International Law Association Athens Conference (2024) : The International Law of Regional Organizations

Final Report

ILA Study Group The International Law of Regional Organizations; Besson, S.; Kassoti, E.; Lusa Bordin, F.; Odermatt, J.

Publication date
2024

Document Version
Final published version

INTERNATIONAL LAW ASSOCIATION

ATHENS CONFERENCE (2024)

The International Law of Regional Organizations

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1 INTRODUCTION

1.1 Aims and Purpose

The Study Group *The International Law of Regional Organizations* explores the law and practice of regional international organizations (RIOs) with a view to understanding the relevance and impact of this law and 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 Study Group (SG) was established with the aim of examining more broadly the role of RIOs, in both their internal and external practice.

The SG encountered several definitional and conceptual issues that are addressed in this Report. This can be explained in part by the challenge of applying existing concepts, often developed in relation to 'universal' international organizations, to the context of RIOs. There are debates about the categorisation of RIOs as well as the very definition of RIO. For example, some RIOs are described as *sui generis*, having legal setups and functions that do not fit easily within traditional assumptions about what international organizations should look like. Moreover, the existing categorisations of international organizations do not capture their diversity. The distinctions between 'universal' (open membership) and 'regional' (closed membership), organizations that have a high degree of autonomy or supranational features versus looser forms of inter-state cooperation, and organizations that pursue regional (economic) integration and those that are established for other functions do not account for the mix of functions and powers of RIOs.

The first part of this Report provides an overview of the working methods of the SG. Part 2 discusses the working definition of 'regional international organization' adopted by the Study Group. Part 3 discusses the ways in which RIOs engage with the international institutional order, including external relations, legal personality, links with other States and organizations, and dispute settlement bodies. Part 4 examines international law as the law of regional organizations, and discusses issues related to the autonomy of the law of RIOs, the relevance of primary and secondary rules of international law for RIOs. Part 5 focuses on the influence that RIOs have had on the development of international law. Part 6 looks at questions related to the role of RIOs in the regionalisation of international law. Part 7 draws conclusions from the Study and identifies areas for further research.

The Report is based on the input provided to the SG Questionnaire and individual RIO Reports and the structure broadly reflects the structure of those individual RIO reports. This report does not provide an exhaustive overview of the answers to the questionnaire or offer detailed information about each RIO examined in the Study. Rather, the report draws together insights from the project and highlights some of the key issues.

1.2 Organization and Membership

The International Law Association (ILA) Study Group *The International Law of Regional Organizations* was established in 2020 for a period of 4 years (2021-24). The Study Group is co-chaired by Professor Samantha Besson (Collège de France & University of Fribourg) and Dr Eva Kassoti (Asser Institute) and supported by the two co-rapporteurs, Dr Fernando Lusa Bordin (University of Cambridge) and Dr Jed Odermatt (City, University of London). Members of the SG were included based on their expertise and background in public international law and the law of regional organizations. The SG includes both academics in the field of public international law and lawyers working in regional organizations and courts. The composition of the SG aims to reflect the geographical scope and diversity of the project, also ensuring inclusivity in terms of gender and seniority.

The SG was organized along regional sub-groups: Africa, Asia-Pacific, Eurasia, Europe, Latin America and the Caribbean, and Middle East and Arab World. These were constituted by the SG on a pragmatic basis, to reflect the main geographical regions in which RIOs are involved.[1] The use of regional sub-groups allowed the study to be of a manageable size and allowed for comparison between and across regions.

1.3 Work Process

The SG's mandate is to clarify and assess, through comparison, the practice of international law by regional international organizations (RIOs).[2] On 15 May 2021, the co-chairs developed a Work Plan to begin the first phase of the project. This involved (1) creating a working definition and mapping of the relevant RIOs to include in the study; (2) developing a questionnaire to be distributed to SG members; and (3) setting out the working method for the SG.

The first step for the SG was to adopt a provisional RIO working definition. This was proposed by the co-chairs and discussed at the SG's initial kick-off meeting on 14 June 2021. Based on the provisional working definition, the co-chairs and co-rapporteurs developed a list of RIOs to be included in the comparative study (see Annex 2). On the one hand, the co-chairs sought to cast a wide net to include a broad range of RIOs beyond those that are typically studied by international lawyers. On the other hand, the project aimed to include the RIOs and RIO practice that are most relevant to international law. This meant that not every RIO, let alone other forms of regional cooperation, was included in the study. It also meant that, as discussed below, some of the arrangements originally selected were deemed not to fall within the purview of the Study under the working definition that the SG eventually adopted.

Secondly, the co-chairs drafted a questionnaire in consultation with the co-rapporteurs and other SG members, who were invited to provide comments and input on the questionnaire. In the kick-off meeting, SG members debated issues such as the working definition of RIOs, the types of RIOs that would be included in the study, and the relevance of some questions to certain RIOs. For example, some SG members had concerns that the SG's comparative method was Eurocentric in that some of the questions were based on the assumption that the European Union represented a model RIO against which other RIOs were to be compared. That led to further fine-tuning of the questionnaire. At the same time, to allow for inter-regional comparison, the SG used the same set of questions for all RIOs. The SG questionnaire provided as an annex to this report (see Annex 1).

Thirdly, the finalised questionnaire was distributed to all SG members. SG members were divided into the regional sub-groups of Africa, Asia-Pacific, Eurasia, Europe, Latin America and the Caribbean, and Middle East and the Arab World. Each sub-group was coordinated by a leader nominated by the sub-group itself.

The SG regional sub-groups submitted their questionnaire responses (which will be referred to here as 'individual RIO reports') to the co-chairs and co-rapporteurs over the first half of 2022. The co-chairs and co-rapporteurs reviewed the individual RIO reports and invited SG members to answer follow-up questions, clarify remarks, provide more information on certain issues, and address any gaps or inconsistences in the responses provided. Based on these responses, the co-rapporteurs prepared a draft Interim Report in September 2022. The draft Interim Report summarised the relevant data provided in the individual RIO reports and sought to provide cross-regional and inter-regional comparisons. It also addressed the conceptual and legal issues that arose during this part of the study.

The main challenge that the SG encountered in the first phase of the project was that the responses to the questionnaire were not consistent in terms of the level and depth of coverage. In some cases, this

[1] They do not correspond, for example, to the regional groups at the United Nations.

[2] *See* ILA, *International Law of Regional Organisations*, <www.ila-hq.org/en_GB/study-groups/international-law-of-regional-organisations>, 10 August 2023.

was due to the lack of publicly available information about a RIO. In other instances, certain questions were not relevant to a particular RIO. Efforts were made by the co-chairs and co-rapporteurs to encourage the members of the SG to work further on their individual RIO reports whenever it was felt that this would be feasible. While inconsistencies in the level and depth of coverage of RIOs may have an impact on the quality of the analysis offered in the present report, they did not stand in the way of providing a robust cross-cutting comparison on which future research can be built.

The second phase of the project involved discussions and reflections on the SG and the draft Interim Report. On 16 September 2022, the SG met in an online workshop to discuss the Interim Report. All individual RIO reports had been made available to the SG members in advance to invite greater inter-regional engagement. The co-chairs provided extensive comments, feedback and revisions on the draft Interim Report, while some SG members provided written comments.

On 8-9 December 2022, SG members met at a workshop held at Fondation Hugot of the Collège de France, Paris, and online in a hybrid mode. To aid the cross-cutting comparison between RIOs, the co-chairs invited SG members from each regional group and a few external experts from each region to address six themes in the form of regional thematic reports: (1) RIOs and International Dispute Settlement;[3] (2) RIOs and International Immunities Law;[4] (3) RIOs and Customary International Law;[5] (4) RIOs and International Responsibility Law[6] (5) RIOs and International Jurisdiction Law;[7] (6) RIOs and the International Law of Treaties[8]. The list of issues/sub-issues is provided in Annex 3.

In addition to the thematic reports, the workshop also involved presentations on specific topics related to the law of regional organizations: 1) RIOs in the History of International Law (Guy Fiti Sinclair); 2) The Vocabulary of Regional Organizations (Damian Chalmers); 3) RIOs in the International Institutional Order (Catherine Brölmann); 4) States and RIOs (Apollin Koagne Zouapet); 5) RIOs and the United Nations (Kirsten Schmalenbach); and 6) RIOs and Regionalism in the Theory International Law (Fabia Fernandes Carvalho). The workshop included a discussion of the inter-regional comparative assessment (Fernando Lusa Bordin and Jed Odermatt) and final conclusions by the co-chairs. The workshop programme is included in Annex 4.

Those regional thematic reports and presentations on specific topics are not as such reflected in the present report, which draws from the individual RIO reports prepared in the first phase of the study. Yet they present valuable companion pieces and materials to the present report, contributing to offering a more complete picture of the international law of RIOs.

On 4 December 2023, the SG met online to discuss the draft final report. The final report was updated based on this discussion and written feedback received from SG members and co-chairs.

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[3] Apollin Koagne Zouapet, Regis Simo, Emmanuel Sebijjo Ssemmanda (Africa); Rowan Nicholson (Asia-Pacific); Kirill Entin (Eurasia); Pieter Jan Kuijper & Laurence Boisson de Chazournes (Europe); Chantal Ononaiwu (Latin America and the Caribbean); Ahmed Jabri (Middle East & the Arab world).

[4] Kehinde Folake Olaoye, Emmanuel Sebijjo Ssemmanda (Africa); Yifeng Chen (Asia-Pacific); Nataliya Maroz (Eurasia); Cedric Ryngaert (Europe); Andrés Delgado Casteleiro (Latin America and the Caribbean); Ahmed Jabri (Middle East & the Arab world).

[5] Kehinde Folake Olaoye, Emmanuel Sebijjo Ssemmanda (Africa); Asia-Pacific: Srinivas Burra (Asia-Pacific); Nataliya Maroz (Eurasia); Jed Odermatt (Europe); Chantal Ononaiwu (Latin America and the Caribbean); Khalid Ismaili Idrissi (Middle East & the Arab world).

[6] Kehinde Folake Olaoye (zoom)/Emmanuel Sebijjo Ssemmanda (Africa); Rowan Nicholson (Asia-Pacific); Nataliya Maroz (Eurasia); Kristen Schmalenbach (Europe); René Urueña (Latin America and the Caribbean); Ahmed Jabri (Middle East & the Arab world).

[7] Emmanuel Sebijjo Ssemmanda (Africa); Yifeng Chen (Asia-Pacific); Kirill Entin (Eurasia); Cedric Ryngaert (Europe); René Urueña (Latin America and the Caribbean); Khalid Ismaili (Middle East & the Arab world).

[8] Regis Simo, Emmanuel Sebijjo Ssemmanda (Africa); Guy Fiti Sinclair (Asia-Pacific); Nataliya Maroz (Eurasia); Catherine Brölmann (Europe); Andrés Delgado Casteleiro (Latin America and the Caribbean); Khalid Ismaili Idrissi (Middle East & the Arab world).

1.4 Planned Publications and Output

The SG has published and made publicly available the research materials developed as part of the project. This includes the SG Mandate, the SG questionnaire, the individual RIO reports, and the regional thematic reports. Those documents may be retrieved from the ILA website.[9]

In addition, the co-chairs have edited a special issue of *International Organization Law Review* (IOLR) on *The International Law of Regional Organizations*, published in 2024.[10] The special issue includes the papers presented at the Paris Workshop, an introduction mapping the issues by the co-chairs, and a comparative assessment summarising the analysis and main findings of the present report by the co-rapporteurs. The table of contents of the special issue is included in Annex 5.

2 DEFINING REGIONAL INTERNATIONAL ORGANIZATIONS

The questionnaire asked SG members to provide comments on the definition of 'regional international organization' (RIO). Some individual RIO reports mentioned that a RIO definition would emerge through the collective efforts of the SG. Others pointed out that it was important to have a consistent definition from the outset. The reports also differed on whether a RIO definition would be useful or appropriate. Some argued that a RIO definition would be useful for international lawyers in legal practice, and for specifying the scope of the present study.[11] Others argued, however, that any definition might compromise the uniqueness of each self-defined RIO.[12] Moreover, it was argued that a definition could create unnecessary semantic debates about the boundaries of a regional international organization.[13]

All in all, it was ultimately felt that the present study could hardly be carried out without the adoption of a working definition of RIO. That entailed examining two main elements. The first element relates to the nature of a RIO as an *international organization*. The second relates to the meaning and significance of *regional*.

2.1 'International Organization'

The first element is the concept of international organization (IO) generally speaking. Individual RIO reports mostly accepted the traditional definition of IO used in academic commentary. According to this definition, an IO 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.[14] Others focused on the legal definition 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.'[15] These definitions require an IO to have a distinct

[9] ILA, *International Law of Regional Organisations*, <www.ila-hq.org/en_GB/study-groups/international-law-of-regional-organisations>, 2 April 2024.
[10] See Volume 21 (2024): Issue 1 (May 2024): Special Issue: The International Law of Regional Organizations.
[11] NATO Report, OSCE Report.
[12] EAC Report.
[13] ASEAN Report.
[14] AMU Report (citing H.G. Schermers N. Blokker, *International Institutional Law* (2018) pp.32-45).
[15] In its work on "Settlement of international disputes to which international organizations are parties", the ILC has also adopted a working definition for its draft guidelines: ""international organization" means an entity possessing its own international legal personality, established by a treaty or other instrument governed by international law, that may include as members, in addition to States, other entities, and has at least one organ capable of expressing a will distinct from that of its members." See International Law Commission, Report of the International Law Commission Seventy-fourth session (24 April–2 June and 3 July–4 August 2023) A/78/10, draft guideline 2. For a further discussion of the definition of RIOs and its relevance, see Besson & Kassoti, 'The International Law of Regional Organizations – Mapping the Issues', (2024) 21 *International Organizations Law Review* 1.

personality, and to have States and other subjects of public international law as members. There was no proposal to challenge or adapt the definition of international organization for the purpose of the study. Rather, much of the discussion focused on the meaning of the term 'regional'.

2.2 Regionalism

Most RIOs are 'regional' in the sense that their membership comprises or is limited to States within a specific geographical area. But practice shows that the concept of 'regionalism' applies to more than the geographical location of the organization's members. 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.[16] Individual RIO reports identified that RIOs can be 'regional' in a strict geographical sense, but also that the term 'regional' is applied in a wider context beyond the location of its members.

2.2.1 Regionalism defined in a geographical sense

According to the individual RIO reports, a defining feature of RIOs is that their membership is limited in some way, and thus contrasted with that of 'universal' international organizations.

The individual RIO reports identified that most RIOs had some kind of geography-related regional membership criteria. The constituent instruments of a few RIOs are precise in determining what States are permitted to join. For example, the Association of Caribbean States has a list of States that are permitted to join the convention establishing it.[17] Similarly, the Andean Community's membership is limited to specific Andean States.[18]

Yet, the geographical scope of most RIOs is usually defined more broadly and openly. For example, the East African Community (EAC) is 'regional' in the sense that its membership requires 'geographical proximity to and inter-dependence between it and the Partner States'.[19] African Union membership is open to '[a]ny African State'.[20] SAARC membership is open to States in the 'South Asian region'.[21] SCO membership is open to states 'belonging to the Euro-Asian' region.[22] ASEAN Member States must be located in the 'recognised geographical region of South East Asia'.[23] APEC membership is open to economies connected to the Pacific Rim (East Asia, Southeast Asia, Oceania, North and South America).[24] The Pacific Islands Forum (PIF) is limited to States in the Pacific region 'and such other Heads of Government as may be admitted to the Forum membership with the approval of the Forum'.[25]

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[16] OSCE Report, NATO Report (citing L. Boisson de Chazournes, *Interactions between Regional and Universal Organizations* (Brill/Nijhoff, 2017) p.8).

[17] ACS Report (citing Article IV(i) Convention Establishing the Association of Caribbean States).

[18] CAN Report (citing Article 5 of the Cartagena Agreement. Originally, Bolivia, Colombia, Ecuador, Perú and Venezuela). Argentina, Brazil, Chile, Paraguay and Uruguay are 'associated member states', while Spain holds 'observer' status.

[19] EAC Report (citing Article 3(3) EAC Treaty).

[20] AU Report, (citing Article 29, Constitutive Act of African Union).

[21] SAARC Report (citing Preambular paragraphs and article I of the Charter of the South Asian Association for Regional Cooperation (SAARC) specifically refer to South Asian region. Further the membership of the organisation is limited to States from south Asian region).

[22] SCO Report (citing Art. 1.2, Regulation on Admission of New Members to Shanghai Cooperation Organization).

[23] ASEAN Report (citing Article 6(2) ASEAN Charter (2007)).

[24] APEC Report (citing The Statement on Membership at the 1997 Annual Ministerial Meeting says that an applicant economy should be located in the 'Asia-Pacific region'; and an applicant economy should have substantial and broad-based economic linkages with the existing APEC members; in particular, the value of the applicant's trade with APEC members, as a percentage of its international trade, should be relatively high; among others).

[25] PIF Report (citing Art I:1, Agreement Establishing the Pacific Islands Forum Secretariat, done at Tarawa, 30 October 2000, entered into force 25 August 2005 ('PIFS Agreement 2000'). See also Art I: 2 (membership), Art 1:3 (associate membership) and Art 1:4 (observers) of the Agreement Establishing the Pacific Islands Forum, done at Port Moresby, 27 October 2005, not yet in force ('PIF Agreement 2005')).

CARICOM is open to 'any other State or Territory of the Caribbean Region' that is, in the opinion of the Conference of Heads of Government, able and willing to exercise the rights and assume the obligations of membership.[26] OECS membership is open to States or territories in the 'Caribbean Region'.[27] The OAS is open to 'American States'.[28] These RIOs limit membership to a particular geographical space, but that space is defined broadly.

