

THE FUTURE OF EUROPE IN A WORLD OF REGIONS

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Abstract

The future of Europe in world-making is regional. This essay proposes that the European Union should be re-instituted as one regional international organization among others and as equal to them under international law. Thereby, the re-organized EU could contribute, with other RIOs, to building the ‘world of regions’ many have long thought could provide the institutional remedy to ‘post-imperial imperialism’. With other peoples, ‘We Europeans’ should pick up the construction of an allegedly universal international institutional order where it was left in 1945. We should endeavour to enforce that order’s egalitarian principle by finally instituting regional orders not only for ourselves, but also for all other peoples in those regions. This is how we will protect those peoples from European imperialism, but also how we will all protect ourselves from the imperialist power of other regional ‘Empire-States’ and ‘Empire-Organizations’ in the world.

‘International lawyers still largely treat the centrality of regionalism to the normative ordering of space as if it operated outside international law. We do so in part by treating the other side’s practices of regional ordering as exceptional and a challenge to international law, while largely ignoring the way that international law is being remade to accommodate the ordering of greater spaces by allies.’¹

‘... precisely at the moment in history where sovereignty was extended to non-European political communities, Europe turned away from this old master principle both with regard to domestic constitutional law and

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1. Anne Orford, ‘Regional Orders, Geopolitics and the Future of International Law’ (2021) 74 CLP 149, 190, doi: 10.1093/clp/cuab005 (emphasis added).

intra-European relations. *Yet the turn away from sovereignty and the nation-state was not merely a response to a fear of nationalism, as the literature often maintains, but also an attempt to reassert European interests and geopolitical autonomy in a world where Europe no longer was the centre of gravity. ... [T]he legacy of empire for the project of European integration is largely ignored or forgotten in Europe. ... Rather than a project of reasserting Europe's geopolitical interest, the story of European integration is for the most part told with few, if any, references to the legacy of imperialism.* The relevant actors, or even competitors, are understood to be European institutions and nation-states, and *the EU is rarely studied in comparison with the composite polities to which it bears striking resemblances, namely empires and federations.*²

Contributors to this issue of CML Rev on *The Future of Europe* have been asked to think about ‘what Europe stands for’ in the world at a time of ‘emergence of a new and brutal, power-based international order’, to quote the invitation. This includes reflecting over ‘Europe’s international vision’ from a legal perspective and thinking about ‘the tools Europe holds or lacks to promote that vision’ in the international legal order.

Taking the bait, this short essay proposes that the European Union (EU) should be re-instituted as one regional international organization (RIO) among others and hence as equal to them under international law. This newly re-organized EU could contribute, with other RIOs, to making the ‘world of regions’³ which many have thought could provide the institutional remedy to ‘post-imperial imperialism’,⁴ despite various failed attempts in the 20th century.⁵

2. Signe Rehling Larsen, ‘European Public Law after Empires’ (2022) 1 European Law Open 6, 24–25, doi: 10.1017/elo.2021.8 (emphasis added).

3. For this expression, albeit in a different geopolitical context, see Peter Joachim Katzenstein, *A World of Regions: Asia and Europe in the American Imperium* (Cornell University Press 2005).

4. Like others, this author considers that the political form ‘Empire’ has disappeared from the categories of the now State-based international institutional law through the depersonalization, secularization and territorialization of political power, but that States and international organizations (IOs), including regional IOs (RIOs), may of course still be considered to pursue ‘imperialist’ policies, that is, policies whereby a central political power (a State or a RIO) behaves like an Empire and seeks to dominate peripheral political institutions (other States or RIOs) before treating them and their peoples unequally. See also Emmanuelle Tourme-Jouannet, ‘La disparition du concept d’Empire’ (2015) 14 Jus Politicum <www.juspoliticum.com/articles/la-disparition-du-concept-d'empire-986>.

5. See Adom Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton University Press 2019); Jane Burbank and Frederick Cooper, *Post-Imperial Possibilities: Eurasia, Eurafrika and Afroasia* (Princeton University Press 2023).

In short, RIOs are understood here as international organizations or orderings of States as specifically regional. What enables the international legal institution of different States' peoples into an encompassing region, and hence what makes them 'integrated' into this whole and hence literally 'solidary', to borrow the language used in the international law of RIOs, pertains to two complementary and necessary characteristics of a region: a territorial and a cultural bond between its States' peoples. What RIOs share with States, therefore, are their territorial *cum* political dimension. They should accordingly be considered 'geo-political' in the strict sense of the term.

