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*Interactions Between Regional and Universal Organizations: A Legal Perspective.* By Laurence Boisson de Chazournes. Leiden: Brill | Nijhoff, 2017. Pp. xxv, 382. Index. doi:10.1017/ajil.2020.4

Regional organizations are an important part of everyday international life. Newspapers in the fall of 2019 would comment on—to name a few organizations—the Southern Common Market (MERCOSUR for its Spanish initials) and the possible trade deal with the EU; the Asian Infrastructure Investment Bank created in 2015 as an alternative to the Asian Development Bank; the Amazon Cooperation Treaty Organization and its dispute with U.S. online retail company Amazon over the new internet space “amazon”; and the European Union and the intricate Brexit crisis, which has been attracting global attention since 2016. Still, regional organizations appear to have a modest role in the narrative of international law and international organization(s), and as such they are infrequently the object of legal study.

The modest role of regionalism is at least partly explained by the counterforce of two discourses on which international law has traditionally relied in response to unilateralist tendencies, the discourses of universality (or the normative variant “universalism”) and of function (or the normative variant “functionalism”). These also have been undercurrents for much of the thinking about international organizations as international actors.

Function is commonly taken as the key defining principle and basis for authority of international organizations, and contrasted with territorial sovereignty of states. International organizations are set up with functionally limited competences within an (in principle) unlimited territory, rather than with unlimited competences with a (in principle) limited territorial scope. For this functional foundation, organizations for a long time were pictured as inherently neutral and less susceptible to the snares of individual state interest and sovereign conflict.

The discourse of universality revolves around a universal foundation or scope of the law. Indeed, the appeal of international organizations often seems linked to a picture of universal membership—which in a sense offers, within the boundaries of a particular issue area, a form of political organization alternative to the state. This image is epitomized by the United Nations with its semi-“monopoly” on the use of force (even if exercised through authorization) granted by the Charter system. The universality and functionality discourses with respect to international organizations have come together in the idea of an institutional-normative sphere next to classic interstate law. Thus, in the 1970s the notion of an “international superstructure” emerged, referring to the layer of institutional arrangements “over and above” states.<sup>1</sup>

Clearly, regional organizations defy both the vision of a universally applicable normative framework and the vision of a deterritorialized world in which authority is divided by issue area or “function.” Regional organizations elude the territory-function dichotomy that some scholars have developed as a basis for explanatory models.<sup>2</sup> And in the everyday practice of international life, regional organizations may be perceived as problematic as they seem to undercut the unity of international normative regimes. Inis Claude Jr. in his seminal work on international organization spoke squarely of “the problem of regionalism.”<sup>3</sup> A recent study has identified the phenomenon of “non-democratic

<sup>1</sup> “The international community, it is true, is still to be considered as a society of sovereign and equal states but the increasing number of organizations have come to play such an important and permanent part in international relations that they now form a kind of superstructure over and above the society of States.” Hermann Mosler, *The International Society as a Legal Community - Part 3: Institutionalised International Co-operation*, 140 RECUEIL DES COURS 1, 11, 189 (1974).

<sup>2</sup> Cf. the shift from territoriality to functionality in the sociological analysis in the book by Nicholas Luhmann: *DAS RECHT DER GESELLSCHAFT* 577 (paperback ed. 1993).

<sup>3</sup> INIS L. CLAUDE JR., *SWORDS INTO PLOUGHSHARES: THE PROBLEMS AND PROGRESS OF INTERNATIONAL ORGANIZATION* 102–13 (4th ed. 1971) (see quote in n. 12).

international organizations,” that is, regional organizations founded by “autocratic states.”<sup>4</sup>

While there may thus be reasons why regional organizations have generally remained understudied in international law,<sup>5</sup> a fair number of international organizations are, in the geographical or the geopolitical sense, *regional*, with a considerable impact on international affairs.

The book by Laurence Boisson de Chazournes, professor of international law at the University of Geneva Law School, is an important contribution to the study of regionalism in several respects. It focuses on regional organizations from an institutional law viewpoint. Moreover, it is one of the few to address interinstitutional cooperation, and it is practically unique in looking specifically at the relations between regional organizations and universal organizations.<sup>6</sup> This theme was taken up almost half a century ago by Michel Virally, but with a much smaller scope and in a very different time.<sup>7</sup> That said, Boisson de Chazournes’s book may be placed in this tradition for the rigorous systematization of the material.

<sup>4</sup> ANASTASSIA V. OBYDENKOVA & ALEXANDER LIBMAN, *AUTHORITARIAN REGIONALISM IN THE WORLD OF INTERNATIONAL ORGANIZATIONS: GLOBAL PERSPECTIVE AND THE EURASIAN ENIGMA* (2019).

