



UNITED NATIONS
UNIVERSITY

UNU - CRIS

COMPARATIVE REGIONAL INTEGRATION STUDIES



UNU-CRIS Working Papers

W-2010/4

The Power of International Legal Personality in Regional Integration

Author:

Eric C. Ip

The author

Eric C. Ip

Eric C. Ip is a Doctor of Philosophy in Socio-Legal Studies student at the University of Oxford and an Academic Tutor at St. John's College, The University of Hong Kong. He was formerly an Intern at United Nations University Programme for Comparative Regional Integration Studies.

United Nations University - Comparative Regional Integration Studies
Potterierei 72, 8000 Brugge, BE-Belgium
Tel.: +32 50 47 11 00 / Fax.: +32 50 47 13 09
www.cris.unu.edu

Abstract

Traditionally, sovereign states were the only international legal persons recognized by public international law. Only legal persons can enter into formal international legal relations. However, the emergence of intergovernmental organizations over the past sixty years has considerably changed the horizontal structure of inter-state relations. The United Nations and the World Trade Organization have not only acquired legal personality but have also enacted new rules for international law governing state behavior. Regional organizations, such as the European Union and the Association of Southeast Asian Nations, have gained greater influence over the direction of inter-state collaboration and dispute resolution. Interestingly, major regional organizations have not explicitly claimed to possess international legal personality until very recently. This essay advances a conceptual framework that seeks to advance understanding of the purpose and relevance of international legal personality in regional organizations. It first sets out the philosophical and legal foundations of international legal personality, and it distinguishes between the juridical and political aspects of personality. Full international legal personality refers to the unity of both legal and political recognition (by other international legal persons) of an entity's capacity to represent its constituents externally and impose constraints on them internally. The possession of legal personality, as recognized by international legal sources, does not necessarily endow a regional organization with the power to exercise that personality in the political sense. The ability of regional organizations to project themselves as largely unitary artificial persons is currently obscured by the powerful sovereign states that dominate them. While the assertion of explicit international legal personality does not automatically lead to dramatic changes in a regional organization's role in international politics, it represents a genuine and continuous shift by states to tolerate integration processes that were previously seen as threats to the core of their sovereignty.

Keywords: international legal personality, regional organizations, EU, ASEAN

Introduction

The past six decades have witnessed the global proliferation of regional intergovernmental organizations (RIGOs).¹ Many contemporary RIGOs have taken active roles in international public policy-making, altering the way inter-state politics have traditionally been conducted.² The European Union (EU), the Association of Southeast Asian Nations (ASEAN), the Organization of American States (OAS), the African Union (AU), the League of Arab States, and the Andean Community have attained greater influence over regional inter-state cooperation and dispute resolution, sometimes at the expense of the sovereignty of their member states.³

These developments raise an interesting question about the future of the institution of international legal personality and the external sovereignty of states. Traditionally, public international law has recognized no legal persons above or below sovereign states.⁴ International legal personality has generally been understood as a legal status denoting the ability of entities, usually states, to act as subjects exercising rights and bearing duties within the international legal order.⁵ The possession of personality in this sense can be regarded as equivalent to membership in the international community. Actors need this status to deal effectively and meaningfully with other members of the international club. International legal personality is thus distinctive from legal personality under sovereign state law. National law has its own norms and rules that govern “membership” issues within the domestic community.

Conventionally, territorial sovereignty has been intrinsically linked to full international legal personality. It is usually channeled through a prominent legal fiction, the state constitution, which gives “formal notice that a people had legally and legitimately self-determined their form of self-rule.”⁶ When the Westphalian doctrine of absolute sovereignty was prevalent in the late nineteenth and early twentieth century, it was commonly assumed that the autonomous decisional powers of constitutionally independent sovereign states could not and would not be weakened by their activities in international institutions.⁷ Full international legal persons were understood to have legal control over their constituents and the ability to act in their name on the international level. Even today, states are not normally prepared

¹ See VOLKER RITTBERGER & BERNHARD ZANGL, *INTERNATIONAL ORGANIZATION: POLITY, POLITICS AND POLICIES* 3 (Antoinette Groom trans., 2006).

² Kenneth W. Abbott et al., *The Concept of Legalization*, in *INTERNATIONAL LAW AND INTERNATIONAL RELATIONS* 129 (Beth Simmons & Richard Steinberg, 2006).

³ MALCOLM SHAW, *INTERNATIONAL LAW* 1285-287 (6th ed., 2008).

⁴ Basak Cali, *International Law for International Relations: Foundations for Interdisciplinary Study*, in *INTERNATIONAL LAW FOR INTERNATIONAL RELATIONS* 5 (Basak Cali, ed., 2010).

⁵ RODA MUSHKAT, *ONE COUNTRY, TWO INTERNATIONAL LEGAL PERSONALITIES* 1 (1997).

⁶ Douglas Howland & Luise White, *Introduction: Sovereignty and the Study of States*, in *THE STATE OF SOVEREIGNTY: TERRITORIES, LAWS, POPULATIONS* 10 (Douglas Howland & Luise White, eds., 2009).

⁷ ANDREAS OSTANDER, *THE STATES SYSTEM OF EUROPE: 1640 – 1990 PEACEMAKING AND THE CONDITIONS OF INTERNATIONAL STABILITY* (1994) 3.

to recognize the status of non-state actors as international legal persons because this could jeopardize their status as the most important class of actors in the international arena.⁸

However, in differing ways, RIGOs and other international organizations have transformed the horizontal structure of public international law by creating a sort of vertical supranational authority within it.⁹ They have created a “multiplicity of rules, principles, decisions, soft-law, and non-legal norms” to cope with the increasingly complicated work they undertake.¹⁰ In other words, they have evolved into “self-contained” legal orders, in the sense that the laws they enact and their rules of self-governance no longer simply reflect the will of national governments.¹¹ Thanks to their perceived authority, knowledge, and neutral image, intergovernmental organizations are able to categorize problems, define actions, and “diffuse new norms and rules” in the international sphere.¹² Like sovereign states, many intergovernmental organizations maintain close relations with other states and organizations,¹³ possess constitutions, and have their own courts, such as the WTO’s Appellate Body, the United Nations’ (UN) International Court of Justice (ICJ), or the Andean Community’s Court of Justice.