There are two main reasons for this essay's proposal to re-institute the EU as one RIO among others and as equal to them: the first reason has to do with the recent developments in international institutional law in general, while the second one pertains to the state of EU institutional law itself.

First, while the original RIOs emerged alongside States at the time of the correlative demise of regional Empires in the 19th century, for purposes including to counter or, on the contrary, to champion the imperialist projects of some of those newborn States,⁶ they were not institutionalized as such in the international institutional order of the 20th century.

Worse, and as emphasized by Anne Orford,⁷ international lawyers have largely neglected the relevance of RIOs for political ordering by international law and for the political legitimacy thereof. As a matter of fact, they have criticized the regionalization of international law and organizations by the USSR and then Russia (especially thanks to the Eurasian Economic Union (EAEU) for example) or by China (especially thanks for instance to the Shanghai Cooperation Organisation (SCO)) as threats to the universality of international law and to universal international organizations (UIOs). However, at the same time, they have turned a blind eye to the very same regionalization efforts by the United States (especially thanks for example to the North Atlantic Treaty Organization (NATO)) all throughout the 20th century, including inside the League of Nations (LoN) after 1919 and even more clearly at the United Nations (UN) after 1945.

6. See Guy Fiti Sinclair, 'Between Functionalism and Hegemony: Regional International Organizations in the History of International Law' (2024) 21 *International Organizations Law Review* 65, doi: 10.1163/15723747-21010004.

7. Orford (n 1) 190.

The result of this neglect of RIOs by most international lawyers,⁸ at least until recently,⁹ and of the repeated failures of a general and egalitarian regional ordering under international law¹⁰ is the weakness of the contemporary international institutional order. Based on the UN Charter, indeed, that order is limited to one single institution, that is, States. States are certainly equal under current international law (Article 2(1) UN Charter (UNC)). However, they are insufficient, as institutions, to protect the sovereign equality of their peoples against certain regional ‘Empire-States’ and their respective ‘Empire-Organizations’, that is, States and RIOs that act as Empires would in a given region. Those States and RIOs have invested into regional spaces left unordered under international law to pursue their imperialist policies after the legal demise of the political form or order

8. There have been exceptions, however, albeit with a focus to date on ‘regionalism in international law’ rather than on ‘regional international organizations’ as such: see eg Société française pour le droit international (ed), *Régionalisme et universalisme dans le droit international Contemporain* (Pedone 1977); Rüdiger Wolfrum, Denise A Bizzarro and Tobias Stoll (eds), *Strengthening the World Order: Universalism v Regionalism: Risks and Opportunities of Regionalization* (Duncker & Humblot 1990); Christoph Schreuer, ‘Regionalism v. Universalism’ (1995) 6 *European Journal of International Law* 477, doi: 10.1093/ejil/6.1.477; Mathias Forteau, ‘Regional Co-operation’ in Rüdiger Wolfrum (ed), *Max Planck Encyclopedia of International Law* (OUP 2007); Antony Anghie, ‘Identifying Regions and Sub-Regions in the History of International Law’ in Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (OUP 2012); Stéphane Doumbé-Billé, *La régionalisation du droit international* (Bruylant 2012); Mariano J Aznar and Mary E Footer (eds), *Select Proceeding of the European Society of International Law: Regionalism and International Law* (4th vol, Bloomsbury 2016); Ján Klučka, *Regionalism in International Law* (Routledge 2018); Orford (n 1) 190; Apollin K Zouapet, ‘Not a Threat, an Opportunity: Regional Approaches and the Future of International Law’ (2023) 48 *South African Yearbook of International Law* 1.

9. See the articles in the IOLR 2024 special issue on the international law of regional organizations, and especially: Samantha Besson and Eva Kassoti, ‘The International Law of Regional Organizations: Mapping the Issues’ (2024) 21 *International Organizations Law Review* 1, doi: 10.1163/15723747-21010001; Fernando Lusa Bordin and Jed Odermatt, ‘International Law of Regional Organizations: A Comparative Perspective’ (2024) 21 *International Organizations Law Review* 19, doi: 10.1163/15723747-21010002; Damian Chalmers, ‘The Distinctiveness of Regional International Organization Law’ (2024) 21 *International Organizations Law Review* 43, doi: 10.1163/15723747-21010003; Samantha Besson, ‘The Politics of Regional International Organizations: A New Dawn for the Political Legitimacy of International Law’ (2024) 21 *International Organizations Law Review* 87, doi: 10.1163/15723747-21010005; Catherine Brölmann, ‘Regional Organizations in International Law: Exploring the Function-Territory Divide’ (2024) 21 *International Organizations Law Review* 132, doi: 10.1163/15723747-21010007. Since then, albeit more critical, see also Jan Klabbbers, ‘The Soft Phenomenology of the Regional International Organization’ in Eva Kassoti, Teresa Cabrita and Narin Idriz (eds), *The European Union and Regionalism: Conceptual and Contextual Perspectives* (Brill/Nijhoff 2025).

