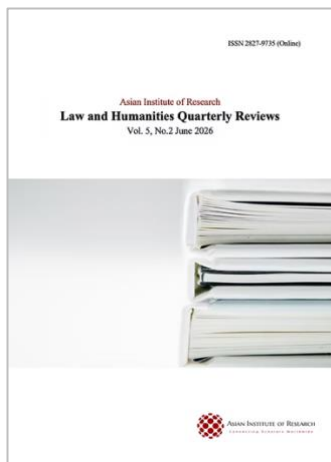




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The Place of Regional Organisations in the Work of the International Law Commission

R. Karlina Lubis¹ 

¹ Leuven Centre for Global Governance Studies and Institute of International Law, KU Leuven, Belgium

Correspondence: R. Karlina Lubis, Leuven Centre for Global Governance Studies and Institute of International Law, KU Leuven, Belgium. E-mail: r.karlinalubis@gmail.com
ORCID ID: <https://orcid.org/0000-0001-7538-7236>

Abstract

Despite the origins of international organisations in regional initiatives, the development of the law of international organisations has been predominantly shaped by institutions of a universal character, particularly the United Nations system. This universal orientation continues to influence the architecture of the field. Against this background, this article examines the place of regional organisations in the International Law Commission's (ILC) construction of the law of international organisations. It does so by tracing Special Rapporteur reports across three topics relating to international organisations, each reflecting distinct legal dimensions of organisational existence and informed by institutional practice. The article argues that, although regional organisations are increasingly acknowledged within the Commission's work, they are not treated as foundational to the development of general principles. Rather, they remain largely illustrative, even in areas where the Commission adopts a broader outlook, such as in its discussions on the status, privileges, and immunities of international organisations. This tendency to refrain from treating the practices of regional organisations as constitutive, in the same manner as those of organisations with a universal character, reflects the enduring influence of institutional universalism in the construction of the law of international organisations.

Keywords: Law of International Organisations, Institutional Universalism, International Law Commission, Regional Organisations, Special Rapporteur Reports

1. Introduction

In realising its objective of promoting and codifying the progressive development of international law (Statute of the International Law Commission, 1947, Article 1 (1)), the International Law Commission (ILC)¹ has engaged with many foundational areas of public international law, including international organisations. The Commission's engagement with this subject emerged from the increasing legal issues arising from relations between organisations and states. As such relations expanded, so too did the need for legal regulation addressing questions surrounding their status, functions, and interactions on the international plane. At the same time, the growing tendency to establish entities with a permanent institutional character, together with the emergence of specialised conventions in the field, reinforced the need for codification (El-Erian, 1963, p. 161).

¹ Hereinafter, the terms "ILC" and "Commission" are used interchangeably throughout this article.

When international organisations became the subject of systematic study by the ILC, attention focused primarily on organisations of a universal character. Although regional organisations and their practices already existed, their diversity was often perceived as an obstacle to the formulation of general legal rules. Within the Commission's work, three major topics relate directly to international organisations as actors in international law: relations between states and intergovernmental organisations, the responsibility of international organisations, and the settlement of international disputes to which international organisations are parties. These projects have extended across more than six decades, and at the time of writing the third topic remains ongoing.

The first two projects resulted in two foundational documents in the field: the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character 1975 (Vienna Convention 1975) and the Draft Articles on the Responsibility of International Organizations 2011 (DARIO). Although neither instrument is legally binding, both remain highly influential within the discourse of international organisation law and are frequently cited in legal scholarship and institutional practice.

Before these instruments were concluded, numerous reports had already been produced. This trajectory may be traced back to 1963, when Special Rapporteur Abdullah El-Erian submitted his first report. That report, together with many that followed, reveals recurring concerns regarding the legal position of international organisations and their expanding role in international affairs. These materials also demonstrate which types of organisations served as benchmarks in the codification of the law of international organisations. More importantly, they provide an opportunity to examine whether regional organisations were regarded as equally influential as organisations of a universal character within this codification process, which forms the central concern of this article.

The research question centres on identifying the place of regional organisations within these codification endeavours. In doing so, the discussion proceeds along two lines of inquiry. First, regional organisations do not fit neatly within the institutional universalism underlying much of the work of the ILC. Second, the role of regional organisations within the discussions develops unevenly across the three topics, beginning primarily as illustrative examples and gradually appearing more frequently as conceptual materials.

