The European Union: A Role Model for Regional Governance?

Richard Kirkham and Paul James Cardwell

The European Union (EU) is the most constitutionally advanced example of regional governance in existence. As the debates across the member states on the Constitutional Treaty continue, it is interesting to note the trends of regional governance in other parts of the world, and to what extent, if at all, the EU has become a role model. This article places the EU in an international context by identifying and evaluating other forms of regional governance around the world. The extremely varied characteristics of the regional entities in existence are explored, followed by analysis of the trends towards supranationalism, the development of autonomous bodies of law, and institutional development. Whilst no two instances of regional governance are alike, clear parallels can be drawn with the institutional and legal order of the EU.

1. Introduction

In constitutional terms, the European Union (EU) is an extraordinary legal entity. Its achievements are considerable and its position within the international legal order looks assured. However, at the heart of the European project there remain questions of constitutional legitimacy, questions that are fundamental to the arguments surrounding the introduction of a constitutional treaty for the EU. This article does not address this debate head on but instead seeks to inform it. Its primary contribution is to place the EU in an international context by examining the evolution of other examples of regional governance.

Given that the EU is by far the most constitutionally advanced example of regional governance, some may object to such a comparative project. However, in spite of its supranational character and constitutional order, the EU remains a...
treaty-based entity composed of 25 nation states. Likewise, there are many other groups of nation states exploring opportunities beyond those that the nation state itself can offer and this interest has increased in recent years.

Admittedly, outside the EU, the long-term prospects of many regional entities are still uncertain and most such schemes have, as yet, achieved little. Nevertheless, in the short to medium-term at least, regional governance looks set to play an ever more important role on the global horizon, and therefore merits the attention of public law scholars. In this article, the argument is made that there are some recurring patterns within the trend towards regional governance which place the EU in a positive light and provide strong support for the institutional logic behind the design of the EU. Indeed, for many the achievements of the EU are looked on with envy and, on more than one occasion, attempts have been made to imitate its institutional design.

The article advances through four stages. It begins with a discussion of some of the main reasons why regional tools of governance have been adopted by nation states. There then follows a description of the constitutional forms that regional entities adopt. In particular, a distinct difference is identified between those entities that adopt an intergovernmental format and those that attempt to govern through supranational institutions. The question then explored is whether there are any overriding reasons why one form of governance should be adopted over another. The article ends with an overview of some of the main features of supranational governance that have been introduced.

This is a controversial issue in some quarters. Amy Verdun, for example, discusses the generally different approaches between European scholars, who tend to see the EU as sui generis, and American scholars who see it as fundamentally similar to other forms of governance around the world; A. Verdun, ‘An American/European divide in European integration studies: bridging the gap with international political economy’ (2003) 10(1) Journal of European Public Policy 84.


There is considerable debate about the state of the EU as an international or regional organisation, which centres on the legal personality of the EU as opposed to the EC under the current treaty arrangements. Deirdre Curtin and Ike Dekker make an interesting case for the EU as a ‘layered’ international organisation in; p. Craig and G. de Búrca, The Evolution of EU Law (1999, OUP), pp. 83-136. Political scientists have also confronted the same question, which hinges on the notion of sovereignty. For an overview of the different arguments, see T.J. Bierstaker, ‘Locating the Emerging European Polity: Beyond States or State?’ in J.J. Anderson (ed.), Regional Integration and Democracy: Expanding on the European Experience (1999, Rowman), pp. 21-42.

2. The Case for Regional Governance

Since the Second World War, the ideal of regional co-operation between nation states has been pursued throughout the world, to the extent that today almost all nation states are a member of one regional entity or another. However, there has been nothing uniform about this development. The result is a bewildering array of regional entities, with different bodies having very different sizes, purposes, aims, depths of integration, legal foundations and fulfilment of their stated aims.

Behind this trend towards regional governance there are two overriding rationales. The first concerns the ability of regional entities to perform functions that nation states are unable to perform alone. In recent centuries the nation state has been the dominant focus of law-making and public power. However, despite the prevailing popularity of the nation state structure, globalization has made this traditional Westphalian understanding look outdated. It is now an almost undisputed truism that in many respects human activity, 'no longer corresponds to the territory of the nation state; it is global and transnational'. Such is the extent to which social and economic life takes place across national boundaries that in many areas there is considerable potential to be explored in turning to alternative solutions of governance. It may even be absurd to attempt to avoid this approach. Indeed, the development of international law and international organizations demonstrates a long held recognition of the need for modes of governance other than at the domestic nation state level.

However, the second overriding rationale for the growth of regional governance casts doubt on the ability of global organizations, by themselves, to make up for the governance deficit at the nation state level. International organizations can be too unwieldy to be effective and too insensitive to local needs. The UN, the WTO, the World Bank and the IMF have all been heavily criticized on these grounds in recent years.

There exists, therefore, problems and limitations of governance at both the nation state and the international level. In search of a solution, some place faith

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6 E. Iglesias, 'Twelve lessons from Five Decades of Regional Integration in Latin America and the Caribbean' (2001) 14 Integration and Trade 128.


in informal networking and co-operation between nation states, whilst others believe the answer lies in strengthening and building upon the current structure of international law. Somewhere in between the two, another approach is to address problems on a regional basis.

2.1. Functional Reasons

There are a number of reasons why many have concluded that regional bodies could be part of a potential solution to the inadequacies of more traditional forms of governance. On occasion, political appeals have been made to some form of common regional identity. However, a stronger driving force has tended to be one based on domestic self-interest. Thus it has been recognized that certain goals can be better achieved through a regional entity than by individual nation states acting alone.

An example of this pragmatic approach is the need to achieve collective security. Faced with the prospect of perceived external threats, nation states large and small have come together to establish collective security groups that guarantee mutual aid where necessary. NATO is the most widely known of such groups, but other wide ranging examples exist with equally impressive mandates. In the African Union and ECOWAS, the security group is specifically adopted in an attempt to provide a constitutional and democratic safeguard for countries otherwise susceptible to internal as well as external violence.

The pursuit of other social, cultural and political objectives can also help explain the development of schemes of regional governance. Indeed, post-war Europe is a good example of where there has been a strong agenda of cooperation and integration leading to the formation of the EU, the Council of Europe and the WEU. Also on the list of social and cultural functions that regional entities serve are human rights protection, the environment, tackling cross-border crime, creating nuclear free zones and reducing poverty, to name but a few.

2.2. Political Voice

Another important factor in the formation of regional entities is their ability to give groups of nations a political voice that they would not possess were they to act independently. In the competitive forum of global politics, the ability of nation

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states to contribute effectively in decision-making procedures is significantly enhanced where like-minded nations come together and agree on a collective strategy. In some cases this need for cooperation is more basic still, as it allows nation states to pool scarce resources in order to obtain the level of technical expertise and knowledge required to negotiate agreements that will work for them at the international level.