Evidently, there is a “wide consensus” that state sovereignty is undergoing some kind of “erosion.”¹⁴ The international legal order is now less of a Westphalian ideal-type system that focuses exclusively on the sovereign rights of nation states and more a decentralized constellation of fragmented regimes encompassing rule systems, such as international environmental law, international trade law, and international humanitarian law. These laws increasingly recognize the rights and duties of non-state actors in the global scene.¹⁵ Against this background, modern day intergovernmental organizational decisions are often made without the continuous consent of their member states.¹⁶

Counter-intuitively, many significant RIGOs are hesitant to make an active claim to international legal personality.¹⁷ For instance, the EU did not clarify this issue before its new constitutive document, the Lisbon Treaty, was enforced on December 1, 2009. Likewise, ASEAN was founded in 1967 and expressly denied any possession of legal personality in 1998. ASEAN did not assert its own international

⁸ HENRY SCHERMERS & NIELS BLOKKER, *INTERNATIONAL INSTITUTIONAL LAW: UNITY WITHIN DIVERSITY* 1068 (2003).

⁹ *Id.* at 6.

¹⁰ Benedict Kingsbury & Lorenzo Casini, *Global Administrative Law Dimensions of International Organizations Law* 25 (IILJ Working Paper No. 9, 2000) available at <http://www.iilj.org/publications/documents/2009-9.Kingsbury-Casini.pdf>.

¹¹ Jan Klabbers, *The Paradox of International Institutional Law*, 5 INT’L ORG. L. REV. 13 (2008).

¹² MICHAEL BARNETT & MARTHA FINNEMORE, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS* 31 (2004).

¹³ SCHERMERS & BLOKKER, *supra* note 8, at 985-87.

¹⁴ GEORGE RITZER, *THE GLOBALIZATION OF NOTHING*: 25 (2007).

¹⁵ Alexandra Khrebtukova, *A Call to Freedom: Towards a Philosophy of International Law in an Era of Fragmentation*, 4 J. INT’L L. & INT’L REL. 52 (2008).

¹⁶ BARNETT AND FINNEMORE, *supra* note 12, at 116.

¹⁷ Simon Chesterman, *Does ASEAN Exist? The Association of Southeast Asian Nations as an International Legal Person*, 12 SINGAPORE YEAR BOOK OF INTERNATIONAL LAW 203 (2008).

legal personality until the adoption of its first charter in late 2007.¹⁸ The existing constitutions of the AU and the OAS do not mention legal personality at all. Although RIGOs perform many functions to the detriment of absolute state sovereignty, their relatively apathetic approach to international legal personality poses one important explanatory challenge: does international legal personality make a difference to the power of RIGOs?

This essay investigates the power, loosely construed as influence and relevance, of international legal personality in the development of RIGOs. It seeks to understand the concept beyond its narrow legal doctrinal context. The rest of this essay is divided into three sections. Section II attempts to understand international legal personality in its theoretical and doctrinal context. It begins with a review of relevant philosophical theories in the work of prominent political theorists and jurists. It articulates a conceptual framework for the study of international legal personality in RIGOs that includes personality on the books (International Juridical Personality) and personality in action (International Political Personality). Importantly, the two do not automatically overlap in all intergovernmental organizations and states. Section III analyzes recent developments integral to the role of personality in the external actions of two selected RIGOs, ASEAN and the EU. Concluding remarks are found in section IV.

II. Framing International Legal Personality in Intergovernmental Organizations

A. Personality in Political and Jurisprudential Theory

The notion of personality was an explicit component of the political theory of Thomas Hobbes, the seventeenth-century English philosopher renowned for his work on realist and materialist perceptions of politics. In Chapter XVI of the *Leviathan*, Hobbes defines “a person” as one “whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether Truly or by Fiction.” For Hobbes, the notion of “personality” is simply a “mask” that fuses the elements of authority, representation, and the capacity to behave as a politically constructed actor. Personality plays a crucial role in the establishment of the state. For Hobbes, when mutual combatants start to perceive that peace and order are necessary to protect their self-interests, they are likely to reach an agreement, which produces a “sovereign power” in the form of an “artificial” person. The Hobbesian doctrine of political personality can be summarized as follows: “When men erect

¹⁸ Rodolfo Severino, *Introduction*, in *FRAMING THE ASEAN CHARTER: AN ISEAS PERSPECTIVE* 6 (Rodolfo Severino, ed., 2005).

a sovereign, they are united in the person; without him, they are returned to the state of nature.”¹⁹ It is an important bridge between “the natural world of chaos and the civil world of organised peace.”²⁰

Contrary to Bodin who views the state as “an association of families” governed by “a supreme power” and “reason;” and Grotius who views the state as “a free association of free men, united for the sake of enjoying the benefits of law and their common advantage,” the Hobbesian state could not accomplish anything without the actions of the sovereign as the representative of its members.²¹ The sovereign, who represents and commands the commonwealth, is conceptualized as “one person, whose acts a great multitude, by mutual covenants one with another, have made themselves every one the one author, to the end he may use the strength and means of them all, as he shall think expedient, for their peace and common defence.”²² Thus, the Hobbesian notion of representation refers to the ability of socially constructed “persons,” wearing unitary “masks,” to represent, personate or act the part of one another.

Hobbes was not the only theorist to write explicitly on state personality. Nijman usefully summarized the major currents of thought on the development of the concept of international legal personality.²³ She observes that the concept of legal personality was historically deployed to mediate the moral and political relations between the individual, the state, and the global community. She argues that international legal personality emerged out of a contradiction between “moral idealism” and “political realism.” Notably, she believes that international legal personality has become a bridge to the pursuit of justice and the right to participate in international affairs.²⁴ According to Nijman, international legal personality implies the “just and legitimate participation in international relations”²⁵ and guides the European community of states towards a set of universal and just goals.

Conversely, natural law philosopher Christian von Wolff insists that individual states have inherent natural rights, and the sovereign right to non-interference is one of them.²⁶ Thus, international persons must be moral persons and international moral persons can only be states. Vattel, de Wolff’s disciple, similarly regards states as the “public authorities of the moral persons.”²⁷ Mid-twentieth-century legal theorists such as Brierly, Kelsen, and Schelle, who experienced the Second World War, adopted modified approaches to public international law to resolve political crises in which legal personality plays a basic

¹⁹ DAVID RUNCIMAN, PLURALISM AND THE PERSONALITY OF THE STATE 12 (1997).

²⁰ JANE NIJMAN, THE CONCEPT OF INTERNATIONAL LEGAL PERSONALITY 50-2 (2004).