2. Literature Review

2.1 Theoretical Framework: Regional Organisations in Institutional Universalism

International law has long been regarded as universal, as it crystallised from a set of principles considered shared within international society (Simm, 2009, pp. 266–268). It is therefore assumed to be capable of application across diverse cultures and legal traditions. This presupposition, however, raises an important question that many critics have repeatedly addressed: whose principles are ultimately regarded as universal, particularly given the existence of power inequalities among states as subjects of international law? There is always a risk that powerful actors may project their own principles as universal norms upon others that do not possess the same degree of bargaining power (Anghie et al., 2003; Eslava et al., 2017).

The codification of the law of international organisations by the International Law Commission (ILC) developed within this broader universalist paradigm. This orientation is reflected particularly in the proposed working method that regarded organisations of a universal character as the primary reference points for the formulation of general rules. Moreover, an organisation is generally regarded as possessing a universal character primarily because of the breadth of its membership. The larger the number of member states, the broader the organisation's presumed global reach (El-Erian, 1963, pp. 163, 185). On this basis, universality becomes associated with representativeness and normative authority exercised through institutions, giving rise to what this article refers to as institutional universalism.

The practices of such organisations were viewed as more capable of generating identifiable legal patterns and, consequently, greater legal certainty. Regional organisations, by contrast, did not present the same degree of

institutional uniformity (Claude, 1963, Chapter 6). Each regional organisation reflects its own legal traditions and institutional preferences, which complicates the formulation of universally applicable general rules. Therefore, it was often considered more practical to derive general principles from organisations of a universal character, while leaving regional organisations to adopt such principles according to their own institutional needs where appropriate.

Within this framework, regional organisations are not generally regarded as possessing the characteristics associated with universality. Regional organisations, naturally, possess narrower territorial scope and more limited membership although it may be argued that the daily operations and institutional relations maintained by regional organisations do not differ substantially from those of organisations with a universal character, as reflected in the two opposing views that emerged within the Commission (El-Erian, 1967, p. 139). In this context, concerns regarding unequal bargaining power arise not only between states, but also between organisations participating, directly or indirectly, in the codification of the law of international organisations.

Within this institutional universalism, the principal organisations used as benchmarks broadly belonged to what is commonly referred to as the United Nations (UN) system. This institutional system reinforced a degree of uniformity by cultivating similar working methods across specialised agencies, programmes, and affiliated entities operating under or connected to the UN framework. The United Nations system itself also became the central subject of much academic scholarship frequently cited² by the ILC, further consolidating its influence within the development of the law of international organisations. As academic scholarship in the field of the law of international organisations expanded, classifications of organisations also became increasingly refined and systematised. Within this field, the term “international organisations” generally refers to intergovernmental organisations, a conception consistently employed by the ILC across three topics (Díaz-González, 1985, p. 106; El-Erian, 1968, p. 124; Gaja, 2003, p. 109; Reinisch, 2023, p. 11). A further important classification is that between global and regional organisations. Within this category, however, the diversity of regional organisations became a particular concern for the ILC.

Regional organisations are frequently associated with regionalism, which generally carries two related meanings: geographical proximity and solidarity based on shared interests (de Chazournes, 2017, pp. 7–14). Of these two meanings, the geographical dimension is most commonly associated with regional organisations. This is reflected particularly in geographical requirements for membership within regional organisations. The second meaning, however, namely solidarity based on shared interests, often explains why geographical considerations are rarely applied strictly in practice, as membership frequently reflects broader historical, cultural, political, or strategic considerations.

What constitutes “shared” within a region may encompass culture, economic interests, historical experiences, political affinities, or future collective objectives. These factors explain why regional organisations sometimes admit states that fall outside strict geographical boundaries but maintain close cultural, historical, or political ties with the region. In contemporary practice, such flexibility has become increasingly common (Besson et al., 2024). At the same time, the distinct cultural and historical experiences undergone by different regions inevitably shape their political and strategic considerations, including their implementation and understanding of international law. Consequently, diversity in institutional practices both within and between regions becomes unavoidable. Because the discourse of regionalism possesses a significant institutional dimension (Carvalho, 2024, p. 116) and also offers a framework for understanding the diverse ways in which different regions engage with international law, regional organisations themselves become an important subject of analysis.

2.2 International Organisation within Interrelated Codification Topics

² Two of them are *Swords into Plowshares: The Problems and Progress of International Organization*, by Inis L. Claude Jr., published by Random House in 1963 and *Fundamentals of Contemporary International Law* by G. Tunkin published in 1956.

