RSCAS 2014/72
Robert Schuman Centre for Advanced Studies
Global Governance Programme-116

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EUI Working Paper **RSCAS** 2014/72

ISSN 1028-3625

Printed in Italy, June 2014
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy
www.eui.eu/RSCAS/Publications/
www.eui.eu
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Abstract

This paper considers a large global sample of constitutional texts (i.e. 171 constitutions from 153 countries) and assesses to what extent and how they refer to the increasingly important phenomenon of international regionalism (or regional integration) and how they deal with potential sources of tensions and contradictions between the national legal systems and the emerging regional regulatory universes. A typology of clauses is therefore proposed. In addition, some evidence is presented on the evolution of constitutional references over time, and on the relationship between constitutional referencing and the depth of the (*de facto* and *de jure*) regionalization processes.

Keywords

Regionalism, regional integration, constitutions, jurimetrics

1. Introduction[*]

International regionalism has gained considerable importance since WWII and there are good reasons to think that this tendency of deepening regionalism might well continue in the foreseeable future (de Melo and Panagariya 1995; UNCTAD 2007; Kühnhardt 2010).[1] No doubt there are many cross-border policy challenges for which the regional level might well be the most adequate to tackle them, especially if the responses to these challenges show features of regional public goods (Sandler 1998). Just think of migration (and related social security issues), infectious diseases, large infrastructure works, natural resource management, environmental disaster management, consumer protection, economic crisis management, monetary stabilization, etc.

Such a process of gradual deepening of regional integration or regionalism implies, however, that the institutional and legal nature of the arrangements is also being transformed.[2] From a legal perspective, it is recognized that a new form of globalization of the law (called 'the third globalization') is taking place, characterized by institutional innovations such as structural adjustment, economic integration and the generalized protection of human rights. These phenomena have influenced the displacement of legal positivism by other normative legal schools such as Neo-Constitutionalism in Europe and Legal Pragmatism in the US, which seem more compatible with these new phenomena (Kennedy 2006:64; Posner 2004:157-9; Bomhoff 2008:4).

From a situation of pure treaty-based intergovernmental cooperation, which can be handled with the established instruments and practices of international public law, states may move in the direction of deeper forms of integration which imply less policy autonomy and/or the pooling or transfer of sovereignty. With deeper integration, the paradigms of the formal international public law and the capacity of national constitutions to interact with it, are being tested.

The purpose of this *Paper* is double. On the one hand, it is related to ontological and typological issues, as a first step in theorizing. We aim at describing how and to what extent constitutional texts, drawn from a large global sample of constitutions, actually refer to the phenomenon of international regionalism (or regional integration). In other words, the questions that will be addressed are about the extent to which constituents and legislators worldwide refer in their constitutions to the emerging reality of regionalism and deal explicitly with potential sources of tensions and contradictions between the national legal systems and the emerging regional regulatory universes. We will thereby propose a typology of clauses, which –we claim- will be useful for both legal and political-type analyses, and apply a jurimetrics approach. This will already give an initial idea of the extent to which national constitutions deal with potential sources of tensions and contradictions between the national legal systems and the (existing or emerging) regional regulatory universes. On the other hand, we will present exploratory analytical work, showing some evidence on the evolution of constitutional references over time, and on the relationship between constitutional referencing and the depth of (*de jure* and *de facto*) regionalization processes.

The structure of the paper is as follows: we will first present a literature review in section two. This includes the connection with the ontological and conceptual discussions in the field (2.1), and the connection with the literature on the transformation of international public law in the context of

[*] The authors thank Stephen Kingah and two anonymous reviewers for helpful comments on a previous version of this paper.

[1] In this paper, regionalism, regional governance or regional integration refer to international regions, as distinguished from sub-national regions (or cross-border regions). In the literature these regions are also called macro-regions or supranational regions. The latter term (supranationality) is reserved here to refer to the nature of arrangements (i.e. not regarding membership), as distinguished from intergovernmental arrangements.