Nowhere is this need for a shared political position more evident than in dealing with bodies such as the WTO, where very real differences of opinion need to be overcome by participants that are influential enough to be able to advance these arguments on a reasonably level playing field. This is also true for developing states when dealing with other, more economically powerful, states. In the words of one Brazilian official:

‘Dealing directly with the US on international trade issues is like getting into a cage with a tiger. Only if we have others with us do we stand a better chance of getting some satisfactory results.’

This form of collective negotiation is not without difficulty. It could be argued that the development of strong regional entities renders it less, not more, likely that the necessary compromises will be made to facilitate the agreement of global deals. A further objection is that the idea that regional entities can help smaller countries gain a voice on the global stage is unrealistic where the regional entity in question is dominated by a single large state. Far from having their voice enhanced, in such a situation smaller states are often only participating because they have little option but to join in and follow for fear of being excluded.

Despite such criticisms, interest in forming regional bodies seems to have been revitalized, and is reminiscent of the enthusiasm seen during the first wave of regionalism in the 1970s. The interest is visible in all parts of the world, and is common to both economically developed and developing states. It would appear that a key factor in this development is the need to face up to the economic requirements of the globalized world.

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14 Ibid., at p. 835.
15 For example, Desker describes how the Asian countries, and in particular ASEAN, have learnt the benefits of this approach to WTO negotiations, B. Desker, ‘In defence of FTAs: from purity to pragmatism in East Asia’ (2004) 17(1) The Pacific Review 3, at p. 8–9.
16 Financial Times, 2 July 1985, at p. 5.
2.3 Economic Needs in a Globalized World

Speaking about the Caribbean Community (CARICOM)\(^\text{18}\), the Prime Minister of Jamaica has described part of the motivation towards regional governance as follows:

'We see CARICOM as a collective instrument for mitigating the vulnerability of our individual small states: vulnerability to political pressures from powerful interests in the wider world; vulnerability to trade, economic and financial shocks from the global market-place; vulnerability to the impact of natural and man-made disasters.'\(^\text{19}\)

Similar prescriptions can be found in amongst the founding charters of most regional entities:

'[The Cartegena Agreement] seeks to reduce external vulnerability and to improve the positioning of the Member Countries in the international economic context.'\(^\text{20}\)

The most common manifestation of this understanding is the requirement to advance the economic health of the member states by facilitating international trade.\(^\text{21}\) At least since the depression of the thirties, the promotion of the mutual benefits of free trade has been a prominent feature of global politics, particularly in the western hemisphere. To this end, regional entities are frequently seen as an appropriate mechanism through which to implement the necessary international cooperation required to make free trade a reality and to make the most of the global opportunities thereby created. ASEAN is typical of this approach.

'[The] ... goal is to boost the competitiveness of the ASEAN countries in the world market by means of regional integration. A notable trait is that it aims to increase the efficiency and competitiveness of the ASEAN countries’ manufacturing industries. Enhanced competitiveness and the creation of a wide-area market under [the Asian Free Trade Agreement] are likely to allow investors in manufacturing industries to exploit economies of scale in production.'\(^\text{22}\)

\(^{18}\) CARICOM was created in 1973 by four Caribbean states. There are now 15 members, and five associate members.

\(^{19}\) P. Patterson, 'CARICOM beyond thirty: Connecting with the Diaspora' (CARICOM 30th Anniversary Lecture, Brooklyn, New York, 2 October 2003). Available at: <www.caricom.org/>.

\(^{20}\) Article 1 of the Cartegena Treaty which founded the Andean Pact, now the Andean Community; <www.comunidadandina.org/ingles/treaties/trea/ande_trie1.htm>.


However, although aims such as a free trade area may represent the principal economic goal of a regional entity, more than one group has gone on to learn the benefits of improving the efficiency of the market in other respects as well. This is done not just through reducing tariffs, but also by harmonizing customs procedures and product standards. Developing the infrastructural base of the region is another common aspiration as it improves such attributes as communication links and energy supplies. Hence, a degree of economic cooperation between member states is often seen as a means to foster a competitive environment that strengthens the ability of businesses to compete on the global stage. Such hopes and aspirations have led more than one region to embark on a process that goes beyond a free trade area and a customs union, and moves in the direction of a common market and even a single economy. Such thinking resembles the experience of European integration. This trend towards regional economic schemes is also encouraged by the fact that in many parts of the world, despite much talk of globalization, the majority of social and economic interaction on the global stage is intra-region rather than truly global.

Within regional entities, not only are the economies of the member states supported through the expansion of the market, but the tool of regional governance offers hope that member states can enhance their ability to regulate the market where appropriate. This is highly important as the ability of the leading global financial institutions to perform this task to a satisfactory standard has been called into question in recent years. The WTO, for instance, represents an unfinished product that is a long way short of achieving the degree of regulatory results that have been achieved in the EU. Thus, for nation states wishing to advance free trade further than can be currently achieved by the WTO, or who wish to reinstate political control over the market, there is a strong temptation to seek other methods. In this respect, regional governance can fit the bill and is provided for by the WTO.


24 J. Ocampo, 'Past, Present and Future of Regional Integration' (2001) 13 Integration and Trade 139, at p. 140. See also T. Pelagidis and H. Papsotiriou, 'Globalisation or regionalism? States, markets and the structure of international trade' (2002) 28 Review of International Studies 519, who make the same point although argue that increased regional trade compared to global trade has come about as a direct result of political choices, not the other way around.


27 For an analysis of the economic arguments in favour of Free Trade Areas in addition to the WTO, see B. Desker, op. cit. note 15 above, and P. Hirst, op. cit., note 7 above, at p. 424.
rules themselves.\textsuperscript{28} Indeed, the irony is that the introduction of global trading rules would seem to have encouraged the birth of regional entities, possibly because it has helped to create a more stable commercial environment.\textsuperscript{29}

There are, of course, risks associated with interfering with the market. In particular, many economists fear that with the construction of extensive trading blocs, regional entities may be tempted to pursue mutually hostile protectionist policies that will be self-defeating for all. The danger here is that because protectionist policies place barriers against free trade from outside of territorial trading blocs, they are discriminatory towards outside producers and therefore distort the allocation of global resources. Economists argue that the end product of such an approach is a reduction in overall global economic efficiency. Moreover, although in the short-term there may be benefits for the member states of regional entities, in the longer term opportunities maybe reduced through restricted connections with the global market.\textsuperscript{30} This was certainly raised as an issue by many developed and developing nations outside the EC when it moved towards completion of the single market in the late 1980s and early 1990s.\textsuperscript{31} There is also empirical evidence from the so-called ‘first wave’ of regionalism in the sixties and seventies to suggest that this line of criticism has some force.\textsuperscript{32}

In response to this criticism of regional governance, today most economic regional integration schemes accept the need to be outward-looking. The Secretary-General of the Andean Community, for instance, has described the modern mantra as being to accept the reality of globalization and work with it using regional governance as an aid to making the most of the opportunities available, not as a defence mechanism.\textsuperscript{33} Similar prescriptions lie behind the renewed drive towards regionalism in Asia,\textsuperscript{34} Africa\textsuperscript{35} and the Caribbean.

\begin{itemize}
\item Ocampo, \textit{op. cit.} note 24 above at p. 140. See also Article XXIV of GATT which provides for the registration of trading blocs at the WTO.
\item Iglesias, \textit{op. cit.} note 6 above, at p. 131; Mansfield and Reinhardt, \textit{op. cit.}, note 13 above.
\item For example, J. Viner, \textit{The Customs Union Issue} (1950, Carnegie Endowment for International Peace).
\end{itemize}
[Although] regional integration is not an end in itself, ... [it] is an integral part of the structural reform process which is designed to make our economies more open, market-based, more socially equitable and democratic and more internationally competitive in a globalizing world economy.  