Individual RIO reports identified the difficulties associated with defining regions based on geographical criteria. RIOs within 'Europe' sometimes restrict their membership to 'Europe', leaving the exact meaning of this term undefined. The Council of Europe, the European Union[29] and the European Economic Area[30] are open to 'any European state', yet there is little practice defining 'European State'. Morocco's application to the EU was rejected because it was not a 'European State' whereas Turkey has been accepted as a candidate country.[31] The term 'European' is understood as including social, cultural, and historical elements beyond membership in a certain geographical space. According to the Parliamentary Assembly of the Council of Europe, 'European state' means any 'state whose national territory is situated wholly or partly on the European continent and whose culture is closely linked to European culture'.[32]

There were only a few instances where an application for RIO membership was contested or rejected on the basis that the State in question failed to meet geographical criteria. One example is Morocco's application to the EU mentioned above. In contrast, Morocco was allowed to make an application to join ECOWAS despite the fact that it is geographically located in North Africa.[33] In 2021, the Court of Justice of the Economic Community of West African States (ECOWAS) dismissed a lawsuit instituted by the Committee for Defence of Human Rights (CDHR) challenging Morocco's application on the ground that it was geographically located in North Africa. The Court held that the NGO did not have *locus standi* to institute the suit and that the NGO's argument on Morocco's geographical location had no impact on its eligibility for membership.[34]

Some RIOs do not require members to be located in a particular geographical region, even where membership is *de facto* linked to a certain geographical space. For example, the Eurasian Economic Union (EAEU) Treaty does not specify any geographical criterion for membership.[35] Article 108 EAEU Treaty stipulates that the Union shall be open for accession to any state sharing its objectives and principles on the terms agreed upon by the Member States. Similarly, the CIS constituent treaties[36] and

[26] CARICOM Report (citing Article 3(2) of the Revised Treaty of Chaguaramas establishing the Caribbean Community, including the Single Market and Economy (RTC). Similarly, the Conference of Heads of Government may admit 'any Caribbean State or Territory' to associate membership of the Community on such terms and conditions as the Conference thinks fit).

[27] OECS Report (citing Art. 3.3 of the Revised Treaty of Basseterre establishing the Organisation of Eastern Caribbean States Economic Union (RTB) provides that 'a State or Territory in the Caribbean Region' not party to the 1981 Treaty of Basseterre may become a full Member State or Associate Member State).

[28] OAS Report (citing Art. 4, OAS Charter 'All American States that ratify the present Charter are Members of the Organization.')

[29] EU Report, (citing Article 49 Treaty on European Union (TEU)).

[30] EEA Report (citing Article 128 EEA Agreement sets out geographical criteria for membership: 'Any European State'.)

[31] EU Report, (citing Fortunato 'Article 49 [Accession to the Union]' in H.-J. Blanke and St. Mangiameli (eds.), *The Treaty on European Union (TEU): A Commentary* 1359).

[32] COE Report, (citing Recommendation 1247 (1994), Parliamentary Assembly, 'Enlargement of the Council of Europe').

[33] ECOWAS Report.

[34] ECOWAS Report (citing H. Chaudhry, 'CDHR Loses lawsuit Challenging Morocco's Application to Join ECOWAS' (*Morocco World News*, 28 October 2021) <https://www.moroccoworldnews.com/2021/10/345226/cdhr-loses-lawsuit-challenging-moroccos-application-to-join-ecowas> accessed 8 June 2022). At the time of writing, Morocco's application remains pending.

[35] EAEU Report.

[36] CIS Report (citing Agreement establishing the Commonwealth of Independent States of December 8, 1991; Protocol to the Agreement establishing the Commonwealth of Independent States, signed on December 8, 1991 in

Charter of the CSTO[37] do not contain provisions with respect to its 'regional' character. These organizations are regional in the sense that their actual membership is comprised of States formerly part of the USSR.[38]

2.2.2. Regionalism beyond Geographical criteria

The individual RIO reports identified that, beyond geographical criteria, RIOs often understand regionalism as including shared culture, values, interests, or historical, linguistic, or political ties.[39] For example, the Islamic Development Bank (IsDB) and the Organization of Islamic Cooperation (OIC) do not limit their membership in a geographical sense. Rather, membership extends to States that share a common background including cultural/faith-based beliefs, established legal traditions, and socio-cultural links. Many member States in the Middle East, Africa and Southeast and Central Asia regions share a history of close political and commercial ties, legal traditions and values as well as common governance structures that distinguished the region from other parts of the world.

The individual RIO reports identified that RIOs require members to adhere to certain values or pursue the organization's objectives. For example, the ECCAS constitutive treaty insists on the deepening of 'community solidarity between the states of the region', the need to put an end to the 'scourge of intra- and inter-state conflicts [which] constitutes a major obstacle to socio-economic development in Central Africa;, and the attachment 'to the common vision of a united and strong Central Africa'.[40] The Southern African Development Community (SADC) is the successor of the Southern African Development Coordinating Conference (SADCC) created in 1980 in the context of Apartheid. The main goals then were to curb dependence on Apartheid South Africa and lay the foundations of an equitable and prosperous regional integration. One of SADC objectives is, inter alia, 'to enhance the quality of life of the people of 'Southern Africa'. However, the Treaty permits accession of other States to the SADC Treaty without specifying that they should necessarily come from Southern Africa.

Some RIOs were established with the aim not only of establishing economic links in a region, but also to build regional solidarity. ALADI was created 'to renew the Latin-American integration process and establish objectives and mechanisms consistent with the region's real situation'.[41] The Preamble also asserted that 'economic regional integration is one of the principal means for the Latin American countries to speed up their economic and social development process in order to ensure better standards of life for their peoples'.[42] This RIO was created under a regional sensibility related to Latin American countries, which is geographic but also related to linguistic and cultural shared sensibilities. UNASUR was created 'to build a South American identity and citizenship' and to create a 'regional space in the political, economic, social, cultural, environmental, energy and infrastructure dimensions', aiming at strengthening the union of Latin America and the Caribbean.[43] The ASEAN Charter includes certain

Minsk by the Republic of Belarus, the Russian Federation (RSFSR), Ukraine of December 21, 1991; Charter of the Commonwealth of Independent States of January 22, 1993).

[37] 'Any state sharing the goals and principles of the Organization and being ready to undertake the obligations containing in this Charter and other international treaties and resolutions effective within the framework of the Organization' In practice, its membership is limited to Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan.

[38] CIS Report (Article 13 of the Agreement establishing the Commonwealth of Independent States sets out: 'This Agreement is open for accession by all member states of the former USSR, as well as for other states that share the goals and principles of this Agreement').

[39] On the different dimensions of regions that RIOs bring to the fore, see Chalmers, 'The Distinctiveness of Regional International Organizations Law', (2024) 21 *International Organizations Law Review* 1, 43-64.

[40] See ECACAS Report (Citing the Preamble, Revised Treaty Establishing the Economic Community of Central African States).

[41] ALADI Report.

[42] ALADI Report (citing the 1980 ALADI Constitutive Treaty).

[43] UNASUR Report (citing the 2008 UNASUR Constitutive Treaty. Considering the 2018 suspension of membership by six members (Argentina, Brazil, Chile, Colombia, Paraguay, and Peru), and the declared withdrawals from

political principles that go beyond its geographical region. It is also a region that 'lives (in) peace with the world at least in a just, democratic and harmonious identity.[44] 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'.[45]

Some individual RIO reports identified common historical, cultural, linguistic and religious ties that drew together States. For example, the AMU States are all part of the 'Arab Maghreb' States (Algeria, Libya, Morocco, Mauritania and Tunisia) and their commonalities go beyond geography to include language and religion.[46] The AMU Treaty refers to 'the deep and firm aspirations of these peoples and their leaders to establish a Union that would reinforce existing relations between them and provide them with the appropriate means to gradually proceed toward comprehensive integration'. The AMU Treaty is open membership of any non-Maghreb Arab or African State, subject to the approval of existing members.[47] Similarly, the Gulf Cooperation Council (GCC) was formed against the backdrop of the Islamic revolution in Iran and the subsequent Iraq-Iran war.[48] GCC States share a common history, culture, religion, language, similar governing structures. The EAEU Report points how the use of Russian as a common language would limit prospects of enlargement beyond the post-soviet space.[49]

2.2.3. Other special cases

The individual RIO reports identified that the term 'regional' applies with respect to organizations that limit membership to a geographical space, or to States that share certain values, interests and other ties. The SG also examined international organizations that were established to work on and address issues within a certain geographical space but with a membership that is not confined to the States that occupy that space. For example, the membership of the Pacific Community (SPC) goes beyond States within the Pacific region. The SPC comprises 'all those territories in the Pacific Ocean which are administered by the participating Governments and which lie wholly or in part south of the Equator and east from and including the Australian Territory of Papua and the Trust Territory of New Guinea; and Guam and the Trust Territory of the Pacific Islands; and Timor Leste'; and 'all the territory of any Government which accedes to this Agreement pursuant to the provisions Article XXI, paragraph 66'.[50] The original participating Governments of SPC included France, the United Kingdom, and the United States of America (as administering powers), and these continue as members of the organization. Such RIOs are regional not due to the geographical location of their membership, but because their mandate relates to a geographical location.

Similar considerations apply to regional development banks. For example, the African Development Bank (ADB) is 'regional' in the sense that it was established in the context of promoting the economic and social development of Africa as a 'region'.[51] It is also 'regional' to the extent that its membership comprises mainly (and was originally constituted by only) African States – the so-called 'regional member countries'. It has thus attracted 54 out of the 55 Member States of the African Union, that is, all but one African State.[52] However, the ADB is also constituted by 27 non-African States ('non-

UNASUR by Colombia (2018), Brazil (2019), Ecuador (2019), Argentina (2019) and Uruguay (2020); its official electronic page is currently not operative).

[44] ASEAN Report (citing Art. 1(4) ASEAN Charter (2007)).

[45] ASEAN Report (citing Article 35 ASEAN Charter (2007)).

[46] AMU Report (citing Mohamad Ali Finaish and Eric Bell, 'The Arab Maghreb Union', Working Paper Issue 055 (International Monetary Fund, 1994), https://doi.org/10.5089/9781451969122.001).

[47] AMU Report (citing Art. 17 AMU Treaty).

[48] GCC Report (citing B. Malkawi, Legal Architecture and Design for Gulf Cooperation Council Economic Integration, (2019)).

[49] EAEU Report.

[50] SPC Report (citing The Agreement Establishing the South Pacific Commission [Pacific Community], Canberra, 6 February 1947, as amended ('Canberra Agreement')).

[51] ADB Report.

[52] ADB Report.

regional member countries'). Similarly, the Asian Infrastructure Investment Bank (AIIB) allows States from outside its region to join.[53]

2.3 Organizations *Sui Generis* or of a 'Special Type'?

The individual RIO reports reveal the pluralistic nature of RIOs. The questionnaire asked whether a particular RIO was understood, in academic literature or by the RIO itself, as an institution of a 'third kind' or *sui generis*. The questionnaire did not define *sui generis*, and individual RIO reports understood this term differently. Some viewed *sui generis* as meaning supranational.[54] Others pointed to certain unique characteristics that set the RIO being covered apart from a 'typical' RIO.

Some individual RIO reports associated *sui generis* status with supranationalism. While the term supranationalism was not defined in the Study, it is understood to include the transfer of sovereign powers to an authority capable of enacting binding laws on its member States. For instance, it was observed that the AU could become a *sui generis* organization when it has directly enforceable supranational law.[55] The Andean Community was described as 'peculiar' in the sense that it features strong regulatory powers; it was modelled after the European Community and Andean Community law has direct effect in certain areas (e.g. intellectual property). In contrast, the APEC Report describes the organization as *sui generis* because it *does not* possess elements of supranationalism as it is based on voluntary decisions made by consensus.[56] Similarly, the CIS Charter and Alma-Ata Declaration were viewed as unique because they stipulate that the CIS does not possess supranational powers.

The RIO that is most often described as being of a 'special type' or *sui generis* on the grounds of its supranational character is the European Union.[57] This is shown both through academic commentary on the EU and EU law, as well as a self-perception displayed by its Court and political organs. The EU displays a high level of supranational decision-making and extensive competences compared with other international organizations. The EU is arguably also unique insofar as the legal order of the Union is closely entwined with the legal orders of the EU Member States, particularly due to the principles of primacy and direct effect of EU law.[58] Citizens of EU Member States also possess Union citizenship. The Union stands out because of the degree to which it has developed a legal order. For example, while other international regimes have recognised rights of individuals, the EU legal order provides for extensive individual rights, which can be relied upon and enforced in legal proceedings.[59] The

[53] 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 Members and Prospective Members of the Bank https://www.aiib.org/en/about-aiib/governance/members-of-bank/index.html).

[54] See AU Report (citing Amao, Olufemi. *African Union Law: the Emergence of a sui generis Legal Order* (Routledge, 2018)). African Union and other regional economic organizations were deemed to be neither supranational nor sui generis. See also EAC report.

[55] AU Report (citing F. Amao, 'Framing AU Law through the Lenses of International Constitutionalization and Federalism, in Olufemi Amao, Michèle Olivier and Konstantinos D Magliveras (eds), *The Emergent African Union Law: Conceptualization, Delimitation, and Application* (OUP 2021) 48).

[56] APEC Report.

[57] EU Report.

[58] In *Costa v E.N.E.L*, C-6/62, EU:C:1964:66, 593, the EU Court of Justice described some of the ways the (then) Community differed from 'typical' international organizations: 'by creating a community of unlimited duration, having Its own institutions, its own personality, its own capacity and the capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.'

[59] EU Report (citing J. Klabbers, 'The European Union in the Law of International Organizations: Misfit or Model?' in R.A. Wessel, J. Odermatt (eds), *Research Handbook on the European Union and International Organizations* (Edward Elgar, 2019)).

discussion about whether the EU represents a 'new' kind of international organization has been debated extensively in EU law and public international law academia.[60]

Other RIOs were described as having certain unique or *sui generis* characteristics. AfCFTA was described as *sui generis* because the Agreement, unlike 'typical' international treaties, borrows its Secretariat from a separate IO, namely the AU. The Gulf Cooperation Council (GCC) was described as *sui generis* because it was established to defend and promote the interests of conservative and absolute monarchies in the Arabian Peninsula.[61] Both the OIC and the IsDB were described as *sui generis* because their membership is mostly based on member States having a Muslim majority populations and apply Islamic Principles and Islamic Sharia'a.[62] The OSCE was described as a peculiar regional organization because it was not explicitly granted international legal personality and has a broad, open membership.[63] Similarly, NATO was described as a 'peculiar' regional organization in the sense that it is not 'regional' in the strictly geographical sense. Moreover, it has an 'open membership'.[64]

It can be thus questioned whether *sui generis* is a meaningful term to describe and categorize RIOs. Given the diversity and variation terms of institutional structure, objectives, aims, mandate and membership, most if not all RIOs display some kind of unique feature. What the *sui generis* description does reveal, however, is that there is a certain assumption of a 'typical' RIO against which others are compared. Yet the comparison that this study has enabled suggests that such a 'typical' RIO does not exist. This conclusion is further revealed by the way the individual RIO reports conceptualised the 'typical' RIO. One conception of the 'typical' RIO was that of a body that is established to create economic integration in a geographical region: CARICOM, MERCOSUR, the Andean Community, EAC, EAEU, SADC, the EU were described as typical in that sense. Yet another group of RIOs were viewed as 'typical' because they are forums for international cooperation: SAARC, PIF, SPC, ASEAN.

The discussion above reveals how RIOs are sometimes conceptualised as '*sui generis*' – but that this can relate to levels of supranationalism, legal personality, membership, and purposes. The reports did not show that any RIO belonged to a 'third kind'.

2.4 The Working Definition Adopted

Based on the discussions of these issues, the SG adopted a working definition of RIO. On the one hand, it uses the traditional definition of international organization as accepted in mainstream scholarship and included in the ARIO. A RIO, therefore, must be established by international law and have an independent identity on the international plane. On the other hand, the SG has adopted a broad and contextual understanding of what is entailed by 'regional'. This addresses the fact that some RIOs do not limit their membership to a specific geographical region but understand 'region' as including shared goals and functions, or cultural and political ties. Moreover, the definition does not limit the concept of RIOs to organizations that share objectives such as regional economic integration.

> '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.'

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[60] EU Report (citing O. Elias, 'General International Law in the European Court of Justice: From Hypothesis to Reality' 31 *Netherlands Yearbook of International Law* (2000) 3, 5). See F. Lusa Bordin, 'Is the European Union a Sui Generis International Organization? The Challenge of Arguing for Special Treatment in Customary International Law' in F. Lusa Bordin, A. Th. Müller, F. Pascual-Vives (eds) *The European Union and Customary International Law* (CUP, 2022).
[61] GCC Report. It describes the GCC is a *sui generis* model of regional cooperation which remains a rather unique experiment in the Arab world, citing C. Nocente, *Knitting the Fabric of Regional Governance: The Unique Model of the Gulf Cooperation Council*, (2014) p. 3.)
[62] ISDB Report.
[63] OSCE report.
[64] NATO Report.

As a consequence of this definition, there are a number of 'regional bodies' that were analysed as part of this study that do not meet our criteria for a RIO. Annex 2 (List of Organizations Studied) includes an overview of the organizations that were studied and subject to individual RIO reports. It also sets out which of these organizations were found to fall outside the criteria of the RIO definition. For example, the EEA, EFTA, Bolivarian Alliance for the Peoples of Our America (ALBA) and Community of Latin American and Caribbean States (CELAC) were all included in the initial study and subject to RIO reports. However, they were found to be regional orders that did not meet the SG's RIO definition. The issue of legal personality and its implications for RIOs is discussed below in Section 3.1.

3 RIOS IN THE INTERNATIONAL INSTITUTIONAL ORDER

There are certain institutional features that RIOs share, to a less or greater degree, which make international law relevant to their functioning and enable them to contribute to shaping international law. This section covers three such features that the questionnaire prompted the members of the SG to address: legal personality; features that allow RIOs to engage in 'external relations'; and courts and other dispute settlement mechanisms.

3.1 Legal Personality of RIOs

The individual reports addressed the issue of legal personality, which, as noted above, ended up being selected as an element of the working definition of RIO adopted for the purpose of the present study. While the focus was on RIO's international legal personality, individual RIO reports showed how questions of internal legal personality were often tied to the RIO's 'internal' legal personality vis-à-vis its member States.

3.1.1 Internal legal personality

'Internal' legal personality relates to the capacity of the RIO to enter into contracts, acquire property and institute legal proceedings in its members' territory.[65] The constitutive treaty of many RIOs explicitly mention the organization's internal juridical personality. In most cases, this is related to the capacity to sign contracts, institute legal proceedings, [66] acquire and dispose of property, or to accept gifts and donations.[67] Some RIOs also require the RIO to have the status of legal person under the domestic law of the member.[68] The individual RIO reports showed that when RIO instruments refer to 'legal personality' this often refers to internal personality and the capacity to acquire property, take part in legal proceedings, and enter into contracts, etc.