²¹ *Id.* at 50-2.

²² KUNG CHUAN HSIAO, POLITICAL PLURALISM 258 (2000).

²³ NIJMAN, *supra* note 20, at 457.

²⁴ *Id.* at 457-58.

²⁵ *Id.* at 50-2.

²⁶ *Id.*

²⁷ *Id.*

role.²⁸ To differing extents, they wished to reinterpret personality as an “evaluative-descriptive concept” and shift its focus from traditional sovereignty to the advancement of democratic transformation and human individuality.²⁹

In contrast to the standard configuration of states as the exclusively relevant actors on the global stage, Runciman shows that late nineteenth- and early twentieth-century English political pluralist philosophers like Maitland, Figgis, Barker, Cole, and Laski held views that ran contrary to their continental counterparts. They openly believed that the state was simply one grouping of human beings among many others and therefore could not exercise supreme power over everyone. They also believed that other social and political groups could claim personalities of their own.³⁰ This view represented a departure from the Westphalian notion of state supremacy and monopoly of membership in the global community.

B. Doctrinal Dimensions of Legal Personality and Intergovernmental Organizations

Contemporary international legal research by academic lawyers is largely dominated by the legal positivist paradigm. This paradigm generally seeks to identify the social facts that distinguish law from other phenomena. It links the validity of law to the moment of it being posited as such, instead of its moral value.³¹ This explains why international lawyers tend to use state consent as the criterion of validity to determine whether new entities possess international legal personality.³² Intergovernmental organizations have certain rights and duties that are said to have arisen out of their personality, including the implied power to take other actions necessary to fulfill their organizational purposes.³³ Many organizations can conclude treaties and present claims before international tribunals.³⁴

The most authoritative modern statement regarding international legal personality for intergovernmental organizations was presented by the ICJ in the Reparation Case, where it held that the UN possesses personality. Although the UN Charter was silent on the issue of legal personality, the ICJ believed that the organization nevertheless has legitimate legal rights to (1) bring international claims, (2) protest, (3) demand an enquiry, and (4) request submission to judicial settlement against member states that cause it damage. Therefore, the UN was endowed with the capacity to seek reparation damages suffered by its

²⁸ *Id.* at 242-43.

²⁹ *Id.*

³⁰ RUNCIMAN, *supra* note 19.

³¹ Samantha Besson, *Theorising the Sources of International Law*, in *THE PHILOSOPHY OF INTERNATIONAL LAW* 166 (Samantha Besson and John Tasioulas, eds., 2010)

³² NIJMAN, *supra* note 20, at 345.

³³ JOSE ALVAREZ, *INTERNATIONAL ORGANIZATIONS AS LAWMAKERS* 8 (2006).

³⁴ *Id.* at 62.

agents as if the harm was suffered by the organization itself.³⁵ However, the Court made it clear that international legal personality does not give the UN the kind of rights, duties, and capacities typically attributed to states.³⁶ This has effectively created a new type of non-state legal personality whose content is not entirely clear but is recognizably different from, if not inferior to, the traditional international legal personality of states.

However, in public international law there is no official separation between state and non-state international legal personality. Mushkat suggests a catch-all approach: to qualify as an international legal person, entities ought to possess (1) the capacity to act in some measure under international law, (2) factual attributes (such as a permanent population, defined territory, and government), (3) international relationships and associations, (4) international legitimacy in its creation process, (5) international recognition, (6) international legal entitlements (for example, the right to self-determination), and (7) certain so-called “sui generis qualities.”³⁷

Schermers and Blokker attach great importance to international legal personality as one of the three parts of the definition of intergovernmental organizations. For them, personality is ultimately derived from state consent, which can be “readily implied from” a number of rights, duties, competences, and liabilities contained in international constitutions.³⁸ This makes them different from treaty bodies or convention secretariats like the European Court of Human Rights and the Human Rights Committee. Those organizations have their own will but lack legal personality. Thus, there is a degree of difference between the former’s “traditionalist” and “stately” version of international legal personality and the “reformed” conception that embraces more flexible criteria when determining an entity’s international legal status.

C. Will vs. Objectivity?

Chesterman identifies two competing theories related to the ICJ’s classical ruling.³⁹ According to the “will theory,” the international legal personality of intergovernmental organizations is rooted in the will of their state creators. The opposite “objective theory” implies that personality can be objectively discovered from an assessment of the powers exercised by the intergovernmental organization concerned.⁴⁰ For example, Boyle and Chinkin postulate that the constitutive instruments of international organizations create “objective” international legal personality, as in Article 2(6) of the UN Charter and

³⁵ CHITTHARANJAN AMERASINGHE, *PRINCIPLES OF THE INSTITUTIONAL LAW OF INTERNATIONAL ORGANIZATIONS* 94 (2005).

³⁶ *Id.* at 92.

³⁷ Rock Mushkat, *Macau’s International Legal Personality*, 24 HKLJ 329-31 (1994).

³⁸ SCHERMERS & BLOKKER, *supra* note 8, at 34.

³⁹ Chesterman, *supra* note 17, at 202.

⁴⁰ *Id.* at 240

Article 12 (2)(a) of the International Criminal Court Rome Statute.⁴¹ The constituent instruments of the pre-Lisbon EU also explicitly allowed for the making of treaties by the Union.⁴²

Brownlie called for a number of objective criteria in the process of determining the legal personality of organizations: (1) a permanent association of states (2) with lawful objects, (3) equipped with organs, (4) a separation of powers and purposes between the organization and member states, and (5) exercised legal powers in the international arena.⁴³ Amerasinghe even doubted the need for an explicit provision in intergovernmental organizational constitutions to ascertain the existence of international legal personality.⁴⁴ Similarly, O’Connell observed that personality is “a question of degree and how many rights and duties states have conferred on an organization.”⁴⁵ The will of states becomes clearer when constituent instruments explicitly mention the issue of international legal personality.

The disagreements between the two approaches are largely parallel to those between the Realist and Liberal schools of international relations theory. Realists typically assume that international legal personality is irrelevant to inter-state power politics because legal rules merely reflect the relevant actions of states.⁴⁶ This is similar to the essence of the objective theory, which asserts that international legal personality is not dependent on juridical rules but rather on contentions of power. However, like will theorists, liberal theorists argue that personality is accorded through international law and that more intergovernmental organizations should be recognized as international persons equal to states, capable of performing sovereign acts on par with states.⁴⁷ The conflict between the two theories seems to pose a “chicken and egg” problem.

