in the history of international law, Besson (n 12).

features (such as, for example, a territory or citizens), has made the interplay between the international and the EU legal order quite unique. This has given rise to the idea of, and arguably even to a practice of, European 'exceptionalism' in international law. Thirdly, at the same time, the EU has also positioned itself as *völkerrechtsfreundlich* (literally, amicable to international law) in its relations to international law. Its foundational treaties actually contain an express commitment to the observance and development of international law, and refer more than once to the latter and to other IO s such as the UN.

While the relations between the EU and international law have been well studied, there are still important blind spots in that research. Addressing the EU as a RIO alongside other RIO s, as it is the case in the ILA SG's report and in this special issue's contributions, may therefore be beneficial not only to the debate pertaining to the EU's external relations law that has often been too one-sided and prisoner to the so-called *sui generis* claim,[23] but also, conversely, to the international law of RIO s in general that has frequently been modelled after the EU, both in theory and practice.[24]

This state of affairs, for example the increasing importance of RIO s in international law combined with a dearth of comparative international legal research that is both sufficiently general in scope and transregional in breadth about them, makes the question of the practice of international law in and by RIO s a very relevant topic for a collective scientific endeavour such as the one pursued in this special issue. The ILA SG's report purports to present a first general and transregional comparative study of RIO s in English language: the comparative analysis proceeds on a regional basis (rather than a functional one), both within each region and across regions, and it addresses a whole range of general international law issues (instead of specific ones) raised by the internal and external practice of RIO s. An academic summary of that study is provided in the first contribution of this special issue.[25]

In its wake, the next contributions in the issue are among the first ones to directly address a series of complex historical and theoretical questions raised by the international law of RIO s. Indeed, as mentioned before, reflecting over the international law of RIO s also directly feeds into a number of current debates regarding the changing landscape of international law and may

23 See Kassoti, in this issue.

24 This is why we considered it important to include the EU into the scope of the ILA SG's report and of this special issue. Both its inclusion and exclusion could be criticized from the perspective of the European bias in the study of RIO s, and we consider that its inclusion, under strict methodological constraints, is mutually beneficial.

25 See Bordin and Odermatt, in this issue.

therefore contribute to addressing some of the many conceptual, normative and institutional challenges it currently faces.

First of all, the enquiry into regional international organization sheds a new light in the discussion of the universality of international law. Indeed, there is more than a strong presumption among contemporary international lawyers that, despite regional origins and influences, international law can be universal and that its validity and authority, while allowing room for regional variations through regional reception and contextualisation, transcend regional influences. This raises the question whether the increasing 'regionalization' of international law threatens the coherence of the international legal order and whether the international legal system has the capacity to absorb the related plurality and attendant tension and even turn it into a valuable comparative resource for convergence and renewed 'universalization'.[26]

Secondly, the relationship between the regional and the universal at play in the international law practice of RIOs also offers a unique prism through which to address broader questions pertaining to the legitimacy of international law. The current backlash against international law is indeed (also) underpinned by the idea that contemporary international law has not transcended its imperial past and that it still mostly reflects regional European (and later Western) values and interests imposed as universal ones. In this light, understanding the past and present role of RIOs in international law-making enables us to assess how 'common' or 'concerted'[27] contemporary international law is, or at least could and should be. This issue is all the more sensitive in a period of growing civilisational tensions in and about international law, characterised by the emergence of new universalising regional imperialisms on the part of certain 'civilisation-States' or 'civilisation-empires'.[28] In that context, RIOs and their regionalisation of international law could be seen as contributing to a better institutionalisation of the egalitarian representation of the peoples of the world and of their legal cultures in international law-making, thereby somehow alleviating the tension between the universal and the particular.[29] RIOs, after all, are now truly universal in their distribution across the world,

26 See, eg, with further references, Koagne Zouapet (n 13); Besson (n 12). See also Besson, in this issue; Fernandes Carvalho, in this issue.

27 On this term, see Besson (n 9).

28 See, eg, Lauri Mälksoo, 'Post-Soviet Eurasia, *Uti Possidetis* and the Clash between Universal and Russian-Led Regional Understandings of International Law' (2021) 53(3) *NYU JILP* 787; Obydenkova and Libman (n 2).

29 Besson (n 12). See also Besson, in this issue.

whether or not they should be seen originally as transplants or reactions to European regional international law. More reflection is needed about what the institutional set-up and role of RIOs should be from that perspective, however. It would require, in particular, working on political equality in the articulation of the relationship between RIOs and States,[30] on the one hand, and on the relationship between RIOs, but also between RIOs and UIOs, and in particular between RIOs within the UN,[31] on the other.