3.1.2 International legal personality

The individual RIO reports addressed the question of international legal personality and how this is addressed in each RIO. Some organizations refer to personality in the constitutive instrument. Article 1 of the UNASUR constitutive treaty, for example, sets out that members 'decide to constitute the Union of South American Nations (UNASUR) as an organisation with international legal status'.[69] Similarly the SCO Charter establishes the SCO 'as a subject of international law' with 'international legal capacity'.[70] Such international functions include the power to conclude treaties or take part in legal

[65] ADB Report (citing Art. 51, Agreement Establishing the African Development Bank).
[66] AU Report (citing Art. 1, General Convention on the Privileges and Immunities of the Organization of African Unity (1965)).
[67] ECCAS Report.
[68] EAEU Report (citing Para 10, Regulation on the EEC (Annex 1 to the EAEU Treaty) and para 3 of the Statute of the EAEU Court (Annex 2 to the EAEU Treaty)).
[69] UNASUR Report (citing Art. 1 of the UNASUR Constitutive Treaty).
[70] SCO Report (citing Article 15 of the Charter of the Shanghai Cooperation Organization)

proceedings. In some case, the RIO constitutive instrument does not refer to legal personality of the RIO, but does confer some legal capacity on its secretariat or other body. For example, the Bangkok Declaration mentions that 'the APEC Secretariat will have its seat in Singapore and will be constituted as a legal entity enjoying such legal capacity as is necessary for the exercise of its functions.'[71] Similarly, the AMU provides legal personality of the secretariat and has concluded a Headquarters Agreement with the host country.[72] Similarly, the AfCTA Secretariat 'shall be a functionally autonomous institutional body within the African Union System with an independent legal personality.'[73] The PIF Secretariat enjoys 'the legal capacity of a body corporate in the territories of member governments'; the Secretariat and its staff are granted certain privileges and immunities comparable to those of other international organizations.[74]

The individual RIO reports also showed instances where the RIO's constituent instrument does not explicitly mention international legal personality, but the RIO's international legal personality is inferred or has otherwise been declared by one of its organs.[75] In the case of NATO, the RIO's legal personality has been as confirmed by the Secretary General.[76] Even more formally, the CIS Economic Court held that the CIS is 'a subject of international law' and 'possesses international personality';[77] its bodies enjoy legal capacity necessary for implementation of its goals on the territory of the Member States[78], as well as immunities. In some cases, the RIO reports themselves inferred that a RIO had international legal personality. For example, the OAS Report discusses how its international legal personality can be inferred by reference to the ICJs' *Reparation for Injuries* judgment.[79] Similarly, the international legal personality of the AIIB and of the IsDB can be inferred from the reference to the banks' 'international character' in their respective Articles of Agreement.[80] Other reports derived the international legal personality from the privileges and immunities of their officials.[81]

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[71] APEC Report.

[72] AMU Report (citing 'Statute of the Secretariat', available at: http://www.moqatel.com/openshare/Wthaek/Molhak/MalahekMag/AMalahekMagrab16_1-1.htm_cvt.htm. See Mohamed Riyad M. Almosly, 'The Institutional and Constitutional Aspects of the Arab Maghreb Union and the Dispute on Western Sahara as an Obstacle: What Role Does the European Union Play in Promoting Maghreb Regional Integration' (2018) 22 Max Planck Yearbook of United Nations Law, 284.

[73] AfCFTA Report (citing Art. 13(3) AfCFTA Agreement).

[74] PIF Report (citing Art. XI, PIFS Agreement (2000). Also see Art X of the PIF Agreement (2005) on PIF's legal capacity and privileges and immunities).

[75] Art. 47 TEU sets out that "[t]he Union shall have legal personality." The EU is considered to have legal personality both in the legal systems of the EU Member States as well as legal personality on the plane of international law (EU Report).

[76] NATO Report (citing Note by the Secretary-General, Strategic Airlift Capability (20 June 2007) www.nato.int/cps/en/ SID-8642E576-06747436/natolive/official_texts_56625.htm). It can be inferred for one from its apparent capacity to conclude treaties (32 bilateral agreements with states or other international organizations registered in the UNTS)

[77] CIS Report (citing Advisory opinion No. 01-1 / 2-98).

[78] CIS Report (citing Art. 2, Agreement between the Government of the Russian Federation and the Collective Security Treaty Organization on the conditions for the stay of the Secretariat of the Collective Security Treaty Organization on the territory of the Russian Federation; Art. 2 Agreement between the Commonwealth of Independent States and the Republic of Belarus on the conditions of the presence of the Executive Secretariat of the Commonwealth of Independent States on the territory of the Republic of Belarus of June 13, 1994).

[79] OAS Report (citing Article 133 OAS Charter and *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion*, [1949] ICJ Rep 174).

[80] AIIB Report (referring to Art. 31 of the Articles of Agreement and also to the assertion made on the webpage of AIIB: https://www.aiib.org/en/about-aiib/who-we-are/role-of-law/index.html) and IsDB Report (citing Article 37 of the Articles of Agreement and also Article IV titled 'Legal Status And the Immunities and Privileges of The Bank" of the Headquarters Agreement signed between IsDB and the Kingdom of Saudi Arabia.)

[81] Some examples include the Headquarters Agreement between Nepal and the SAARC, which provides for immunities and privileges (SAARC Report), or the Canberra Agreement, which refers to the SPC legal capacity regarding privileges and immunities. See SPC Report (citing Art IV:10, Canberra Agreement, "The participating Governments undertake to secure such legislative and administrative provision as may be required to ensure that the Pacific Community will be recognised in their territories as possessing such legal capacity and as being entitled to such

Relations between RIOs and other international organizations

The SG questionnaire asked groups about whether their RIO had formal links with other international organizations. The individual RIO reports revealed that RIOs are often part of an interlinking web of organizations that cooperate and interact. However, the reports revealed that there is little practice of RIOs formally joining and becoming members of other RIOs. The reports identify, rather, how relations take place through informal and *ad hoc* meetings, observer status in other organizations, and via the maintenance of offices and missions at other States and international organizations. Individual RIO reports showed how relations are sometimes formalised through treaties, but in many cases RIOs employ memoranda of understanding (MOUs) to formalise their commitments. The RIO reports also highlight the importance of RIOs to maintain links with the United Nations.

3.1.3 Full membership

The individual RIO reports showed that there was little practice of RIOs having other RIOs/UIOs as members. A common reason is that that RIOs (and UIOs) often only allow membership for States. For example, the constitutive treaties of the OAS,[82] Council of Europe,[83] EAEU,[84] CIS,[85] and SCO[86] state that membership is only open to States. The exception was the European Union, which is a member of some UIOs, including the World Trade Organization.[87]

3.1.4 Observer status

While the individual RIO reports found little practice of RIOs joining other international organizations, or allowing other RIOs to become formal members, they showed a tendency to use observer status as a way to maintain external relations. The individual RIO reports identified a common practice of RIOs allowing other organizations (including other RIOs) and States to be observers or partners. In some instances, this is included in the RIO constitutive instrument, as the case with Article 14 of the Charter of the SCO, which allows other international organizations as observers or dialogue partners.[88]

To mention some of the examples provided in the individual RIO reports, the CSTO allows other international organizations to be partners or observers. The Parliamentary Assembly of the Union State of Russia and Belarus has held observer status in the Parliamentary Assembly of the CSTO since 2010.[89] APEC has a number of official observers: the Association of Southeast Nations (ASEAN), the Pacific Economic Cooperation Council (PECC) and the Pacific Islands Forum (PIF). The EU has permanent

privileges and immunities (including the inviolability of its premises and archives) as are necessary for the independent exercise of its powers and discharge of its functions.').

[82] OAS Report (citing Article 4 of the Bogotá Charter).

[83] COE Report (citing Article 4 of the Statute of the Council of Europe).

[84] EAEU Report (citing Article 108, Treaty on the Eurasian Economic Union, 'The EAEU shall be open for the accession by any State that shares its aims and principles, on terms agreed by the member States.').

[85] CIS Report (citing Article 8, Charter of the CIS).

[86] SCO Report (citing Article 1, Regulation on Admission of New Members to Shanghai Cooperation Organization).

[87] EU Report.

[88] The SCO may grant to the State or international organization concerned the status of a dialogue partner or observer. SCO Report (citing Art. 14., Charter of the Shanghai Cooperation Organization. Currently, the SCO counts four observer States, namely the Islamic Republic of Afghanistan, the Republic of Belarus, the Islamic Republic of Iran and Mongolia and six dialogue partners, namely the Republic of Azerbaijan, the Republic of Armenia, the Kingdom of Cambodia, the Federal Democratic Republic of Nepal, the Republic of Turkey, and the Democratic Socialist Republic of Sri Lanka).

[89] CSSTO Report (citing Interparliamentary organizations that granted the status of a permanent observer to the Parliamentary Assembly of the Union of Belarus and Russia (Межпарламентские организации, предоставившие Парламентскому Собранию Союза Беларуси и России статус постоянного наблюдателя.), https://belrus.ru/info/mezhdunarodnye_organizatsii/).

observer status at the OAS, which was granted because of its 'state[-like] competence in certain areas'[90] and allows it to participate in the work of all the organs of the Organization. SAARC conducts external relations via 'observer status' of States and organizations such as Australia, China, the European Union and United States.[91]

The individual RIO reports did not provide further detail on what observer status entailed. For regional development banks, cooperation included co-financing development projects. RIOs were also identified as working with other RIO/UIOs on developing international standards and best practices.[92] Further research may shed more light on the role of observer status as a method whereby RIOs engage with international law.

3.1.5 Relations through treaties and MOUs

Another method by which RIOs engage in formal legal relations on the plane of international law is through concluding treaties. Some RIOs have the explicit power to conclude treaties in their own right, both with non-member States and other international organizations. Individual reports illustrate the importance of concluding treaties with other States and international organizations as key to the RIO's external relations.[93] This was mostly the case for RIOs engaged in the economic sphere. Individual RIO reports also detailed the practice of headquarters agreements concluded with the RIO's host State. The international law implications for RIO treaty making is discussed in more detail in Section 4.3.1.

Individual RIO reports identified that RIOs also establish relations through the use of memoranda of understanding (MOUs). MOUs record international commitments but do not establish binding legal obligations. They are used by RIOs to establish relations that are more formal than *ad hoc* meetings and partnerships. The reports identify how these are used by RIOs active in the economic field to cooperate with other States and regions. The reports point to the MOUs concluded by the Eurasian Economic Commission and SAARC.[94] The AIIB and African Development Bank also utilise MOUs with other financial institutions and organizations.[95] As with observer status, the use of MOUs as a method to maintain relations between RIOs and other organizations could be further studied.

3.1.6 Dialogue and cooperation

Individual RIO reports also showed how RIOs maintain political and diplomatic relations with non-member States and other RIOs. These relations are often informal or *ad hoc* and seek to enhance cooperation and dialogue with other organizations, rather than establish legal relations. In many instances, cooperation takes place between States and organizations in a similar geographic region, or with organizations with overlapping aims and functions. For example, in Latin America, the ACS has entered into arrangements with an array of other organizations in the region.[96]

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[90] OAS Report (citing J.-M. Arrighi, 'L'Organization des États américains et le droit international (Volume 355)', in *Collected Courses of the Hague Academy of International Law* (2011), p. 323).

[91] SAARC Report (citing https://www.saarc-sec.org/index.php/about-saarc/external-relations) The EU has also had observer status with the SAARC since 2007.

[92] AMU Report.

[93] CIS Report (citing Advisory opinion No. 01-1 / 2-98, paras 1-2). See ASEAN Report (citing Art. 41(7) ASEAN Charter); SCO Report (citing Art. 15, Charter of the Shanghai Cooperation Organization).

[94] SAARC Report, (citing https://www.saarc-sec.org/index.php/about-saarc/external-relations).

[95] AIIB Report (citing Art. 35, AIIB Articles of Agreement). AIIB Report (citing Asian Infrastructure Investment Bank and African Development Bank sign MoU to promote cooperation, 19 April 2018 https://www.afdb.org/en/news-and-events/asian-infrastructure-investment-bank-and-african-development-bank-sign-mou-to-promote-cooperation-18046).

[96] ACS Report. Caribbean Community (CARICOM) Secretariat, the Latin American Economic System (SELA), the Central American Integration System (SICA) and the Permanent Secretariat of the General Agreement on Central American Economic Integration (SIECA) to facilitate their participation in the work of the Ministerial Council and the Special Committees. The United Nations Economic Commission for Latin America and the Caribbean (ECLAC) and the Caribbean Tourism Organisation (CTO) are also founding observers to the ACS.

Some RIOs have the explicit aim of fostering cooperation with other regional and international organizations. For example, the EAC Treaty provides that '[w]ith a view to contributing towards the achievement of the objectives of the Community, the Community shall foster co-operative arrangements with other regional and international organisations whose activities have a bearing on the objectives of the Community.'[97] One of the Andean Community's main objectives is to achieve the integration with other economic blocs in the region, and to establish political, social, and economic-trade relations with extra-regional systems.[98] The requirement for a RIO to maintain external partnership with other organizations, regions and States is found in the constitutive instrument of several RIOs.[99] Outside of formal membership of other RIOs or treaties, such relations include dialogue, partnerships, or attendance at other meetings of the other RIO.

3.1.7 RIO offices and missions

Individual RIO reports showed how RIOs maintain links with other States and international organizations through maintaining offices, headquarters, or delegations. The ADB maintains country offices across 41 African States.[100] The EU maintains relations with non-member countries and other international organizations via delegations that represent the EU in national capitals and at the seat of international organisations.[101] The Council of Europe has established liaison offices with international organizations.[102] CARICOM maintains external relations with third States, groups of States and international organizations, and close to 40 third States or groups of States have accredited representatives to CARICOM.[103] Individual RIO reports also showed that RIOs have representation in their region. The IsDB has offices located in Morocco, Malaysia, Senegal, Kazakhstan, Bangladesh, Egypt, Indonesia, Nigeria, Turkey and Suriname.

Beyond establishing offices in States and organization in a similar region, the individual RIO reports showed the importance of RIOs maintaining relations with the United Nations. As discussed above, the individual RIO reports identified that it is common for RIOs to have observer status at the United Nations General Assembly[104] and other bodies. This means that RIOs often establish offices at the at the UN in New York, Geneva and other regional headquarters.[105]

3.1.8 Organs/bodies competent to carry out external representation

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[97] EAC Report (citing Art. 130(3) EAC Treaty).
[98] CAN Report.
[99] See AU Report; PIF Report (citing Art IX:2(n), PIFS Agreement 2000), Art I:4, PIF Agreement 2005; Art I:4, PIF Agreement 2005. See EU Report.
[100] ADB Report.
[101] See European External Action Service (EEAS), List of Diplomatic Representations and ongoing Missions and Operations https://www.eeas.europa.eu/eeas/eu-world-0_en
[102] COE Report (citing Arts 15 (a) and 16 of the Statute of the Council of Europe).
[103] CARICOM Report (referring to the full listing of the third states with accredited representatives to CARICOM https://caricom.org/plenipotentiary-reps.pdf).
[104] The CSTO has held observer status in the United Nations General Assembly since 2004. CSTO Report (citing UNGA Resolution 59/50, 16.12.2004); The Permanent Observer Mission of the African Union is the official representation of the African Union Commission to the United Nations. AU Report (citing 'About us' Permanent Observer Mission of the African Union, https://www.africanunion-un.org/aboutus). SAARC has observer status at the UNGA. SAARC Report (citing UNGA Resolution 59/53, Observer status for the South Asian Association for Regional Cooperation in the General Assembly, 16 December 2004, A/RES/59/53). The SCO obtained observer status of the UN General Assembly in 2004. SCO report (citing Resolution A/RES/59/48 (agenda item 151), http://eng.sectsco.org/cooperation/). The AIIB obtained the permanent observer status in the United Nations in 2018. AAIB Report (citing AIIB, 'AIIB Granted Permanent Observer Status by the United Nations', 21 December 2018 https://www.aiib.org/en/news-events/news/2018/AIIB-Granted-Permanent-Observer-Status-by-the-United-Nations.html).
[105] OIC Report.

The individual RIO reports revealed no common thread regarding which RIO organs or bodies are competent to carry out their external representation. In some cases, the organization's constitutive instruments set out modalities for the RIO's external representation. In most cases, this is not specified and is developed through institutional practice.

Some RIOs have a dedicated department established to deal with external relations. For example, the OAS Department of International Affairs manages relations between the OAS and other international organizations.[106] At the CIS, the Executive Secretary 'maintains and develops contacts with international organizations at the level of their working (executive) bodies within his competence'.[107] At the EAEU, international representation is undertaken by the EAEU Commission's board.[108] At the Council of Europe, the Directorate of Political Affairs and External Relations (DAPRE) provides the administrative input for the establishment of the Council's external relations with other organizations, including the UN.[109]

In some cases, the RIO is represented internationally by the Secretary-General or individual nominated to head the organization and speak on its behalf. [110] ASEAN is represented externally by its Secretary General.[111] The Executive Director of the APEC Secretariat represents APEC internationally.[112] The AIIB is represented internationally by its President.[113]

Where a RIO's constitutive treaty does not regulate the maintenance of legal and diplomatic relations, RIO member States and organ practice have developed to allow external relations. In the ECCAS treaty, the modalities for external representation are to be defined by the Conference of Heads of State and Government.[114] In the Andean Community, there was a level of uncertainty about which organ had the legal powers to represent the organization externally. While Article 22 (h) of the Cartagena Agreement gives the Commission the power to represent the Community in matters and acts of common interest, the President of the Commission has not been given clear power for the exercise of such representation.

3.2 RIO Courts and Dispute Settlement Bodies

The individual RIO reports identified the different types of dispute settlement mechanisms that RIOs have. In some cases, this includes a permanent or *ad hoc* judicial body. In other instances, disputes are to be resolved at the inter-State level through dialogue and diplomacy. Formal dispute settlement bodies usually have the role of interpreting the constitutive treaty of the RIO (and its internal laws), resolving disputes between member States, and addressing cases brought by current and former employees of the organization. Some RIO courts also allow for advisory opinions to be submitted by States or RIO organs.

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[106] OAS Report. (It notes that this information is taken from the report 'OAS General Secretariat Cooperation with International Organizations' produced by the General Secretariat of the Organization of American States. The role of the Department of International Affairs is also mentioned on the website of the Organization of American States, notably on a page on 'Relations with International Organization'. However, the Department of International Affairs, as well as the Secretariat for External Relations, are not mentioned in the most recent annual reports.

[107] CIS Report (citing Art. 8 of the Regulations on the Executive Committee of the CIS approved by the Protocol of June 21, 2000).

[108] EAEU Report (citing Decision of the Supreme Eurasian Economic Council of December 23, 2014 No.99).

[109] COE Report (citing S. Schmahl, M. Breur, *The Council of Europe: its laws and Policies* (OUP, 2017) p. 882).

[110] AfCFTA Report (citing Art. 29(1) AfCFTA Protocol). At the CSTO, the Secretary General is entitled to 'represent the Organization before other states which are not the members thereof, international organizations, mass media and shall carry out working contacts with them'. CSTO Report, (citing Article 17 of the Charter of the CSTO).