The influence of institutional universalism may also be observed in the manner through which the ILC approached the codification of the law of international organisations. Many of the Commission's codification projects extend over long periods of time, and the topics addressed by it are often treated in an interconnected manner. In relation to the law of international organisations, one of the foundational legal notions concerns the recognition of international organisations as subjects of international law capable of conducting activities and possessing legal capacities. These discussions emerged during a period of growing awareness that states were no longer the sole subjects of international law, particularly due to the expanding role of international organisations within international affairs. This development also generated the perceived need to establish specific legal regulations governing international organisations.

The development of the law of international organisations was therefore closely connected to several other codification topics directly related to the activities and capacities of international organisations. These included the law of treaties, the law of the sea, diplomatic law, succession of states and governments, as well as State responsibility (El-Erian, 1963, III). Through these interconnected discussions, the legal framework surrounding international organisations gradually took shape. Organisations of a universal character occupied a particularly influential position within this process because their broader operational activities generated more extensive institutional materials and relatively uniform patterns of practice. Regional organisations likewise contributed to these developments. However, their practices were institutionally more diverse and consequently less frequently relied upon in the formulation of general rules following the establishment of the League of Nations and, later, the United Nations.³ Moreover, the United Nations system itself consolidated numerous organisations within a common institutional framework and produced extensive legal and operational materials. This further reinforced reliance upon organisations of a universal character and reduced the practical necessity of examining the practices of individual regional organisations in comparable detail.

Within this network of topics, two fields of international law played particularly significant roles in shaping the codification of the law of international organisations: the law of treaties and diplomatic law. In the former, discussions related directly to the legal capacity possessed by international organisations. Although an international organisation is not a state endowed with sovereignty and territory, it possesses the capacity to conclude treaties whether with states or with other international organisations. This development was later reflected in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986 (Vienna Convention 1986), adopted under the Commission's work on the law of treaties. The treaty-making capacity of international organisations was not confined to organisations of a universal character. Regional organisations likewise concluded agreements with states and other organisations. Nevertheless, the practices of organisations within the United Nations system remained especially influential in shaping general codification efforts.

The latter, namely diplomatic law, occupied a particularly important position within the discourse of international organisations, as reflected in the prominence of diplomatic conventions frequently cited throughout the discussions. The diplomatic law of international organisations concerns primarily the privileges and immunities of international organisations and their officials (Rakhmanov, 2019, 2022). These, in turn, are reflected in various sub-topics such as headquarters agreements, permanent missions and permanent observers to international organisations, as well as delegations to organs of international organisations and conferences convened by them. The privileges and immunities of international organisations received particularly extensive legislative and doctrinal attention (El-Erian, 1963). Although these diplomatic practices also developed within regional organisations, the institutional framework surrounding the United Nations and its specialised agencies remained the principal reference point within codification efforts.

Collectively, these codification efforts were intended to enable international organisations to perform their expanding roles with maximum effectiveness, including facing the possibility of being held responsible for their conduct and participating in dispute settlement processes to which they are parties. Within this interconnected

³ For an elaborated account on international organisations see: Bob Reinalda, *Routledge History of International Organizations: From 1815 to the Present Day*, Routledge History of International Organizations (Canada: Routledge, 2009), <https://doi.org/10.4324/9780203876572>.

network of topics, the law of international organisations gradually emerged and developed as a distinct field of international law. However, this codification developed through institutional practices that were not equally representative of all forms of international organisation, including regional organisations.

3. Research Question and Methodologies

Building on the issues identified in the Introduction, the research question guiding this article is: *what place do regional organisations occupy in the work of the International Law Commission in constructing the law of international organisations?* The aim is to clarify whether regional organisations are regarded as foundational to the development of this field of law.

The discussion is framed as contextualised doctrinal research (Taekema & Burg, 2024) in the sense that it focuses on tracing the role of regional organisations within the codification of the law of international organisations between 1963 and 2025 through the work of the International Law Commission, rather than examining the implementation of treaty regimes relating to international organisations.

The reports of the ILC Special Rapporteurs on the three topics concerning international organisations serve as the primary materials of analysis. These reports reflect exchanges of views concerning the legal position of international organisations and reveal the evolution of legal thought within the Commission itself. Given that membership in the Commission is expertise-based rather than representative of states, and that comments from states and international organisations form part of the Commission's working process,⁴ the reports provide insight into both the doctrinal and practical dimensions of an institution engaged in the codification and progressive development of international law.