The “will theory” puts more emphasis on the de jure, explicit consent of states to grant legal personality. In contrast, the latter theory focuses on the de facto powers held by international institutions. The two constitute a circular question: whether the rights and powers of intergovernmental organizations, under the label “international legal personality,” originate from the existence of the legal title itself or whether “international legal personality” emerges as an acknowledgement of the rights and powers of organizations. This essay posits that empirically, the two positions are not necessarily inconsistent.

⁴¹ ALAN BOYLE & CHRISTINE CHINKIN, *THE MAKING OF INTERNATIONAL LAW* 240 (2007).

⁴² AMERASINGHE, *supra* note 35, at 102.

⁴³ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 649 (6th ed. 2003).

⁴⁴ AMERASINGHE, *supra* note 35, at 79.

⁴⁵ MARY ELLEN O’DONNELL, *THE POWER AND PURPOSE OF INTERNATIONAL LAW* 269 (2008).

⁴⁶ Robert Jackson, *Quasi-States, Dual Regimes, and Neoclassical Theory: International Theory and the Third World*, in *INTERNATIONAL LAW AND INTERNATIONAL RELATIONS* 227 (Beth Simmons & Richard Steinberg, 2006).

⁴⁷ NIGEL WHITE, *THE LAW OF INTERNATIONAL ORGANIZATIONS* 37 (2005).

Personality can actually come from both directions, and the nature of international legal personality depends on the particular organization concerned.

As demonstrated above, the concept of international legal personality in the non-state context carries a variety of historically contingent norms and ideas related to the external dimensions of intergovernmental organizations. Political realists like Hobbes tend to focus on the exercise of certain unitary political powers and external competences as the entirety of legal personality. However, legal theorists, such as positivist jurists, are more inclined to emphasize the juridical aspect of personality based on state consent, a cornerstone of public international law. Thus, their disagreements are not genuine because they are arguing on different levels.

D. A Dual-Level Conceptual Framework for the Study of International Legal Personality and Intergovernmental Organizations

As a fluid socio-political construct, international legal personality exists only in the inter-subjective minds of the participants. Because of the variations in intergovernmental organizational power, legal personality is, in many ways, what the actors think it is. Indeed, as shown in the analysis of Gareis and Varwicks, many international organizations are curiously and simultaneously “instruments of state diplomacy,” “arenas of international politics,” and “actors in international politics in their own right.”⁴⁸ The relevance of international legal personality differs across contexts, and its interpretation is shaped by a variety of political, historical, cultural, economic, and social ideas held by the actors. The exact content of international legal personality can only be adequately understood by looking at its practices rather than the letter of the constituent document. White rightly argues that although intergovernmental organizational treaty-making powers are presumed to be necessary and many organizations use this power under the 1986 Vienna Convention on the Law of Treaties between States and Organizations, such competences are not pre-given, and thus legal personality cannot be taken for granted.⁴⁹ The insertion of an “inherent core” into the personality of non-state entities is largely an “unnecessary attempt.”⁵⁰

Clearly, a workable conceptual framework of international legal personality should encompass at least these two levels, the Juridical and the Political (see Figure 1). International Juridical Personality (IJP) and International Political Personality (IPP) are not necessarily unified in one intergovernmental organization. The notion of IJP is usually recognized by international law as a legal title through expressed provisions in constituent treaties or judgments of international tribunals (such as the ICJ Reparation Case decision).

⁴⁸ SVEN BERNHARD GAREIS & JOHANNES VARWICK, *THE UNITED NATIONS: AN INTRODUCTION* 49 (Lindsay Cohn trans., 2005).

⁴⁹ WHITE, *supra* note 47, at 34.

⁵⁰ *Id.*

Therefore, this level of international legal personality could largely be posited in the positivist sense. In addition to abilities and competences in forging agreements with other entities as one actor, an important dimension of IPP consists of a common political identity in the sense of emotional, affective, and normative ideas that describe and categorize an entity's differences from other entities.⁵¹ Accordingly, in terms of intergovernmental organizations, a specific political identity may be composed of ideational components ranging from a self-standing logo and anthem, to common values such as democracy and rights protection, to common histories and similar political systems among the member states.

Figure 1: The Dual-Level International Legal Personality Conceptual Framework

Level	International Juridical Personality (IJP)	International Political Personality (IPP)
Source	Generally unambiguously endowed by States under Public International Law	Generally multi-faceted and ambiguous. For instance, the incremental assumption of powers and influences by organisations through practice and interactions
Form	Usually explicit.	Usually implicit.
Non-exhaustive Examples of Components	<p>(1) Official recognition at Public International Law, such as an expressed provision conferring legal personality as found in intergovernmental organisational Constitutions or other international normative documents (such as international court judgments);</p> <p>(2) Legal will separate from that of member states;</p> <p>(3) Exact content depends on definition.</p>	<p>(1) Relatively unitary organisational identity;</p> <p>(2) Exercisable external powers such as the capacity to make decisions independent from the unanimous will of member states, and the ability to make treaties and enter into relations with third-states and intergovernmental organisations.</p>

Law and politics reinforce each other.⁵² Likewise, IJP and IPP do not necessarily have primacy over each other in that neither of them determines the existence of the other. Intergovernmental organizations do not need IJP to sustain their IPP, and vice versa. However, their unification would, through the elimination of debates and controversies surrounding the issue of international legal personality, considerably reinforce the authority of the relevant intergovernmental organizations in popular perception and actual practice.

⁵¹ Thomas Risse, *Social Constructivism and European Integration*, in *EUROPEAN INTEGRATION THEORY* 152 (2nd ed. Antje Wiener and Thomas Diez, eds., 2009).

⁵² IAN WARD, *A CRITICAL INTRODUCTION TO EUROPEAN LAW* 227 (3rd ed. 2009).