[111] ASEAN Report (citing Art. 11(2)(d) ASEAN Charter).

[112] APEC Report.

[113] AIIB Report (citing Art. 29(4) of the AIIB Articles of Agreement, ' the President shall be the legal representative of the Bank').

[114] See ECCS Report.

The details of the various dispute settlement procedures of RIOs are provided in the individual RIO reports. The reports show that, while some economic integration RIOs utilise judicial bodies, it was not common for RIOs to have a permanent court or tribunal to settle disputes. Moreover, there are a range of dispute settlement bodies that remain non-utilised. While the focus is often on permanent judicial bodies, the individual reports also showed the variety of other forms of dispute settlement available under international law, including negotiation and arbitration.

3.2.1 RIOs with established courts and tribunals

RIO reports described the roles of the various RIO courts and tribunals. In most instances, the jurisdiction of the court relates to resolving disputes concerning the RIO's constitutive treaty and applicable law. RIOs were also found to have roles in resolving disputes between RIO members and hearing cases relating to employees and officials. This section provides some detail about courts and tribunals established by RIOs.

Permanent courts were more common in RIOs established for economic integration. The most developed court system is that of the EU. The Court of Justice of the European Union has the primary role of applying and authoritatively interpreting EU law, including the EU Treaties. EU Member States are under an obligation not to bring disputes involving EU law to any form of dispute settlement other than those provided for in the EU Treaties.[115] The CJEU also hears inter-state cases between Member States. Cases come before the Court (indirectly) via references for a preliminary ruling from a Court of an EU Member State or (directly) via challenges to EU acts by individuals, groups, EU institutions, EU Member States and other entities affected by Union acts.

Other examples coming from RIOs established for economic integration are:

(i) EAEU Court.[116] Its main objective is to ensure the uniform application of the EAEU law.[117] The Court's competence is divided into two parts: it resolves disputes brought by Member States or economic entities and clarifies EAEU law provisions on requests brought by the Member States, the Eurasian Economic Commission, or EAEU civil servants. EAEU officials may request clarification of EAEU law provisions on labour relations.

(ii) CIS Economic Court. Its jurisdiction relates to the settlement of economic disputes and the interpretation of agreements and other CIS acts. [118]

(iii) Court of Justice of the Andean Community. The Court exercises three forms of jurisdiction: (i) nullification,[119] (ii) non-compliance [120] and (iii) pre-judicial interpretations of Community rules in order to ensure its uniform application among Member Countries.[121]

(iv) Caribbean Court of Justice. The Court exercises both appellate jurisdiction from CARICOM Member States and original jurisdiction, which involves the exclusive power to determine disputes concerning the interpretation and application of the RTC.[122] Its original jurisdiction includes disputes between Member States, between Member States and the Community, and

[115] EU Report (citing Article 344 TFEU: 'Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein.').
[116] EAEU Report (citing Article 19 (1) and (3) EAEU Treaty).
[117] EAEU Report (citing Para 2, Statute of the EAEU Court (Statute of the Court)).
[118] CIS Report (citing Article3.2 Agreement on the status of the Economic Court of the Commonwealth of Independent States (as amended by International Protocol of September 13, 2017).
[119] Article 17 Treaty Creating the Andean Court of Justice.
[120] Articles 23 and 24 Treaty Creating the Andean Court of Justice.
[121] Articles 32 Treaty Creating the Andean Court of Justice.
[122] CARICOM Report.

refers from the courts of Member States. [123] The Court also delivers advisory opinions at the request of Member States concerning the interpretation and application of the RTC.[124]

(v) ECOWAS Court of Justice. The Court has contentious jurisdiction to hear cases between the Member States or between one or more Member States and the Institutions of the Community on the interpretation and application of the 1993 ECOWAS Revised Treaty.[125] The Court also has advisory jurisdiction and may provide legal opinions at the request of Member States and Community institutions. The individual report also noted the human rights function of the ECOWAS Court of Justice. [126]

Individual RIO reports also identified bodies established specifically to hear disputes related to staff members, such as the NATO Administrative Tribunal.[127]

3.2.2 RIOs with non-utilised courts or tribunals

Some RIOs have dispute settlement bodies in their constituent instruments, but these have not been used or established. For example, the OIC Charter establishes an 'International Islamic Court of Justice'[128], but it is not operational because its statute has not yet attracted the required ratification of two thirds of the member States.[129] The AMU Treaty established the Court of Justice of the AMU[130] to settle disputes concerning the interpretation or application of the AMU Treaty. The Court, however, has never decided a dispute or issued an advisory opinion.[131] Similarly, while the GCC Charter includes provisions on dispute settlement involving the interpretation or implementation of the Charter,[132] it has not been utilised. The GCC Report noted that this was due to a lack of political will on behalf of the member States, partly out of concern of creating a 'supranational' institution.[133]

An example from the African region is the Court of Justice of ECCAS. The ECCAS Constitutive Treaty envisages a Court of Justice and Court of Auditors.[134] The Treaty requires the adoption of protocols to establish the Court's status, composition, competence and procedure. These protocols have not yet been adopted.[135] In another case, a tribunal established by a RIO was disbanded. In 2010, leaders at the SADC Summit decided not to renew the terms of office of the SADC Tribunal judges, and in 2012 its jurisdiction was limited to inter-State disputes. The individual RIO report mentions how this was the result of political influence of Zimbabwe.

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[123] CARICOM Report (citing Article 211, RTC; Article XII, Agreement establishing the Caribbean Court of Justice).
[124] CARICOM Report (citing Article 212, RTC; Article XIII, Agreement establishing the Caribbean Court of Justice).
[125] Supplementary Protocol ECOWAS Court of Justice A/SP1/01/05.
[126] ECOWAS Report (citing S. T Ebobrah, 'Critical Issues in the Human Rights Mandate of the ECOWAS Court of Justice' (2010) 54 *Journal of African Law* 1).
[127] NATO report.
[128] OIC Report (citing Chapter IX, OIC Charter in Art. 14 titled 'International Islamic Court of Justice' states that the court 'established in Kuwait in 1987 shall, upon the entry into force, be the principal judicial organ of the Organisation'.
[129] OIC Report.
[130] AMU Report (citing Article 13, AMU Treaty).
[131] It has been involved in revising drafts of legal texts on the Secretariat's request. AMU Report (citing 'The Court of Justice of the AMU convenes its 25th Session' Mauritanian News Agency, (15/04/2013), available at: https://www.ami.mr/Depeche-29087.html).
[132] GCC Report (citing Article 10, GCC Charter titled 'Commission for the Settlement of Disputes' states that '[t]he Cooperation Council shall have a commission called 'The Commission for the Settlement of Disputes' which shall be attached to the Supreme Council').
[133] GCC Report (citing F. Hussain & M. Zahraa, 'Dispute Settlement Mechanisms: Gulf Cooperation Council Practice v. European Union Practice', *Arab Law Quarterly* (published online ahead of print 2021). B. Malkawi, Legal Architecture and Design for Gulf Cooperation Council Economic Integration (2019). Available at https://arxiv.org/ftp/arxiv/papers/1909/1909.08798.pdf).
[134] ECCAS Report (citing ECCAS Constitutive Treaty).
[135] ECCAS Report.

3.2.3 Other forms of dispute settlement

SG regional groups were asked to provide details on their RIOs' courts and dispute settlement bodies. An observation that emerged from the individual RIO reports was that RIOs often employ dispute settlement without establishing a permanent judicial body. This can include the obligation to resolve disputes peacefully. The OIC Charter, for example, stipulates that member States that are parties to any dispute which may endanger the maintenance of international peace and security shall seek a solution by good offices, negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means.[136]

In terms of specific arrangements, the degree of formality of dispute settlement mechanisms varies. The internal law of some RIOs include provisions for arbitration between members in case of a conflict,[137] while the rules of other RIOs include an obligation to enter into negotiations in case of dispute.[138] In the case of several RIOs, disputes are to be submitted to a board of directors, secretariat, or other non-judicial body. ALADI does not have a judicial body, but the General Secretariat has the power '[t]o analyze on its own initiative, for all countries, or at the request of the Committee, compliance of agreed commitments, and evaluate legal provisions of members countries which directly or indirectly alter concessions granted.'[139] In the ACS, disputes among Members concerning the interpretation or application of the ACS Convention and which cannot be settled by the disputing parties shall be settled by the Ministerial Council.[140] At the ADB, disputes on the interpretation of the Agreement are first referred to the Board of Directors, with the possibility of appeal to the Board of Governors.[141]

A RIO may set out a range of available dispute settlement procedures. For example, MERCOSUR establishes dispute settlement procedures 'in order ensure the correct interpretation, implementation and enforcement of the fundamental instruments of the integration process'.[142] However, these dispute settlement procedures are not exclusive and members may also resort to WTO's dispute settlement system.[143] The Olivos Protocol improved MERCOSUR's dispute settlement system by creating 'an *ad hoc* arbitration procedure; … a motion for review before the Permanent Review Court; and a judicial mechanism to ensure the enforcement of the awards.'[144] The Permanent Court of Review is not a permanent international court but rather 'of a hybrid nature, half *ad hoc* arbitration, by reason of some arbitral attributes.'[145] Following Article 17, '[a]ny of the parties to the dispute may file a request for review with the Permanent Court of Review, against the awards issued by the *Ad Hoc* Arbitration Court', and the review 'shall be limited to the legal issues addressed during the dispute to the legal interpretation set out in the award given by the *Ad Hoc* Arbitration Court'.[146]

The report on dispute settlement in the Asia-Pacific discussed the paucity of dispute settlement procedures in that region.[147] Of the organizations studied – APEC, SAARC, ASEAN, and the AIIB, the

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136 OIC Report (citing Articles 27 and 28, OIC Charter).
137 The IsDB Articles of Agreement set out procedures for arbitration in the case of disputes between the IsDB and a member state. ISDB Report (citing Chapter VIII, Art. 64, IsDB Articles of Agreement titled 'Arbitration').
138 UNASUR Report (citing Article, 21, Constitutive Treaty of the Union of South American Nations, 'Any dispute that may arise between State Parties regarding the interpretation or implementation of the provisions of this Constitutive Treaty shall be settled through direct negotiations.').
139 ALADI Report (citing ALADI Constitutive Treaty. 38, i) of the 1980 Montevideo Treaty).
140 ACS Report (citing Article XXIX, ACS Convention).
141 As provided in Article 60 of the ADB Agreement. See also ADB Report.
142 MERCOSUR Report (citing Olivos Protocol, F. Filho et al, *The Law of MERCOSUR*, p. 455).
143 MERCOSUR Report (citing Article 1 para 2).
144 MERCOSUR Report (citing N. Susani, 'Dispute Settlement', in F. Filho et al (Eds.). *The Law of MERCOSUR* (Hart, 2010) p. 77).
145 MERCOSUR Report (citing N. Susani, 'Dispute Settlement', in F. Filho et al (Eds.). *The Law of MERCOSUR* (Hart, 2010) p. 79).
146 MERCOSUR Report (citing Ouro Preto Protocol, F. Filho et al, *The Law of MERCOSUR,* p. 460-461).
147 Rowan Nicholson 'Regional International Organizations and International Dispute Settlement: Asia-Pacific', reports presented at ILA Paris Workshop.

Pacific Community, and the Pacific Islands Forum – the bodies either had no dispute settlement body, or they included dispute settlement procedures that had never been utilised. For example, while ASEAN has some dispute settlement procedures, these had never been used in practice. The report points out that Asian States have dealt with economic disputes in organizations such as the WTO, rather than at the regional level.

4 INTERNATIONAL LAW AS (INTERNAL AND EXTERNAL) LAW OF RIOS

The status of international organizations as subjects of international law gives rise to questions of great theoretical and practical relevance. What are the rules of general international law and treaty law that apply to international organizations 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?[148] How do international organizations contribute to the development of international law, both formally and informally?

The present study does not attempt to offer a full answer to those questions. More modestly, the goal of the comparative analysis and systematic account provided in the present Report is to uncover how the RIOs surveyed, their Member States, and third parties conceive the relations between international law and the RIOs' legal orders. To that end, the participants in the SG were asked to ponder four main questions: first, the question of autonomy and status of the internal law of RIOs; secondly, the applicability of primary rules of international law to and within RIOs; thirdly, the applicability of secondary rules of international law to and within RIOs; finally, the role of RIO courts, individually and jointly, in applying international law.

4.1 Autonomy and Status of the Internal Law of RIOs

The question of the character of the internal law of international organizations – whether it forms part of international law or is somehow distinct from international law as is the case with domestic legal orders – is the subject of longstanding debate.[149] In its codification project on the responsibility of international organizations, the International Law Commission refrained from expressing 'a clear-cut view on the issue'.[150] Be that as it may, it seems undeniable that the internal law of international organizations 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 Member States,[151] and from the proposition that international law is permissive as to what the content of that legal order can be (save for the limits imposed by peremptory norms of general international law)[152]. As a result, international law gives IOs

[148] For an account, see Bordin, 'General International Law in the Relations between International Organizations and Their Members' (2019) 32 Leiden Journal of International Law 653.

[149] By 'internal law' we mean what the 1986 Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations and the 2011 Articles on the Responsibility of International Organizations for Internationally Wrongful Acts 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' (Art. 2(b) ARIO; similarly, Art. 2(1)(j)).

[150] Yearbook of the ILC 2011, vol. 2, part 2, p. 64, para. 7 (commentary to Article 10(2) ARIO).

[151] 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, I.C.J. Reports 2010*, para. 89.

[152] 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, Judgment, I.C.J. Reports 1969*, p. 3, para. 72).

and their Member States a choice as to how autonomous they wish the rules of the organization to be, with only a few limitations.

4.1.1 The self-understanding of RIOs

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?

The individual RIO reports reveal that the possibility of making internal law relatively autonomous has been mostly explored and/or asserted within RIOs that concern themselves with economic integration, perhaps because those are the organizations where political integration has been taken to its highest degree. The EU provides the paradigmatic example, and is also the most emphatic in asserting autonomy. According to the case law of the 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.'[153] The Andean Court of Justice has taken a similar approach, so that 'Andean Community Law has been understood as an autonomous legal system, different from the general system of public international law'.[154] The same seems to be the case with the EAEU, albeit by implication. 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'.[155]

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 CARICOM, the CCJ has observed that the 'implementation of the very idea and concept of a Community of States necessarily entails as an exercise of sovereignty the creation of a new legal order', which it has also described as 'unique'.[156] At the same time, the Court has not construed community law 'as a body of law which is completely independent from international law', rather expressing the view, in the light of the applicable law clause found in the constituent instrument, that it 'can and must take into account principles of international human rights law when seeking to shape and develop relevant Community law'.[157] In a similar vein, community law is viewed as 'dependent on the domestic legal systems of Member States to have validity and application at the domestic level'.[158] A similar self-perception is found in the OECS, where 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'.[159] In the case of MERCOSUR, the Permanent Review Court has suggested that internal law 'has and should have sufficient autonomy from other branches of law';[160] 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'.[161] A final example of an economic integration RIO that seems to adopt a relatively weak notion of autonomy is the EAC. On the one hand, the EAC Treaty 'specifically

[153] EU Report (citing *Opinion 2/13*, EU:C:2014:2454). Similarly, EEA Report (citing *Erla María Sveinbjörnsdóttir v Iceland* para. 59).
[154] CAN Report.
[155] EAEU Report.
[156] CARICOM Report (citing *Shanique Myrie v Barbados* [2013] CCJ (OJ) [69] and CCJ Advisory Opinion No. AOOJ2019/001 [2020] CCJ 1 (OJ) (AO) [41])).
[157] CARICOM Report (citing *Shanique Myrie v Barbados* [2013] CCJ (OJ) [10]).
[158] CARICOM Report.
[159] OECS Report.
[160] MERCOSUR Report (citing Giupponi, Sources of Law in MERCOSUR, França Filho et al, The Law of MERCOSUR, pp. 64-65).
[161] MERCOSUR Report (citing María Belén Olmos Giupponi, 'International Law and Sources of Law in MERCOSUR: an analysis of a 20-year relationship' (2012) 25 *Leiden Journal of International Law* 709, at 732.

establishes an autonomous dispute settlement regime for its interpretation and application, complete with a Treaty-established court', the EACJ, comprising also 'a firm proclamation that only that Court has jurisdiction to interpret the EAC Treaty';[162] on the other hand, 'the EACJ characterizes EAC law primarily as international law', so that the 'EAC law's fundamentally international character' is not seriously contested.[163]

What seems to distinguish economic integration RIOs making a stronger claim of autonomy from economic integration RIOs making a weaker claim of autonomy is the extent to which the rules of the organization are viewed as 'supranational', notably by judicial bodies and academic commentary.[164] RIOs where doctrines of 'supremacy' and 'direct effect' of internal law are accepted (the EU, CAN and the EAEU) perceive themselves as more autonomous from international law and domestic legal systems than RIOs where those doctrines are not (as of yet) accepted (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 appear to have emerged.

In contrast, there seems to be little, if any, engagement with the question of autonomy of internal law in RIOs tasked with other forms of international cooperation. Members of the SG dealing with those organizations have either indicated that the question of autonomy of internal law was not relevant,[165] or offered the assessment that the internal law of those organizations is not autonomous from international law.[166] Outliers include the SCO and AIIB, which were reported as '[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'.[167] In the case of the Council of Europe, it was reported that while the rules of the organization as such could not be viewed as autonomous, a '[d]ifferent view could be adopted' regarding the European Convention on Human Rights, described by the European Court of Human Rights as the 'constitutional instrument of European public order'.[168]

4.1.2 The views of third parties

In addition to a RIO's own self-understanding of the character of its internal law, it is important to consider the stances adopted by other entities, in particular third States and other IOs. The two perspectives may not always 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'.[169] This view is supported by the awards of ICSID arbitral tribunals in *Electrabel v Hungary* – 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 in *Eskosol v Italy* – where EU law was described as a 'sub-system within the international legal order' existing alongside that of the Energy Charter Treaty.[170] At the same time, there is some ambiguity

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[162] EAC Report.

[163] EAC Report (citing *Henry Kyarimpa v Attorney General of Uganda (No. 3),* above n 1; *Prof. Anyang' Nyong'o & Ors v Attorney General of Kenya & Ors (No. 2),* above n 3; and *Attorney General of Uganda v Tom Kyahurwenda,* above n 120).

[164] 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.

[165] ACS Report; OLDEPESCA Report; APEC Report, AMU Report; and SAARC Report. That is unsurprisingly the case of entities that are not regarded as RIOs under the working definition adopted by the SG: cf ALBA Report and CELAC Report.