Finally, the study of RIOs offers a fresh and non-binary vantage point from which to approach the vexed questions of subjecthood and personality in international law anew, and more specifically the institutional nature and evolving characteristics of IOs. As mentioned above, indeed, RIOs defy the territory-function dichotomy and occupy an intermediate institutional layer between States and IOs.[32] To that extent, they provide the ideal background for a much-needed reflection on the nature and the role of IOs, but also more generally of public institutions in international law and on the future of the international institutional order.[33]

The relevance and timeliness for the future of international law of such reflections about the international law of RIOs have been aptly captured by Anne Orford:

> International lawyers still largely treat the centrality of regionalism to the normative ordering of space as if it operated outside international law. […] [A]ttending more closely to the practice of international legal argument allows us to analyse the movement between big ideological claims and technical details. […] Thinking about regional order as a juridical concept, with attention to the variations in the concept historically and comparatively, can help to bring such questions into view, make visible the plural forms of spatial ordering that have long been with us, and draw attention to the political stakes of assembling regional orders through international law.[34]

30 See Besson, in this issue; Koagne Zouapet, in this issue.
31 See Schmalenbach, in this issue; Kassoti, in this issue; Besson, in this issue.
32 Brölmann (n 18). See also Brölmann, in this issue.
33 Besson (n 14). Orford (n 2). See also Besson, in this issue.
34 Orford (n 2) 190 and 194.

3 The Structure and Contents of the Special Issue

This special issue comprises the present introduction and nine articles. Those contributions address a selection of conceptual, normative, historical and institutional questions raised by the practice of international law of RIOs and their role in the contemporary and future international order.

The issue opens with an article co-authored by the two co-rapporteurs of the ILA SG, presenting the gist of the ILA SG's report's findings and proposing a comparative analysis of RIOs' internal and external practice of international law.

Fernando Bordin's and Jed Odermatt's article, *International Law of Regional Organizations: A Comparative Perspective,* provides a comparative analysis of the law and practice of RIOs. Drawing upon the ILA SG's study and individual regional reports, the article provides a cross-regional study 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. It then discusses how international law applies to, and within, RIOs, examining issues such as the autonomy of the organization's internal law. The article shows how RIOs 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 the authors to offer reflections on the 'openness' of RIOs and the conditions under which they can shape, and be shaped by, international law. The article concludes with some pointers for further research on the place of RIOs in international law.

The remainder of the issue is divided in two parts comprised of four articles each. A first group of articles addresses a selection of issues raised by RIOs in international legal history and theory. The first article is dedicated to the concept and role of 'regions' in international law and what that vocabulary implies for the study of RIOs. It is followed by an article on RIOs in the history of international law, an article on their implications for the political legitimacy of international law and another one on what RIOs do to the theory of international organizations.

Damian Chalmers' article, *The Distinctiveness of Regional International Organization Law*, argues that there is a distinct RIO law which derives from that law's concern with the institution, management and cultivation of

qualities identified with regions. This concern gives this law four qualities. First, it seeks to institute the region into being, with the region identified as somewhere that combines a place and a mission-based association. Secondly, it characterises regions as fissile so that the provision of trust and security are central features of this law. Thirdly, it sees emancipation and solidarity as central ideals of both the region and its Member States. Fourthly, this law contains an account of national inadequacy. This essay concludes by arguing for inclusion of a fifth quality, an account of regional inadequacy. This would problematise more extensively both what the RIO does and the concentrations of power it often facilitates.

Guy Sinclair's article, *Between Functionalism and Hegemony: Regional International Organisations in the History of International Law*, examines the changing theory and practice of RIOs since the early 19th century. It argues that the meaning and place of RIOs in international law have been continuously shaped and reshaped by the relational practices of particular entities, understood and enacted as more or less 'regional' and 'organizational', at different times and places. The article focuses on two axes of tension in particular: the positioning of RIOs between *functionalist* and *territorial* logics; and the possibility of RIOs being used for *hegemonic* or *counter-hegemonic* purposes. The article traces these two lines of tension through the practice of RIOs and doctrinal and theoretical reflections on that practice, over four periods of uneven lengths: the late 19th and early 20th centuries; the interwar period; the four decades following the Second World War; and the period since the end of the Cold War.

Samantha Besson's article, *The Politics of Regional International Organizations: A New Dawn for the Political Legitimacy of International Law*, argues that international lawyers can no longer afford to ignore the growth of regional orderings under the umbrella of international law and their political consequences. There are, the author argues, at least two concerns RIOs may help us address when thinking about the future of the international institution of (States)peoples and organising it to secure more political legitimacy: sovereignty and democracy. With respect to sovereignty *qua* ultimate political authority, first, RIOs enable us to consider the virtues of multiple and shared external sovereignty in international relations and the possibility of a regional ordering of dispersed sovereignty as a shield to protect the same albeit multiply reinstituted peoples *qua* publics against domination, and this both inside their States and in their international relations. Second, with respect to democracy, RIOs enable us to approach international democracy, and especially international democratic representation, in a pluralistic albeit systemic way: peoples may be reinstituted into different publics by multiple institutions over

time, such as their States, but also by one or more RIOs in their region, and giving those representative institutions a role in international law-making could strengthen political equality by compensating demographic and power imbalances between States while also requiring those RIOs to become more egalitarian and accountable in return.