As Special Rapporteurs work on topics assigned by the Commission, and because this article seeks to situate the discourse within a temporal framework, the discussion is structured chronologically by topic. Within each subsection, the evolution of legal notions reflected in the reports is examined in relation to the institutional practices that informed them. Through these reports, this article analyses how regional organisations appear within the Commission's reasoning, whether as constitutive legal examples, comparative illustrations, supplementary conceptual materials, or marginal references.

4. Findings

From the reports, three principal findings may be identified:

1. Regional organisational practices appear across discussions of all three topics. Their role, however, develops unevenly, gradually shifting from primarily illustrative references toward broader use as conceptual supporting materials within the codification discourse.
2. The notion of diversity is addressed across the three topics with differing orientations. Initially, institutional diversity was regarded primarily as an obstacle to the formulation of general rules. Over time, however, it gradually evolved into an explicit drafting concern and eventually became a factor influencing consideration of more diverse forms of outcome.
3. The reports also reveal a pattern of continuity across the three topics, with the first topic on relations between states and international organisations functioning as the central axis of development. Questions concerning the responsibility of international organisations had already appeared within the broader issues identified during the first part of the first topic. Subsequently, the third topic concerning dispute settlement involving international organisations reflected notions that had already emerged during the second part of the first topic.

⁴ Article 16, Statute of the International Law Commission, 1947.

5. Discussions

5.1. The First Topic: Relations between States and International Organisations

Consisting of two complementary parts with different areas of emphasis, the first part focused on the representation of states in their relations with international organisations, while the second concerned the status, privileges, and immunities of international organisations and their officials. The first part resulted in the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character 1975 (Vienna Convention 1975), whereas the second part was eventually discontinued due to the lack of ratification of the convention, leading the International Law Commission (ILC) to conclude that there was little point in continuing the work. Nevertheless, the first topic remained under consideration for more than twenty-five years, producing fourteen reports and involving two Special Rapporteurs. Consequently, these reports contain substantial and influential material for understanding the development of the law of international organisations.

5.1.1. Universal-First Approach: Managing the Diversity of Regional Organisations in the Formulation of General Rules

Following the decision to base the work primarily on organisations of a universal character, the first part of the first topic adopted what may be described as a universal-first approach. Under this method, the Commission first developed draft rules on the basis of the practices of the United Nations system and the International Atomic Energy Agency (IAEA), and only afterwards considered whether those rules could be extended to regional organisations, either without modification or with necessary adaptations.

This methodological choice was not free from disagreement. On one hand, several members of the Commission argued that regional organisations should be included throughout the drafting process because relations between states and organisations of a universal character did not differ substantially from relations between states and regional organisations. Excluding regional organisations would therefore render the Commission's work unnecessarily restrictive. On the other hand, other members maintained that regional organisations were too institutionally diverse for uniform rules to be formulated in a meaningful manner. In their view, it was preferable to leave regional organisations broad discretion in regulating their relations with governments. Nevertheless, rules derived from organisations of a universal character could still serve as models for regional organisations where appropriate.(El-Erian, 1971)

In order to preserve the continuity of the drafting process while accommodating these opposing views, the Commission sought a middle ground. This compromise appeared both in the drafting discussions and in the wording of the proposed articles themselves. Although the draft articles were formulated primarily on the basis of organisations of a universal character, the practices of regional organisations continued to be utilised and regarded as valuable throughout the discussions.(El-Erian, 1967)

Despite this compromise, the preference for organisations of a universal character remained evident throughout the discussions. Various concepts examined within the first part continued to rely heavily upon the practices of the United Nations system and the IAEA. Organisations such as the Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Health Organization (WHO), for example, appeared frequently when discussing legal position of representatives of states to international organizations and headquarter agreements. The sixth report, which largely consisted of observations from states and international organisations, further demonstrated the secondary position of regional organisational practice. Even where organisational examples were collected comparatively, the observations relied predominantly upon organisations within the United Nations system and the IAEA. (El-Erian, 1971)

Regional organisational practices were introduced primarily as supplementary illustrations for specific concepts, such as provisions on privileges and immunities and the establishment of permanent missions to organisations.

The former was reflected in the elaboration on founding instruments of regional organisations containing provisions on privileges and immunities (El-Erian, 1963, p. 173, 1967, p. 149, 1969, p. 16, 1970, p. 15), such as:

- a. Articles 103-106 of the Charter of the Organization of American States 1948
- b. Article 40 of the Statute of the Council of Europe 1949
- c. Article 14 of the Pact of the League of Arab States 1945
- d. Article XIII of the Charter of the Council for Mutual Economic Assistance 1959
- e. Article XIV of the Protocol for the Implementation of the African Charter of Casablanca 1961

These examples are particularly revealing because they were presented within a broader explanation concerning the influence of the Convention on the Privileges and Immunities of the United Nations 1946 and the Convention on the Privileges and Immunities of the Specialized Agencies 1947 upon many regional organisations.