[165] CoE Report.

[166] 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 RIOs General Report.

[167] SCO & AIIB Report.

[168] CoE Report (citing GC, *Loizidou v. Turkey*, 23 March 1995, § 75).

[169] EU Report.

[170] EU Report (citing *Electrabel S.A. v. Republic of Hungary,* ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability, para 4.124 and *Eskosol SpA in liquidazione v Italian Republic*, ICSID Case No ARB/15/50, Decision on Italy's Request for Immediate Termination and Italy's Jurisdictional Objection Based on Inapplicability

in the practice of third States and third IOs, 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. As noted in the EU Report:

> Within the WTO, EU law is the equivalent to domestic law for the simple reason that the EU is a WTO member alongside States. However, in most instances, it remains unclear whether EU regulations and directives are considered of an international or domestic legal character due to a lack of authoritative decisions in this regard. For example, it remains unclear whether EU regulations fall within the scope of Art 311(3) UNCLOS, according to which two or more state parties may conclude 'agreements' modifying or suspending the operation of provisions of UNCLOS. The same is valid for the United Nations: the UN Security Council has not officially referred to EU law as an 'obligation under any other international agreement' pursuant to Art 103 UN Charter over which the UN Charter Chapter VII prevails. With regard to international practice, it can be said that third parties generally avoid placing EU internal law in a specific category, i.e. either international law or domestic law. In the end, it all depends on which category supports the legal argument in cases of dispute.[171]

Other individual RIO reports considering this question suggest that the internal law of their respective RIOs is viewed by third parties as international law.[172] As regards the OAS, for example, it was suggested that 'the internal law of the OAS is considered regional international law by third states and other international organizations', not least because the OAS qualifies as a regional arrangement in the sense of Chapter VIII of the UN Charter.[173] It does not follow, of course, that third parties see themselves as bound by the internal law of RIOs. As noted in the CoE Report, '[t]he principle remains that the internal law of the [RIO] is binding only on its Member States', unless third parties otherwise agree.[174]

4.2 RIOs and Primary Rules of International Law

4.2.1 Applicability of international law under constituent instruments

Constituent instruments seldom flesh out how international law applies to RIOs, either on the international plane or as part of the RIO's internal legal order. That said, some constituent instruments comprise clauses that have been construed as expressing the RIO's commitment to comply with international law and/or as providing a gateway to apply international law within the RIO. Examples include; Article 3 of the EAEU Treaty, which lists among the basic principles of the functioning of the Union the 'respect for the universally recognised principles of international law'; Article 3(5) of the TEU, according to which the EU 'shall contribute […] to the strict observance and the development of international law'; and Article 2(2)(c) of the ASEAN Charter, pursuant to which ASEAN and its Member States renounce 'aggression and of the threat or use of force or other actions in any manner inconsistent with international law'.[175]

Other constituent instruments hint at compliance with international law more indirectly, often in preambular clauses. For example, the preamble of the 1980 Montevideo Treaty establishing ALADI mentions 'principles of international law regarding development'; the preamble of the 2008 UNASUR Constitutive Treaty refers to 'the rule of law in international relations', 'sovereign equality of States' and 'unrestricted respect for human rights'; and the Member States of the CSTO profess, in the preamble of the Charter of the CSTO, to be 'acting in strict compliance with their obligations under the UN

of the Energy Charter Treaty to Intra-EU disputes (7 May 2019) para 181). Those pronouncements were made, it should be highlighted, as part of the tribunals' reasoning about the applicable law under the BITs governing the disputes.

[171] EU Report.

[172] NATO Report; OSCE Report; AU Report; ALADI Report; CARICOM Report; SCO Report; AIIB Report.

[173] OAS Report.

[174] CoE Report.

[175] Compare EU, EAEU and ASEAN Reports.

Charter, resolutions of the UN Security Council, being guided by the universally recognized principles of international law'.[176]

Another way in which constituent instruments have been understood as indicating a RIO's commitment to international law is through provisions concerning dispute settlement. For example, Article 34 of the Olivos Protocol provides that the *Ad Hoc* Courts and the Permanent Court of Review of MERCOSUR shall settle disputes by applying not only MERCOSUR law but also 'the applicable principles and provisions of international law.'[177] Similarly, Article 217 of the RTC directs the CCJ to 'apply such rules of international law as may be applicable',[178] and Article 90 of the OAS Charter specifies that OAS organs 'performing their functions with respect to the peaceful settlement of disputes… shall observe… the principles and standards of international law, as well as take into account the existence of treaties in force between the parties'.[179]

Another manner in which constituent instruments are understood to impliedly signal a RIO's commitment to international law is through emphasising the obligations of Member States to act in accordance with international law within the framework of the organization. Article II of the SAARC Charter on Principles, for example, provides that cooperation within the organization 'shall not be inconsistent with bilateral and multilateral obligations'.[180] Similarly, pursuant to Article 2 of the OIC Charter, '[a]ll Member States commit themselves to the purposes and principles of the United Nations Charter' and 'undertake to contribute to the maintenance of international peace and security […] as enshrined in the present Charter, the Charter of the United Nations, international law and international humanitarian law'.

In the case of several RIOs, there are no provisions in constituent instruments or secondary law that require, or could readily be construed as requiring, compliance with international law. [181] Which is not to say that such an interpretation is not possible. The individual RIO report for the Council of Europe, for example, extrapolates a requirement to comply with international law, by means of teleological interpretation, from two passages from the Treaty of London: a preambular clause to the effect that 'the pursuit of peace based upon justice and international cooperation is of vital interest for the preservation of human society and civilization', and a provision prescribing that 'participation in the Council of Europe shall not affect the collaboration of its members in the work of the United Nations and of the other international organizations or unions to which they are parties'.[182]

4.2.2 Sources of international law that bind RIOs

What rules of international law typically apply to RIOs? Are RIOs, like States, bound by customary international law, treaties to which they are party, and general principles of law?

As regards customary international law and general principles of law, the individual RIO report on NATO makes the following general observation:

> It is fair to say that the idea of international organisations being fully bound by relevant customary international law since at least a decade (when the debate was also spurred by developments in the field of human rights law) is no longer controversial… This would logically hold for general principles as well.[183]

[176] See the respective reports. See also CIS Report and SAARC Report.
[177] MERCOSUR Report. See also AU Report and ECOWAS Report.
[178] CARICOM Report.
[179] See also AU Report.
[180] SAARC Report.
[181] See ACS Report. That is unsurprisingly the case of entities that are not regarded as RIOs under the working definition adopted by the SG: cf ALBA Report and CELAC Report.
[182] CoE Report.
[183] NATO Report (also citing C Brölmann, '*On the Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*' advisory opinion, [1980]' in Ryngaert et al, *Judicial Decisions on the Law of International Organizations*, OUP 2016).

That insight is borne out by the practice of some RIOs, which have interpreted references to international law in constituent instruments broadly. 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 entirety, including customary international law'.[184] The political organs of CSTO and CIS have both indicated the respective organizations' commitment to 'universally recognized principles and norms of international law'[185]. Customary rules have also been applied by the EACJ[186] and by the CCJ.[187] Even in the case of RIOs where the question has not yet been posed in practice, customary international law is applicable in the assessment of the participants of the SG and/or in academic commentary.[188]

Though express references to general principles of law are comparatively rare, the applicability of those principles in dispute settlement within CARICOM has been recognised by the CCJ, which has drawn an analogy between Article 217(1) RTC – directing the CCJ to 'apply such rules of international law as may be applicable' – and Article 38(1)(c) of the Statute of the International Court of Justice – directing the ICJ to apply the 'general principles of law'.[189] The Protocol of the Court of the Justice of the AU and the ECOWAS Protocol go even further, the former by emulating Article 38(1)(c) of the ICJ Statute, the latter by making a direct reference to it.[190]

The practice of those RIOs 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, as is the case with Article 2 of the Charter of the CSTO, which 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'.[191] 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.[192]

As a general rule, RIOs are not bound by treaties to which they are not party.[193] 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'.[194] 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 AfCFTA's internal law expressly incorporates the GATT 1994 and WTO Agreement.[195] 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.[196] In the case of the EU, a doctrine of 'functional succession' has been 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, e.g. in the field of trade'.[197] This doctrine has also been upheld by the EAEU Court, which has ruled that 'international agreements concluded by

[184] EU Report.
[185] See CSTO Report and CIS Report.
[186] See EAC Report and the discussion below.
[187] See CARICOM Report.
[188] NATO Report; OAS Report; SAARC Report.
[189] CARICOM Report (citing *Trinidad Cement Limited v Caribbean Community* [2009] CCJ 2 (OJ) [41]. A similar – albeit more implicit – approach has been taken by the EACJ: see EAC Report.
[190] See AU Report and ECOWAS Report.
[191] CSTO Report. Similarly: EAEU Report.
[192] See e.g. CoE Report.
[193] Art. 34 VCLT 1986.
[194] CAN Report (citing ACJ, Case 01-AI-2001).
[195] AfCFTA Report.
[196] EAC Report (citing *Democratic Party v Secretary General to the East African Community & Ors (Delayed Declarations No. 2*, [2015] Appeal No. 1 of 2014, p 22 para. 69).
[197] EU Report.

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'.[198]

4.2.3 The rank of international law in the legal order of RIOs

Once international law is received in (or 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 'primary law' prevails over customary and conventional rules of international law, these rules prevail over 'secondary law'. That is the case with the EU, where '[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'.[199] It is also the case with the EAEU, with 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'. As regards the EAC, it has been reported that 'should a conflict arise between the rules… of either legal order, the answer should be that the rules of EAC law take precedence over the rules of international law'.[200]

In the assessment of a few participants in the SG, international law (or at least some designated rules of international law) may prevail over the internal law of RIOs whose constituent instruments and practice are silent on the issue. The individual RIO report on the OAS expresses the view that '[i]n the absence of an express provision enshrining the pre-eminence of OAS law in its legal order, and given the lack of autonomy of that legal order, general international law must be considered the supreme *corpus juris* of the OAS'. In the light of the multiple references to international rules in the OAS Charter, it suggests that 'international law has preeminent rank within the OAS structure, not to say prevalent'.[201] Similarly, the individual RIO report on the 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 recognized principles of international law [prevail] over obligations deriving from the membership in the CSTO'.[202]

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 establish the primacy of the international obligations of the Member States. The first is Article II of the 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'.[203] 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'.[204]

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[198] EAEU Report (citing Case C-6/15 *General Freight*).
[199] EU Report.
[200] EAC Report (*East African Civil Society Organization Forum v Attorney General of Burundi & Ors (No. 1)*), Above n 146, p 18, para 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'.
[201] OAS Report.
[202] CSTO Report.
[203] SAARC Report.
[204] CSTO Report.

4.2.4 Other ways in which international law permeates the legal orders of RIOs

Participants in the SG were asked how the application of international law in the legal orders of RIOs 'inform the debate about the latter's 'openness' to international law'.

The individual RIO reports indicate that the question of the 'openness' of RIOs to international law has not yet attracted much discussion.[205] But answers to this question provided relevant details of the 'more indirect ways' in which international law permeates the legal order of RIOs, in particular as an aid to the interpretation of internal rules. For example, in the context of the Andean Community, 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'.[206] 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'.[207] 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'.[208]

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 administrative tribunals.[209] In the case of international banks such as IsDB and AAIB, a certain degree of 'openness' to international law is demonstrated in their adherence to relevant UN resolutions and international standards set out by other international organizations.[210]

4.2.5 Regime-specific approaches to international law in 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 actions that the RIO is in a position to take in fulfilling its functions. The same is true for the types of treaties 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. For example, the CJEU 'has adopted different approaches depending on policy area', with the Court having been 'more open to giving effect to association agreements or agreements that seek to replicate rights under EU law' but more 'reluctant to engage with the reasoning of international human rights bodies or other human rights courts when examining the content of EU fundamental rights'.[211] 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.[212] In the case of the IsDB, described as a 'development financing' organization, the relevance of environmental rules and standards is emphasised through the Bank's adherence to the

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[205] An attempt to engage directly with the debate on 'openness' can be found in the EU and OAS Reports. In the NATO and EAC Reports, it is noted that there appears to be no debate about this matter. Various reports treated the question as if it were 'not applicable', or provided details of the role of international law without directly engaging with the concept of 'openness'.

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

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

[208] EU Report.

[209] EAEU Report (citing Case C-4/15 *Tarasik*; Case P-3/18 *Eurasian Economic Commission (Professional Athletes case)*; and C-2/19 *Trans Logistic Consult*).

[210] See ISDB Report and AIIB Report.

[211] EU Report.

[212] EAEU Report; APEC Report; and AfCFTA Report.

'UN sustainable development goals (SDGs) and the new agenda for comprehensive and sustainable human development encompassing the social, economic and environmental dimensions of development'.[213]

4.3 RIOs and Secondary Rules of International Law

4.3.1 RIOs and the law of treaties

4.3.1.1 RIOs' treaty-making practice

As a comparative assessment of individual RIO reports reveals, the relevance of the 'secondary' rules of the law of treaties for RIOs is linked to the intensity of their treaty-making practice, that is, how active they are in concluding treaties and what types of treaties they conclude. That is in turn tied with the nature and scope of the RIO's functions, which will determine what kind of agreements are necessary for the RIO to cooperate with their members and/or to carry out external relations. So, for example, the ADB, the AIIB and the ISDB are all fairly active in concluding loan agreements with their members, such as the treaty between the AIIB and India for a U$304 million contribution to the Assam Intra-State Transmission System Enhancement;[214] cooperation agreements with third States linked to development projects, such as the treaty concluded in 2010 whereby Austria made a €300,000 contribution to the African Water Facility managed by the ADB;[215] and cooperation agreements with other IOs operating in the financial sector.[216]

RIOs whose mission is to promote economic integration show a great potential to engage in intensive treaty-practice, though the picture that emerges from existing practice is somewhat complex. The EU finds itself in a category of its own, with an unusually active treaty-making practice, including treaties concluded by the organization alone and treaties concluded by the organization alongside its Member States (mixed agreements).[217] Not only has the EU concluded numerous bilateral agreements relating to trade and various forms of international cooperation, it has also become party to various multilateral treaties, including high profile conventions which only States are otherwise allowed to join.[218]

Among other economic integration RIOs, the spectrum of treaty-making is wide. On the more active end of the spectrum, CARICOM has concluded several bilateral trade agreements with States in Latin America and the wider Caribbean; a Trade and Investment Framework Agreement with the United States; and cooperation agreements with various other IOs and third States.[219] On the less active end of the spectrum, the Andean Community was described as not being particularly active in treaty-making, leaving the conclusion of treaties that pursue its goals mostly to the members.[220] Likewise, while the EAC has been able to join the 2008 and 2022 Protocols on Relations between the African Union and the Regional Economic Communities, it is not party to the East African Community-European Union European Partnership Agreement (EAC-EU EPA) that its Member States have concluded with the EU and EU Member States.[221] Somewhere in the middle, perhaps, are the EAEU, which has concluded treaties with several third States, including free trade agreements and an agreement on economic and

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213 IsDB Report.
214 AIIB Report.
215 https://www.afdb.org/en/documents/document/bilateral-agreements-matrix-23135.
216 E.g., as explained in the IsDB Report, '[t]he IsDB has entered into cooperation agreements with several United Nations agencies as well as with the World Bank and its affiliates, the African Development Bank, the Asian Development Bank and various other RIOs.'
217 EU Report.
218 E.g. UNCLOS, the WTO treaties, the 2006 Convention on the Rights of Persons with Disabilities, and the Paris Agreement on Climate Change.
219 CARICOM report (including specific references to the treaties concluded.)
220 CAN Report (explaining that an agreement between the block and MERCOSUR was ratified by the Member States individually, and that even in the case of a 'Flexible Frame Agreement' reached between CAN and the EU it was the CAN Member States that have subsequently concluded the required individual free trade agreements with the EU).
221 EAC Report (explaining how the EAC nevertheless participated in the negotiation of the agreement).

trade cooperation with China, in addition to 'memoranda of understanding and memoranda of cooperation with a number of countries and RIOs including MERCOSUR';[222] and the GCC, which concluded a cooperation agreement with the EU and free trade agreements with Singapore and EFTA, and whose Secretariat coordinates external trade negotiations on behalf of the Member States.[223]

RIOs promoting looser form of cooperation tend to conclude relatively few treaties, the majority of which relating to 'housekeeping issues', such as headquarters agreements and cooperation agreements with like-minded IOs.[224] In some cases, the absence of treaty-making action reflects the RIO's ethos and design. UNASUR, for example, is 'less oriented to the creation of legal norms' than to the pursuit of a 'strategy to bolster integration in South America' that favours 'practical exchanges' over 'grand agreements or all-encompassing declarations'.[225]

Some of those RIOs that are not active in concluding treaties in their own name nevertheless embrace as a core mission the task of facilitating the drafting and adoption of treaties by their Member States. Those include:

(i) The Council of Europe, under the auspices of which 223 treaties have been concluded, covering various fields. According to the CoE Report:

> 'The Treaty Office classifies the 223 treaties in question using 50 categories of legal fields. Among the categories with the highest number of treaties, it is possible to mention legal cooperation in criminal matters (with 39 treaties, e.g. 17.50% of all treaties); civil, commercial and family law (with 37 treaties, e.g. 16.6% of all treaties); culture (with 9 treaties, i.e. 4% of all treaties); and, of course, human rights (with 34 treaties, e.g. 15.25% of all treaties).'[226]

(ii) The OAS, under the auspices of which several notable regional treaties have been concluded in the field of human rights (including the 1985 Inter-American Convention to Prevent and Punish Torture, the 1994 Convention on Forced Disappearance of Persons, the 1994 Convention on the Prevention, Punishment and Eradication of Violence against Women, and the 1999 Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities); judicial cooperation (including the Inter-American Convention on Mutual Assistance in Criminal Matters and the Inter-American Convention on Extradition); the fight against terrorism (including the Inter-American Convention Against Terrorism and the Convention to Prevent and Punish the Acts of Terrorism Taking The Forms of Crimes Against Persons And Related Extortion that are of International Significance); among others.[227] The role of the OAS in promoting the conclusion of ambitious treaties is reflected in Resolution AG/RES. 1634 (XXIX-O/99), establishing 'Procedures for the preparing and adopting Inter-American Legal Instruments within the Organization of American States', and expressing the conviction that the OAS is 'the hemisphere's forum of choice for the development and codification of international law'.[228]

(iii) The AU, under the auspices of which important treaties have been concluded in the fields of human rights (notably, the the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child); economic cooperation (notably,

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[222] EAEU Report.
[223] GCC Report (explaining, however, that 'collective trade agreements in the GCC have advanced very slowly, partly reflecting difficulty of adhering to common interests').
[224] See Coe Report and CIS Report.
[225] UNASUR Report (citing Anne Marie Hoffmann, *Regional Governance and Policy-Making in South America*, Palgrave Macmillan, 2019).
[226] CoE Report.
[227] OAS Report.
[228] OAS Report.

the Treaty Establishing the African Economic Community); and disarmament (notably, the African Nuclear Weapon-Free-Zone Treaty); among others.