[2] On the transformation of institutions and law in the most emblematic –European- case, see e.g. Weiler (1991).

regional integration (2.2); Section three deals with various aspects of our empirical methodology (research questions, selection of constitutions, selection of relevant clauses, typology, indicators, etc.). In section four, we present the results in terms of frequency and typology of constitutional referencing to the regional phenomenon. The jurimetric results are contextualized and re-connected to the regional and national constitutional and institutional contexts. Section four thus responds to the first purpose of this paper (see above). Section five presents some further analysis and interpretation of the data. Using a sub-sample of constitutions, some evidence will be presented on the evolution of constitutional referencing over time, and on the relationship between constitutional referencing, on the one hand, and *de jure* or *de facto* depth of the regionalization process, on the other. Section six concludes.

2. Literature review

2.1. International regionalism

The broader political science/IR literature on regionalism is characterized by conceptual variety, if not conceptual confusion (see Hurrell 1995; Katzenstein 1996; Mansfield and Milner 1997; Warleigh-Lack 2008; Sbragia 2008; De Lombaerde et al. 2010; and many others). This variety reflects both the heterogeneity of the underlying population of regions (Genna and De Lombaerde 2010), and the fact that regions (and regionalization processes) can be looked at through a variety of theoretical lenses. We cannot go deeply into this conceptual debate here, but what comes clearly out of it is that comparative studies on regionalism require *ab initio* conceptual pluralism and flexibility. This will also be our underlying approach when selecting relevant clauses from a sample of constitutions (see below).

Regionalism will therefore be seen here as a phenomenon going beyond regional intergovernmental and supranational organizations. Having said this, from institutional and legal perspectives they are obviously of essential relevance. From a transaction cost perspective, one could assimilate intergovernmentalism with the organization of a market of international relations, whereas supranational integration could then be assimilated with the creation of an organization (Trachtman 1996: 48). They are usually seen as discrete, mutually excluding and opposite extremes but it is closer to reality to consider more gradual transformations within a spectrum (Weiler 1991) and -more recently- they have been considered as rather complementary options for regional integration (Schout and Wolff 2010:1-2). Supranationality is usually understood as a vertical transfer of competences to supra-national institutions, i.e. a hierarchical institutional design, while intergovernmental schemes are more based on horizontal cooperation. One illustration of the complementarity hypothesis is the European Union (EU), considered as the cornerstone of the supranational model, which continues to deepen its regional integration process increasingly using intergovernmentalist arrangements for this purpose (Fontes 2000:6; Schout and Wolff 2010: 18).

But even from a legal perspective, regionalism is not only a matter of (regional) intergovernmental treaties and/or supranational organizations; it is also –more generally- one of the factors that contribute to the transformation of international law (see also below) and to the consequential changing nature of national sovereignty regarding the regulation of the internal affairs of countries. When looking at these developments, the EU is usually taken as the main point of reference, given that its regional integration process has created an important *corpus* of supranational law and institutions and simultaneously reduced national sovereign competences of its member states. However, when looking at regionalism globally, although one can observe a renewed dynamism since the 1990s (the so-called *new regionalism*) in many regions, one cannot observe a systematic adoption of the 'European model', understood as the formal model of European supranationalism, elsewhere (Best 2005: 39; De Lombaerde and Schulz 2009). ASEAN for instance rejected the creation of regional supranational institutions. By contrast, the African Union has taken the European Model more into account but not reaching a representative level of supra-nationalism and *de facto* being more inclined towards

intergovernmental designs (Best 2005:40-1). This is reflected in our empirical analysis where, behind the European countries, the countries of the African region are the ones who have most explicit references to belonging to regional organizations in their constitutional texts (e.g. Algeria, Angola, Cape Verde and DR Congo) (see section 3). Also in Latin America, there is some formal similarity between the regional institutions and the European institutions (the Andean Community being a case in point), but despite the intentions, intergovernmentalism is still predominant. There is an extensive literature on the 'European model' (in its normative and positive understandings) and the comparability of regionalization processes in political science/IR.[3] This will not be further discussed here; in this paper, we will focus on the legal aspects that interact with regional integration policies worldwide.

Regional integration can be considered as public international (economic) law whose scope has sometimes been interpreted as a new form of governing competition among states with respect to the regulation of all issues related with international trade, but more in particular, with public goods. This regulation of competition at the international level seeks therefore to achieve local public policy goals of national governments (Trachtman1996: 50-1).