Subsequently, a similar method of referring to regional organisational practice in order to illustrate the influence of United Nations practices upon other international organisations appeared in the discussion concerning the establishment of permanent missions to organisations. In this regard, the reports referred to several regional organisational instruments and practices relating to permanent missions (El-Erian, 1968, pp. 131–132), including:

- a. Article 1 of the Bilateral Agreement between the Organization of American States and the Government of the United States of America relating to Privileges and Immunities of Representatives and Other Members of Delegations 1952
- b. Permanent representations established within the Council of Europe pursuant to a resolution adopted by the Committee of Ministers in 1951
- c. A resolution issued during the third meeting of the twelfth regular session of the Council of the League of Arab States in 1950 concerning permanent representatives
- d. Consideration by the Institutional Committee of the Organisation of African Unity in 1965 regarding relations between the General Secretariat and African diplomatic missions accredited to Addis Ababa.

The culmination of this attempt to reach a middle ground between excluding regional organisations and preserving the intended scope of the work appeared in the proposed saving clause of draft article 3, which provided:

“The fact that the present articles do not relate to international organizations of a regional character shall not affect the application to them of any of the rules set forth in the present articles to which they would be subject independently of these articles.”

Under this proposed draft article, regional organisations were permitted to apply the draft articles should they consider them suitable, even though such organisations were not treated as constitutive elements in the drafting process itself. The approach therefore preserved the primacy of organisations of a universal character in the formulation of general rules, while allowing regional organisations limited space for adaptive application.

In general, the inclusion of regional organisations within the work of the first part of the first topic did not amount to conceptual inclusion within the codification framework itself. Regional organisations primarily served as examples corroborating concepts already derived from the practices of the United Nations system. Their inclusion was therefore illustrative rather than constitutive. This remained the position at the time the draft articles were adopted as the Vienna Convention 1975.

5.1.2. Regional Organisations and the Shift toward a Broad but Cautious Outlook

Two years after the adoption of the Vienna Convention 1975, the preliminary report for the second part of the first topic was published. This time, the work focused on the privileges and immunities of international organisations and their officials. Within this phase, a noticeable shift in the Commission's approach toward regional organisations could be observed. Unlike the previous part, the study process extended its scope to encompass both organisations of a universal character and organisations of a regional character, although the question of their inclusion within the final codification framework was left to be determined at a later stage (Díaz-González, 1983, 1986, 1989; El-Erian, 1977, 1978). This method may be described as a broader, though still cautious, outlook.

This methodological shift was influenced by developments that had occurred during the preceding decade, particularly the growing convergence between the practices of organisations of a universal character and those of regional organisations in matters relating to privileges and immunities. Furthermore, the increasing number of legislative instruments adopted by regional organisations enabled more extensive comparative analysis alongside the already substantial body of material produced within the United Nations system (El-Erian, 1978, pp. 283–285).

Alongside this broader outlook, the Commission also adopted a pragmatic method, (Díaz-González, 1985, p. 105) focusing heavily upon institutional practices while deliberately avoiding prolonged theoretical debates. This choice is understandable given that, during the work on the first part of the topic, the Commission had already extensively examined the historical and theoretical development of the subject.

The combination of this cautious outlook and pragmatic approach became evident throughout the discussions. Regional organisations appeared in the elaboration concerning the evolution of the legal status and immunities of international organisations, where references to the influence of the Convention on the Privileges and Immunities of the United Nations 1946 upon regional organisations were restated (El-Erian, 1977, pp. 145–146). The Organization of American States (OAS), the Danube Commission, and the European Economic Community (EEC) appeared in discussions concerning the legal capacity of international organisations alongside various organisations within the United Nations system (Díaz-González, 1985, p. 108). Questions relating to legal personality were further supported by references to decisions of the Permanent Court of International Justice (PCIJ) and the International Court of Justice (ICJ).

A similar pattern could also be observed in the discussion concerning the inviolability of communications of international organisations. In this context, practices relating to the Committee of Ministers of the Council of Europe, the OAS, the Economic Commission for Latin America (ECLA), the Economic Commission for Asia and the Far East (ECAFE), the Economic Commission for Africa (ECA), and the European Committee on Legal Cooperation were frequently cited alongside practices drawn from organisations of a universal character. (Díaz-González, 1990, 1990)

Nevertheless, when discussing the scope of the privileges and immunities of international organisations, no specific practices of regional organisations were referred to (Díaz-González, 1986, 1989). In addition, in the discussion concerning headquarters agreements, the supplementary materials relied upon consisted primarily of replies submitted by United Nations specialised agencies and the IAEA to the 1978 questionnaire (Díaz-González, 1986, p. 167).