(iv) The OIC, under the auspices of which treaties have been concluded in the field of trade and investment (for example, the Framework Agreement on Trade Preferential System among the Member States of the Organization of the Islamic Conference and the Agreement for the Promotion, Protection and Guarantee of Investment among Member States of The Organization of the Islamic Conference) and cooperation in important technical matters (for example, the Statute of the Islamic Organization for Food Security and the General Agreement for Economic, Technical and Commercial Cooperation among Member States of the Organization of the Islamic Conference), among others.

4.3.1.2 The VCLT rules applied

There are multiple examples in RIO practice where the 'secondary rules' of international law codified in the 1969 Vienna Convention on the Law of Treaties (VCLT) are resorted to, especially the so-called 'rules of interpretation' found in Articles 31-33.[229] In the case of dispute settlement under the AfCFTA, it is specifically provided that '[t]he Panel and the Appellate Body shall interpret the provisions of the Agreement in accordance with the customary rules of interpretation of public international law, including the Vienna Convention on the Law of Treaties, 1969'.[230] The VLCT rules of interpretation have also been relied upon by the EACJ,[231] by the EAEU,[232] and by the European Court of Human Rights.[233] A body that has made use of various provisions of the VCTL 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.'[234]

An example of a RIO that freely departs from the general rules of the law of treaties in its practice is the EU. Innovations include the rules for withdrawal from the EU articulated in Article 50 TEU, and 'internal rules and procedures relating to the way it gives its consent to be bound under international law'.[235]

4.3.1.3 Source of validity of agreements concluded between the Member States of a RIO

When the members of a RIO conclude agreements *inter se* under the auspice of that RIO, do such agreements derive their legal force from the general international law of treaties or from the internal law of the RIO?

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229 The rules set out in the 1969 Vienna Convention on the Law of Treaties (VCLT) are applicable here. Art. 5 VCLT sets out that the convention applies with respect to "any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization."

230 AfCFTA Report.

231 EAC Report (citing *Henry Kyarimpa v Attorney General of Uganda (No. 3)* [2016] EACJ Appeal No. 6 of 2014).

232 EAEU Report.

233 CoE Report (citing *Golder v UK*, 1975, para. 29).

234 CIS Report (citing Decision of 25 March 1996 No. 11/95 / C-1 / 4-96; Advisory opinion of 15 May 1996 No. 06/95 / C-1 / 1-96, decision of 22 June 1998 No. 01-1 / 1-98; 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, http://sudsng.org/analytics/sudobzor/udobzor2013).

235 EU Report.

Most participants in the SG addressing this question in their individual RIO reports observed that agreements between Member States are governed by the general law of treaties codified in the VCLT.[236] Following the judgment of the CJEU in the *Achmea* case, the EU has been maintaining that a conflict between EU law and an *inter se* agreement (such as a bilateral investment treaty) between EU members results in the invalidity of the latter; yet, this is not taken as a '[rejection of] the idea that the BITs legal force stems from *pacta sunt servanda* (Article 26 VCLT)', but rather as an 'argument… based on *lex superior* considerations'.[237]

If *inter se* agreements are governed by general international law, a question that arises is whether the parties may invoke the internal law of the RIO to justify non-compliance with a treaty. In the case of the EU, that possibility is admitted under the 'principle of sincere cooperation' enshrined in Article 4(3) TEU, which provides that 'the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties'.[238] No further relevant provisions or practice from other RIOs have been reported.[239]

Participants reporting on the EAUE, ECOWAS and the OAS expressed the view that *inter se* agreements concluded by members derive their legal force from the internal law of the respective RIO. The AU Report, on its part, makes the thought-provoking observation that 'AU Conventions and Treaties derive legal force from both the international law of treaties and its internal law'. Even when one can readily understand how those RIOs play a crucial role in facilitating the conclusion of the relevant treaties, it is not clear on what basis those reports came to the conclusion that the legal system governing the agreements is the internal law of the organization instead of general international law.[240]

4.3.2 RIOs and the law of international responsibility

The question was posed to the participants in the SG of whether the general law of international responsibility applies to RIOs. In particular, are breaches of internal law considered as a ground for international responsibility, or does internal law provide for a special regime for responsibility/liability?

The internal law of the RIOs surveyed tended, on the whole, not to specify in detail what the legal consequences of breaches of internal law or the corresponding mechanisms of enforcement are. In the case of a few RIOs, internal rules are simply silent on the issue,[241] while in others only rudimentary mechanisms for dealing with non-compliance are provided.[242] In the case of organizations such as APEC, PIF, SIC and 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.[243]

Silence in constituent instruments and other internal rules creates the occasion for applying 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. The practice of the EAC provides an illuminating example, as the EACJ, faced with 'the absence of an explicit list of remedies for breach of the EAC Treaty', proceeded to apply customary international law noting that its 'entry point into the issue of remedies is that in international law, a breach of a treaty obligation by

[236] EU Report; NATO Report; CIS Report; CSTO Report; PIC + SPC Report; and SAARC Report.
[237] EU Report.
[238] EU Report.
[239] Brief references to the question are made in the CSTO Report (noting that '[a] situation of conflict between treaty obligations of the Member States and internal law of the CSTO hasn't taken place' and in the PIC + SPC Report (expressing great doubt that 'Member States would invoke the internal law of PIF or SPC to justify a breach of such international agreements').
[240] The EU Report consider 'the possibility that EU Member States conclude inter-se agreements governed by EU law, provided that the EU law foresees such agreements e.g. in EU secondary law', even if that possibility does not seem to have come to pass in the practice of the organization yet.
[241] See APEC Report; CAN Report; MERCOSUR Report; NATO Report; and PIF + SIC Report.
[242] E.g. UNASUR Report.
[243] See the respective Reports.

a contracting State is an internationally wrongful act of that State and it entails its international responsibility'.[244] 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.[245]

The possibility of recourse to the law of international responsibility may also be read into provisions in constituent instruments that, in addressing violations of international law, make generic references to international law. For example, the Charter of the CIS provides that the Council of Heads of State may address 'systematic failure by a State to fulfil its obligations' by taking '[m]easures permitted by international law'.[246] In a similar vein, in the context of the OECS, the Eastern Caribbean Court of Appeal may 'declare the right of a complainant state to exercise any right of redress available under international law'.[247]

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 SCO, the AIIB, and the OAS all provide for rules on suspension and/or expulsion from membership. [248] To offer an example from practice, following a coup d'état in Honduras, the OAS suspended the country between 2009 and 2011; it did so by relying on Article 21 of the Inter-American Democratic Charter, which envisages expulsion in the event of 'an unconstitutional interruption of the democratic order of a member state'.[249] Other constituent instruments articulate different sanctions schemes. For instance, 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'.[250] Likewise, in 2012 ECOWAS 'enacted the Supplementary Act on Sanctions against member states that fail to comply with their obligations under Community Law'.[251]

And then there is the example of the EU, where an intricate legal regime was envisaged to tackle the various possible ways in which EU law can be breached. The EU's regime was summarised as follows:

> 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, Art. 259 TFEU. Within the Union, a breach of an international obligation deriving from an agreement concluded between the EU and a third State does also constitute a breach of internal law, since the agreement forms part of the *acquis communautaire* (Art. 216 (2) TFEU). A variety of other mechanisms exists, i.e. infringement procedures before the Commission or the imposition of fines by the Commission for breaches of competition law.[252]

EU law, in this respect, comprises a 'complete system of remedies'. It has been understood as constituting *lex specialis* in the sense of Article 64 of the ARIO, debarring the Member States from

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[244] EAC Report (citing *Henry Kyarimpa (No. 3)*, p 49, para 104).
[245] EAC Report (citing *Manariyo Desire v Attorney General of Burundi*, [2016] EACJ Reference No. 8 of 2015; and *Hon. Dr. Margaret Zziwa v Secretary General of the East African Community* [2018] EACJ Appeal No. 2 of 2017).
[246] CIS Report.
[247] OECS Report.
[248] 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).
[249] OAS Report.
[250] AU Report (referring to African Union Constitutive Act, Art. 23(2)).
[251] ECOWAS Report. See also ADB Report.
[252] EU Report (citing *Ruffert* in „EUV /AEUV Kommentar", Calliess/Ruffert (ed), Art. 17 para. 7 and Case 181/73 R. & V. *Haegeman v Belgian State*, EU:C:1974).

'[resorting] to public international law as a way to enforce compliance with EU law', in particular countermeasures.[253]

Other RIOs that comprise comparable, albeit less 'complete', system of remedies are the EEA, the EAEU, the EEA and the OECS.[254] But the precise design varies according to the organization. For example, the ECCA is 'empowered to annul or declare void any wrongful or *ultra vires* act of an Organ of the OECS…[,] award monetary compensation to a complainant state, order the party complained against to take measures to comply with its obligations under the Treaty, and declare the right of a complainant state to exercise any right of redress available under international law'.[255] At the EAUE, in contrast, the Commission is not entitled to bring proceedings against the Member States, and private persons may not sue the Commission for damages before the EAEU Court.[256] In the context of CARICOM, while the Revised Treaty of Chaguaramas 'does not contain specific provisions governing sanctions for breaching its provisions', the CCJ has decided that 'the new Single Market based on the rule of law implies the remedy of compensation where rights which ensure to individuals and private entities under the Treaty are infringed by a Member State', provided that the individual or private entity is able to show 'that the provision alleged to have been breached was intended to benefit that person, that such breach is serious, that there is substantial loss and that there is a causal link between the breach by the State and the loss or damage to that person.'[257]

A final point to note, as regards the applicability of the rules of international responsibility to RIOs, is that there may be situations where the RIO and its members will be collectively implicated in the commission of an internationally wrongful act against a third party (e.g. the breach of a mixed agreement). While the position of principle is that it is international law (and not the internal law of the RIO concerned) that applies, this is still an emerging field. As the EU Report notes, '[t]here is no clear practice regarding the responsibility of the EU [Member States] regarding areas where the EU [Member States] have taken up responsibility together', and 'quite some legal debate about how the ILC's ARIO applies in these contexts'.[258]

4.3.3 Reception of IL in RIO law: The Role of Courts

4.3.3.1 The role of courts in the interpretation and application of international law within RIOs

Among the existing RIO courts or other organs that are involved in dispute settlement within RIOs, most have the mission of applying internal law in the first instance, resorting to international law only as needed. That will be the case when international law is incorporated into RIO law, or when a question of international law is incidental to solving a question of RIO law. So, for example, the CJEU is not 'an 'international court' similar to the International Court of Justice, but closer to a constitutional court of a domestic legal system', even if it is 'often called upon to decide on the interpretation and application of international law, including customary international law… [w]hen interpreting EU law and resolving disputes involving EU law'.[259] As noted above, the internal law of some RIOs comprise applicable law clauses that make explicit reference to international law.[260]

Some courts or arbitral tribunals belonging to RIOs are specifically tasked with applying international law instead of RIO law. The European Court of Human Rights, the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights all apply international law, in the form of

[253] EU Report.
[254] See the respective reports.
[255] OECS Report (citing paragraph 10, Dispute Settlement Annex).
[256] EAEU Report.
[257] CARICOM report (citing *Trinidad Cement Limited & TCL Guyana Incorporated* [2009] CCJ 5 (OJ) [27]).
[258] EU Report.
[259] EU Report. However, similar RIOs have thus far had little occasion to interpret and apply international law alongside RIO law: see e.g. EAEU Report.
[260] MERCOSUR Report; AU Report; ECOWAS Report; CARICOM Report; OAS Report.

human rights conventions concluded by the members under the auspices of the organization but not strictly part of its internal law.[261] In doing so, they may all have the occasion to refer to other rules of international law, including international custom.[262] In the context of the OSCE, '[t]he Court of Conciliation and Arbitration may create conciliation commissions and arbitral tribunals, to settle disputes between OSCE States submitted to it (including in respect of territorial integrity, maritime delimitation, or environmental and economic issues)'; those commissions and tribunals are directed to apply international law.[263]

4.3.3.2 Competition and coordination between RIO courts

In accordance with constituent instruments and other internal rules, several courts claim exclusive jurisdiction over international law issues that bear upon the application of the RIO's internal law. The CJEU, for example, 'has found that it has the exclusive responsibility to interpret EU law, and that the EU Member States cannot establish or use an international dispute settlement body that would be in a position to interpret EU law'.[264] The exclusivity claim that the CJEU makes is so strong that the Court has vetoed a version of the draft agreement for the EU's accession to the European Convention on Human Rights, for fear that the European Court of Human Rights might have the occasion to interpret EU law and thus 'violate the autonomy of the EU legal order'.[265] In a similar vein, the CCJ is given exclusive jurisdiction over the interpretation of CARICOM law,[266] and the Economic Court of the CIS has decided that in cases where it has compulsory jurisdiction 'the resort to a process of international dispute settlement in other international bodies, bypassing the CIS Economic Court, is impossible'.[267] The Economic Court has even sought to define 'the criteria to resort to the International Court of Justice and the Permanent Court of Arbitration when resolving disputes between the states of the Commonwealth'.[268]

In contrast, the claim of exclusivity in the context of the EAEU is more ambiguous. While Article 112 of the EAEU Treaty envisages recourse to the EAEU Court 'if the parties do not agree on the use of other resolution procedures',[269] that provision stands in tension with the EAEU Court's mandate to ensure the uniform application of EAEU law. The EAEU Report thus suggests that it is unlikely that Article 112 should be construed as allowing Member States to settle disputes relating to the EAEU law before other international courts and tribunals.[270]

Other RIOs allow for disputes impacting on their internal law to be brought before other forums. For example, MERCOSUR members have the option to take their trade disputes to WTO dispute settlement if they so wish.[271] Whenever a claim to exclusivity is not made, it is common for internal law to include provisions on parallel proceedings and litispendence. That is the case with the 1992 Convention on Conciliation and Arbitration within the OSCE,[272] and with the European and American Convention on Human Rights, both precluding the respective courts, tribunals, or commissions from dealing with matters that have been decided or investigated by, or that are still pending before, other international

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[261] It also important to acknowledge the role that the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights play in this connection: see OAS Report and AU Report.
[262] See e.g. EoC Report.
[263] OSCE Report.
[264] EU Report. It was noted, in addition, that 'the CJEU considers "EU law" to be broad', even comprising international agreements such as the Energy Charter Treaty (citing Case C-741/19 *Republic of Moldova v Komstroy LLC* ECLI:EU:C:2021:655 para. 49).
[265] Ibid. (citing Opinion 2/13).
[266] CARICOM Report.
[267] CIS Report (citing *Decision on the interpretation of the Treaty on the Establishment of the Economic Union of September 24, 1993*, Decision of May 15, 1997 No. C-1/19-96).
[268] Ibid. (citing Advisory Opinion No. C-1/19-96 of May 15).
[269] EAEU Report.
[270] Ibid.
[271] MERCOSUR Report.
[272] OSCE Report.

bodies.[273] The Malabo Protocol establishing the International Criminal Section of the ACJHR 'envisages a complementarity relationship between the ACJHR, on the one hand, and national courts and courts of the regional economic communities, on the other hand'.[274] However, the same provision has not yet been extended to the ICC, despite the jurisdictional overlap over international crimes that exists between the two courts.[275]

A final point to be noted is that the plurality of RIO courts creates the occasion for judicial dialogue. An example is the close relationship between the EFTA Court and the CJEU, with the latter relying regularly on the case law of the former.[276] Another is the CJEU serving as 'the primary source of inspiration' for the development of the jurisprudence of the EAEU Court.

5 INFLUENCE OF RIOS' INTERNAL LAW AND INTERNATIONAL LAW PRACTICE ON INTERNATIONAL LAW

International organizations have undoubtedly had a massive impact on the development of international law. Not only did their emergence change the way international lawyers think about international legal personality and participation in the international legal system, they have also been active in the making and shaping of international rules and regimes.[277] In the context of the present study, it is then important to parse out the influence of RIOs on international law.

Given the differences between RIOs, the degree to which they are capable of leaving a mark is bound to vary. Indeed, some of the RIOs 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',[278] or that are 'inward-looking' in that they neither maintain extensive external relations with third parties (by e.g. concluding treaties) nor engage in persuading the outside world to adopt rules of their preference.[279] Yet, several RIOs are 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.

The relevant practice is reviewed in the subsections that follow. The picture that emerges is somewhat impressionistic, as individual RIO reports make it difficult to measure and distinguish between purported and inadvertent attempts to influence, on the one hand, and cases of effective influence and failed influence, on the other hand. Moreover, proving influence poses considerable empirical challenges: 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. Finally, individual RIO reports have often identified a potential to contribute to international law which a RIO may or may not wish to fulfil in its practice (and do so with mixed results). Yet, the comparative assessment resulting from the SG's work will hopefully prove useful for those wishing to conduct more granular research on the influence of any given RIO.

5.1 Influence of RIO treaties on international law

It is well accepted that treaties may influence the development of international law. On the one hand, they can provide a template for other treaties or legal regimes. On the other hand, they can contribute to the development of customary international law. In *North Sea Continental Shelf*, the ICJ described the process whereby 'a norm creating provision' that is 'only conventional or contractual in its origin'

[273] See CoE and OAS Reports.
[274] AU Report.
[275] AU Report.
[276] EEA Report.
[277] See e.g. JE Alvarez, *International Organizations as Law-Makers* (2005).
[278] UNASUR Report.
[279] See e.g. CAN Report; OLDEPESCA Report; SAARC Report.

over time passes into 'the general *corpus* of international law' as 'perfectly possible', and 'indeed one of the recognized methods by which new rules of customary international law may be formed'.[280]

Individual RIO reports have dealt with two categories of RIO treaties with a potential influence on international law: (i) treaties concluded by RIOs; and (ii) treaties concluded by Member States but drafted under the auspices of the RIO. To those two categories one may add constituent instruments, the influence of which is discussed in section 6.3 below.