<sup>5</sup> A recent exception is the Symposium on “Regional Organization and Regional Integration” in the *European Journal of International Law* (see, e.g., the introduction by Damian Chalmers, *Regional Organizations and the Reintegrating of International Law*, 30 EUR. J. INT’L L. 163 (2019)).

<sup>6</sup> See, e.g., HENRY G. SCHERMERS & NIELS M. BLOKKER, *INTERNATIONAL INSTITUTIONAL LAW*, at paras. 1691–741 (6th rev. ed. 2018); JAN KLABBERS, *AN INTRODUCTION TO INTERNATIONAL ORGANIZATIONS LAW* (2015) (chapter 13 on “inter-IO liaisons”); see also early concerns in Clarence Wilfred Jenks, *Co-ordination: A New Problem of International Organization: A Preliminary Survey of the Law and Practice of Inter-organizational Relationships*, 77 RECUEIL DES COURS 151 (1950); René-Jean Dupuy, *Le droit des relations entre les organisations internationales*, 100 RECUEIL DES COURS 457 (1960). Note that none of these authors single out regional organizations.

<sup>7</sup> See, e.g., Michel Virally, *Les relations entre organisations régionales et organisations universelles*, in SFDI, *RÉGIONALISME ET UNIVERSALISME DANS LE DROIT INTERNATIONAL CONTEMPORAIN* 147–65 (1977).

The volume is based on the well-received lectures delivered by the author at the Hague Academy of International Law,<sup>8</sup> with the French title mentioning “*relations*.” The present title in English refers to “interactions,” which in fact better captures the diffuse mechanisms at play between regional and universal organizations. It contains solid analysis of these interactions in topical fields, such as trade law, peace and security, and human rights, and as such the book can be genuinely said to fill a gap in the academic literature on international organizations. The subtitle emphasizes the book’s “legal perspective,” thus helpfully setting it apart from studies with an international relations or economic approach. Yet the technical ring of the title should not give the idea that the focus is exclusively on legal technicalities. Two facets are in fact addressed: the institutional-legal dimension, and the politics of an inherently lopsided relation between universal and regional mechanisms. Otherwise, the level of research is such that the individual chapters could stand on their own in the academic literature of the respective substantive law fields (all longtime areas of specialization of the author).

The book is to be lauded for endeavoring to identify structures and trends in a disciplinary field that is notorious for being anecdotal and bound to focus on stock-taking. The stage is set in the first two chapters, which contain a broad range of examples—from transboundary watercourses governance to trade to peace and security—which enable the reader to glean possible general patterns and also to form ideas about those organizations that—inevitably—do not figure in the book.

The scope of the study is set with a definition and to some degree a taxonomy of regional organizations: “geographical proximity” (in some form) (p. 8), in combination with “solidarity founded on common interest” (p. 11). This would be coupled with an “integrative will” (to establish joint regional institutions) (p. 14) and “crystallization” (the actual regulation of an

<sup>8</sup> Laurence Boisson de Chazournes, *Les relations entre organisations régionales et organisations universelles*, 347 RECUEIL DES COURS 79 (2010).

issue through such institutions) (p. 16). The balance between the latter two may vary per organization and over time. After a solid bit of political history on regional arrangements (pp. 28–52), such as in the River Commissions, regionalism is discussed as a tendency, an ideology, and an inspiration, juxtaposed with universalism.

The book goes on to identify “in a world of growing linkages between universal and regional organizations” (ch. 2) four categories of relationships: “institutional”; “operational”; “surveillance”; and “emulation” (p. 66). These categories are illustrated entirely with facts and figures from the context of international financial institutions, such as the African Development Bank, the European Bank for Reconstruction and Development, and other regional development banks.

The central part of the book then looks at the relationship between universal and regional organizations in three areas that are vast and complex: interaction between the World Trade Organization (WTO) and various regional trade arrangements; interaction between the UN and regional organizations in the maintenance of international peace and security; and interaction between decisions of the UN Security Council and human rights standards of (universal and) regional origin and scope.

The WTO is connected to three forms of institutionalized regionalism: free trade areas, common markets, and customs unions (ch. 3). The relations of the WTO with regional arrangements may be couched in terms of “complementarity,” such as was originally envisaged in Article XXIV of the General Agreement on Tariffs and Trade (GATT) (p. 114); but also in terms of “potential for conflict” in dispute resolution, such as in GATT and MERCOSUR (p. 120); and in terms of “competition” with regional trade agreements (p. 137).