10. See Getachew (n 5); Burbank and Cooper (n 5).

‘Empire’ in those very regional spaces.¹¹ Those imperialist regional orders have grown in the shadow of the UN for lack of a proper international and egalitarian legal status of RIOs under the UN Charter and, accordingly, of a proper legal articulation between RIOs and the UN therein.¹²

The recent return of regional international law, and especially of the international law of RIOs,¹³ opens a new window of opportunity in international institutional law.¹⁴ This new chapter in the regionalization of international organizations (IOs) has three features: the ‘universalization’ of that regionalization (it occurs across the world and in all regions), its ‘generalization’ (it occurs across international law and in all its regimes), and its ‘deepening’ (it not only aims at cooperation, but also increasingly at integration).¹⁵ Against this new background, instituting RIOs alongside States in international law could contribute to enhancing the political legitimacy of international law by defeating regional imperialism.¹⁶ This could include reforming the UN into a ‘United Nations and Regions Organization’ (UNR) or, alternatively, re-organizing a new world IO so as to guarantee the equal status of RIOs in international law besides States and, through this additional institutional layer, reinforce the sovereign equality of (States’ and RIOs’) peoples.

11. See eg Anastassia V Obydenkova and Alexander Libman, *Authoritarian Regionalism in the World of International Organizations: Global Perspective and the Eurasian Enigma* (OUP 2019).

12. On the latter, see Michel Virally, ‘Les relations entre les organisations régionales et les organisations universelles’ in Société française pour le droit international (ed), *Régionalisme et universalisme dans le droit international contemporain* (Pedone 1977); Laurence Boisson de Chazournes, *Interactions between Regional and Universal Organizations: A Legal Perspective* (Brill/Nijhoff 2017).

13. See Fernando Lusa Bordin, Jed Odermatt (Co-rapporteurs), Samantha Besson and Eva Kassoti (Co-chairs), *The International Law of Regional Organizations: Final Report of the International Law Association Study Group 2021-24* (International Law Association, Athens Conference, 2024) <www.ila-hq.org/en/documents/ila-study-group-regional-organizations-final-report-may-24>.

14. For this author’s past publications on the topic, Samantha Besson, ‘Du droit de civilisation européen au droit international des civilisations: instituer un monde des régions’ (2021) 31 *Swiss Review of International and European Law* 373; Samantha Besson, ‘Reconstructing International Law Starting from Regional Organizations’ (2021) 2 *Revue européenne du droit* 64; Besson and Kassoti (n 9); Besson (n 9); Samantha Besson, ‘Seeing like a Region. The Regional Re-Ordering of International Law’, (2026) 68 *German Yearbook of International Law*, forthcoming.

15. See eg Louise Fawcett and Andrew Hurrell (eds), *Regionalism in World Politics: Regional Organization and International Order* (OUP 1996); Tanja A Börzel and Thomas Risse, ‘Three Cheers for Comparative Regionalism’ in Tanja A Börzel and Thomas Risse (eds), *The Oxford Handbook of Comparative Regionalism* (OUP 2016), 627.

16. For a full argument, see Besson (n 9). See also Andrew Hurrell, ‘One World? Many Worlds? The Place of Regions in the Study of International Society’ (2007) 83 *International Affairs* 127, 146, doi: 10.1111/j.1468-2346.2007.00606.x; Orford (n 1) 192.

Second, the reason why the EU should be considered as the regional order from which to start writing this new chapter in the history of international institutional law lies in the role that Europe has played, first through European Empires and then through European States, in the construction of that law as universal law in the first place. Re-instituting the EU as one RIO among others and, hence, as equal to others and, at the same time, reforming the international institutional order accordingly would not only enhance the protection of the sovereign equality of all peoples, including European peoples, against the regional imperialism of certain States and RIOs; it would also debunk the EU's own special kind of imperialism in the RIOs' landscape.