As regards the first category, the RIO whose treaty practice has been singled out as most capable of influencing international law is the EU. It was noted that 'EU practice is especially informative and relevant for the law of treaties', examples including the human rights clauses found in EU agreements with third parties and the impact of agreements such as CETA on 'judicial standards in international dispute settlement e.g., in the field of investment law'.[281] In contrast, the EAEU has only entered into 'bilateral trade agreements such as FTAs', which are unlikely to result in contributions to the development of international law.[282] Similarly, '[n]o examples are readily cited of how CARICOM's international agreements have influenced the development of international law'.[283]

As regards the second category, the Council of Europe, the Organization of American States and the African Union 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. Other examples of influential treaties identified in the reports were:

- In the context of the Council of Europe: the 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, which was 'a major inspiration for the International Law Commission' in its study of nationality in relation to State succession; the 2005 Convention on Action against Trafficking in Human Beings, described as having particular influence 'within the European Union where it represents a notable element of concordance between the Council of Europe system and European Union law';[284] and the 2001 Convention on Cybercrime, to which states outside the Council of Europe may be invited to accede.[285] The influence of this latter treaty is especially evident in the fact that 'the meeting of Ministers of Justice of the Americas has proposed to the OAS States Parties to consider [its] ratification', and that various OAS members have indeed proceeded to do so.[286]

- In the context of the OAS, the 1996 Inter-American Convention against Corruption, as the first of its kind and a source of inspiration for similar treaties concluded under the auspices of CoE, the AU and the UN.

Another RIO involved in the conclusion of treaties that may have an influence on international law is the SCO. For example, the 2009 Agreement among the Governments of the SCO Member States on Cooperation in the Field of Ensuring International Information Security could contribute to the 'formation of customary international law in the cyber context'.[287] As regards ASEAN, it was noted

[280] *North Sea Continental Shelf*, para. 71.
[281] EU Report.
[282] EAEU Report.
[283] CARICOM Report.
[284] CoE Report.
[285] Examples include Japan, Senegal and the Philippines: https://www.coe.int/en/web/cybercrime/the-budapest-convention.
[286] OAS Report. This example 'beyond constituting a real dialogue between regional international organizations, symbolizes and exemplifies the power of the influence of agreements established within the framework of regional IOs for the development of international law'.
[287] SCO Report.

that Member States have 'concluded a significant number of agreements between themselves', which 'could be seen… as generating a [South East] Asian customary international law'.[288]

A related question is whether the interpretation given to RIO treaties by the organs of the relevant RIOs is influential on other parties, such as third States and other IOs. This influence is most felt in the authoritative judgments of the European Court of Human Rights, the Inter-American Court of Human Rights, and the African Court on Human and Peoples' Rights. The same can be said of findings of other human rights bodies. As regards the AU, '[t]he findings of the African Commission on Human and Peoples' Rights have influenced the jurisprudence of courts outside Africa', including the SADC Tribunal (in *Campbell v Zimbabwe*) and the ICJ (in *Diallo (Republic of Guinea v Democratic Republic of the Congo*).[289] In contrast, participants in the Study Group doubted that the organs of RIOs like CIS, the SCO, the AIIB and the EAEU would be in a position to adopt interpretations influential outside of their respective institutional frameworks.[290] In the case of the EAEU, this is partly due to the fact that the EUAU Court 'does not have the competence to interpret… agreements unless it has been expressly provided'.[291]

5.2 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.

5.2.1 RIOs as platforms for State 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. 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'.[292] As regards APEC, it was reported that the organization may 'agree on a common position that is later brought into discussions in binding organizations such as the WTO' and serve as 'an incubator of ideas'.[293]

Another important RIO that potentially falls in this category is ASEAN.[294] It was reported that despite the organization's commitment to the principles of sovereignty, territorial integrity and peaceful settlement of disputes, 'the development of a significant legal corpus… marked by extensive soft law, informal dispute settlement, a downplaying of censure' is under way.[295] Fields on which ASEAN-generated practice may be particularly impactful include the rights of persons with disabilities and action taken in response to the haze generated by the burning of forests.[296]

5.2.2 RIO practice and the formation of custom

[288] ASEAN Report.
[289] AU Report.
[290] See the respective Reports.
[291] EAEU Report.
[292] OAS Report.
[293] APEC Report.
[294] ASEAN Report (noting that '[t]here is an argument to be had on whether ASEAN is better conceived as an autonomous regional international organisation or as an arena where ASEAN States conclude treaties and soft law between themselves').
[295] ASEAN Report.
[296] 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).

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 expression, of rules of customary international law'.[297] 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.[298] Turning to RIOs more specifically, the question arises of what is the demonstrated or potential capacity of regional organizations to contribute to the emergence of universal or special customary rules.

The main example of 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.[299] 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'.[300] Likewise, it was reported that 'African RIOs can make significant contributions in areas like the right to development, self-determination and human rights',[301] 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'.[302] Even RIOs like NATO, where the lines between action by the organization and action by the members States are blurry, an institutional influence on the development of rules governing issues such as military operations in the cyberspace may be discerned.[303]

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' organisation which 'in the future could contribute to regional customary law'.[304] 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 her or his post upon the election of a Secretary General of the same nationality,[305] the Member State of which the leaving Deputy Secretary General is a national is under an obligation to reimburse the Secretariat with the funds deployed to compensate her or him for the forfeited years. In its *Advisory Opinion to the Council of Ministers (on Compensation for Forfeiture)*,[306] the EAC Court 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'.[307]

5.3 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

[297] Yearbook of the ILC 2018, vol. 2, part 2, p. 96, Conclusion 4(2).
[298] Possession of international legal personality would be a prerequisite: see OSCE Report (pointing out that 'it is unlikely that the OSCE, downplaying its legal independence as such, would be considered a source of relevant practice').
[299] Yearbook of the ILC 2018, vol. 2, part 2, p. 97, para. 7. See also EU Report (citing *Cabrita,* 'The integration paradox: an ILC view on the EU contribution to the codification and development of rules of general international law' in Europe and the World: A law review Vol.1 Iss. 5, 2021).
[300] EU Report. For a recent scholarly contribution, see Bordin, Müller & Pascual-Vives (eds), *The European Union and Customary International Law* (CUP, 2022).
[301] AU Report.
[302] AIIB Report.
[303] NATO Report.
[304] ECOWAS Report. See also OAS Report.
[305] As required by the EAC Treaty.
[306] [2015] EACJ Advisory Opinion No. 1 of 2015.
[307] EAC Report.

special rules of international law.[308] 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'.[309] Other RIO courts that have dealt with issues of customary international law (such as the EAC Court[310]), or that are given the authority to apply custom even if they have not yet had the occasion to do so (such as the EFTA Court and the EAEU Court[311]), are also in a position to make similar contributions over time.

And then there are the human rights courts under the auspices of the Council of Europe, 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 the sound application of the treaty in question'.[312] 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 identification of customary international law, which consists in reflecting, as best as possible, State practice'.[313] 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'.[314] As regards the African system, the African Commission of Human and Peoples' Rights' 'statements on the right to life, exhaustion of remedies, conditions of detention, protection of property in armed conflict, statelessness and amnesty' are also noteworthy.[315]

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[308] The ongoing International Law Commission's ongoing study on subsidiary means for the determination of rules of international law includes 'regional judicial bodies, such as the African Court on Human and Peoples' Rights, the Court of Justice of the European Union, the Economic Community of West African States (ECOWAS) Court of Justice, the European Court of Human Rights and the Inter-American Court of Human Rights': Report of the International Law Commission 2023, A/78/10, at 82.

[309] EU Report (citing Report of the International Law Commission Seventy First Session, UN Doc A/74/10 (2019) and *Kadi v. Council of the European Union and Commission of the European Communities*). See also Odermatt, 'The European Union's Role in the Making of Customary International Law' in Bordin, Muller & Pascual-Vives, *The EU and Customary International Law* (2022).

[310] See above.

[311] See the EEA Report and the EAEU Report.

[312] *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 664, para. 74.

[313] CoE Report (discussing *Al-Adsani v. United Kingdom* [GC], application No. 35763/97, judgment of 21 November 2001, ECHR Reports 2001-XI, p. 101).

[314] *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, p. 99, paras. 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 (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, 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 ZIEMELE I., « Customary International Law in the Case Law of the European Court of Human Rights - The Method », The Law and Practice of International Courts and Tribunals, 2013, pp. 243-252 and SCHABAS. A. W., « Le droit coutumier, les normes impératives (jus cogens), et la Cour européenne des droits de l'homme », in Revue québécoise de droit international, Special Issue, December 2020, p. 681–704.)

[315] AU Report.

On the other hand, RIOs may engage in studies which, similar to the International Law Commission in the context of the United Nations, result in particularly relevant examples of 'teachings of the most highly qualified publicists of the various nations' that serve as an authoritative aid to the determination of treaty 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'.[316] 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'.[317] 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 'organizes 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.[318]

5.4 Other forms of RIO influence on international law

The RIO reports have identified other ways in which RIOs may influence international law, including:

(i) The part that the OIC played in the institution of proceedings against Myanmar at the International Court of Justice over allegations of genocide perpetrated against the Rohingya minority.[319] The OIC passed a resolution backing the plan to have recourse to the ICJ, and the case was accordingly brought by The Gambia, 'as Chair of the OIC Ad Hoc Ministerial Committee on Accountability for Human Rights Violations against the Rohingya'.[320]

(ii) The IsDB action to ensure that 'some of its financing agreements with various international entities and firms combine both conventional financing and Islamic modes of financing', contributing to the creation of 'a new set of international accounting, auditing, governance and ethical standards' that can be 'integrated in the international finance system and international financial rules and regulations'.[321] In this connection, the ISDB 'has helped create several international standard setting organizations', including the Malaysia based Islamic Financial Services Board (IFSB).[322]

(iii) The (non-binding) APEC initiatives such as the APEC Non-Binding Investment Principles, the APEC Principles for Cross-Border Trade in Services, APEC Model Measures for RTA/FTA and APEC Best Practices for RTA/FTA which members 'have incorporated… in their own international agreements', especially free trade agreements and bilateral investment treaties.[323]

316 Statutes of the Inter-American Juridical Committee, OEA/Ser. Q/I rev.3, November 12, 2021.
317 OAS Report (citing Lima, O Comitê Jurídico Interamericano da OEA e a codificação do direito internacional regional. *Brazilian Journal of International Law*, vol. 16, nº 2, pp. 296-298).
318 CoE Report.
319 OIC Report.
320 https://www.oic-oci.org/topic/?t_id=22925&ref=13830&lan=en
321 ISDB Report.
322 Ibid.
323 APEC Report.

(iv) The relevance of EU treaty practice even in cases where the EU is not a party to the treaty at stake. The EU Report brings the example of the influence among the parties to the Convention on the Elimination of All Forms of Discrimination against Women of the view, shared by the EU and its Member States, that an impermissible reservation relating to Sharia cannot preclude the entry into force of the Convention for the reserving State.[324] This influence is due to 'the fact that the EU and its Member States strive for a united approach to the interpretation and application of the agreement which necessarily carries weight for other parties', not least because of 'the economic power of EU market'.[325]

6 RIOS AND THE REGIONALIZATION OF INTERNATIONAL LAW

The SG groups were asked to reflect on how RIOs relate to existing forms of regionalism in international law (e.g. regional treaties; regional mutual recognition principle; regional groups in universal international organizations such as the UN and its related IOs; regional IL codification commissions). Some reports mention a certain regional approach to international law issues. For example, the OAS plays a role in developing 'American' way to tackle issues.[326] The African Union reflects the collective historical past of African States and has prioritized solving African problems through African institutions.[327]

Reports also showed how some RIOs act as a political group within the United Nations system. For example, the EU, AU, ASEAN, OIC, CARICOM, and PIF all make statements at UN General Assembly meetings. The regional groups in the United Nations (Africa, Asia-Pacific, Eastern Europe, Latin America and Caribbean, Western Europe and others) do not coincide with the membership of RIOs, however.

6.1 Regionalization and the universality of international law

Few individual RIO reports showed that the regionalisation of international law impacted the universal authority of international law. There was discussion about whether such 'regionalization' was necessarily a negative development. It was argued that regional cooperation and integration can help to safeguard a higher standard of the international rule of law among a group of more homogeneous States and actors. If universal authority is paralysed or ineffective due to conflicting interests, regionalization can be a way forward. However, this should not be understood as suggesting that the regionalisation of international law should be progressively pursued at the expense of the universal international law system. As always, it depends on the individual case whether regionalization adds value to the international legal order.[328]

It was also noted that regionalization can contribute to the fragmentation of international law.[329] Reports gave examples of the regionalization of trade and foreign investment regimes, or human rights protection.[330] On the whole, the RIO reports did not provide examples of how RIOs and regional law undermined universality of international law.

Individual reports showed overlap in the field of peace and security. In particular, the reports on OSCE, CSTO, and NATO reflected on the overlapping roles in this field and the potential for cooperation. Reports identified the need to ensure coherence between the UN and RIOs.[331]

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[324] EU Report (citing F. Hoffmeister, The Contribution of EU Practice to International Law, in Cremona (ed) *Developments in EU External Relations* (2008), 37, 71).
[325] Ibid.
[326] OAS Report, see the *Inter-American Democratic Charter.*
[327] AU Report.
[328] See EU Report.
[329] AU Report.
[330] See AU Report.
[331] SAARC Report.

Individual RIO reports also mentioned how regionalisation of international law can have advantages. For example, it may help legitimize international law through closer international cooperation.[332] As discussed above, the RIO reports showed a web of cooperation between RIOs and between RIOs and UIOs.

6.2 An International law of RIOs?

The individual RIO reports revealed the heterogenous nature of regional organizations. The reports addressed the question whether an 'international law of regional organizations' has emerged. One report noted that a conscious effort to develop the law of RIOs would be as difficult as developing a law of IOs.[333] However, the reports revealed the need to have more comparative studies of RIOs, which will increase our understanding of legal sub-systems and international law.[334] Other reports mentioned that there might be some general principles and rules that apply to RIOs of a similar type (trade, security).[335] Reports also mentioned that a conscious effort to develop a law of RIOs would likely be Euro-centric.[336] Another report mentioned that, beyond a comparative study of RIOs, the international law of RIOs should focus on clarifying the relationship between RIOs.[337]

6.3 Institutional Borrowing and RIOs

Individual RIO reports identified some general trends regarding institutional borrowing from other RIOs and UIOs.

A number of reports identified that RIOs pursuing economic integration possess certain traits that are similar to the European Union. However, the individual RIO reports and discussions within the SG disagreed as to whether the EU should be viewed as a 'blueprint' for other RIOs, especially those of an integrative character (e.g. ECOWAS, SADC, CARICOM etc). Some RIOs incorporate certain 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. The CCJ has cited and applied principles from CJEU cases when interpreting and applying the RTC. The EAC was described as borrowing legally and institutionally from the EU, with the EACJ also borrowing from the ECJ.[338] The AU has also been influenced by the European Union.[339] Despite significant differences with the EU in the institutional set-up legally the EAEU borrows quite a lot from the European integration model.[340]

While individual reports identified institutional similarities between several RIOs and the European Union, SG members cautioned against presenting the EU as a 'model' or 'blueprint' for regional integration. Indeed, the individual ccc reports demonstrate the plurality of RIOs in terms of design and the development of their internal law, which goes against the narrative of the EU being a model RIO.[341] The RIO reports used the EU as a point of comparison with other RIOs.

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[332] CoE Report.
[333] NATO Report.
[334] EU Report, CoE Report.
[335] SCO Report.
[336] ASEAN Report.
[337] AU Report.
[338] The EAC Report mentions doctrines of precedence of community law over domestic law, direct effect and state liability for breaches of community law, preliminary ruling procedure, and individual references as being reflecting EU concepts. See Articles 8(2),(4),(5) and 16 EAC Treaty. See also Prof. Anyang' Nyong'o & Ors v Attorney General of Kenya & Ors (No. 2); East African Law Society v Secretary General of the East African Community & Ors (Jurisdiction to Interpret); East African Centre for Trade Policy and Law v Secretary General of the East African Community; and Attorney General of Uganda v Tom Kyahurwenda.
[339] AU Report.
[340] EAEU Report.
[341] OECS Report.

An example of this was the Andean Community. The individual RIO report discusses how it was explicitly modelled on the EU integration process and EU law. However, the Andean Community developed in a different trajectory. In some areas, it developed effective supranational regulation, such as in the field of intellectual property law and free movement of workers.[342] In other areas, the RIO report shows how integration has been less effective. Using other RIOs (including the EU) was viewed as useful for studying integration. The report also mentioned that this could be used to study legal transplants.

There is overlap and institutional borrowing in the field of international economic development and financial organizations. The IsDB cooperates with other RIOs such as the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development as well as with other international organizations such as the World Bank, borrowing and implementing their procurement guidelines and other international best practices. The AIIB borrows legally and institutionally from other multilateral development banks (i.e. Asian Development Bank, Inter-American Development Bank).[343]

7 CONCLUSIONS

The present Report, by presenting and systematising the data gathered by the members of the Study Group, reveals the multiple ways in which RIOs operate within, and interact with, the international legal order. It provides a wealth of information and detail about the practices of RIOs in relation to international law.

From an institutional point of view, the capacity and competence to maintain external relations, including by concluding treaties and memoranda of understanding, enable RIOs to contribute to the shaping of international law. In this connection, possession of international legal personality, whether expressly or impliedly, appears as an essential institutional feature for RIOs to be able to act in their own name, which further justifies its inclusion as an element of the working definition of RIO here adopted. The presence of courts or other forms of dispute settlement is also a factor of institutional relevance, seen as it creates further opportunities for RIOs to engage with international law.

RIOs, as defined for the purposes of the present study, comprise an internal legal order that the member States and RIO organs can make more or less autonomous from the system of public international law. That raises the question of what the terms are for the invocation and application of treaty and customary rules within that legal order. Individual RIO reports suggest that most RIOs are relatively open (or at least thought as being relatively open) to rules of international law, including the so-called 'secondary rules' stemming from the law of treaties and the law of international responsibility.

RIO individual reports have also shown the ways in which RIOs may influence the development of treaty rules, customary rules, and general principles of law. There is a wealth of practice regarding RIO treaty-making, and RIOs are increasingly showing the potential to contribute to the creation of customary rules, be it as a focal point for the practice of their members or through their own practice. RIOs can also serve (and have served) as generators of 'subsidiary means' to identify rules of international law in the sense of Article 38(1)(d) of the ICJ Statute, not only by engaging in dispute settlement but also by carrying out codification projects.

When it comes to the regionalization of international law, members of the SG were relatively circumspect in addressing the issues raised in the questionnaire (which were less descriptive and more evaluative in character). One can still discern, however, a conviction that regionalism can be a

[342] See CAN Report.
[343] AIIB Report.

productive force, leading to innovation and institutional cross-fertilization. Concerns about the fragmentation of the international legal system do not appear to be paramount.