Based on the foregoing discussion, it may be argued that regional organisations continued to occupy a secondary position as conceptual materials despite the broader scope of study adopted during this phase. Ultimately, the role of regional organisations did not change substantially from the earlier universal-first approach. The clearest evidence supporting this conclusion appeared in proposed article 2, which provided (Díaz-González, 1989, p. 156):

Article 2. Scope of the present articles

1. The present articles apply to international organizations of a universal character in their relations with States when the latter have accepted them.
2. The fact that the present articles do not apply to other international organizations is without prejudice to the application of any of the rules set forth in the articles which would be applicable under international law independently of the present articles.

Ultimately, despite the broader analytical framework adopted during the second part of the topic, institutional universalism continued to shape the codification process. Following nearly a decade of discussion, the second part of the topic was eventually discontinued due to the slow ratification of the Vienna Convention 1975 (UNGA, 1992).

5.2. *The Second Topic: Responsibility of International Organisations*

More than a decade after the above discontinuation, the study on the responsibility of international organisations was undertaken, with its first report issued in 2003. The work eventually resulted in what is now known as the Draft Articles on the Responsibility of International Organizations 2011 (DARIO). This topic did not emerge entirely independently from the Commission's earlier work. Questions concerning the responsibility of international organisations had already appeared in the first report of the first topic, which explained that growing concern regarding the responsibility of international organisations developed alongside the expanding role of such organisations within international affairs, inevitably generating increasingly complex legal issues (Gaja, 2004, p. 107).

Within the interconnected framework of the Commission's work, the topic on the responsibility of international organisations followed the legal structure previously employed in the codification of the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). The principal difference lay in the subject under examination, namely international organisations rather than states. Nevertheless, conceptual adjustments were also required because the work was not intended to constitute a mere mechanical reproduction of ARSIWA, a point repeatedly emphasised by the Special Rapporteur.

Within this phase, institutional diversity also became an explicit concern (Gaja, 2007, pp. 6–7). Unlike the first topic, diversity within the second topic was treated as a substantive consideration in the drafting process itself. The reports repeatedly emphasised the need to accommodate the diversity of international organisations, which eventually led to the proposal of a *lex specialis* provision intended to preserve the applicability of special institutional rules (Gaja, 2009, p. 95).

The second topic reflected a substantial expansion in the conceptual use of regional organisational practice. Although organisations within the United Nations system and the IAEA continued to occupy a central position, regional organisations appeared far more extensively throughout the discussions than in the earlier topics. Nevertheless, this broader engagement remained uneven, as the reports relied predominantly upon European regional institutions such as the Organization for Security and Co-operation in Europe (OSCE), the European Commission, and the North Atlantic Treaty Organization (NATO).

The first major issue addressed within the topic concerned attribution. This issue relates to the manner in which international society attributes responsibility to international organisations, whether through their organs, member states, or relationships with other international organisations. The WTO Panel proceedings in *European Communities — Customs Classification of Certain Computer Equipment* constituted an important source in examining questions of mixed responsibility⁵ between member states and the organisation itself. Similarly, proceedings involving NATO before the International Court of Justice (ICJ) and the European Court of Human Rights (ECtHR) demonstrated the practical complexities surrounding attribution (Gaja, 2004, pp. 4–8). These discussions were later reflected in articles 6 and 7 of DARIO.

Various advisory opinions of the ICJ were relied upon to clarify attribution through the conduct of organs and agents of international organisations. In particular, the Court's use of the term "agents" was regarded as significant because it applied irrespective of an individual's formal status within the organisation. These opinions also addressed questions concerning attribution in situations involving ultra vires conduct (Gaja, 2004, pp. 7–8). The discussions were further supported by the practices of the International Monetary Fund (IMF) and the Court of

⁵ In the report the term used was simultaneous attribution, Gaja, *Second Report on Responsibility of International Organizations*, p.4 para (6).

Justice of the European Communities. In addition, situations in which one international organisation places an organ at the disposal of another organisation were examined, although such arrangements were considered comparatively rare. One important example concerned the relationship between the World Health Organization (WHO) and the Pan American Health Organization (PAHO), under which PAHO functions as the regional office of WHO. Under this arrangement, the conduct of PAHO and its staff may entail responsibility attributable to WHO.