3. Constitutional Structures in Regional Governance

Regional entities exist for a plethora of reasons. Sometimes an entity will undertake a number of different functions, but often those functions will be performed by separate groups. The end result is a complex world of regional governance. This makes the task of classifying regional groups according to a defined typology not only difficult, but potentially misleading. However, in one respect the various different regional entities do stand up to comparison, and that is in the procedural means by which they choose to implement their goals.

Here too there are a rich variety of organizational solutions adopted. The most common form of regional governance is one set up on an intergovernmental basis. Intergovernmental arrangements are the classical form of collective decision making amongst nation states, as in such arrangements the decisions of the regional entity remain reliant upon the unanimous consent of all the member states. But not all groups are so conservative. Along the organizational spectrum there are many groups that have evolved strong integration features within their intergovernmental framework. Some groups have gone even further and introduced distinct features of supranationalism. The most importance feature of a supranational group is that the member states delegate a degree of autonomy to the regional entity.

3.1. Basic Intergovernmental Groups

At the lower end of the integration scale, regional governance tends to operate through a bare minimum of formal structures. In some cases this reflects the fact that the regional entity is, in practice, little more than a forum for the discussion of mutual issues of concern or for the transfer and collation of information. For example, the Arctic Council facilitates discussion about sustainable development in the Arctic region.  

Iglesias, op. cit. note 6 above, at p. 128.

The Arctic Council was founded in 1996. Its permanent members are: Canada, Denmark, Finland, Iceland, Norway, Sweden, Russia and the USA.
across the member states which perform the various information collation tasks that are essential to the Council’s decision-making.

Administrative and technical support is a regular feature of schemes of regional governance. In this respect, many groups have gone as far as establishing a permanent central institution to coordinate the work of the regional entity. Such a move is an indication of seriousness of intent in that, once an agreement on a particular issue has been obtained, it allows the group to function more effectively as an instrument through which the mutual collective will of the member states can be put into practice. NATO is a good example of such an organization. NATO has a permanent organizational base, an institutionalized decision-making process and even a number of permanent NATO appointees charged solely with promoting the business of NATO. Even so, as sophisticated an organization as NATO is, in practice, any military or peace-keeping mission undertaken by NATO must first be approved by all members of the group before it can be actioned. Thus the group remains within the classical intergovernmental format of international law whereby the member states retain a high degree of control of the decision-making process.

The Arctic Council and NATO are but two examples of intergovernmental organizations, and there are many others. But what these examples demonstrate is that the label ‘intergovernmental’ encapsulates a range of very different organizational solutions to regional governance. Moreover, some solutions contain features that, on the part of the nation state, involve a much greater concession to the collective cause than others in the areas of day-to-day management and implementation. Within this broad array of regional entities, an important constitutional question to ask here is how far the model of intergovernmental organization can go in terms of achieving results. The examples shown above provide some evidence that there are a number of tasks that can be performed appropriately under such schemes. For instance, where the responsibilities delegated to the regional entity are relatively uncontroversial, as with the work of the Arctic Council, then the likelihood is that where political disagreements do occur then compromises will be found relatively easily within the intergovernmental format. By contrast, in regional entities where the issues are extremely politically sensitive, such as in NATO, it will be virtually impossible to establish a collective association other than through an intergovernmental mechanism that retains ultimate decision-making authority with the member states.

There are some areas of governance though where the efficacy of the intergovernmental constitution is less clear cut. Lead among these is within the economic sphere. Indeed, current practice within regional integration schemes lends support to the concerns about the ability of the intergovernmental design of regional governance to achieve material results.
3.2. Economic Intergovernmental Organizations

Most regional entities that attempt to pursue a shared economic agenda do so through intergovernmental agreements, although once again such agreements come in many different forms. Hence, in some groups, such as the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), the organizational features are minimal. Within ANZCERTA the objectives are to strengthen the relationship between these two states and develop their economic interests by eliminating barriers to trade and encouraging competition. In this project ANZCERTA has been relatively successful despite operating in the absence of established 'regional' institutions, such as a formal dispute resolution mechanism. For this reason, it could be argued that ANZCERTA may be a more appropriate model for groups to follow than that of the EU. However, care needs to be taken before concluding that the minimalist approach to governance exhibited in ANZCERTA could be replicated elsewhere with similar effect. First, there are some special factors that probably help explain ANZCERTA's success. In particular, there are only two states in the agreement and these states enjoy long-standing good relations. They also share a common legal and economic heritage. Second, even if these favourable circumstances could be copied, the objectives of ANZCERTA remain limited.

Perhaps a more revealing example of a free trade organization is the North American Free Trade Association (NAFTA), which includes only three states of various sizes and economic power. As with ANZCERTA, NAFTA is firmly based on an intergovernmental understanding rather than a political union. Yet, it is significant that despite broad agreement as to NAFTA's free trade agenda, it was felt necessary to support the Treaty with a sophisticated independent dispute settlement procedure. This procedure culminates in a choice of arbitration routes, depending on the Treaty source of the disagreement. One of these arbitration routes allows for an investor to bring an action against a member state. The work of the NAFTA arbitration panels, backed-up by the support of the domestic courts, would appear to have the potential to be an extremely effective form of legal control. However,

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38 ANZCERTA is sometimes referred to simply as the CER.
39 ANZCERTA Treaty Article 1(a)-(d).
40 Article 24 leaves open the possibility of association of third states to the agreement via mutual agreement.
41 Canada, Mexico and the USA.
42 G. Vega-Cánovas, 'NAFTA and the EU', in Anderson, op. cit., note 4 above, at p. 225.
44 NAFTA, Chapter 11.
45 At this stage there remain significant question marks over the procedure's true effectiveness, e.g., T. Weiler, 'NAFTA: Dispute Settlement – significant Awards and a New US Dispute' (2003) 9(6) International Trade Law & Regulation 63.
it also represents a step away from the classical intergovernmental model in that it reduces the level of control that the member states possess over the operation of the agreement.

Other regional economic integration schemes pose an even stronger challenge to the intergovernmental model, as they are formed with the intention of going beyond a simple free trade agreement, and attempt to address a wider range of political objectives. For instance, the Gulf Cooperation Council (GCC) states in its founding Charter the desire to deepen and strengthen relations, ‘in all fields in order to achieve unity’. However, it is noticeable that there appears to be little political will to take this project further in terms of concrete actions. Indeed, a lack of constructive progress is relatively common amongst economic regional schemes, and has been one of the reasons why several have fallen by the wayside and been abandoned, either formally or informally.