More than anything, the cross-cutting comparative study on the international law of RIOs that this Report encapsulates, and which the individual RIO reports have enabled, provides a starting point for future research.[344] As Damien Chalmers has pointed out, the '[t]he scale and sweep of regional organizations have made them crucibles for ascertaining the possibilities and limits of international law.'[345]

[344] For some further reflections, see Besson & Kassoti, 'The International Law of Regional Organizations – Mapping the Issues', (2024) 21 *International Organizations Law Review* 1, 7-13; Bordin & Odermatt, 'International Law of Regional Organizations: A Comparative Perspective' (2024) 21 *International Organizations Law Review* 19, 40-41.
[345] D. Chalmers, 'Regional Organizations and the Reintegrating of International Law' 30 *European Journal of International Law* (2019) 1.

8 ANNEXES

8.1 Annex 1: Study Group Questionnaire

A. RIOs in the International Institutional Order

Definitions and Delineations

1. What would be a good definition of a regional international organization (RIO) in international law (IL)? Do international lawyers need one? If so, why?
2. What is 'regional' about your RIOs exactly? And how are your RIOs delineated from universal international organizations (UIOs)?
3. Are some of your RIOs also conceived as international institutions of a third kind (e.g. 'supranational', *sui generis*)?

II. Common (Internal and External) Features of RIOs

4. Please give details of internal institutional organization of your RIOs, their membership, subjects, aims/mandate and (internal and/or external) powers/competences?
5. Do your RIOs possess internal and/or international legal personality? In what contexts is this assertion made, by whom and for what purposes?
6. Are your RIOs members of another international organization, or do they have any formal links (e.g. observer status) with other international organizations (including the United Nations and other UIOs)? Do your RIOs include (or allow) other international organizations as members?
7. Do your RIOs have a court or dispute settlement mechanism? If so, describe in a few sentences what this is.
8. Would you describe your RIOs as 'typical' (regional) international organization or as a 'peculiar' (*sui generis*) (regional) international organization? Please comment, as appropriate, on (internal and external) commonalities that your RIOs share with other (universal or regional) international organizations or on any significant differences.

B. IL as (Internal and External) Law of RIOs

Autonomy and Status of the Internal Law of RIOs

9. Do your RIOs, or any of its organs, consider their internal law as an autonomous or self-contained legal order, distinct from that of their Member States, on the one hand, and from international law, on the other? If so, why?
10. How, in turn, does this affect the RIOs' Member States' own legal order's relationship to international law?

II. RIOs and Primary Rules of IL

11. Does the internal law of your RIOs expressly or implicitly require it to comply with international law?
12. What are the sources of IL (customary international law, international agreements of the RIO, general principles of international law) that bind your RIOs, either according to its own organs or according to its Member States, other States and other IOs?
13. What is the status (validity/rank/direct effect) of international law in your RIOs' legal order?

14. How do those direct, but also more indirect ways in which international law permeates your RIOs' legal order (where applicable) (e.g. consistent interpretation) inform the debate about the latter's 'openness' to international law?

15. Are some of the differences of approach to international law also regime-specific (such as e.g. international human rights, environmental law, law of the sea, WTO law)?

III. RIOs and Secondary Rules of IL

16. How does the specificity of your RIOs as IOs and of their RIO-Member State relationships (and especially of the division of competences between the RIO and its Member States) affect the application of the international law on the responsibility of IOs to the RIOs?

17. Please explain if there are any other differences in your RIOs' law with respect to other secondary rules of IL (e.g. sources and the way IL is adopted, amended and abrogated)?

18. How active are your RIOs in concluding treaties? What types of treaties do they conclude?

IV. Reception of IL in RIO law: The Role of Courts (when applicable)

19. What is the role of your RIOs' courts (provided they have any) (or other organs, if applicable) in the interpretation and application of international law?

20. How do your RIOs' courts relate to the jurisdiction and the role of other international judicial and quasi-judicial institutions on international law matters pertaining to the RIO?

21. How is the exclusive jurisdiction of your RIOs' courts over international law issues pertaining to the RIO organized and justified (when applicable)?

C. The (Internal and External) Law of RIOs as IL

I. RIOs' Law as Internal Law of the IO and/or IL

22. Is the internal law (so-called 'rules of the organization' under ARIO) of your RIO considered as domestic or international law by third States and IOs?

23. How do your RIOs address violations of its internal law? Is a breach of the internal law of your RIOs considered as a ground for their international responsibility or that of their members? Or is a responsibility/liability regime specifically provided in the internal law of the RIOs?

24. Do international agreements between your RIOs' Member States derive their legal force from the international law of treaties or from the internal law of the RIO? If they derive their legal force from the international law of treaties, do the Member States invoke the internal law of the RIO to justify a breach of them?

II. The Law of RIOs as IL

25. What are the reception and effects of your RIOs' internal law in international law (e.g. RIO customary law, RIO general principles, RIO case law)?

26. Is there a "RIO law effect" along the lines of what some have referred to as the "Brussels effect", that is, an externalisation of regulations adopted within your RIOs driven by political or market mechanisms?

III. Influence of RIOs' IL Practice on IL

27. Do the international agreements that your RIOs conclude (including mixed agreements, when applicable) have an influence on the development of (general or special) international law? If so, please provide some examples.

28. Is the interpretation given of those agreements by the organs of your RIOs influential on third States and other IOs? If so, please provide some examples.

29. Do your RIOs make or are capable of contributing to the formation of customary international law (including regional customary law)?

30. Do your RIOs' organs engage in the identification and specification of customary international law? If so, are the positions they take influential on third States and other IOs? If so, please provide some examples.

31. Are there any regime-specific differences of approach in this respect (such as e.g. international human rights, environmental law, law of the sea, WTO law)?

D. RIOs and the Regionalization of IL

32. How would you relate your RIOs to existing forms of regionalization of international law (e.g. regional treaties; regional mutual recognition principle; regional groups in universal international organizations such as the UN and its related IOs; regional IL codification commissions)?

33. What is the impact of the increasing regionalization of international law on the universal authority and coherence of international law? Are the conclusions of the ILC Study Group Report on fragmentation of international law still valid in this respect? Should something be done about it and, if so, what exactly?

34. Should the place and role of RIOs within the UN (or other universal IOs) be re-conceived? How exactly?

35. Is it worth, by reference to current discussions about the international law of IOs, to contemplate the possibility of developing an international law of RIOs?

36. Do your RIOs borrow legally and institutionally from other RIOs (which ones and why)? Is comparative RIO law the way forward in this respect?

8.2 Annex 2: List of Organizations Studied

Africa

African Development Bank (ADB)
African Union (AU)
African Continental Free Trade Area (AfCFTA)
East African Community (EAC)
Economic Community of West African States (ECOWAS)
Economic Community of Central African States (ECCAS)
Southern African Development Community (SADC)

Asia and Asia-Pacific

Asian Infrastructure Investment Bank (AIIB)
Asia-Pacific Economic Cooperation (APEC)
Association of South East Asian Nations (ASEAN)
Pacific Islands Forum (PIC)
Pacific Community (SPC)
Shanghai Cooperation Organization (SCO)
South Asian Association for Regional Cooperation (SAARC)

Eurasia

Eurasian Economic Union (EAEU)
Collective Security Treaty Organization (CSTO)
Commonwealth of Independent States (CIS)

Europe

Council of Europe (CoE)
European Economic Area (EEA)
European Union (EU)
European Free Trade Agreement (EFTA)
North Atlantic Treaty Organization (NATO)
Organization for Security and Co-operation in Europe (OSCE)

Latin and Central America

Association of Caribbean States (ACS)
Organisation of Eastern Caribbean States (OECS)
Latin American Integration Association (ALADI)
Alianza Bolivariana para los Pueblos de Nuestra América - Tratado de Comercio de los Pueblos (Bolivarian Alliance for the Peoples of Our America– ALBA)
Comunidad Andina (Andean Community – CAN)
Caribbean Community (CARICOM)
Community of Latin American and Caribbean States (CELAC)
Southern Common Market (MERCOSUR)
Organization of American States (OAS)
Organización Latinoamericana De Desarrollo Pesquero (Latin American Organization for Fisheries Development, OLDEPESCA)
Sistema de Integracion Centroamericano (SICA)
Union of South American Nations (UNASUR)

Middle East and Arab World

Arab Maghreb Union
Gulf Cooperation Council (GCC)
Islamic Development Bank (IsDB)
Organization of Islamic Cooperation (OIC)

Organizations Studied but falling outside RIO definition

Alianza Bolivariana para los Pueblos de Nuestra América - Tratado de Comercio de los Pueblos (Bolivarian Alliance for the Peoples of Our America– ALBA)
Community of Latin American and Caribbean States (CELAC)
European Free Trade Agreement (EFTA)
European Economic Area (EEA)

8.3 Annex 3: List of Issues/Sub-Issues

International Customary Law and Law-Making

- As a source of applicable law by RIOs in your region
- As a product of RIOs' (internal and external) international legal practice: customary international law-making by the RIO *qua* IO and/or *qua* platform for their Member States' customary international law-making
- Distinction between regional and/or universal customary international law
- Relation to related sources such as general principles of law, and to *jus cogens*
- Implications in the ILC codification processes (e.g. submissions, interventions, reactions by RIOs in your region)
- Convergence/divergence on those issues within the regional pool of RIOs studied in your report, and assessment

Treaties and International Treaty Law

- As a source of applicable law by RIOs in your region
- As a product of RIO (internal and external) international law practice
- Distinction between international treaty law between States, between IOs and between States and IOs
- Application of VCLT 1969 (including by analogy) and/or 1986
- Types of treaties: constitutive treaties; treaties between Member States; treaties with third parties (States or IOs); mixed treaties (RIO+Member States and a third State/IO)
- Further types of treaties: bilateral and multilateral treaties; contract-like and legislation-like treaties
- Notion of treaty, and delineations from political commitments, memoranda of understanding, gentlemen's agreements etc.
- Specific issues of treaty practice: conclusion; reservations; interpretation; termination
- Implications in the ILC codification processes (e.g. submissions, interventions, reactions by RIOs in your region)
- Convergence/divergence on those issues within the regional pool of RIOs studied in your report, and assessment

International Dispute Settlement Law

- As a source of applicable law by RIOs in your region
- As a product of RIO (internal and external) international law practice
- IDS mechanisms: judicial and/or political; advisory mechanisms
- Exclusive v. pluralist models; relationship to international arbitration; relation to universal IDS mechanisms
- In case of RIO courts: dispute settlement v. law-making, justice
- Standing: private persons, Member States, third States, other RIOs
- Convergence/divergence on those issues within the regional pool of RIOs studied in your report, and assessment

International Immunities Law

- As applicable law by RIOs in your region
- As product of RIO (internal and external) international law practice
- Sources: constitutive treaties; headquarters agreement; UN Convention; regional conventions; customary international law of immunities; and/or domestic law in the region
- Foundations: functional; other?
- Types: immunities of jurisdiction and execution; of the organization and of its officials/civil servants; criminal, administrative and civil; complete or relative; exceptions and exemptions; alternative internal remedies condition
- Human rights exception; civil service disputes and labour law protection
- Implications in the ILC codification processes (e.g. submissions, interventions, reactions by RIOs in your region)
- Convergence/divergence on those issues within the regional pool of RIOs studied in your report, and assessment

International Jurisdiction Law

- As a source of applicable law by RIOs in your region
- As a product of RIO (internal and external) international law practice
- Competence/jurisdiction distinction; (quasi-)sovereignty issue
- Territorial/extraterritorial (e.g. personal, protective or universal) jurisdiction
- Prescriptive, enforcement and adjudicative jurisdiction; equivalents in the absence of jurisdiction *stricto sensu* (e.g. through economic influence, conditionality, etc.)
- Convergence/divergence on those issues within the regional pool of RIOs studied in your report, and assessment

International Responsibility Law

- As a source of applicable law by RIOs in your region
- As a product of RIO (internal and external) international law practice
- Responsibility for breach of RIO law and for breach of international law; status and opposability of the "rules of the organization"
- Responsibility of Member States or of the RIO; responsibility of the RIO for its Member States; responsibility of the Member States for the RIO
- ARSIWA and/or ARIO; special regimes of international responsibility law (international human rights law, international humanitarian law, international investment law); own regime of international responsibility law and invocation of a *lex specialis*
- Conditions of responsibility: attribution of conduct v. responsibility, joint conduct, circumvention of State duties
- Content of responsibility: joint and several responsibility, financial liability of Member States
- Implementation of responsibility: collective countermeasures (esp. sanctions, either autonomous or following UN sanctions)

- Implications in the ILC codification process (e.g. submissions, interventions, reactions by RIOs in your region)
- Convergence/divergence on those issues within the regional pool of RIOs studied in your report, and assessment

8.4 Annex 4: Paris Workshop Programme

8 December	Fondation Hugot	11 Rue de l'Université, 75007 Paris
09.00-09.30	*Introduction*	Samantha Besson & Eva Kassoti
09.30-12.00	*Part 1: RIOs and International Law*	*Moderation: Eva Kassoti*
09.30-10.00	RIOs in the History of International Law	Guy Fiti Sinclair (zoom)
10.00-10.30	The Vocabulary of Regional Organizations	Damian Chalmers
10.30-11.00	Break	
11.00-11.30	RIOs in the International Institutional Order	Catherine Brölmann
11.30-12.00	States and RIOs	Apollin Koagne Zouapet (zoom)
12.00-13.30	Lunch	Fondation Hugot
13.30-14.30	*Part 1: RIOs and International Law (continued)*	*Moderation: Eva Kassoti*
13.30-14.00	RIOs and the United Nations	Kirsten Schmalenbach
14.00-14.30	RIOs and Regionalism in the Theory International Law	Fabia Fernandes Carvalho (zoom)
14.30-18.00	*Part 2: The Comparati International Law of of RIOs*	*Moderation: Samantha Besson*
14.30-15.15	RIOs and International Dispute Settlement	RIOs in Africa: Apollin Koagne Zouapet (zoom)/Regis Simo/Emmanuel Sebijjo Ssemmanda RIOs in Asia-Pacific: Rowan Nicholson (zoom) RIOs in Eurasia: Kirill Entin (zoom) RIOs in Europe: Pieter Jan Kuijper & Laurence Boisson de Chazournes (zoom) RIOs in Latin America and the Caribbean: Chantal Ononaiwu (zoom) RIOs in the Middle East & the Arab world: Ahmed Jabri
15.15-15.45	Break	
15.45-16.30	RIOs and International Immunities Law	RIOs in Africa: Kehinde Folake Olaoye (zoom)/Emmanuel Sebijjo Ssemmanda RIOs in Asia-Pacific: Yifeng Chen (zoom) RIOs in Eurasia: Nataliya Maroz RIOs in Europe: Cedric Ryngaert RIOs in Latin America and the Caribbean: Andrés Delgado Casteleiro (zoom)

16.30-17.15	RIOs and Customary International Law	RIOs in the Middle East & the Arab world: Ahmed Jabri RIOs in Africa: Kehinde Folake Olaoye (zoom)/Emmanuel Sebijjo Ssemmanda RIOs in Asia-Pacific: Srinivas Burra (zoom) RIOs in Eurasia: Nataliya Maroz RIOs in Europe: Jed Odermatt RIOs in Latin America and the Caribbean: Chantal Ononaiwu (zoom) RIOs in the Middle East & the Arab world: Khalid Ismaili Idrissi (zoom)
17.15-18.00	General Discussion	All participants
19.30	Dinner	Restaurant *Les Éditeurs*, 4 Carrefour de l'Odéon, 75006 Paris
9 December	Fondation Hugot	11 Rue de l'Université, 75007 Paris
09.00-12.30	*Part 2: The Comparative International Law of RIOs (continued)*	*Moderation: Jed Odermatt*
09.00-09.45	RIOs and International Responsibility Law	RIOs in Africa: Kehinde Folake Olaoye (zoom)/Emmanuel Sebijjo Ssemmanda RIOs in Asia-Pacific: Rowan Nicholson (zoom) RIOs in Eurasia: Nataliya Maroz RIOs in Europe: Kristen Schmalenbach RIOs in Latin America and the Caribbean: René Urueña RIOs in the Middle East & the Arab world: Ahmed Jabri
09.45-10.30	RIOs and International Jurisdiction Law	RIOs in Africa: Emmanuel Sebijjo Ssemmanda RIOs in Asia-Pacific: Yifeng Chen (zoom) RIOs in Eurasia: Kirill Entin (zoom) RIOs in Europe: Cedric Ryngaert RIOs in Latin America and the Caribbean: René Urueña RIOs in the Middle East & the Arab world: Khalid Ismaili Idrissi (zoom)
10.30-11.00	Break	
11.00-11.45	RIOs and the International Law of Treaties	RIOs in Africa: Regis Simo/Emmanuel Sebijjo Ssemmanda RIOs in Asia-Pacific: Guy Fiti Sinclair (zoom) RIOs in Eurasia: Nataliya Maroz RIOs in Europe: Catherine Brölmann RIOs in Latin America and the Caribbean: Andrés Delgado Casteleiro (zoom) RIOs in the Middle East & the Arab world: Khalid Ismaili Idrissi (zoom)
11.45-12.15	An Inter-Regional Comparative Assessment	Jed Odermatt & Fernando Lusa Bordin (zoom)
12.15-13.00	General Discussion	All participants

13.00-13.15	*Closing Remarks and Next Steps*	Eva Kassoti & Samantha Besson
13.15-14.30	Lunch	Fondation Hugot

8.5 Annex 5: International Organizations Law Review, Special Issue, Table of Contents

1. *The International Law of Regional Organizations, Mapping the Issues* (Samantha Besson & Eva Kassoti)
2. *The International Law of Regional International Organizations: A Comparative Perspective* (Fernando L. Bordin & Jed Odermatt)
3. *The Distinctiveness of International Regional Organizational Law* (Damian Chalmers)
4. *Between Functionalism and Hegemony: Regional International Organisations in the History of International Law* (Guy Sinclair)
5. *The Politics of Regional International Organizations: A New Dawn for the Political Legitimacy of International Law* (Samantha Besson)
6. *Regional International Organizations and Regionalism in the Theory of International Institutional Law* (Fabia Fernandes Carvalho)
7. *Regional Organizations in International Law: Exploring the Function-Territory Divide* (Catherine Brölmann)
8. *States and Regional International Organizations* (Apollin Koagne Zouapet)
9. *The Relationship between RIOs and the UN in Matters of Peace and Security: It's Complicated* (Kirsten Schmalenbach)
10. *The European Union and other Regional International Organizations: Tales of Solidarity* (Eva Kassoti)