But regionalism has also been presented as weakening the unitary sovereignty of the nation state and the traditional hierarchy of legal rules (Bernard 2011). According to Trachtman (1996: 57-58), the degree of regional integration has a direct relation with the scope of constitutional competences of the legislative branch of government. If they are expanded, governments would engage more with intergovernmental organizations. The scope of the national constitutional judicial competences may also influence the discussion concerning supranational rules. Therefore, constitutional design is relevant for the deepening of regional integration processes, when transiting from an intergovernmental arrangement towards an institutionalized supranational organization.

2.2. Regional integration, international public law and constitutional law

The discussion on constitutional referencing to regionalism or regional integration should be seen in the broader context of a global transformation of international public law and constitutional law. Relevant aspects of this transformation include: the constitutionalization of international public law, the debate about the enforcement of international treaties by national authorities, and the growing relevance of international soft law. These will be briefly presented in the following paragraphs.

The constitutionalization of international public law[4]

An empirical study of national constitutions and case law concluded that although the influence of international law on national constitutional systems is significant, constitutional courts do not necessarily uphold the supremacy of international law over national constitutions (Peters 2009:171). However, although this appears to be a problem of hierarchy of rules and although it sometimes seems that international law and national constitutions are irreconcilable, there is a clear trend towards a progressive harmonization of national constitutions worldwide, mainly in the terrain of human rights (Peters 2009:197).

Modern constitutions, enacted after 1945, generally protect fundamental rights, based on "a flexible and pragmatic style of interpretation and enforcement" which seems closer to the German model (Grey 2003:7). This model has been widely adopted in countries with recent democracies and is

[3] For an introduction into this literature, see e.g. De Lombaerde, Söderbaum, Van Langenhove and Baert (2010). See also, Sbragia (2008), Warleigh-Lack (2008), Acharya (2012), and many others.

[4] This concept has been widely analyzed, and it is also referred to as world constitutionalism (Ackerman 1997; Peters 2012). The idea behind these concepts is that some issues regulated by public international law enjoy a sufficient degree of 'objectivity' that they may limit the sovereignty of the nation–state and even of international organizations (Kleinlein 2012:703).

becoming the most influential model outside the US (Ginsburg 2008). In the US, the scope of foreign and international law, case law or doctrine has been frequently debated. Some positions argue that globalization and the diffusion of the protection of human rights have an incidence on US constitutional cases, while other oppose this possibility because it is not in line with the meaning of the US constitution (Gray 2007: 5-6, 11-5). That is why world constitutionalism is not considered as having a strong influence on US constitutionalism (Ackerman 1997:772).

At the global level, a progressive constitutionalization of international public law has been suggested, precisely because of the progressive weakening of national constitutions caused by the growing globalization of some issues. This is mainly supported and promoted by courts and the academic world (Peters 2012:82). The points of departure for this global constitutionalism are two international legal systems in force: the international protection of human rights and the WTO (Peters 2012). These legal systems are more and more interconnected (Van Hees 2004; De Lombaerde and Lizarazo 2013; Lizarazo et al. 2014).

The protection of fundamental rights and their consequent judicial globalization is characterized by the mutual citation in human rights matters, named the "new *ius gentium* of human rights" (Grey 2003:7; Stone Sweet and Matthews 2008; Bomhoff 2008). This movement is seen as the conclusion of a long process of increasing pertinence of rights, in many cases taking the form of rules and in other cases as policies, but their relevance cannot be ignored, even if they are not part of the constitution (Kennedy 2006:65-6). The growing direct application of International Conventions of Human Rights as binding rules by national courts corroborates this trend (ICJ 2008).

The WTO in turn is presented as an example of a strong global institution that aims to fight protectionism through the principles of most favored nation (MFN) and national treatment (Peters et al. 2011: 71-6). However, the stagnation of the Doha Development Agenda in recent years, similarly to what happened during the Uruguay Round, has affected its global influence through the explosion of bilateral and regional FTAs. It is argued that the recently approved Bali Package in 2013 (just) seeks to recover the role of the WTO as the main regulator of international trade (Ramírez 2013). In addition, the constitutionalization of international economic law is also justified by the need to solve the conflicting relations between human rights protection and trade liberalization with the corresponding creation of a multilevel judiciary (Peters et al. 2011: 76-7, 94; Van Hees 2004; Narula 2011).