Nevertheless, there are some regional schemes that would appear to be capable of achieving much more than free trade deals alone when the commitments are acted upon. For instance, the Association of South-East Asian Nations (ASEAN) is often cited as the closest relation to the EU. Such a comparison is justified by drawing upon the group’s relative success in establishing a regional identity, its successive enlargements from the original five to ten states, and its attempts to diversify its sphere of activity into economic, security, and other domains. Indeed, its founding Charter, the Bangkok Declaration, contains a provision for, ‘exploring all avenues for even closer cooperation among themselves’ via the regular meetings of government officials at many levels. This has been reiterated in subsequent declarations, most recently in Bali in 2003:

‘ASEAN shall continue its efforts to ensure closer and mutually beneficial integration among its member states and among their peoples, and to promote regional peace and stability, security, development and prosperity with a view to realizing an ASEAN Community that is open, dynamic and resilient.’

46 Formed in 1981 by Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.
47 Gulf Cooperation Council Charter, Article 4(1).
48 ASEAN was founded by five states in 1967 and, after successive enlargements, now has ten member states.
50 Point 2(7).
51 Declaration of ASEAN Concord II (Bali Concord II), 7 October 2003. Available at: <www.aseansec.org/15160.htm>.
52 Ibid., point 2.
Such statements reflect those made in the EC/EU treaties and go beyond a simple free trade agreement, yet the crucial difference between the two groups lies in the legal aspect of the respective agreements. Unlike the EU, within which it was always envisaged that there would be a legal delegation of decision-making power to a 'European' body, ASEAN states have made no such equivalent formal commitment to the collective will. Thus the development of a common body of legally enforceable rules at the supranational level, akin to those developed by the ECJ, has not been possible. Instead, ASEAN has retained its intergovernmental character through an explicit recognition within its treaties of the principle of non-interference in each other's internal affairs. This reliance upon intergovernmentalism would seem to be a rejection of the model of integration practised by the EU.

In other parts of the world though, the EU has become something of a role model. For instance, another regional entity with wider aspirations than the creation of a free trade area is Mercosur. Mercosur began life in 1991 at a time when the EC had emerged from the 'eurosclerosis' of the 1970s and early 1980s and was pushing forward with the integration process. The group's founders were all newly established democracies seeking to bury regional tension, especially that between Argentina and Brazil. Interestingly, Mercosur expressly drew on the European model of regional integration, and indeed the European Commission assisted in the technical aspects of Mercosur's foundation. The end result is that, to a much greater extent than in ASEAN, Mercosur reflects a combination of political and macroeconomic goals in its founding treaty, the Treaty of Asuncion. The member states of Mercosur share as an initial goal the formation of a customs union, but they also aspire to create a common market, full macro-economic coordination including a single currency, and the free movement of goods, capital, labour and services.

Yet here too there are fundamental differences between the European model of governance and that of Mercosur. Whereas in the EU, institutions such as the Commission and the ECJ were set up to be independent from the member states and to work for the integration of Europe, this has not been the case with Mercosur. This means that despite the tone of its founding treaty, Mercosur has firmly remained an intergovernmental rather than a supranational project.

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53 Tan, op. cit., note 34 above.
54 Ibid.
56 Mercosur stands for Mercado Común del Sur (Common Market of the South). It was founded by Argentina, Brazil, Paraguay and Uruguay.
58 Available at: <www.mercosur.org.uy/paginalesp.htm>.
3.3. Supranational Regional Entities

While the intergovernmental design may be the most common form of regional governance, many other regional schemes, on paper at least, have taken definitive steps towards the creation of a much more advanced and sophisticated form of regional governance. By way of example, the members of the Andean Community created their ‘subregional agreement’ in 1969 with the signing of the Cartagena Agreement. Within the Cartagena Agreement the signatories are:

‘RESOLVED to strengthen the union of their peoples and to lay the foundations for advancing toward the formation of an Andean subregional community. AWARE that integration constitutes a historical, political, economic, social and cultural mandate for their countries, in order to preserve their sovereignty and independence.’

After a number of years of relative inaction, in recent years the Andean Community has made significant strides towards integration, notwithstanding the domestic political difficulties which have faced almost all the members. In particular, unlike its neighbour Mercosur, the Andean Community has put in place institutions which are both supranational in character and which contain a far-reaching economic focus. Thus there is now an Andean Parliament, a Court of Justice and a General Secretariat, all with autonomous powers.

As for the aspirations of the group, within the text of the Cartagena Agreement the economic aspect of integration is clear. This drive has already led to a free trade zone created in 1993, a customs union, and advanced plans for a wider economic union. But the aspirations of the Andean Community go much further, as there is also a detailed political and social agenda in place, including proposals to implement a common passport.

A similar tale can be told of other more constitutionally advanced attempts at regional governance, such as the Caribbean Community (CARICOM), the Central America Common Market (CACM) and the Economic Community of Eastern Bolivia, Columbia, Ecuador, Peru and Venezuela.

Writing in 1977, E. Milenky noted that there was a lack of economic, social and political links within the Andean Group, compromising its economic development policy: E. Milenky, ‘Latin America’s Multilateral Diplomacy: Integration, Disintegration and Interdependence’ (1977) 53(1) International Affairs 73, at p. 81.

Although this has yet to cover Peru.

Decision, Lima, 5 May 2004.

and Southern Africa (COMESA). However, with all these regional schemes there remain crucial problems at the national level which must be resolved before their potential can be fulfilled. In the words of one writer in their description of the Andean Community:

‘... despite the region’s significant progress, it is necessary to face up to Latin America’s ‘great deficits’ in the current integration process: the leadership deficit, the management and governability deficits; the democratic and social deficits; the deficit of judicial-institutional capacity; the deficit of follow-up, monitoring and evaluation; and the deficit of information and training.’

Hence, whilst it is the argument of this article that there is a definite trend towards the adoption of ever more sophisticated forms of regional governance, it must be recognized that in virtually all parts of the world there are a number of significant obstacles that could prevent this vision becoming a reality.

4. Moving from the Intergovernmental to the Supranational

4.1. The Pros and Cons

As described above, there is no one set design for regional governance. However, despite this diversity, there are some common themes that can be ascertained from the current network of regional entities, themes which should be very familiar to observers of the EU. In particular, within the economic sphere there is a developing tendency for regional entities to attempt to move away from the intergovernmental model, towards an institutional format along similar supranational lines to that that has been created in the EU. Whilst there are a number of social and cultural explanations for this development, a key constitutional explanation is that within standard intergovernmental ‘constitutions’, the pursuit of deeper integration goals come up against significant practical and constitutional barriers to progress.