By universalizing what was then still a regional regime of international law, indeed, the expansion of the *jus publicum europaeum* or European public law by European powers to the 'rest' of the world was decisive in constructing that law as 'universal' from the 17th century onwards. What is less well known, however, is that, since the second half of the 19th century, European States have done the same with RIOs whose model was that of the first RIOs in Europe.¹⁷ In fact, after 1945, (Western) European RIOs developed even more intensively than in other regions, starting with the Council of Europe (CoE) in 1950, the European Coal and Steel Community (ECSC) in 1952 and the European Economic Community (EEC) in 1957, and culminating in the EU since 1992. In so doing, European States have also influenced the establishment of the 20th century's UIOs, as exemplified first by the LoN and then by the UN system.

Once again, then, Europe *qua* region took the international legal lead over other regions, this time not only in strictly legal terms (by continuing to develop 'universal' international law from Europe, not only through its States but also through European RIOs and especially the EU), but also in institutional terms (by contributing to the institution of other RIOs and of UIOs in their image).

Overall, the reaction of other RIOs outside Europe has been the same as that of States from other regions at the time those other regional international laws, notably Latin American and then African international laws, developed in reaction to European public law in the 19th century. Just like then, indeed, their response has been largely ambivalent.¹⁸ It has teetered between a desire for recognition and a desire for emancipation. Some RIOs have sought to emulate the EU as a 'model' (for example Southern Common Market (MERCOSUR)), while other RIOs, notably the African

17. See Sinclair (n 6).

18. Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842-1933* (CUP 2015), 22.

Union (AU), have started to resist, denouncing the Eurocentrism of the EU model as an imperialist and neo-colonial imposition.¹⁹

Crucially, however, having learned from the mistakes of European States' and their international law's 'civilizing mission' in the 19th century, Europe instituted in the form of the EU has known better this time than to impose its institutional model as a legal requirement on other RIOs.

Instead, from the 1960s onwards, the position of the EU and its organs, including that of the Commission and the Court of Justice of the EU (CJEU), has been to emphasize the exceptional legal and political nature of the EU, often coined as the only 'supranational'²⁰ IO. Early on, indeed, the CJEU portrayed the EU as the sole example of an 'integrated'²¹ IO, and its legal order as 'autonomous' and as a 'new legal order'.²² By referring to the EU as a '*sui generis*' organization²³ and by even dropping the reference to international law as a basis for its legal order later on,²⁴ the CJEU has exempted the EU from any form of comparison with other RIOs. Thereby the CJEU has freed the EU not only from the pre-existing categories of international institutional law, but also from new egalitarian ones which it could have contributed to create and share with other RIOs. After all, Article 21(1) TEU requires that the EU act 'on the international scene ... guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world'. That provision's second phrase is even clearer: 'the Union shall seek to develop relations and build partnerships with *third countries*, and international, regional or global organisations which share the principles referred to in the first subparagraph.'²⁵ The same exceptionalist positioning applies to international lawmaking by the EU. True, the Treaty on European Union posits the EU's allegiance to international law (Articles 3(5) and 21(1) TEU). However, the practice of international law by the EU has mostly been about replacing international law both inside and outside the EU, and

19. See eg Maurizio Carbone, 'There is Life beyond the European Union: Revisiting the Organisation of African, Caribbean and Pacific States' (2021) 42 Third World Quarterly 2451, doi: 10.1080/01436597.2021.1951608.

20. Opinion 2/13, *Accession of the EU to the ECHR* EU:C:2014:2454, paras 163–7. For a critical assessment of this 'particularist' case law from inside EU law, see Nic Shuibhne and Iglesias Sanchez, in this issue.

21. Case C-6/64, *Costa v E.N.E.L.*, EU:C:1964:66, paras 1158–60.

22. Opinion 1/91, *Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area*, EU:C:1991:490, para 21.

23. Opinion 2/13, paras 156–8.

24. Opinion 1/91, para 21 with Case C-26/62, *Van Gend en Loos*, EU:C:1963:1, para 23.

25. Art 21(1) TEU (emphasis added).

in its relations to Member States as much as to third States, to quote Pierre d'Argent.²⁶

This is how the EU has succeeded in acquiring unprecedented participation rights for an RIO in universal international lawmaking processes. This is exemplified by its special observer status at the UN General Assembly or even by its full membership of some UN agencies and specialized institutions such as the Food and Agriculture Organization (FAO). The EU's *sui generis* position in international institutional law is actually echoed in the terms used. Thus, when it intervenes diplomatically inside universal IOs and institutions such as the International Law Commission (ILC),²⁷ the EU presents itself as a 'regional economic integration organization' (REIO), a denomination which it is, however, the only RIO to use and which it does not seek to share equally with other RIOs. Conversely, when those institutions, and especially the ILC, refer to the EU, they do so interchangeably as a 'regional (integration) organization', as an 'international organization', as a 'community of States' or even as a 'large federal State', thereby simultaneously confirming both the importance of institutional categories for purposes of equal treatment by those universal institutions and their high level of toleration for the EU's exceptionalism.