Fabia Fernandes Carvalho's article, *Regional International Organizations and Regionalism in the Theory of International Law*, explores the relationship between international law and space with particular attention to regionalism. Focusing on theoretical debates in the discipline, it examines the interplay between regionalism and RIOs and the universal character of international law, re-describing central theoretical legal issues concerning that relationship. Regionalism is assessed as one form of spatial ordering in international law. Regional order is an international legal notion that contributes to a more nuanced understanding of the politics of space and the processes of production, organisation and distribution of power, resources and identities in a particular region. In this setting, changes in the spatial focus while employing theoretical interrogations in the discipline are productive ways to make sense of the diverse modes of engagement with international law in different regions worldwide.

The place of RIOs within the current structure of the international institutional order is at the core of the second series of contributions in this issue. Four articles address this question, generally for the first one, that focuses on RIOs and the function-territory divide in the international institutional order, and then specifically for the other three: a contribution pertains to RIOs and States, another one to RIOs and the universal IO *par excellence*, that is the UN, and a third one to a RIO that deserves special treatment not the least due to its historical precedence and the role it plays in international law discussions of RIOs, that is the EU.

Catherine Brölmann's article*, Regional Organizations in International Law: Exploring the Function-Territory Divide*, starts from the observation that, according to a classic account originating from the social sciences, 'function' is the organising principle and basis for authority of IOs whereas 'territory' has that role for States. Organised on the basis of specific functions without *a priori* territorial limitations, IOs have come to constitute an 'international superstructure over and above States'. This frequently quoted phrase (1974) underscores how the *allure* of IOs over time has been connected to an image of universal membership and universality of law. RIOs could appear to challenge all this, due to their combining a functional and a territorial dimension. The article is aimed at further unpacking that proposition. A central claim is that the troubled image of RIOs among international lawyers (in contrast to political

scientists and international practitioners) is not due to a systemic problem, but to an ideological tension. Notions of territory and function in relation to the *origins* of States and organizations do not as such have legal effect in international law. Conversely, the regional nature of RIOs might indeed be seen to act as an opposing force to the universalist ambitions associated with international 'institutionalisation'. Meanwhile, in the background, regional organizations continue to hold a significant place in the (discursive) practice of the UN and other organizations.

Apollin Koagne Zouapet, in his contribution *States and Regional International Organizations*, argues that, beyond the thorny, even insoluble question of the definition of a region and the definition of the criteria that should make it possible to apprehend the polymorphism of RIOs, the *raison d'être* of these organisations, their mode of operation and their activities are at the heart of the debate on 'international governance'. For many authors, the advent of RIOs has been seen as a challenge to the State monopoly in the international legal order and as a redefinition of the relationship between these particular organizations and States. It is this relational dynamic between States and RIOs that this contribution aims to describe and analyse. The purpose is to examine the originality and specificity of the relationship between States and RIOs, compared to the latter's relationship with the 'classic/universal' IOs, which would reveal something about the very nature of regional organizations.

Kirsten Schmalenbach's article, *The Relationship between RIOs and the UN in Matters of Peace and Security: It's Complicated*, focuses on the example of the Economic Community of Western African States (ECOWAS)' reaction to the military coup in Niger in 2023 in order to offer a fresh appraisal of the relationship between RIOs and the UN within the universal collective security system which is—once again—largely paralysed by geopolitics. Departing from an analysis of the channels available to RIOs to engage with the UN in a rapidly unfolding regional crisis, this article argues that the UN primarily perceives RIOs as mediators and peace facilitators. This is driven by RIOs' often advantageous position due to their knowledge of local dynamics and their particularly strong interest in securing peace in their own neighbourhoods. However, UN-RIO cooperation in peacekeeping is not without tension and RIOs' use of military force without the targeted State's consent or UN Security Council (UNSC) authorisation is seemingly at odds with the UN Charter. Nevertheless, the UNSC's ambiguous practice regarding Chapter-VIII authorisations may allow future developments involving RIOs without, however, opening the door to their full autonomy.

Eva Kassoti's article, *The European Union and Other Regional International Organizations: Tales of Solidarity*, begins by examining the added value of

studying RIOs separately from IOs. It argues that the RIO lens, apart from its descriptive value, also provides significant and distinct insights: RIOs' law may directly affect the position of the individual under international law; RIOs offer a new angle through which to approach recurring questions of international law; RIOs' law frames in legal terms regional narratives of emancipation and solidarity that are central to bringing into existence and sustaining the legitimacy of new regional orders. Against this backdrop, the article focuses on the legal trajectory of the principle of solidarity in EU and African Union (AU) law—with a view to providing concrete examples of the potential and limits of RIOs to act as vehicles for realising regional narratives of solidarity. The analysis allows the author to query some long-standing assumptions regarding the necessary preconditions for the development of an international law principle of solidarity and to reflect on how other regional spaces and peoples may contribute to the shaping of the content and scope of international law rules on the basis of different regional visions. More fundamentally, the article highlights the potential of RIOs' law to increase accountability and pluralise the geographies of international law. In a multiverse of RIOs, taking the regional space seriously provides a framework and a language for thinking about questions of participation in international law-making and for holding RIOs as *loci* of power accountable.

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