Furthermore, their components are not absolute but vary by degree. Most intergovernmental organizations, including RIGOs, do not possess high levels of IPP, like many of their sovereign counterparts. The central mission of international organizations to “translate fundamental community norms into practice” is inevitably restrained by an international legal order that prioritizes state sovereignty.⁵³ National governments continue to act confidently as the only “effective political and military authorities.”⁵⁴ Only a “very small” subset of intergovernmental organizations can be regarded as “highly authoritative” in that they frequently command the voluntary compliance of members to their decisions.⁵⁵ States sometimes even take advantage of the IJP of intergovernmental organizations to free themselves from liabilities and responsibilities as self-designated “agents” of the latter.⁵⁶

III. The Politics of International Legal Personality in ASEAN and the EU

This section reviews the case of two RIGOs, namely ASEAN and the EU, which have recently (2007 and 2009, respectively) expressly claimed to possess legal personality. Before proceeding, it is useful to mention the three indicators of “third-generation” regional integration offered by Langenhove and Costea: (1) an institutional environment conducive to the external action of RIGOs, (2) political willingness to engage with states and other regions, and (3) engagement with multilateral systems such as the UN.⁵⁷ This forms the third part of the “three-generation typology” of Langenhove and Marchesi on regional integration, which includes (1) economic sovereignty, (2) internal sovereignty, and (3) external sovereignty.⁵⁸

While both ASEAN and the EU integrated the concept of international legal personality into their constitutions, they are radically different in terms of Langenhove’s and Marchesi’s conceptual framework. As the most developed supranational system, the EU possesses significant internal economic sovereignty, largely as a result of economic integration, and is in the process of articulating a more comprehensive and cohesive foreign policy.⁵⁹ In contrast, ASEAN is relatively weak in all three dimensions. It is “more than just a ‘group of friends’”, but it does not “assert the power to impose binding obligations on all states”; it

⁵³ GERD OBERLEITNER, *GLOBAL HUMAN RIGHTS INSTITUTIONS* 180 (2007).

⁵⁴ ERIC HOBBSBAWM, *GLOBALISATION, DEMOCRACY, AND TERRORISM* 23 (2007).

⁵⁵ MARGARET KARNS & KAREN MINGST, *INTERNATIONAL ORGANIZATIONS: THE POLITICS AND PROCESSES OF GLOBAL GOVERNANCE* 258 (2nd ed. 2009).

⁵⁶ See Jean D’Aspremont, *The Abuse of Legal Personality of International Organizations and the Responsibility of Member States*, 4 INT’L. ORG. L. REV. 91 (2007).

⁵⁷ See generally, Luk Van Langenhove & Ana-Cristina Costea, *The EU as a Global Actor and the Emergence of ‘Third Generation’ Regionalism*, in *MANAGING A MULTILEVEL FOREIGN POLICY – THE EU IN INTERNATIONAL AFFAIRS* (Paolo Foradori, Paolo Rosa & Riccardo Scartezzini eds., 2007).

⁵⁸ Luk van Langenhove & Daniele Marchesi, *The Lisbon Treaty and the Emergence of Third Generation Regional Integration*, 10 EUROPEAN J. L. REFORM 494-96 (2008).

⁵⁹ *Id.* at 16-7.

is “more than an annual meeting of foreign ministers hoping to promote economic growth, but less than the World Trade Organization.”⁶⁰

Unlike the EU, ASEAN was unable to agree on whether to impose conditions on membership. The Association’s failure to deal effectively with the Burmese human rights abuses raises significant doubts about its ability to forge a strong regional community.⁶¹ Furthermore, the Association typically defers to member governments, even on issues of rights.⁶² It has no central institution to enforce treaty commitments or settle disputes among states. Clearly, the EU holds substantial degrees of IJP and IPP, while ASEAN possesses greater IJP than IPP. What, then, are the divergences and convergences of the journey of both organizations towards a greater role in the international community?

A. ASEAN

1. The ASEAN Way

Founded by the Bangkok Declaration (1967), ASEAN has been regarded as “one of the more promising experiments” in regional integration outside Europe.⁶³ Encompassing a geographical area and population slightly larger than the EU, ASEAN currently consists of ten member states: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam. Curiously, the Association existed for forty years without a Charter. Upholding the so-called “ASEAN Way” of diplomatic interaction, political elites of the member states traditionally favor personal connections, informal and vague agreements, and opaque decision-making processes over legally binding and confrontational mechanisms.⁶⁴

The original aims of ASEAN, as expressed in the 1967 Declaration, included not only the promotion of economic collaboration but also the promotion of regional peace and stability. The parties’ aspirations for member states to promote peace, friendship, and cooperation were reaffirmed by the Zone of Peace, Freedom, and Neutrality Declaration (1971) and the Treaty of Amity and Cooperation in Southeast Asia (1976). The Declaration of ASEAN Concord, signed in February 1976, embraced cooperation in many areas, including the fields of commodities, trade, and access to external markets, assistance to low-income groups, narcotics traffic, and continued cooperation between member states for their mutual needs and

⁶⁰ Chesterman, *supra* note 17, at 200.

⁶¹ Walter Lohman & Anthony Kim, *Enabling ASEAN's Economic Vision*, 2101 BACKGROUND 7 (2008).

⁶² KELLY-KATE S. PEASE, INTERNATIONAL ORGANIZATIONS: PERSPECTIVES ON GOVERNANCE IN THE TWENTY-FIRST CENTURY 33 (4th ed. 2010).

⁶³ DAVID ARMSTRONG, LORNA LLOYD & JOHN REDMOND, INTERNATIONAL ORGANIZATION IN WORLD POLITICS 220 (3rd ed. 2004).

⁶⁴ MARK BEESON, INSTITUTIONS OF THE ASIA-PACIFIC: ASEAN, APEC AND BEYOND 21 (2009).

interests in terms of security.⁶⁵ The Association is an arena utilized by members for collaboration, as opposed to a supranational political structure with a juridical will above constituent states.

2. The Charter: A Step towards International Juridical Personality

“ASEAN, as an inter-governmental organization, is hereby conferred legal personality.” – Article 3, Chapter II, ASEAN Charter

“ASEAN may conclude agreements with countries or subregional, regional and international organizations and institutions. The procedures for concluding such agreements shall be prescribed by the ASEAN Coordinating Council in consultation with the ASEAN Community Councils.” – Article 7, Chapter XII, ASEAN Charter

The ASEAN Charter is a multilateral international treaty, adopted at the 13th ASEAN Summit in November 2007 and enacted on December 14, 2008. It is significant in two important dimensions, namely political values and organizational design. The document incorporates liberal international norms, including international human rights law and international humanitarian law, into the Southeast Asian inter-state regime, famous for its long-standing insistence on sovereign rights and non-interference. In addition, the Charter redefines, formalizes, and systemizes the various institutions of ASEAN. It is legally binding and intended to constitute a “regional ego,” showing the major powers of the world that “ASEAN is capable of forging common positions on key issues that matter to the parties.”⁶⁶