Perhaps the most important issue is implementation. As regional entities become ever more advanced in their ambitions, attention has to be given to the ability of the organization to deliver. By following the intergovernmental approach, groups such as ANZCERTA, NAFTA, Mercosur and ASEAN have demonstrated that much can be achieved this way and that it is not always necessary to establish autonomous supranational institutions in order to achieve results. The key advantage with this format is that it creates an international understanding of the law that allows the

67 COMESA comprises of twenty member states; <www.comesa.int>.

member states to retain complete control of the decision-making process. This is seen as a more legitimate approach to governance than other potential solutions because of the direct political link between the member state governments and their citizens. Enhanced trust is also created this way because in practice regional entities can only go so fast as domestic political arenas allow. A further benefit is that such an approach is, initially at least, more efficient in terms of administration. Expensive new supranational bureaucracies do not need to be created in intergovernmental agreements because advantage can be taken of domestic administrative resources to implement the scheme.69

However, against these benefits, there is empirical evidence to suggest that there are limits as to how much can be achieved through this form of governance. In particular, the more expansive and influential the goals, the more room there is for member states to disagree as to the means of implementation and in so doing bring the organization to a standstill. Such problems seem particularly acute in economic integration schemes because the complexity of the rules that have to be established and enforced demand a high level of decision-making. This problem is exacerbated by the fact that the nature of economic agreements is such that, ultimately, they are designed to create rights for individuals within the member states. Both these factors create many more opportunities for disagreement.70

4.2. Making the Rules

There are two principal problems that face any attempt to create a regional scheme of governance: agreeing to collective rules; and enforcing those rules once they have been established. With regard to the first problem, as with all decision-making procedures, intergovernmental organizations at some point reach a stage when difficult decisions have to be made and disagreements as to the way forward resolved. In such circumstances, intergovernmental organizations can only move forward on the basis of unanimity. But even where there is broad agreement as to the long-term benefits of making a particular decision, arriving at a unanimous consensus of opinion as to the detail of that decision is often difficult. This is especially so where there are competing domestic agendas to negotiate. As a result, intergovernmental schemes are almost bound to run into difficulties in terms of developing and maintaining the group’s momentum, unless a way of making concessions to the collective cause can be found.

69 F. Gonzalez, ‘MERCOSUR: The incompatibilities between its institutions and the need to complete the Customs Union’ (1999) 3 Integration and Trade 83.

An illustration of the problems that can occur is provided by the Mercosur experience. Mercosur is of particular interest because of the scale of the objectives that it seeks to pursue through an intergovernmental structure. To implement these goals, Mercosur has to date chosen to govern without establishing autonomous institutions. Instead, the decision making procedure is retained in the hands of the member states through the exercise of power in the organization's key institutions, the Common Market Council, the Common Market Group and the Mercosur Trade Commission. All of these bodies are staffed by political or bureaucratic officers of the member state governments. This means that there is no independent authority to push forward the regional agenda. In the opinion of many observers this is an unrealistic and institutionally inefficient solution which has resulted in the organization failing to maximize its potential.71

It is true that the economic situation in South America has been very difficult in recent years and this has been partly responsible for Mercosur's failure to complete all of its original goals.72 But, whilst recognizing the difficulties, for many the evaluation of Mercosur is blunt. Either the group needs to downsize its ambitions, or it needs to introduce autonomous regional institutions.

'The lack of appropriate supranational institutions has impeded progress towards deeper integration. The absence of a strong technical body vested with the power to propose and implement laws at the Mercosur level has been a major obstacle to moving forward with the integration process. This has contributed to a weak integration scheme, an imperfect customs union, which cannot be deepened without the full commitment of all member countries.'73

The principal problem is that regional policy cannot be advanced in the absence of unanimous agreement amongst its members, yet unanimity is hard to achieve given the sensitivity of the issues that need resolving.74 This situation is made worse by the strength of the various domestic interest groups and the lack of a central energizing force to take the project forward.


72 It has also been argued that in attempting to follow the EU economic model of integration too closely, the founders failed to take fully into account the particular political and practical obstacles in the way of South American integration, see J. Pelufio, 'Mercosur: In search of a new agenda - Mercosur's insertion into a globalized world' (2004) *Inter-American Development Bank, INTAL-ITD Working Paper -SITI-06B* and M. Hirst, 'Mercosur's Complex Political Agenda', in R. Roett (ed.), *Mercosur: Regional Integration, World Markets* (1999, Lynne Riener), at p. 45.

73 European Commission, *op. cit.*, note 71 above. See also Mecham, *op. cit.*, note 59 above.

Similar problems exist in other regional schemes, even where there is broad agreement as to the way forward. For instance, in CARICOM, there has been a clear understanding as to the objectives of the organization for many years, yet the process has stagnated largely because of the inability of the member states to translate their agreed commitments into reality.

'The pace of regional activity is frenetic, but the actual movement of regional integration is on the whole pathetically slow. We give the impression of advancing, but quite often we are simply marking time. And, of course, if we do so while the world is moving forward apace, the result is retrogression.'

The difficulty is that intergovernmental organizations are only capable of moving forward at the speed of the slowest member state, and the member states will only act as they deem domestically acceptable. Thus every decision of the regional group is reduced to a short term consideration of domestic politics in one part of the region and, on occasion, member states are tempted to retreat from their commitments. The end result may facilitate member state control, but it is also extremely time consuming, inefficient and possibly self-defeating.

Nor is the problem simply one of arriving at an international agreement. In many nation states, intergovernmental agreements have to be incorporated into domestic law before they can become effective. Therefore, in such states the implementation of objectives follows a two-stage process, which adds to the uncertainty and invariably slows the process down even further. In CARICOM, Mercosur and in several African integration schemes, protocols and common norms have often been adopted at the regional level, only for there to be extensive delays in transposition or complete non-performance on the part of the member states.

'So far, some of the CARICOM members resemble players involved in the prisoner’s dilemma, in which an individual betrays his comrades in order to better his own situation. Such behaviour by CARICOM members undermines the authority of the organization by destroying the trust underlying such multilateral agreements, endangering the fulfilment of the group’s common goals.'


Gonzalez, op. cit., note 69 above, at pp. 86-7.

For instance, on Mercosur, Vervaele cites that only 40% of unanimously agreed decisions of Mercosur have been effectively incorporated into member state law, op. cit., note 59 above, at p. 394. For a similar story in some African schemes, see the UN Economic Commission for Africa report, op. cit., note 35 above.

A. Cordova and J. Vance, ‘Will the Caribbean take the leap of faith?’ The Panama Times, 3-16 August 2003.
In all these examples, a common problem has been the absence of an autonomous community institution with sufficient powers to monitor member state performance and to put pressure on them to comply, as is the case with the European Commission.