Treaty enforcement by national authorities

Although the debate on the scope of self-executing treaties *versus* non-self-executing treaties is to a large extent associated with the US, its relevance goes beyond this country and extends particularly to other federal states in processes of international integration. The concept of self-executing treaties refers to the possibility that an international treaty may be directly enforced before courts without the implementation of prior legislation (Vázquez 1995: 695). This subject remains highly controversial and the US Supreme Court of Justice has not produced a clear precedent that would guide lower courts in distinguishing between self-executing treaties and non-self-executing treaties (Vázquez 1995: 722-3; García 2013). A non-generalized position in case law supports the presumption of non-self-execution, mainly in the context of multilateral treaties (Bradley 2003:1588-9). Another interpretation, seeking to apply a more selective filter to the direct application of international treaties, affirms that if a treaty creates a "primary international duty", it is judicially enforceable but the nature of the duty is also relevant. Courts should determine whether this international duty creates a primary national duty whose nature and scope is a constitutional issue and whether the national duty is judicially enforceable. However, this extreme position limits the enforcement of treaties by the courts when the political branches decide not to comply with them (Sloss 2002). In recent years, the US Supreme Court has influenced the way of understanding self-executing-treaties after a ruling of 2008 (Medellín vs. Texas). Since then, it is accepted that treaties have a double character of political and legal

agreements whose judicial enforcement may also be considered as a political decision, or as a discretionary decision of courts that may be controlled by the political branches (Bradley 2009:41-2).[5]

In Europe this issue has also been analyzed. Poland, The Netherlands and Germany are quoted as countries remarkably inclined towards accepting the character of some treaties as self-executing, in particular those that refer to rights enforcement (Sloss 2009:12-3). The existence of the EU legal system is one reason that may explain why some national courts in some European countries are more familiar with the character of self-executing treaties (Sloss 2009:15).

In some of the more visible countries belonging to the Commonwealth, such as Australia, Canada and the UK, the courts are in general open to accept the self-executing character of some treaty clauses, also mainly when they relate to rights. In the UK the Human Rights Act (1998) is at the basis of this position while Canada accepts the direct enforcement of treaties by the application of "the presumption of conformity" and in Australia the "legitimate expectations doctrine" is the basis of this acceptance (Sloss 2009:24).

Recent judicial activism of some courts is attracting the attention to emerging markets where the international treaties of human rights are not only self-executing, but they are also used as a binding principle of constitutional adjudication. This is the case of India and South Africa (Sloss 2009:25) but also Colombia (Lizarazo 2011; Lizarazo et al. 2014).

Trade agreements and regional economic integration

Concerning international trade agreements, the US Constitution does not establish their character of self-executing treaties approved under the competence of the commerce clause, and case law of the US Supreme Court of Justice does not show a clear pattern. Case law of the US Court has not been consistent in the interpretation of the scope of the commerce clause although it has ruled that one of its purposes is the abolition of the barriers to trade (Goodman and Frost 2000:1,3,5). Therefore, regional integration treaties signed by the US, such as the North American Free Trade Agreement (NAFTA), are not clearly self-executing treaties. The Congress has the competence to overrule them. As such, regional integration agreements need special constitutional status to warrant more institutional stability (Abbot 1993: 184). In some cases, the Court follows policy arguments in favor or against the (federated) states, and in some cases it has considered NAFTA as a threat to national sovereignty (Goodman and Frost 2000: 1, 3, 5). The US states are concerned that their constitutional competences may be compromised by the federal government because it does not have a binding duty to consult with the states during the negotiation of trade agreements, although the NAFTA itself includes a duty to align state competences with NAFTA regulations (Tangeman 1996: 245-6). Again the issue turns around the nature of "*constitutional state rights*" with a political component. While for some observers the constitutional sovereignty of states is an obstacle in the processes of FTA negotiations (Goodman and Frost 2000:1), for others the federal government cannot compromise the constitutional sovereignty of the states, otherwise the Federal level would widen its competences (Cruz 2014: 102-3, 105). But the issue is not exclusive to the US. In Canada, some tensions between NAFTA regulations and provincial policies have been observed in the areas of environmental protection and investment (Cumming and Froehlich 2007).