Interestingly, the EU has thereby granted itself privileges in its external relations that it does not recognize for its own Member States. Indeed, the EU institutions hold those Member States strictly accountable to international law and the respect of sovereign equality of peoples, both in their internal relations to one another and in their external relations to third States and IOs. Indirectly, of course, the EU's specific positioning on the international stage has enabled the most powerful EU Member States, themselves former European Empires such as France or Germany, or the United Kingdom before Brexit, to continue to carry their full weight in international lawmaking, albeit this time through the EU. To that extent, it has reinforced its original Member States' privileges in their own external relations, alone and under EU cover, and thereby contributed to a deepening of inequalities in external power between EU Member States.

Admittedly, the EU has contributed to the consolidation of the political form 'State' against that of 'Empire' in the post-war international institutional order, and accusing it of trying to assert a new form of imperialism

26. See Pierre d'Argent, 'The European Union: Using International Law to Replace it' in Anne van Aaken and others (eds), *The Oxford Handbook of International Law in Europe* (OUP 2024).

27. See Teresa Cabrita, 'The Integration Paradox: An ILC View on the EU Contribution to the Codification and Development of Rules of General International Law' (2021) 5 *Europe and the World: A Law Review* <journals.uclpress.co.uk/ewlr/article/pubid/EWLR-5-7/>.

may seem far-fetched. It is sometimes even said that EU law is a highly advanced form of international law in this respect, a law that has rescued each Member State from itself²⁸ and domesticated or ‘tamed’ it as it were. And this has occurred on two levels: internally within each EU Member State, and externally in relations between EU Member States. This is sometimes referred to as the protection against nationalism inside each State reinstated as a ‘Member State’ of the EU and as the protection against imperialism in relations between EU Member States.

While cultivating and requiring a form of anti-imperialism on the inside, however, the EU has also positioned itself in an imperialist way on the outside and in its relations to third States, other RIOs and UIOs.²⁹ Describing the EU’s own kind of imperialism euphemistically as a ‘post-imperial’ or even as ‘anti-imperial’, as some commentators have done,³⁰ does not detract from its imperialist nature.

Curiously, however, EU law scholars, including EU external relations law scholars, have turned a blind eye not only to the imperialist past of EU Member States,³¹ but also to the EU’s contemporary imperialist practice in the post-war international institutional order. This may actually explain why they have also downplayed the regional dimension of the EU especially in its external dimensions,³² and have focused instead on the internal organization of the EU – as if the external political form and organization of the

28. See Alan Milward, *The European Rescue of the Nation-State* (2nd edn, Routledge 2000).

29. There is also an argument to be made, albeit not here due to space constraints, against the EU’s imperialism in relation to its Member States, especially newer Member States, and the risk of double standards which one may observe between what is required of Member States by EU law in terms of democracy, rule of law and fundamental rights, and what EU law requires of the EU itself. This is all the more important for the so-called Central and Eastern European States as their European integration came about after the fall of the Wall, and in reaction to the Russian imperialism that had previously held sway over them, and whose vexed anti-imperialist relationship to the EU fuels the return of a form of ‘second world regionalism’ albeit inside the EU itself this time. As will become clearer later in this article, this is also something that could be remedied by the re-institution of the EU as a regional Confederation, thanks to the mutual democratic domestication on which confederalism is based.

30. See eg Timothy Garton-Ash, ‘L’Union comme empire post-impérial’ *Le Grand Continent* (20 July 2023) <legrandcontinent.eu/fr/2023/07/20/lunion-comme-empire-post-impérial/>.

31. See, however, Larsen (n 2) 24–25; Jan Zielonka, *Europe as Empire: The Nature of the Enlarged European Union* (OUP 2006).

32. See for an exception, however: Eva Kassoti, ‘The European Union and Other Regional International Organizations: Tales of Solidarity’ (2024) 21 *International Organizations Law Review* 190, doi: 10.1163/15723747-21010010; Eva Kassoti, Teresa Cabrita and Narin Idriz, ‘Introduction: The EU as a Regional International Organization’ in Eva Kassoti, Teresa Cabrita and Narin Idriz (eds), *The European Union and Regionalism: Conceptual and Contextual Perspectives* (Brill/Nijhoff 2025).