The discussion subsequently moved toward questions concerning breaches of international obligations and the legal consequences arising from such breaches, including the responsibility of international organisations in connection with acts carried out by states or by other organisations.(Gaja, 2005, 2006) Within this context, the institutional position of the European Commission and the European Communities became particularly influential in the formulation of the draft articles, especially in discussions concerning actions or omissions giving rise to responsibility. Other European institutions repeatedly relied upon throughout the reports included the European Court of Justice and the European Court of Human Rights. This reflected a growing reliance upon European regional institutional practice as conceptual material within the codification process.

Alongside these materials, the practices of United Nations organs and specialised agencies frequently appeared in discussions concerning the legal nature of the internal rules of organisations under general international law. By referring to ICJ proceedings such as *WHO v Egypt* and *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie*, the Special Rapporteur concluded that the internal rules of organisations may constitute rules relevant within general international law. The practices of the World Intellectual Property Organization (WIPO) and the International Civil Aviation Organization (ICAO) also appeared, particularly in discussions concerning the responsibility of an international organisation in connection with the conduct of a State or another organisation.

Within the discussion of circumstances precluding wrongfulness, the European Union served as an important example concerning consent, while the practices of the European Commission, IMF, and International Labour Organization (ILO) were relied upon in discussions concerning necessity. The Organization of American States (OAS) appeared in discussions relating to force majeure. Similarly, in discussions concerning the responsibility of a State in connection with the act of an international organisation, the practices of the European Court of Human Rights and the influence of the European Convention on Human Rights were repeatedly emphasised.(Gaja, 2006)

The content of international responsibility was also examined extensively.(Gaja, 2007) In discussions concerning reparation, references were made to the practices of the Permanent Court of International Justice (PCIJ), the ICJ, the Organisation for the Prohibition of Chemical Weapons (OPCW), the United Nations Administrative Tribunal, and NATO. The subsequent issue concerned the invocation of responsibility, namely the manner in which international organisations implement and enforce international responsibility.(Gaja, 2008) The *Reparation for Injuries* advisory opinion of the ICJ was relied upon extensively to substantiate the concept of invocation by injured parties. The Commission further considered that the principles established in that opinion could apply equally to other international organisations, provided that their legal personality was sufficiently established. The practices of the European Commission, the European Court of Human Rights, and the ICAO Council were also relied upon in discussions concerning the exhaustion of local remedies,(Gaja, 2008) particularly in disputes involving European Union member states and the United States.

Overall, the second topic reflected a significant expansion in the conceptual role of regional organisational practice within the Commission's work. Nevertheless, this broader engagement remained structurally uneven. While regional organisations no longer functioned merely as supplementary illustrations, the reports relied predominantly upon European regional institutions as the principal regional reference points. Consequently, although institutional diversity received greater recognition within the drafting process, institutional universalism continued to shape the broader architecture of codification.

5.3. The Third Topic: The Settlement of International Disputes to which International Organisations are Parties.

This topic is comparatively recent, with its first report issued in 2023. Unlike the previous two topics, the work remains ongoing. At the time of writing, three reports have been published and serve as the primary materials for this subsection. Within these reports, the pattern of continuity and interconnectedness with the earlier topics is evident. Questions concerning the participation of international organisations in legal proceedings had already appeared during discussions in the second part of the first topic concerning relations between states and international organisations. At the time the third topic emerged, issues concerning the status of international organisations, their relations with states, treaty-making capacity, and responsibility had already undergone substantial codification (Reinisch, 2023, p. 8).

Once again, as in the previous two topics, institutional diversity is addressed within the work, although this time it broadens into a factor potentially influencing the forms of outcome the Commission might eventually adopt, including possibilities extending beyond draft articles (Reinisch, 2023, p. 14). Moreover, the third topic appears to employ a broad approach in the sense that the practices of the United Nations system inform the discussions alongside the extensive and varied institutional practices of regional organisations.

Within the definitional discussions, regional organisations played a substantial illustrative role in explaining the evolving membership dimension of international organisations. Organisations such as the Andean Community, the African Union, the Caribbean Community (CARICOM), the Common Market for Eastern and Southern Africa (COMESA), the East African Community, the European Union, the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC), the Southern Common Market (MERCOSUR), and the West African Economic and Monetary Union (WAEMU) were repeatedly referred to throughout the discussions.