In Australia, it has been proposed that the problem of federal states regarding the competences of subnational entities in the context of regional agreements be solved by means of the action of the constitutional court by balancing (reconciling) (protectionist) sub-national constitutional competences with federal constitutional competences on free trade (Villalta 2011:1,18). By contrast, as it will be illustrated in the empirical analysis of constitutions, European countries with strong federal states such as Germany, Italy and Austria are solving the conflict between levels of government by constitutional

[5] For a comparative analysis of the reluctance to accept self-executing treaties in the US and Israel, see Sloss (2009: 32-9).

regulation of multi-level governance, seeking to avoid regulatory obstacles to the regional integration process as in North America or Australia.

At the European level, the development of European integration and the self-executing character of most of the hard European Law have been possible because national constitutions have been made compatible with (the primacy of) European Law (Declaration 17 annexed to the TEU, quoted by Besselink et al 2014:9). The principle of primacy, together with the one of the direct effect of European Law have been developed by the case law of the Court of Justice of the EU (CJEU), and they have been considered as the point of departure of a progressive constitutionalization of the primary Law of the EU (Aguilar 2012:7-8).[6]

Although in principle the primacy of EU law could be seen as an expression of the Vienna Convention of 1969 (27), which does not allow member-states to invoke national rules as a justification to breach treaties, the relations between EU law and national constitutions of member-states have been largely analyzed in a very specific way. They have even been considered as a sort of composite constitutional framework or an "interwined constitutionalism" (Ziller 2005:480, quoted by Diez-Hochleitner 2013: 3-4).

This compatibility has been made possible mainly through constitutional amendments that authorize the limitation of national sovereignty and/or the consequent transfer of competences to the EU. In many countries, the objective to participate in the EU as a regional integration process was made explicit in the corresponding constitutional amendment by means of the enactment of the well-known "Europa Clauses" (Besselink et al. 2014:8-21) or "integration clauses" (Bernard 2011). This explains why many EU member states include explicit references to the regional grouping in their constitutional texts (see table 3).[7]

However, 'good' European governance in coordination with the national competences of the member-states depends not only on constitutional and legal regulators who support regional integration mainly by the elimination of constitutional barriers ("*constitutional safeguards*") but also on the behavior of courts, who can/should also ensure international cooperation by avoiding "*the protection biases*" that may affect regional integration. In other words, regional integration law needs to be enforced with the support of a multilevel judicial safeguard who should take into account the constitutional diversity of the member-states (Petersmann 2008: 246).[8] Therefore, the enforcement of EU law depends on a strong coordination between EU Law and national constitutional systems, favoring the interpretation *pro unione* of constitutional rules, in particular the "Europe clauses" (Diez-Hochleitner 2013:4), but at the same time, national constitutional values should be a criterion of interpretation for the CJEU.[9]

Thus, as Besselink et al. (2014: 22-27) explain, although from the perspective of the EU institutions, national constitutions cannot be used as an argument to refuse the enforcement of EU Law, from the perspective of member-states, secondary EU Law is enforceable if it respects

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6 The first principle refers to the prevalence of EU Law in case of contradiction with national legal rules of the member-states, and the second one refers to the above defined self-executing treaties (Aguilar 2012:7-8).

7 The relevant role of national constitutions for the enlargement of the European integration has been particularly notorious in the case of East European countries where deep constitutional reforms were needed in order to make their national legal order compatible with EU law (Herdegen 2013:144).

8 Although the creation of supranational institutions, including Courts, has been presented as the best way to promote regionalism, the "multilevel legal and judicial protection" of regional markets may also occur by means of intergovernmental designs as in the case of the Economic European Area (EEA) (Petersmann 2008: 235-236).