EU could be separated from its internal organization. Following Jacques Delors,³³ European law scholars generally relish in referring to the EU as an unidentified political object (an ‘UPO’), as if it were amusing for EU citizens to consider themselves as citizens of such a legally indeterminate institution.

The recent return of international law of RIOs, and on a universal scale this time, provides an opportunity for the EU to acknowledge and unravel the paradoxical form of ‘regional universalism’³⁴ that Europeans have generated and cultivated in international law since the 17th century. At long last one should say, as it is this very European form of parochial universalism that has turned universal international law and UIOs into the standard, on the one hand, and regional international law and RIOs into the exception, on the other. This explains why the re-regionalization of the world should start, by reference to Dipesh Chakrabarty’s ‘provincialization of Europe’,³⁵ with the ‘self-regionalization’ of the EU.

Reconsidering the EU’s place in this world of regions and re-instituting it as one RIO ‘among’ others means considering it neither as a ‘model’ for other RIOs nor as a *sui generis* ‘exception’ in the international institutional order. Only this way can the EU escape the model versus exception (or misfit) double-bind.³⁶

Of course, the next question that one should raise is that of the form the regional re-institution of the EU as one RIO among others should take in international institutional law.

Elsewhere,³⁷ this author has defended the re-institution of RIOs as a third political form and institution of public international law, one that could institute regional geopolitical communities which are increasingly sidelined or, at least, dominated by imperialist States for lack of a proper, egalitarian status under international law. Currently, indeed, RIOs have no place in the binary opposition inside international institutional law between, on the one hand, States, which are still regarded as the only political and territorial

33. Speech by Jacques Delors (Intergovernmental Conference, Luxembourg, 9 September 1985), <www.cvce.eu/content/publication/2001/10/19/423d6913-b4e2-4395-9157-fe70b3ca8521/publishable_en.pdf>.

34. See Jennifer Pitts, *Boundaries of the International: Law and Empire* (Harvard University Press 2018), 3.

35. See Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press 2007).

36. For an endorsement of this opposition, however, see Jan Klabbers, ‘The European Union in the Law of International Organizations: Misfit or Model?’ in Ramses A Wessel and Jed Odermatt (eds), *Research Handbook on the European Union and International Organizations* (Edward Elgar 2019); Klabbers (n 9).

37. For a full argument, with references, see Besson (n 9).

institutions, and, on the other, UIOs regarded as purely technical and functional ones.

This third institution of international law could be the ‘regional Confederation’. It is a political form unknown to modern international law, but which was already in use to institute regional geopolitical spaces around peoples long before the emergence of the first States, and which was not an ‘Empire’. The Confederation was actually opposed to the Empire as a regional political form, either for the purposes of common defence or common prosperity in the face of imperialist military or economic policies.

The regional Confederation therefore lends itself very well to the re-institution of regional orders. Like the Empire, the Confederation is indeed a regional political form that is ternary, an instituted political entity comprising a centre and peripheries, in this case the confederate States, without creating a new State.³⁸ Like the Empire, the Confederation brings together heterogeneous States and, like it, maintains a multiplicity of citizenship ties between these States and their respective peoples. Unlike the Empire, however, the Confederation guarantees and protects the sovereign equality of the federated States, on the one hand, and the equal rights of the citizens of the federated States, on the other. This double guarantee of political equality goes hand in hand with the requirement of a democratic regime both at the confederal level and within the federal States. Indeed, this shared political regime implies greater political homogeneity within the Confederation, giving rise to a mutual domestication and democratization effect between the Confederation and the Confederate States.

Note that the term ‘Confederation’ is preferred here to that of ‘Federation’ because it was used to refer to Switzerland and the United States long before these confederations of States became federal States. However, like Olivier Beaud³⁹, the present author understands the Confederation as a distinct federal political form that is neither a State nor an international organization. The regional Confederation as a third, distinct political form and institution, falls within the scope of both the Confederation’s internal law (in this case, the law of the forthcoming EU ‘Confederal Pact’) and international institutional law. What this means, therefore, is that the term ‘Confederation’ is not used here to refer to the

38. See Olivier Beaud, ‘Federation and Empire. About a Conceptual Distinction of Political Forms’ (2018) 16 *International Journal of Constitutional Law* 1199, doi: 10.1093/icon/moy103.

39. Olivier Beaud, *Théorie de la Fédération* (2nd edn, Presses universitaires de France 2009); Olivier Beaud, *Le Pacte Fédératif. Essai sur la Constitution de la Fédération et sur l’Union Européenne* (Daloz 2022).

usual opposition between a ‘federal State’ and a ‘confederation of States’, and hence between national and international law.