4.3. Dispute Resolution

Even if an efficient means of making rules can be agreed upon, next there is the question of how to deal with disputes. In this respect, intergovernmental agreements tend to rely on arbitration mechanisms to enforce the scheme. Within regional schemes, the experiences of arbitration in NAFTA, Mercosur and CARICOM are mixed. Whilst arbitration can promote effective redress, a number of criticisms are generally made of such schemes, which demonstrate that they are weaker institutions than the courts. To begin with, because arbitration tribunals are usually set up on an *ad hoc* basis, particular care needs to be taken in their creation. Here, there have been concerns in the past that members of arbitration tribunals can lack neutrality and relevant expertise. But even if a suitable panel can be formed, the fact that arbitration tribunals are generally set up on an *ad hoc* basis means that they do not necessarily possess full residual knowledge of past arbitration hearings. Arriving at a decision is also made harder because arbitration tribunals are not bound by precedent and possess little by way of community juridical norms upon which to base their decisions. Equity may be achieved through this mechanism, but it does little to prevent inconsistent rulings being made.

A probable consequence, therefore, of relying upon arbitration to resolve disputes is that the regional system of community rules will remain underdeveloped, which makes it more difficult for it to obtain a position of strength within the region. Worse still, the enforcement potential of this system is less than clear. In this respect, NAFTA is unusual in allowing for a certain category of individuals, investors, to bring an action against a member state. In other systems, often the only means by which an individual can pursue a complaint is by requesting their government to bring an action. Yet with state-to-state arbitration, in the absence of political agreement, the enforcement of decisions is reliant upon punitive retaliatory action on the part of the successful member state. This entails that from the outset the system is weighted in favour of the stronger party. Furthermore, the use of political negotiation to resolve disputes can place unnecessary pressure on the political process and distract from the further development of the regional scheme. Some have


81 For example, as is the case in Mercosur.
concluded, therefore, that if the purpose of regional governance is to implement a set of goals, many of which are economic, then this form of dispute resolution is unhelpful as it creates uncertainty. In doing so, this system reduces commercial confidence and discourages external investment.82

4.4. Other Problems with the Intergovernmental Design

There are also more mundane difficulties associated with the intergovernmental design of government. Often the rules that are being developed within regional entities are extremely complex and technical, and sometimes completely novel to the member states. In these circumstances, some member states may simply lack the administrative and financial resources to implement community rules and any regulatory agencies that go with them.83 Moreover, where the rules are new to all member states, then poorer regional entities can ill afford the duplication of work across the member states that their implementation implies. In such a scenario, if the member states are serious about progress, a much more practical way forward is to pool resources and confer responsibility on one body within the community to draft and implement the rules of the organization.84

To prevent these problems and to encourage the longevity of the regional entity, then the introduction of ‘community’ institutions is often necessary for a number of reasons. First, community institutions can supply a regional entity with a sense of direction and a source of ideas and energy; second, they can provide an effective guarantee against the non-implementation of integration policies;85 and third, by administering schemes that prevent inequalities and correct distortions, community institutions can help ensure that all members of the organization benefit from the regional arrangement.86 The strength of these arguments is given much credence by the experiences of a number of regional schemes. At present, CARICOM would appear to be on the cusp of taking this next step beyond intergovernmentalism. After many years of limited success in trying to make the organization work, there

85 Rosell, op. cit., note 5 above.
is now a recognition of the limits of intergovernmentalism and a movement in the direction of introducing supranational institutions.

'There is an urgent need for CARICOM to rise to a higher level of regionalism – one that gives more maturity to the integration process and fulfils the manifest yearning of Caribbean people for an effective system of governance in matters of regional integration.'

Likewise, it is argued by many that without a similar step forward then Mercosur too will fail to develop the regional and international profile required to achieve real gains for its member states. So far though the group has responded only tentatively with proposals to establish a Permanent Legal Tribunal and moves to strengthen its Administrative Secretariat. Meanwhile, other regional entities have already moved to introduce an element of supranationalism through the introduction of an autonomous body of law, to which discussion now turns.

5. Designing Advanced Regional Entities

5.1. Developing an Autonomous Body of Law

Establishing a supranational organization entails a number of radical constitutional innovations. Perhaps the key difference between the intergovernmental and supranational approaches to regional governance is the explicit creation of an autonomous body of law. Intergovernmental groups may claim to have created legal norms but there are a number of difficulties in treating these in the same way as a fully effective system of supranational law.

To begin with, the norms created by intergovernmental agreements do not necessarily, by themselves, create rights for individual citizens. Ordinarily, to have such effect these intergovernmental norms require domestic transposition by the member states and it is only at this stage that the legal norms of the regional entity impact on the individual. Even then, the extent to which any rights and duties thereby created are effective across the region as a whole is uncertain and, within an international dispute, the ability of an international arbitration tribunal to bind domestic courts to its interpretation of intergovernmental norms is doubtful. The

89 European Commission, *op. cit.*, note 71 above.
end result is at best a weak system of rules. By contrast, the supranational solution is identifiable above all by the explicit faith it places in the rule of law.

An important and essential first stage in implementing an effective system of law within regional schemes of governance is to establish a legal obligation on the participants to abide by the legal system of the group. In the EU this provision is found within Article 10 of the EC Treaty. Remarkably similar statements can be found in other regional schemes, such as Article 5 of the Cartegena Agreement (Andean Community), Article 9 of the Revised Treaty of Chaguaramas (CARI-COM) and Article 8(1)(c) of the East African Community Treaty. These create a general obligation on the member states to take the necessary measures to ensure compliance with the rules and regulations that constitute the juridical system of the regional entity concerned. In establishing such a binding obligation, the means is created by which regional entities can move beyond the ordinary processes of international law.

However, such statements are relatively meaningless in the absence of a coherent basis upon which an autonomous body of law can be developed, implemented and enforced. In recognizing the problems, the EU is not alone in developing a decision-making procedure that breaks away from the intergovernmental model in a number of respects. One of the key components of the EU is the facility for majority voting in the Council of Ministers, an innovation that has been vital in keeping up the momentum of European integration despite the increases in membership. Equivalent arrangements are as yet rare in other regional schemes, but the Andean Community is noticeable for having established a procedure which allows for majority voting in certain circumstances.

An additional feature in the European settlement that strengthens the authority of the law-making procedure at the regional level is the ‘direct applicability’ of Community law in the member states. Here too, other regional schemes have taken on board the lessons of the EU. In the Andean Community, Decisions of the Council of Foreign Ministers and of the Commission, as well as the Resolutions of the General Secretariat, do not require ratification by national parliaments in order to take effect. This means that once they have been published in the Cartegena Agreement’s Official Gazette these provisions are binding on all branches of national governments and their citizens. In the language of the Andean Community this is

91 See also the Treaty Creating the Court of Justice of the Cartagena Agreement (as amended by the Trujillo and Cochabamba Protocols), Article 4.

92 Art. 26, Cartegena Agreement.

93 Defined by the European Court of Justice as; ‘the rules of Community law must be fully and uniformly applied in all the Member States from the date of their entry into force and for so long as they continue in force’; Case 106/77 Amministrazione delle Finanze dello Stato v. Simmenthal SpA (Simmenthal II) [1978] ECR 629, at p. 643.

94 Treaty Creating the Court of Justice of the Cartagena Agreement, Article 3.
known as 'direct application'. Equivalent arrangements can be found in ECOWAS,\(^a\) and the East African Community,\(^b\) and are being contemplated in CARICOM.