9 This position has as legal basis the TEU (4.2) which holds that *"The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State".*

constitutional rights, the limits of the transferred competences to the EU and the constitutional principles (also called "national identity"). These conditions coincide with the TEU (4.2) but they have also been identified in case law of national courts (e.g. Germany, Denmark) and in some national constitutions (e.g. Germany (23) and Portugal (7(6))).[10]

The case of Germany is a benchmark case inside the EU and the German Constitutional Court has extensively ruled on the scope of delegation of competences to the EU. Initially the discussion was mainly about the level of protection of German constitutional rights. The German Court has in general upheld EU law if the EU reveals at least the same level of protection of fundamental rights provided by the German Constitution (Pernice 1998; Lebeck 2006). However, since the enactment of the Treaty of Lisbon, which gave binding force to the EU Charter of Fundamental Rights, the tensions concerning constitutional rights have diminished (Besselink et al. 2014). Some authors argue that the German Constitutional Court is also inclined to be in line with the CJEU because European integration is a German constitutional value (Lebeck 2006; Diez-Hochleitner 2013; Paulus 2009: 241; Besselink et al 2014: 19). Nevertheless, the respect for fundamental constitutional principles by EU law (which in some cases still includes rights concerns) remains a relevant issue in national courts (Besselink et al. 2014: 22-5).

As far as the respect for the transfer of competences is concerned, the German Constitutional Court accepts that the CJEU verifies first whether the EU respects its own competences, and it would only rule in cases of notorious detriment of national competences (Besselink et al. 2014: 222).[11] This is, the conflict becomes real only after a ruling of the CJEU by means of the proceedings for annulment or by a preliminary ruling (Diez-Hochleitner 2013:33) .

This issue (known as the *ultra vires* control) remains the main source of potential conflict between EU law and national constitutions, despite the fact that the TEU (4.1 and 5.2) establishes that all "*competences not conferred upon the Union in the Treaties remain with the Member States*". The problem is that the Lisbon Treaty does not contain a clear catalogue that would avoid potential conflicts (e.g. art. 114) (Diez Hochleitner 2013: 7,9). The main concern of the German Court when analyzing the constitutionality of the Lisbon Treaty (*Lisbon Case*) referred mainly to the flexibility clause (TFEU (352)), which allows that the EU competences may be adjusted to the objectives of the Treaty in case it fails in providing the necessary competences to reach them. The German Court held that EU law and the competences of the CJEU should respect and protect the democratic principle[12], i.e. each new transfer of competences should be approved by national parliaments and not only by the European Parliament. This position has been seen as a rejection of the creation of a European federal state (Kiiver 2010:580-3; Diez Hochleitner 2013:14; Wolfahrt 2009:1280).

In Africa, the constitutional rules and case law of African states in general are currently not in a state of accommodating supranational rules to support the further deepening of regional integration. Some countries reformed their constitutions after independence to favor regional integration. However, the Organization of African Unity (OAU) emphasized the national sovereignty of the member states and the principle of non-interference in internal affairs, which is not necessarily compatible with a deepening process of regional integration (Oppong 2008: 2,15). More recently, i.e.

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10 Cf. infra, the principle of subsidiarity in France, Germany and Portugal.

11 The Lisbon case has been seen by some as showing a Euro-skeptic position of the German Constitutional Court because it keeps the competence of revising *ultra vires* acts of the EU (Diez Hochleitner 2013: 7). However, the German Court upheld the treaty and even made the *ultra vires* control compatible with the Europe clause (BL 23 (13-4)), seeking not to interfere with the normal activity of the EU (Diez Hochleitner 2013:13).

12 The respect of the democratic principle (i.e. the approval of international agreements by national parliaments) is not an exclusive position of the German Court. It is understood as the way to legitimize the international economic order (Herdegen 2013:67). Bothe (2009) considers this case law of the German Court not necessarily as an obstacle to regional integration but as useful and necessary for Europe because the active participation of Parliaments in daily issues of European policy would shorten the distance between EU institutions and EU citizens.

after the creation of the African Economic Community in 1991, new constitutions do not attach much relevance to regional integration, but a clear interaction between national constitutions and regional directives with respect to democracy and human rights is notorious (Oppong 2008:2,16,18). However, Courts in Africa have not been active in ruling on regional integration treaties and commitments, despite the fact that some constitutions may allow such judicial review. In general, regional integration treaties are treated like other international treaties, without a special constitutional status (Oppong 2008: 23-24).

In Latin America, as it will be explained below in the empirical analysis, despite the constitutional aims to promote regional integration, in some cases with a supranational character, in practice many countries are still more inclined to give primacy to national sovereignty, leaving regional integration agreements at the level of the law (e.g. Colombia). Some of them give regional integration agreements a higher hierarchy than internal law (e.g. Venezuela and Argentina) but in all the cases, national constitutions are at the top of the legal system, which means that regional integration treaties are subordinated to national constitutions.