The proposed argument in favour of the institution of the regional Confederation in international institutional law is a republican one. It is based on the sovereign equality of States’ peoples in the different regions of the world. If the State has been conceived and instituted since the 18th century against the Empire as the political form that enables the institution of peoples into several States, each of them being equal under international law (Article 2(1) UN Charter), its contemporary weaknesses should lead us to think of and institute an additional institution and political form for the protection of these same peoples against the imperialism exercised by certain States and their IOs. The time has come to re-institute the regional orders that have developed around States into regional Confederations, in order to offer additional protection to the sovereign equality of their peoples.

Re-organizing the EU as a RIO ‘among’ others could be done by re-instituting it as a regional Confederation.

At first glance, this proposal seems familiar. This is because of the influence of federalist theories at the time that the EU was founded in the 1950s. Winston Churchill’s idea of a ‘United States of Europe’,⁴⁰ for instance, has deep roots in thinking of Europe as a federal project. That imaginary runs indeed from Kant’s ‘federation of free States’⁴¹ to Montesquieu and Tocqueville’s ‘federative Republic’.⁴²

The fact is, however, that the form of organizational federalism that is often attributed to the EU, and that could therefore mistakenly be taken as a model for other RIOs, does not correspond to a fully-fledged political form. Authors such as Olivier Beaud⁴³ and Signe Rehling Larsen⁴⁴ have long demonstrated this. Indeed, EU federalism has been approached only as a type of political ‘regime’ applicable to the internal organization of the EU, and not as a political ‘order’ or ‘form’ distinct from the State. It was never conceived therefore as offering an external political alternative on a regional scale to the demised Empires of post-war Europe.

40. Speech by Winston Churchill (University of Zurich, 19 September 1946), <rm.coe.int/16806981f3>.

41. Immanuel Kant, *Perpetual Peace: A Philosophical Essay* (first published 1795, Mary C Smith tr, Swan Sonnenschein & Co 1903), 68 and 128.

42. Charles Louis de Secondat, Baron de Montesquieu, *De l’Esprit des Lois* (Barillot & fils 1758), c IX.1; Alexis de Tocqueville, *De la démocratie en Amérique* (first published 1835 and 1840, 12th edn, Pagnerre 1848), 197 and 264.

43. See Beaud, *Le Pacte Fédératif* (n 39).

44. See Signe Rehling Larsen, *The Constitutional Theory of the Federation and the European Union* (OUP 2021).

In fact, faced with the choice between Empire and Confederation for the purposes of regional organization, Member States did not choose the federal political form for the EU in opposition to that of the Empire. Admittedly, and as mentioned earlier, EU law has made it possible to limit the sovereignty of its Member States *from within*, in order to protect the sovereignty of the peoples of these States against both nationalism inside Member States and imperialism between Member States. It has done so by imposing egalitarian constraints, additional to those of international law. However, the EU was by no means set up in such a way as to call into question the State political form of its Member States *from the outside*, by doubling it with a second political form designed to re-instate its Member States as confederal States. It did not, as a result, provide additional institutional protection for the sovereign equality of their peoples by instituting a European Confederation.

In this respect, the EU has simply endorsed its Member States' legally entrenched binary opposition between statism and internationalism and, by extension, between States and IOs in international institutional law. In so doing, it has perpetuated the contrast between the 'federal State' and the 'Confederation of States' mentioned before, treating one as an institution of national law and the other as an institution of international law. This explains why EU has remained at best an IO under general international institutional law and, more to the point, a *sui generis* institution of a new kind under its own exceptional international law, EU law, as explained earlier.

In turn, this also accounts for how EU federalism has been reduced to a form of internal organization or regime of the EU, irrespective of the indeterminacy of its political form in international law. To that extent, of course, EU federalism is not very different from federalism within States: it has become a form of (State) organization or even of regime, rather than a political form in its own right. Still, the lingering indeterminacy of the EU's political form explains why even its internal federal organization itself could not but remain indeterminate as well. Despite specialists' best efforts at constructing complex analogies with State federalism, discussions of the federal principles allegedly applicable either to the EU's internal organization (and in particular to the distribution of powers between the EU and its Member States) or to its regime (and in particular to the question of good government and democratic constitutionalism) have remained inconclusive. This is because the separation of the federal question from that of the EU's political form has left the question of sovereignty in the EU unresolved.⁴⁵

At this stage, someone may object to the feasibility of the argument for reform defended in this essay.