As summarized by Gonzalez-Manalo, a former Filipino ambassador and Charter drafter, the document was originally expected to do the following: (1) serve as ASEAN’s “constitution”; (2) endow the association with a legal identity and create a more institutionalized framework; (3) codify all ASEAN norms, rules, and values that will guide actions of member states; (4) provide for the establishment of appropriate and effective dispute mechanisms; (5) steer ASEAN towards a rule-based environment where decisions are legally binding to make the institutions work more efficiently; (6) enhance the functions of the ASEAN Chairman, the Secretary-General and the Secretariat; (7) promote ASEAN identity and create solidarity; (8) strengthen ASEAN’s external relations and encourage common positions; and (9) form a base for an “ASEAN Community” and, ultimately, an “ASEAN Union.”⁶⁷ However, many of these ideals, such as the “ASEAN Union,” were abandoned in subsequent stages of drafting, which exhibited a

⁶⁵ PHILIPPE SANDS & PIERRE KLEIN, *BOWETT’S LAW OF INTERNATIONAL INSTITUTIONS* 233 (6th ed. 2009).

⁶⁶ Daniel Seah, *The ASEAN Charter*, 58 INT’L. COMP. L. Q. 211 (2009).

⁶⁷ Rosario Gonzalez-Manalo, *Drafting ASEAN’s Tomorrow: The Eminent Persons Group and the ASEAN Charter*, in *THE MAKING OF THE ASEAN CHARTER* 39 (Tommy Koh, Rosario Manalo & Walter Woon, eds. 2009).

“general tendency to create a Charter to preserve the intergovernmental character of ASEAN and dispel any suggestion of creating a supranational body.”⁶⁸

Nonetheless, the ASEAN Charter remains an attempt to make the Association “a more effective international actor” and to entrench its role as the center of gravity in regional politics.⁶⁹ According to Koh, Manalo, and Woon, the Charter is a “finely-balanced document taking into account the different perspectives, interests, and concerns of the ten member states” by offering “a practical framework for the functioning of ASEAN.”⁷⁰ One noteworthy development is its provision formalizing the role of the ASEAN Summit, which shall be the supreme policy-making body of ASEAN and shall meet twice a year. It provides for a powerful Coordinating Council consisting of the foreign ministers, which meets twice a year. Nonetheless, it is likely that this decision simply reflects the wishes of foreign ministry policy-makers who sought to control the future direction of ASEAN. The emphasis on bureaucratic dominance of the Association’s machinery is also apparent in the lack of oversight and governance by elected representatives of ASEAN states.

Tan contends that the Charter is “a measure of self-help in regional integration as part of ASEAN’s gradual development” to “entrench ASEAN sovereignty.”⁷¹ Severino believes that the Charter does make a difference. With international legal personality, ASEAN would be able to enter treaties, act separately from its member states, and enforce agreements against members.⁷² Furthermore, ASEAN would be able to “sue in national courts, purchase property, enjoy tax benefits, and enter into a headquarters agreement with a host country.”⁷³ Jones is less optimistic. The Charter simply affirmed in law “what ASEAN has already become.”⁷⁴ However, he agrees that the Charter is “more than a reassertion of traditional practice,” because in addition to the doctrines of “regional cooperation, consensus, national sovereignty and other mainstays of ASEAN rhetoric,” the instrument sets out something new: the need to empower democracy, strengthen good governance and the rule of law, and enhance and safeguard human rights and fundamental freedoms.⁷⁵ While the Charter’s commitment to democracy may not be genuine, it has brought a pro-democracy and human rights rhetoric into the discourse of Southeast Asian integration,

⁶⁸ *Id.* at 44.

⁶⁹ Mark Beeson, *Southeast Asia in the Long Run*, in CONTEMPORARY SOUTHEAST ASIA 266 (Mark Beeson, ed. 2009).

⁷⁰ Tommy Koh, Rosario Manalo & Walter Woon, *Preface*, in THE MAKING OF THE ASEAN CHARTER xxi (Tommy Koh, Rosario Manalo & Walter Woon, eds. 2009).

⁷¹ Eugene Tan, *The ASEAN Charter as “Legs to go Places”: Ideational Norms and Pragmatic Legalism in Community Building in Southeast Asia*, 12 SYBIL 179 (2008).

⁷² See, Rodolfo Severino, FRAMING THE ASEAN CHARTER: AN ISEAS PERSPECTIVE, 47-8 (2005).

⁷³ *Id.*

⁷⁴ David Martin Jones, *Security and Democracy: the ASEAN Charter and the Dilemmas of Regionalism in South-East Asia*, 84 INTERNATIONAL AFFAIRS 736-47 (2008).

⁷⁵ *Id.*

which may put increasing pressure on states as time passes.⁷⁶ However, these values have yet to constitute a defining element in the Association's organizational identity, given that many of its members are not liberal democracies.

The Charter is problematic in many ways. The concurrent implementation of Charter norms in a region where authoritarian regimes coexist with a smaller number of liberal democracies might push forward "incoherence rather than integration."⁷⁷ Lohman and Kim are unsure whether it would only give a legal façade to ASEAN and "nothing else."⁷⁸ Instead of painting a picture of the peoples of Southeast Asia coming together in a hypothetical "constitutional moment," ASEAN Secretary General Surin Pitsuwan readily admits that the Charter is a "precious gift" to Southeast Asians from the national leaders and the eminent drafters of the Association.⁷⁹ For him, "[t]he Charter spells out the commitment of ASEAN elites to turn the Association into "a people-oriented and regional grouping."⁸⁰ Conversely, there was very little public consultation or involvement in the drafting of the Charter and, like the unrepresentative nature of many of the member states, it was a process that was wholly led by the elite. The Charter is conservative in many ways because it implies that the Association would more or less be "business as usual," following the established practices of "decision-making by consensus," "working on the lowest common denominator," and "non-interference."⁸¹

3. International Legal Personality and Southeast Asian Integration

In fact, even before the enactment of the Charter, ASEAN had already attained a number of de facto foreign affairs competences. For example, it was granted observer status at the UN in December 2006 and has actually signed agreements with states, such as the 2000 Memorandum of Understanding (MOU) with Australia on Haze, the MOU with China on Agricultural Cooperation (2000), and the MOU with China on Information Communications Technology (2003). The Association also played key facilitative roles in designing other Asian regional institutions, like the ASEAN Regional Forum (ARF), the East Asia Summit (EAS), and the APEC.⁸² Since 2007, ASEAN has possessed the kind of IJP recognizable in public international law as separate from that of its member states. Nevertheless, one should not expect

⁷⁶ Richard Burchill, *Regional Integration and the Promotion and Protection of Democracy in Asia: Lessons from ASEAN*, 13 ASIAN YEARBOOK INT'L. L. 115 (2008).