Self-regulating markets and soft law

Although this paper refers to hard law (law and regional integration treaties), some words should be said about the growing role of soft law. The process of regional integration has also been influenced by the growing privatization of markets and *vice versa*. Private actors are pushing for more regionalism but they are simultaneously and increasingly self-regulating their markets in less explicit ways and not only through the institutionalization of their lobbying activities. This transformation of the traditional paradigms of the legal system has been producing an explosion of the number of regulations applied in countries not necessarily enacted by the national constitutional and democratic authorities (Corkin 2013: 636, 648-9). The growing and generalized use of private hard and soft law by private and public institutions is considered as the privatization of international law with a clear influence on regional integration and the empowerment of private actors in the global markets vis-à-vis the national states (Peters 2012:78). In other words, besides traditional hard law created by constitutional national authorities or by means of international treaties in force under the law of treaties, other kinds of hard law enacted by regional institutions are displacing norms adopted by national authorities. The latter are also seeing their regulatory competences limited or at least influenced by the increasing relevance of soft law produced by regional organisms and by private actors (e.g. codes of conduct, standards, certification schemes, etc., which are now part of a complex international legal system) (Corkin 2013: 650-651). In some cases, constitutional authorities try to interact with the non-traditional lawmakers, making explicit the supremacy of their constitutional competences of regulation or judicial adjudication on all issues related with national or institutional supranational legal systems (Corkin 2013:659-61). Although there has been reluctance to recognize the growing relevance of soft law for international law, it has been used by EU authorities[13], alongside self-regulation mainly through Codes of Conduct (Peters 2011: 27,31). Despite the increase of soft law regulations worldwide, the production of binding hard law does not seem to have been influenced (Falkner et al. 2005:350, quoted by Peters 2011: 22). Arguments supporting soft law emphasize that it does not need a formal approval procedure in which different institutions are involved. At the EU level, it also means a flexible regulation that has marginal effects on national sovereignty of member states and which guides the interpretation of hard European Law (Peters 2011: 33,36). However, this may create tensions between institutions (European Parliament and the Commission) because soft law – in contrast with hard law – does not have a democratic origin and has been associated with the bureaucratization of the EU (Peters 2011: 44-45; Corkin 2013).

[13] Two clear examples of soft law inside the EU have been: the Charter of Fundamental Rights which became hard law with its recognition in the Treaty of Lisbon in 2009, and the Luxemburg Agreement (Peters 2011: 26-7).

3. Methodological aspects

As mentioned before, the central research questions that will be addressed in this paper refer to the extent to which constituents and legislators worldwide refer in their constitutional texts to the emerging reality of regionalism and deal explicitly with potential sources of tensions and contradictions between the national legal systems and the emerging regional regulatory universes. In addition, we will assess whether there is evidence of increasing constitutional referencing over time, and of any relationship between constitutional referencing and the depth of the corresponding (*de jure* and *de facto*) regionalization processes.

At the core of our analysis is a jurimetric analysis of a large sample of constitutions. Inclusion of texts in the sample was as wide as possible, and depended basically on the availability of the constitutional texts in electronic format. A sample was built from the constitutions accessible through *Constitution Finder*.[14] Of all the constitutions available, the texts were selected in the original language, if the original language was English, French, Spanish, German or Dutch, or –otherwise-- a translated version into English was used. Dates of enactment and most recent amendments were systematically registered. If various (consecutive) texts were available for a specific country, they were all included in the database in order to also make a dynamic analysis possible (see below). Some micro-states and territories with special status were excluded from the sample. This led to a final sample of 171 post-WWII constitutional texts, corresponding to 153 countries.

As a first step, all relevant articles were identified and uploaded in a database. As suggested before, we started from a wide and flexible conceptualization of the regional phenomenon. Any reference to international regions, independently of its domestic legal implications was registered. However, the numbers of articles as reported in the tables in the following sections, should be interpreted with some caution. Not all constitutions are organized in the same way. And therefore the use of 'articles' (or 'sections') is not necessarily consistent. We have tried to base our analysis on equivalent articles, but – obviously— some margin for interpretation was unavoidable. However, this should not significantly influence the main conclusions of our analysis.