The sizeable and thorough chapter on cooperation of regional organizations with the UN in the area of peace and security is different in that the parameters for the relation between the universal and the regional are essentially fixed, by the universal (UN-wide) “collective security system” (ch. 4). This chapter gives an overview of

different forms of cooperation of the UN with regional organizations in a highly political context. Combined with an institutional focus, this makes for, among other things, a systematic examination of the definition of “regional organization” applied in practice. The question as to whether a collectivity amounts to a “regional arrangement or agency” in the sense of Article 52 (peaceful settlement of disputes) or Article 53 (enforcement action) of the UN Charter, and whether a structure such as the North Atlantic Treaty Organization aimed at collective self-defense in the sense of Article 51 of the UN Charter also qualifies as a “regional arrangement” under the Charter’s Chapter VIII,<sup>9</sup> is difficult to answer at a general level. What seems clear is that some of the requirements (such as institutionalization; consistency with the purposes and principles of the UN; and competence in the field of the maintenance of peace and security) in practice are applied with “radical flexibility” (p. 155). The author recalls, interestingly, that while the UN decides which institutions qualify as a regional organization, ultimately it “is powerless when an organization refuses to be considered as a regional organization under Chapter VIII” (p. 153).

The focus on the generally somewhat understudied Chapter VIII also yields a precise analysis of the difference between the *utilization* and the *authorization* of “regional arrangements or agencies” by the Security Council in case of enforcement action (UN Charter Article 53(1), first and second sentences, respectively), with an overview of some terminological confusion among scholars and commentators, as well as courts such as the European Court of Human Rights (ECtHR). It is worth noting that the concept of “authorization,” which has assumed such a prominent role in unwritten Security Council law and practice under Chapter VII, *is* actually mentioned in

<sup>9</sup> Chapter VIII, entitled “Regional Arrangements,” comprises Article 52 (regional arrangements engaging in pacific settlement of a dispute); Article 53 (regional arrangements taking enforcement action, only upon authorization of the UN Security Council); and Article 54 (duty to keep UN Security Council informed).

the Charter, namely in Article 53. That provision leaves no right of initiative to the regional organization, but it does leave the decision on the actual resort to force to such organization. Interestingly, as the book points out, the UN Security Council is relying more on regional organizations than before, but more often with a declared basis in Chapter VII<sup>10</sup> (with a new role for the previously obscure Article 48(2)<sup>11</sup> of the Charter) rather than in Chapter VIII. The book sets out how this “migration of regionalism” (p. 196) to Chapter VII—leaving various “obscure legal motivations” (p. 198) aside—seems to be inspired by a wish to avoid the restrictions of Chapter VIII, and is “undoubtedly based on the sense of subordination that Chapter VIII might convey to regional organizations because of its explicit authorization model and the express requirement to submit reports to the [Security Council]” (p. 203). In the context of “responsibility allocation” (p. 212)—in fact focused on “attribution of conduct”—the Chapter in conclusion offers a treatment of the 2011 International Law Commission (ILC) Articles on the Responsibility of International Organizations.

When it comes to enforcement action, there is an oscillation between the regional organization’s subservience to the UN on the one hand and its struggle for autonomy on the other. This is illustrated, for example, by the case of the African Union, which is “trying to preserve its autonomy in reacting to African crises while at the same time accepting UN financial and logistical contributions for operations undertaken by the Union or under its authority” (p. 254). The European Union is avoiding its qualification as “regional organization” altogether “so as not to subject itself to Chapters VII/VIII of the UN Charter and thus to UN control” (*id.*).

<sup>10</sup> Chapter VII “Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression,” specifically includes the Charter provisions on the lawful use of force and enforcement measures.

<sup>11</sup> Article 48(2) reads: “Such [Security Council] decisions shall be carried out by the Members of the United Nations directly and through their action *in the appropriate international agencies of which they are members*” (emphasis added).

Finally, in a conceptual move that calls for some alertness on the part of the reader, the book turns to the interaction between the universal and the regional through the lens of a tension between coercive measures taken by the UN Security Council and human rights standards (ch. 5). In this case, the interaction between the regional and the universal—tested on case law of the European Court of Human Rights and the Court of Justice of the European Union (CJEU)—is captured in a spectrum ranging from “unconditional subordination” to “conditional deference” to “autonomy” of the regional regime.

This spectrum—to some extent a central motive of the entire book—is the structuring angle for the analysis in the last chapter, which wonderfully illustrates how seasoned topics such as the ECtHR *Behrami and Saramati* judgment<sup>12</sup> and the CJEU *Kadi* cases can assume fresh relevance through the regional-universal perspective. While the 2005 *Kadi* case<sup>13</sup> before the Court of First Instance was marked by “subordination” of the human rights standards to the UN Security Council resolution (p. 265), in the *Kadi* case that reached the Grand Chamber in 2008<sup>14</sup> (p. 278) the EU order was accorded

<sup>12</sup> *Behrami and Behrami v. France* (Application No. 71412/01); and *Saramati v. France, Germany and Norway* (Application No. 78166/01), Admissibility Decision (Eur. Ct. Hum. Rts. May 2, 2007) (on attribution of impugned conduct to, respectively, the NATO Mission in Kosovo and the UN Mission in Kosovo rather than to the member states whose nationals were involved).