⁷⁷ Jones, *supra* note 74.

⁷⁸ Lohman & Kim, *supra* note 62, at 8.

⁷⁹ Surin Pitsuwan, *Foreword*, in THE MAKING OF THE ASEAN CHARTER xv (Tommy Koh, Rosario G. Manalo & Walter Woon, eds. 2009).

⁸⁰ *Id.*

⁸¹ Mely Caballero-Anthony, *The ASEAN Charter: An Opportunity Missed or One that Cannot Be Missed?*, SOUTHEAST ASIAN AFFAIRS 81-2 (2008).

⁸² Tan, *supra* note 71, at 178.

ASEAN members to act in unison on all matters at all times, especially regarding controversial issues.⁸³ However, the formal legal arrangements derived from the Charter may give third organizations and states a clearer sense of how to organize their external relations with ASEAN as a body in its own right, not just a collective of “ten voices (some louder than others).”⁸⁴

Although the supranational rhetoric adopted by the Charter is essentially soft, the document is indeed an attempt to forge a kind of unified internal and external identity for the Association. In reality, whether such an identity could be steadily maintained depends on the political will of its member states.⁸⁵ While the Charter enables ASEAN to conclude international agreements, it requires that such actions be controlled by the ASEAN Coordinating Council. The level of IPP enjoyed by ASEAN can be determined by member states in an intergovernmental and equal-status manner. The failure of the Association center to coerce its members has weakened the Association’s ability to act as a single entity and to be perceived as such. The articulation of IJP is a positive step towards the external sovereignty of the region, but without higher degrees of IPP, the Charter is still a small achievement. The legal label has yet to give ASEAN a “collective sovereignty” or an external IPP identity that is distinguishable from that of its member states.⁸⁶

B. The European Union

1. Legal Personality and the European Community

Beginning in 1957, the European Community (EC) has continuously held the status of an international legal person under public international law. With the proactive work of the European Court of Justice and national judiciaries, the Community’s own legal system has become an integral component of the legal systems of its member states.⁸⁷ The Community has developed considerable competences to conduct its foreign affairs. A High Representative was created for the CFSP under the Amsterdam Treaty. The EU has a trade agreement with virtually all regions of the world, including association agreements like the Cotonou Agreement. Europe has negotiated as a group in the GATT talks, most recently the Uruguay Round, and in the quadrennial United Nations Conference on Trade and Development meetings. EC member states have worked as a unit for the Commission on Security and Cooperation in Europe. Furthermore, the CFSP has contributed to the production of a range of joint European statements and actions.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 179.

⁸⁷ See generally, KAREN ALTER, THE EUROPEAN COURT’S POLITICAL POWER: SELECTED ESSAYS (2009).

European member states have conceded several areas of their sovereign powers by investing IJP and some form of IPP in the EC and, subsequently, in the EU.⁸⁸ However, such IPP powers were not truly satisfactory. Since the 1970s, the European Council, which consists of the heads of government of the various member states, has worked to define a role for the EC on a global scale.⁸⁹ Even so, most Council statements were unenforced and many members retained their exclusive individual foreign relations policies, thus restricting the potential of the CFSP. Indeed, even the coexistence of both IJP and IPP in the EC did not imply “the pervasive supranationalization of the intergovernmental Union legal order.”⁹⁰ The EC’s constitutional principles of intergovernmental foreign policy-making did not move towards “the unmitigated federalization of European foreign affairs” at the expense of the external sovereignty of its member states.⁹¹

2. The International Legal Personality of the European Union

Conversely, the Maastricht Treaty that founded the EU in 1993 did not endow the Union with international legal personality in the sense of IJP. The EU is “a curious mix of the supranational and the intergovernmental” elements and “a product of a unique time and unique circumstances” that differs from common behavioral patterns in other RIGOs.⁹² Before the passage of the Lisbon Treaty, the EU principally acted externally through either the EC’s international legal personality or agreements between its member states.⁹³ Nevertheless, de Schoutheete and Andoura believe that the Union “implicitly” attained international legal personality because of hints contained in its constituent instruments, further asserting that the legal aspect of personality is not important.⁹⁴ Thym also argues that Article 24 of the EU Treaty clearly indicates that the Union is capable of entering into treaties, and thus its legal personality is beyond doubt. Since 2001, in security and defense policy alone, the EU has concluded more than 80 agreements with other states and organizations. The Union’s Common Commercial Policy enables the Trade Commissioner to speak on behalf of the 27 member states with the WTO. The EU has increasingly become recognized as a power in the global economy, and its external relations in this area have “gone some distance beyond the nation state.”⁹⁵ Article 11 of the Treaty on European Union establishes that “[t]he Union shall define and implement a common foreign and security policy covering

⁸⁸ SCHERMERS & BLOKKER, *supra* note 8, at 968.

⁸⁹ JAN WERTS, *THE EUROPEAN COUNCIL* 143 (2008).

⁹⁰ Daniel Thym, *Foreign Affairs* in *PRINCIPLES OF EUROPEAN CONSTITUTIONAL LAW* 336 (2nd ed. Armin von Bogdandy & Jurgen Bast eds. 2010)

⁹¹ *Id.*

⁹² ARMSTRONG, LLOYD & REDMOND, *supra* note 63, at 20.

⁹³ SCHERMERS & BLOKKER, *supra* note 8 at 968.

⁹⁴ Philippe de Schoutheete & Sami Andoura, *The Legal Personality of the European Union*, WORKING PAPER OF THE EUROPEAN AFFAIRS PROGRAM, EGMONT ROYAL INSTITUTE OF INTERNATIONAL RELATIONS 7-8 (2007).

⁹⁵ Michael Smith, *European Union External Relations*, in *EUROPEAN UNION POLITICS* 236-37 (3rd ed. Michelle Cini, Nieves Perez-Solorzano Borragan, eds. 2010).

all areas of foreign and security policy.” However, Dedman argues, “A real CFSP remains a castle in the air and the Western European Union (WEU) has not become the EU’s defence arm.”⁹⁶ In other words, the EU’s external unity centers largely on economic and trade aspects and not the more politicized areas of national policy.