The European Union, for example, was discussed as a founding member of both the World Trade Organization (WTO) and the Food and Agriculture Organization of the United Nations (FAO), while the European Investment Bank was referred to in connection with the European Bank for Reconstruction and Development. The Asian-African Legal Consultative Organization, the Organization of Petroleum Exporting Countries (OPEC), and SADC further appeared in discussions explaining that international organisations may be established by instruments other than treaties. These discussions eventually contributed to the proposed definition that:

International organizations refers to an entity established by States and/or other entities on the basis of a treaty or other instrument governed by international law and possessing at least one organ capable of expressing a will distinct from that of its members.(Reinisch, 2023)

Questions concerning international dispute settlement itself continued to rely heavily upon the framework of the United Nations Charter and the practices of institutions such as the ICJ and the International Tribunal for the Law of the Sea (ITLOS). Negotiation and consultation were illustrated through agreements concluded by organisations such as the International Labour Organization (ILO) and the WTO with Switzerland, while the Samoa Agreement between the European Union and the Organization of African, Caribbean and Pacific States served as an example of cooperation and negotiation between organisations. Discussions concerning mediation and conciliation were further substantiated through the participation of the European Union in the International Treaty on Plant Genetic Resources for Food and Agriculture (Reinisch, 2024).

Similarly, discussions concerning arbitration relied upon practices ranging from UNCITRAL proceedings to institutions such as the International Centre for Settlement of Investment Disputes (ICSID), the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Stockholm Chamber of Commerce, and the Permanent Court of Arbitration (PCA). Regional organisational agreements, including arrangements between the European Union and the African, Caribbean and Pacific Group of States, as well as the European Union–United Kingdom Trade and Cooperation Agreement, also appeared prominently throughout the discussions.

In discussions concerning judicial settlement, proceedings before the ICJ, ITLOS, and the WTO formed important conceptual materials. A particularly striking feature of this topic, however, is the increasing reliance upon regional human rights institutions, especially the African Court on Human and Peoples' Rights, the European Court of Human Rights, and the Inter-American Court of Human Rights (Reinisch, 2024, III). In this respect, regional organisations no longer appeared merely as illustrative references but increasingly functioned as conceptual materials informing the development of the discussion itself.

A similar pattern could be observed in discussions concerning courts within regional economic integration systems (Reinisch, 2024, 2025). The reports relied upon the practices of the European Union, the European Economic Area, the Central American Court of Justice, the Court of Justice of the Andean Community, the MERCOSUR dispute settlement system, the SADC Tribunal, and the East African Court of Justice. Even dormant judicial bodies, such as the Nuclear Energy Agency Tribunal of the Organisation for Economic Co-operation and Development and the judicial organ of the Arab Maghreb Union, were considered within the discussions.

Overall, the third topic reflects the most substantial integration of regional organisational practice within the Commission's work thus far. Unlike the earlier topics, regional organisations increasingly function not merely as supplementary illustrations but as conceptual materials shaping the development of the discussions themselves. Nevertheless, institutional universalism has not entirely disappeared. The United Nations Charter and the practices of universal judicial institutions continue to provide the overarching legal framework within which many of these discussions remain situated.

6. Conclusion

In conclusion, the work of the International Law Commission demonstrates that the position of regional organisations within the codification of the law of international organisations evolved gradually across the three topics examined in this article. The reports reveal not only continuity across the topics themselves, with the first topic concerning relations between states and international organisations functioning as the central axis of development, but also a gradual transformation in the conceptual role assigned to regional organisational practice within codification discourse.

In the earlier stages of codification, regional organisations primarily functioned as illustrative and supplementary references within a framework strongly shaped by institutional universalism and the practices of organisations of a universal character. Although subsequent topics adopted broader and more inclusive methodological approaches, regional organisations continued to occupy a secondary conceptual position, with European regional institutions emerging as the dominant regional reference points. Over time, however, regional organisational practices increasingly contributed as conceptual materials informing the development of the discussions themselves, particularly within the most recent topic concerning the settlement of disputes involving international organisations.

The reports further demonstrate that the notion of institutional diversity evolved across the three topics with differing orientations. Initially regarded primarily as an obstacle to the formulation of general rules, diversity gradually became an explicit drafting concern and eventually emerged as a factor influencing consideration of more varied forms of outcome within the Commission's work. Nevertheless, despite these developments, the reports continue to reflect the enduring influence of universal institutional frameworks within the broader architecture of codification. The evolution traced throughout the three topics therefore reveals not the disappearance of institutional universalism, but its gradual accommodation of regional organisational practice within the construction of the law of international organisations.

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