Establishing more efficient decision-making procedures and the adoption of an equivalent doctrine to that of direct applicability represent quantum leaps in the direction of supranationalism for any regional group. This is an extremely difficult decision for nation states to make given the issues of sovereignty and legitimacy involved. But, where made, such concessions are justified on the basis of the perceived long term benefits in terms of governance and the economic and social gains that will result.\(^7\)

5.2. Establishing Regional Governing Institutions

Once an effective means of implementing community law has been established, the next step is to find a way to enforce it. In this respect, there is some potential in the use of inter-state political negotiation to protect the law of the regional entity. However, given the likelihood of future difficulties it is not surprising that some regional schemes have established specialized regional institutions to aid the process of implementation. Supranational solutions, however, take this process further than the intergovernmental approach by making these institutions fully autonomous and endowing them with effective power.

The recognition of autonomous institutions within regional schemes frequently follows several stages. The initial stage is typically the formation of a secretariat to support the work of the various intergovernmental conferences that are attended by the member states. Such a move is understandable, as secretariats are seen as relatively non-threatening towards national sovereignty and tend to be staffed by representatives of the member states. A more significant development comes when the member states sanction the introduction of autonomous regional institutions with delegated power to implement a feature of the regional agreement. Thus, in more than one regional entity a regional development bank has been established, along with various functional bodies in areas of mutual interest. For instance, in CARICOM, the West Indies University, the Regional Shipping Services and the Caribbean Meteorological Service can be viewed as the first tangible results of regionalization there and are today permanent features of the social structure.

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\(^{b}\) East African Community Treaty 1999, Article 16.

\(^{7}\) For an account of the political processes that lead to governments establishing schemes of regional governance, see H. Milner, 'Regional Economic Co-operation, Global Markets and Domestic Politics: A Comparison of NAFTA and Maastricht Treaty' (1995) 2(3) *Journal of European Public Policy* 337.
key to the long-term success of these bodies is their ability to provide a service which was poorly supplied prior to integration or, in some cases, noticeably absent.

However, in order to achieve the greater objectives of regional governance there is a strong argument that a more influential central body is required. In particular, a common understanding is that the regional entity requires a concentrated source of dynamism to overcome the logistical, technical and political hurdles that bar the development of any system of law and governance. This is another big step to take. But if the regional entity has grand ambitions then the case for introducing such a body is, in the words of one authority, 'virtually irrefutable'. The importance of a strong central regional institution would appear to have finally been recognized in CARICOM, whilst in the Andean Community a General Secretariat is already operative with wide ranging powers.

A central governing institution generally has two main roles: to research and initiate proposals for new community law; and to pursue the implementation of existing law. With regard to the latter task, a regional body is required to monitor and negotiate with member states to establish whether they are meeting their obligations. However, a stronger option is to confer powers on a regional body to pursue legal actions in a specially established court of the regional scheme. This too is a regular feature of supranational organizations. Thus within the Andean set-up, the General Secretariat is charged with the power to bring non-compliance actions. Whether of its own initiative or at the behest of a member state, the General Secretariat formally sends its written observations to the member state alleged to have committed a breach, together with a deadline for compliance. Following the response of the member state or the expiry of the deadline, the General Secretariat can then issue an administrative ruling on the situation and take the member state to the Court of Justice of the Andean Community (ACJ). At present there is no specific power to levy a fine, although a provision allows for restrictions or suspensions to be placed on the community rights of the member state concerned.

5.3. Enforcement and the Courts

No system of law is complete without an independent arbiter to resolve disputes on the basis of the law and legal principles. However, to introduce a court of law within a regional entity first entails acceptance by the member states of the procedure, the outcomes and the overall goals of the regional entity. In turn, to be effective, the establishment of a regional court may involve a delegation of sovereignty. As we have seen with the EU experience, such a delegation then leaves open the possibility of the court adopting an expansive approach to judicial interpretation that may not

99 Treaty Creating the Court of Justice of the Cartagena Agreement, Article 23.
100 Ibid., Article 27.
necessarily be in accordance with the wishes of the member states. However, on
the positive side for member state governments, what a regional court can also do
is provide them with a security mechanism to ensure that fellow member states are
sanctioned for their breaches and that any regional institutions are held to account
for the use of their powers.

A number of regional schemes have now taken these arguments on board and
have introduced a regional court. In the Andean Community, the ACJ is already
in operation, as are the Court of Justice of the Community in ECOWAS and the
East African Court of Justice in the EAC. At the time of writing, the inauguration
of the Caribbean Court of Justice (CCJ) has just taken place. Moreover, even in
Mercosur, which has to date failed to establish any permanent autonomous regional
institutions, there is now provision for the introduction of a regional court.

What is noticeable with most of these regional courts is quite how much they
have taken from the ECJ. Indeed, the wording of the Treaty establishing the CCJ
is, in many respects, identical to the EC Treaty articles. In both the Andean and
the CARICOM systems there are provisions for national courts to refer community
issues to the community court as with Article 234 of the EC Treaty. Likewise, in
both examples, where an aspect of community law is contentious, the use of the
reference procedure is obligatory although, as with the European approach, it is
for the domestic court to then apply the law to the facts of the case and make the
final judgment. Also like the European version, both the ACJ and the CCJ have
the power to declare community law null and void.

With the establishment of these regional courts a number of classic legal issues
come to the fore which raise significant political and constitutional questions. First,
what is created is another link in the enforcement mechanism. Where the political
process and even the arbitration mechanism leave the grounds for settlement
uncertain, the introduction of a regional court places the regional entity firmly within
the bounds of law. This is a significant step, as it encourages private investors to
place faith in the system of law that has been developed.

101 Articles 6(c) and 15(1) of the ECOWAS Revised Treaty 1993.
102 Treaty for the Establishment of the East African Community, Article 9. It has been operational
since 30 November 2001.
103 CARICOM Secretariat, Press Release 85/2005, 19 April 2005. Eventually the CCJ will be unique
in being both the supreme court of CARICOM and the final appeal court for both criminal and
civil matters in a number of Caribbean states.
105 Agreement Establishing the Caribbean Court of Justice 2001.
106 In the Andean system this is known as the 'Pretrial Interpretation Procedure', Treaty Creating the
Court of Justice of the Cartagena Agreement, Article 32; Agreement Establishing the Caribbean
Court of Justice, Article 14.
107 Ibid.
108 Ibid., Article 12.
Second, the likelihood of the law of the regional entity being enforced is enhanced if a number of factors are built into the constitution of the regional court. Primarily here we are talking about issues of standing. As discussed above, one key feature is the introduction of a regional body to play the role of enforcer; or in EU terms, ‘Guardian of the Treaty’. Through the courts, this regional body can gain legal credibility for its opinions that member states are breaching their obligations under the law of the regional entity. However, as with the European experience, it is unlikely that this route, by itself, is going to guarantee the successful implementation of the law in all circumstances. A significant development, therefore, is to grant individuals access to the court, albeit this may be restricted by standing rules and reference procedures. In this respect, it is noticeable that in the Andean Community a legal challenge in the courts can be brought by both the member states and any natural or juridical person to which the rule in question is applicable and detrimental.109