Like others in this volume, however, this is an essay in international law, not international relations. As such, its aim is not simply to describe or predict these relations realistically, but to interpret and justify them and, when this cannot be done, to prescribe how to reform them. In any case, the proposal for a new regional institution of international law advanced here is in line with the protection of the sovereign equality of peoples enshrined in the UN Charter and, hence, amounts to a project to reform and reconstruct the existing international institutional order from within rather than a project for its complete revolution and overhaul.⁴⁶

True, the question of the feasibility of such reform must arise even in an international law argument. In response, it suffices to say that today's world of 193 UN Member States is no longer the world of a few European powers that enabled the political form of the State to be instituted against Empire between the 18th and 20th centuries. A key difference indeed is that States are already established, and their sovereign equality is guaranteed by the UN Charter. It is a question, then, of pursuing together the construction of our existing common institutional order for greater protection of the equality of peoples, this time through the equal institution of the regional Confederation. Moreover, and as mentioned earlier, RIOs in all their diversity already exist legally as IOs all over the world, and the threat posed by Empire-States and Empire-Organizations applies to all peoples in those RIOs, including European peoples.

Of course, and zooming back into Europe, this proposal for reform may at first seem counter-intuitive to the needs of EU Member States and their peoples in a context of increasing political, military and economic threats.

In response, however, one may argue that the strategic reaction to the growing imperialism of other Empire-States and their regional Empire-Organizations, should precisely be not to further entrench imperialist EU policies, even with a counter-imperialist agenda. Indeed, it is also in the EU's interest, as a political and legal power rather than only an economic or military one, to work to preserve the international institutional order and the sovereign equality of all peoples on which it was actually built. This means at long last taking an interest in the world's other RIOs, and building an international institutional order that guarantees their equality and to do so hand in hand with all their States and peoples. In turn, this implies, albeit

45. For a full argument, see Samantha Besson and José L. Martí, 'Republican Sovereignty' in Mortimer Sellers and Frank Lovett (eds), *The Oxford Handbook on Republicanism* (OUP 2025) <academic.oup.com/edited-volume/55827/chapter-abstract/537022211?redirectedFrom=fulltext>.

46. See Samantha Besson, *Reconstructing the International Institutional Order* (OpenEdition Books/Collège de France 2021) <books.openedition.org/cdf/12335>.

not only, extending to the other RIOs the privileges that the EU has secured for itself within UIOs, but this time in the form of full and equal rights.

This may trigger a third objection, however: the return of Eurocentrism. By proposing to make the EU centre-stage in the international institutional reform, the objection goes, this essay would be guilty as charged of making the world revolve around Europe one more time.⁴⁷

This critique does not cut any ice, however. As a matter of fact, it is just as exceptionalist as the EU's own *sui generis* positioning described earlier. By making it impossible to compare or treat RIOs together as institutions of the same kind under international law, the Eurocentrism critique ends up separating the EU entirely from other RIOs. Moreover, it is mistaken on this essay's intentions. Indeed, treating the EU as one RIO 'among' others, comparing the EU with them and then devising a minimal 'common international institutional law'⁴⁸ applicable to all of them, does not necessarily imply treating the EU 'like' other RIOs nor, as a result, as a 'model' for them. On the contrary, the new institutional law common to all RIOs should be developed from their respective practices and on an equal footing, seeking unity in diversity and without suppressing their organizational diversity. For instance, the legal personality and autonomy of other RIOs, including in Asia, should be taken as given as well.⁴⁹ However, this can only be done if those other RIOs are assessed not solely by reference to the organizational specificities of the EU and based on EU law.

To conclude: the future of Europe in world-making is regional. With other peoples, 'We Europeans'⁵⁰ should pick up the construction of the allegedly universal international institutional order where it was left in 1945. We should endeavour to enforce that order's egalitarian principle by finally instituting regional orders not only for ourselves, but also equally and for all other peoples in those regions. This is how we will enhance our chances of protecting those peoples from European imperialism, but also, at the same time, how we will get to protect ourselves from the imperialist power of other regional Empire-States and Empire-Organizations in the world.

47. See for the most recent instance of this critique: Klabbers (n 9).

48. See Boisson de Chazournes (n 12), 332.

49. See Alison Duxbury, 'Rewriting the law of international organizations: Whither the Asia Pacific?' (2024) 37 *Leiden Journal of International Law* 694, 714–15, doi: 10.1017/S092215652400013X.

50. Bruno Karsenti and Bruno Latour, *Nous autres Européens* (Presses universitaires de France 2024).