The Lisbon Treaty put an end to Europe’s former “legal schizophrenia” by combining the separate legal hierarchies of the EU and the EC into one.⁹⁷ The personification of the European Council is supposedly found in its president, who should “be the external spokesperson on the international political scene on behalf of the Union....and will project internationally an image of continuity and coherence.”⁹⁸ Pursuant to Article 3 of the Lisbon Treaty, the EU enjoys exclusive competence in (1) customs union, (2) competition rules, (3) monetary policy, (4) conservation of marine biological resources, (5) common commercial policy, and (5) the conclusion of an international agreement. Article 4 provides that the EU can conduct a common policy for development cooperation and humanitarian aid. According to Christiansen and Reh, the Lisbon Treaty creates a “mixed situation”: while it gives supranational Europe a unified international legal personality, it unequivocally defines the limits of the EU’s external competencies as well.⁹⁹ The unity of the EU’s constitutional architecture is perhaps “rhetorical” and superficial because the CFSP framework remains fundamentally distinctive from the rest of the Union.¹⁰⁰ Article 18(2) of the post-Lisbon Treaty of European Union elevated the High Representative for Foreign Affairs and Security Policy to the “unified voice” of the EU. This was accomplished by segregating its connections to the Council secretariat, establishing a new European External Action Service and creating a Vice President of the Commission. The Vice President participates in European Council meetings and chairs the Foreign Affairs Council. Nevertheless, the roles of both the European Commission President and the President of the European Council in external affairs have not diminished. If anything, these roles have been strengthened. Therefore, three “faces” may represent the EU at the international level, and they do not necessarily act consistently.¹⁰¹ Additionally, inter-state dialogue still plays a significant role in determining the coherence of EU foreign policy positions.¹⁰²

⁹⁶ MARTIN DEDMAN, *THE ORIGINS AND DEVELOPMENT OF THE EUROPEAN UNION 1945 – 2008: A HISTORY OF EUROPEAN INTEGRATION* 194 (2nd ed. 2010).

⁹⁷ Thym, *supra* note 90, at 336.

⁹⁸ DEIRDRE CURTIN, *EXECUTIVE POWER OF THE EUROPEAN UNION: LAW, PRACTICES, AND THE LIVING CONSTITUTION* 77 (2009).

⁹⁹ THOMAS CHRISTIANSEN AND CHRISTINE REH, *CONSTITUTIONALIZING THE EUROPEAN UNION* 256 (2009).

¹⁰⁰ Panos Koutrakos, *European Union Law External Relations*, 59 INT’L. COMP. L. Q. 487 (2010).

¹⁰¹ See Philipp Dann, “The Political Institutions” in *PRINCIPLES OF EUROPEAN CONSTITUTIONAL LAW* (2nd ed. Armin von Bogdandy & Jurgen Bast eds. 2010)

¹⁰² Robert Dover, *From CFSP to ESDP: the EU’s Foreign, Security, and Defense Policies*, in *EUROPEAN UNION POLITICS* 256 (3rd ed Michelle Cini, Nieves Perez-Solorzano Borragan, eds. 2010).

IV. Conclusion

This essay established a two-tier conceptual framework to understand the power and purpose of international legal personality related to RIGOs. It posits that the international legal personality of RIGOs, as a socio-political construction, is radically different from traditional international legal personality that has long been possessed by nation states on both juridical and political levels. The IJP of the nation state is usually reinforced by its constitutional independence within a given territory and Westphalian international legal norms that recognize the primacy of that constitutional independence in the acquisition of sovereignty. The more IJP and IPP overlap and the more that an entity possesses them concurrently, the less controversial an entity's claim to membership and influence in the international community. This largely explains the variances between the EU and ASEAN. In addition, entities that wield substantial influence on international and global affairs, like powerful states, typically possess high degrees of both IJP and IPP.

The kind of personality possessed by RIGOs is a kind of artificial representative personality in the Hobbesian sense, albeit limited in its form. While most RIGOs are constituted by constitutional instruments, they hold neither territories and populations nor the kind of constitutional independence that states enjoy. If we take the state as an artificial person made up of the natural persons that compose it, then most RIGOs are really second-level artificial persons made up of first-level artificial persons in the form of states. Europe remains an exceptionally advanced case of regional integration that boasts comparatively higher degrees of both IJP and IPP. Comparatively, it is the regional organization closest to being one of both states and citizens. Nevertheless, the most powerful European institutions (e.g., the European Council, the Council, and the Commission) are in fact dominated and driven by state appointees who wield far more influence than the geographically elected representatives of the Parliament.

The connections between most RIGOs and the natural persons who compose their regions are ultimately obscured by the layer of state institutions in between. This has generally undermined the ability of RIGOs to represent their respective regions as unitary international legal persons. The political ability of RIGOs to project a unified personality, or the Hobbesian "mask," in the international realm depends largely on the willingness of member states "to cede powers to the centre and non-members to deal with that centre."¹⁰³ The endowment of IJP in the case of ASEAN does denote a change in the mentality of member states to give the organization greater weight for certain purposes in the eyes of external entities. However, the ambitious claims of IJP in law are often at odds with the actual (weak) political capacities

¹⁰³ Chesterman, *supra* note 17, at 208.

of ASEAN to represent its constituents externally. This corresponds to Nijiman's observation that international legal personality embodies a conflict between ideals and reality. After all, states have a host of reasons to preserve their role as the primary "mask" of their citizens on the global stage.

Nevertheless, the power of international legal personality in regional integration is not entirely meaningless in the long run. At the very least, it has further weakened the previously unchallengeable doctrine of state sovereignty as the prerequisite for membership in the international community. Even now, states have to acquire membership to take part in the multilateral decision-making of RIGOs and other international organizations to actualize their external sovereignty.¹⁰⁴ Of course, variances exist among regions: the EU outperforms ASEAN in many fields, and ASEAN has reached consensus on issues such as a common official language and regional anthem that are absent in Europe. Nonetheless, through sustained practices, education, and normative internalization, the preferences of member states are likely to be eventually reconstituted in a direction that is more conducive to regional integration and cooperation.

¹⁰⁴ Jean Cohen, *Sovereignty in the Context of Globalisation: A Constitutional Pluralist Perspective*, in *THE PHILOSOPHY OF INTERNATIONAL LAW* 278 (Samantha Besson and John Tasioulas, eds., 2010).