Third, in order for this system to be effective, from the outset the regional court has to establish credibility. A vital step in this is a positive resolution of the central question of supremacy that featured so prominently in Marbury v. Madison110 and in Costa v. ENEL.111 Already this question has been tackled by the ACJ with a very similar result. In a case brought against the Venezuelan government,112 the ACJ affirmed its pre-eminence in interpreting community law and its ability to interpret community law as prevailing over a provision of any domestic law that is contrary to it. Further, and reminiscent of Simmenthal113 and Factortame,114 the ACJ ruled that the hierarchical level of the rule of law at the domestic level was irrelevant for its interpretation of community law. Accordingly, domestic provisions and constitutional rules cannot be asserted as reasons to justify failing to comply with community law. By implication, amendment of community law can only be achieved through the community decision makers.115

Fourth, to be fully effective, a system of law needs to be able to offer a remedy. Remarkably, within the Andean Community, the Treaty arrangements pre-empt the need for a Francovich116 style case by allowing for state liability.

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109 Treaty Creating the Court of Justice of the Cartagena Agreement, Article 18–19 & 25. The right is less clear cut in the Caribbean arrangements; see Agreement Establishing the Caribbean Court of Justice, Article 24.

110 (1803) 5 US 137.


113 See note 93 above for reference.


115 For discussion, see Rosell, op. cit., note 5 above.

‘A verdict of non-compliance issued by the Court ... shall constitute legal and sufficient grounds for the party to ask the national judge for compensation for any damages or loss that may be due.’

What we see then across the globe are the foundations being put in place for the development of independent and autonomous regional systems of law. In this respect there are profound similarities with the EU.

6. Conclusion: A Word of Caution

There are other constitutional comparisons that can be made of regional schemes of governance, such as the attempts to introduce regional parliaments. However, the general point is clear. On paper, the EU is not alone in setting out on the road towards supranationalism. In many parts of the world the intellectual logic in favour of regional governance is accepted and provision has been made for the institutions to put that goal into effect. The big question that remains regards the ability of other regional entities to implement effective regional law and achieve lasting benefits. Many regional entities are into their second life having required resurrection after a failed first effort during the 1960s and 1970s, and many of these still suffer from the same basic economic and political problems that caused the initial effort to drift. The evidence suggests that it is still much easier to launch an integration process than to sustain one.

There is much that can go wrong within a regional entity, but comfort can be taken from the fact that even the EC/EU has undergone periods of stagnation and internal soul-searching before reinvigorating its integration agenda. Given the complexity and politically radical nature of what is being attempted, slow progress is probably inevitable. An initial basic political problem is the formation of appropriate regional schemes and the need to avoid duplication of efforts. In Africa, for instance, there is currently an excessive profusion of regional entities across the continent, many of which have conflicting mandates. It seems inevitable, therefore, that there will have to be a process of rationalization before we see material evidence of progress, and this indeed is the recommendation of the UN. In other parts of the world as well, regional political events could prove to be the catalyst for change or an excuse for stagnation. In South America there is an ongoing move to integrate the free trade areas of the Andean Community and Mercosur. At the same time there are proposals in place for a pan-Americas free trade area. At this stage it

117 Treaty Creating the Court of Justice of the Cartagena Agreement, Article 30.
118 UN Economic Commission for Africa, op. cit., note 35 above, Chapter 3.
119 Cusco Declaration on the South American Community of Nations, 8 December 2004.
120 For a summary of the progress made towards the Free Trade Area of the Americas, see: <www.ftaa-alca.org/View_e.asp#PROGRESS>.
is impossible to predict with certainty what the eventual outcome will be for the schemes in the region.

Nevertheless, despite much scepticism, substantial effort continues to be put into existing regional schemes. In South America commitment to regional integration remains strong even after the economic crisis experienced there in recent years, whilst in the Caribbean the success of CARICOM is seen as an essential precursor to membership of any future pan-America free trade area. In Africa too, economic and political integration are at the forefront of the political agenda. For the moment in parts of Africa there is a realistic recognition of the severe economic and political problems in the region that make any governmental project problematic, let alone one that seeks to build completely new institutions. But there is currently hope as well, with a key difference between the current efforts at regionalism and those in the 1960s and 1970s being the stabilizing influence provided by the WTO.

However, it is all very well having favourable external conditions, but successful schemes also need a firm internal foundation and a shared vision on the key objectives. Part of this is about the need for political leadership and vision capable of rising, 'above narrow short term national interests in favour of the collective objective'. But to avoid reliance on the unreliable nature of politics and to secure the foundations of regionalism, more than one of the recent regional schemes has begun to look to the law as the safeguard of their efforts. Indeed, one could go as far as to argue that the lack of legal transparency is a fatal flaw in regional governance.

'Non-compliance and ad-hoc, unpredictable and informal remedies to trade and investment problems have been a persistent weakness of Latin America and the Caribbean's regional agreements and indeed were quite devastating for the old regionalism.'

Intergovernmental agreements can go a long way where there is a genuine shared will amongst the member states, but in the long term if confidence is to be retained by all stakeholders, including the private sector, then there needs to be a guarantor behind the system that acts as the catalyst to keep it moving forward. That guarantor is community law.

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122 E. Carrington (CARICOM Secretary-General), Speech to the Trinidad and Tobago Manufacturing Association, 12 April 2005. Available at; <www.caricom.org>.


124 Iglesias, op. cit., note 6 above, at p. 132.

125 Ibid.
Another necessary requirement is to find a way to maintain trust and confidence amongst all member states over long periods of time. To achieve this, one solution that is being adopted by some regional entities today is to create schemes that allow for the favourable treatment of the disadvantaged nations in order to ensure that all members of the group benefit from regional governance. The effectiveness of these procedures may be one of the most important determinates of whether or not a regional entity will succeed.\textsuperscript{126}

The European experience certainly holds many lessons for the rest of world, some of which have already been taken on board. For sure, the EU is by no means perfect and still has to provide a convincing answer to the core legitimacy question at the heart of any constitutional organization. However, Europeans can take heart from the fact that the basic organizational solution inherent in the EU, that is the transfer of legal power to supranational organizations, has proved to be influential elsewhere. Admittedly, of the various regional entities that have been looked at in this article, none are without flaws. Some are too small in economic terms to have any great international influence, whilst others are palpably failing in their objectives. Even so, what is impressive and clear is that the members of all these organizations have accepted that the nation state model is inadequate for addressing some features of governance. Further, what so many member states have done is recognize that a viable solution in the attempt to secure peace and security, or the search for economic growth, is the pursuit of regional governance.

\textsuperscript{126} P. Mistry, ‘Regional Integration and Economic Development’, in B. Hettne, \textit{et al.}, \textit{op cit.}, note 32 above.