<sup>13</sup> *Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the EU and Commission of the EC*, Case T-306/01, and *Yassin Abdullah Kadi v. Council of the EU and the Commission of the EC*, Case T-315/01, Judgments (Ct. First Instance Sept. 21, 2005). Plaintiffs saw assets frozen pursuant to a UN Security Council Resolution and a subsequent EU Regulation; they claimed this was unlawful and amounted to a breach of human rights. The Court of First Instance held it was not able to review UN Security Council Resolutions.

<sup>14</sup> Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the EU and Commission of the EC*, Judgment (Eur. Ct. Just. Sept. 3, 2008) (the Court in this decision conceptualized the EU as an autonomous order and annulled the impugned

autonomy. The advocate-general grounded this in a famously “constitutional(ist)” approach, while the Court in its ensuing decision rather relied on a pragmatist approach. Meanwhile, the ECtHR is seen to “oscillate . . . between deference and subordination,” with an approach of “conditional deference” (p. 263) (which reserved the right to review the UN Security Council resolution with regard to *jus cogens*) in the *Bosphorus* case<sup>15</sup> and an approach of “unconditional subordination” (p. 268) in the *Behrami and Saramati* case(s). The author “conclude[s] that the *Behrami and Saramati* case illustrates the subordination of a regional order to the universal system” (p. 277).

After looking at the tension between universal and regional normative frameworks, the book goes on to consider “various channels of dialogue” that take place between regional and universal organizations, through “different institutions and the judiciary” (p. 287). This includes another concise treatment of the ILC Articles on the Responsibility of International Organizations;<sup>16</sup> and notably of the exchange on the implementation of sanctions, the reaction thereto on the part of the Security Council—namely, the creation of the ombudsperson in 2009—and the response to that reaction.

Universalism, in the same way as regionalism, appears both as an explanatory model for social reality and as an aspiration. Boisson de

Regulation, due to breach of, inter alia, the right to property).

<sup>15</sup> *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, Application No. 45036/98, Judgment (Eur. Ct. Hum. Rts. June 30, 2005) (member states of an international organization (such as the EU) can take measures based on obligations following from their membership “as long as the relevant organisation is considered to protect fundamental rights in . . . a manner which can be considered at least equivalent to that for which the Convention provides” (para. 155)).

<sup>16</sup> The Articles on the Responsibility of States for Internationally Wrongful Acts, which are widely used as a reflection of customary law, were adopted by the UN International Law Commission at its fifty-third session, in 2001, and submitted to the General Assembly in that same year (see *Yearbook of the International Law Commission*, 2001, Vol. II (Part Two)).

Chazournes importantly confirms that as an explanatory model, a merely universalist view on international organizations is inaccurate. Regional organizations are key building blocks in international life and international relations. They are emerging in the interstices as the contractors—if not architects—of “international governance” (p. 324). The UN itself has repeatedly expressed awareness of this fact: “[t]he Secretary-General remains committed to strengthening further this cooperation [with (sub)regional organizations] through deepened partnerships, . . . taking full account of the specificities and demands of each region, as well as the mandate of the institution concerned.”<sup>17</sup>

The relationship between the regional and the universal in international organizations is a valuable prism that allows for new insights, also because the analytical lens is tilted with respect to the familiar treatises on international law. Against this backdrop, the book skillfully brings together a wealth of material and analysis, in a highly structured manner. Whereas the logic in the systematization and categorization often remains implicit, just as the evaluative dimension of the book, the reader sometimes may be called to make an extra effort; but this is definitely worth their while.

As for the aspirational dimension, the book seems to proceed from a universalist vision, even if this is not made explicit. The author states early on that “an important factor to consider is whether the creation of regional institutions is intended to strengthen the modes of global governance or, alternatively, whether the increasing number of regional institutions and regimes weakens the coherence of the international order” (p. 63). In the course of the book this question seems to fade into the background, which is perhaps not strange, as it is part of a different set of questions that may still be posed to the material. Apart from being as such an excellent study in the law of international organizations, the book makes a valuable contribution

<sup>17</sup> UN Secretary General, *Cooperation Between the United Nations and Regional and Other Organizations*, para. 145, UN Doc. A/71/160, S/2016/621 (2016).

to the field as the material can offer the foundation for further reflections on “the regional institutional phenomenon” (p. 323).

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