In section four, some further analysis of the data is presented. Within the mentioned sample of 171 constitutions, 16 pairs were identified that covered consecutive constitutions for particular countries (i.e. a given constitution and a posterior new, substantially reformed or amended one), in order to assess the referencing patterns over time. For another sub-sample of recent constitutions (i.e. constitutions enacted or amended after 2000), we contrast referencing statistics with measures of *de jure* and *de facto* regionalization. The former is an index of institutional integration, similar to the integration achievement scores first developed by Hufbauer and Schott (1994), based on Balassa's framework (Balassa 1961), further developed and applied by Feng and Genna (2003), and then refined by Dorrucci et al. (2004).[15] We use the data as reported in De Lombaerde, Dorrucci, Genna and Mongelli (2011). The latter index, intra-regional trade shares, reflects the relative importance of intra-regional trade as a percentage of total trade of the member states of a given regional organization.[16] We use data from the Regional Integration Knowledge System (RIKS).[17] This indicator shows the degree of regional (economic) interdependence and, thus, *de facto* regionalization.

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[14] The tool which was used for the identification and collection of constitutional texts was *Constitution Finder* of Richmond University [http://confinder.richmond.edu/index.html]. *Constitution Finder* is an open access tool, made available by a team affiliated with the University of Richmond School of Law.

[15] For a more complete bibliography on indicators of regional integration, see De Lombaerde et al. (2011).

[16] For a methodological discussion of the intra-regional trade share measure, see e.g. Iapadre (2006) and Iapadre and Plummer (2011).

[17] See: http://www.cris.unu.edu/riks.

4. Results: frequency and typology of constitutional referencing

We consider thus a large sample of constitutional texts to assess the degrees and ways in which regions and/or regional organizations are referred to and defined in constitutional texts worldwide. The analysis of this database is reflected in a number of consecutive tables (tables 1-4). The main results are the following: Around 50% of all constitutions in the sample refer to international regionalism in one way or another, which is quite significant (table 1). Most of these cases refer to international regionalism in one or two articles, although there are outliers of up to nine articles (France). Looking at broad geographical regions, Asia, Oceania and North-America tend to refer relatively less to international regionalism, whereas Europe, Africa and South-America tend show relatively more constitutional references to regionalism (table 2).

Table 1: Distribution of constitutions in sample according to number of articles referring to regionalism

Number of relevant articles	0	1	2	3	4	5	6	7	8	9	Non-zero	*Total*
Number of constitutions in sample	85	57	13	7	3	1	2	2	0	1	86	*171*

Source: Own calculations based on constitutional texts from: http://confinder.richmond.edu/index.html.
(See table 2 for list of constitutions with relevant references)

Table 2: Distribution of constitutions according to presence of references to regionalism, by broad geographical regions

	No references	References	Total
Africa	22	25	47
Asia	27	17	44
Europe	16	26	42
North America	2	0	2
Central America	4	4	8
South America	3	10	13
Caribbean	4	3	7
Oceania	7	1	8
Total	*85*	*86*	*171*

Source: see table 1.

Now, when looking at the constitutional provisions more in detail, one notices that the references to international regions come in various forms, and that they are not necessarily concerned with clearly defining regional organizations (table 3). They either refer to international regions in rather vague terms, leaving it to the national authorities to interpret how this should be reflected in a country's international relations and what the constitutional and legal consequences of these provisions exactly are, or they refer to specific regional organizations (e.g. EU, League of Arab States, etc.) rather than to the generic category. The latter contrasts clearly with how the constitutional principles of foreign policy are usually articulated. In order to see more clearly, we established a typology of how constitutions refer to regionalism. The following types were considered: (i) belonging to a wider cultural region; (ii) belonging to a wider geo-political region; (iii) belonging to a regional organization and/or the commitment to respect its rules; (iv) mandate to engage in further regional cooperation and/or formal regional integration in the future; (v) rights for citizens of regional organization co-member states in national elections; (vi) organization of elections of members of regional parliaments; (vii) compatibilization of sub-national autonomy and supra-national rule-making; (viii) compatibilization of the constitutional framework and autonomy of national parliament, on the one

hand, with supra-national rule-making, including the treaty negotiation process, on the other; (ix) requirement of a referendum on regional integration treaties/reforms; and (x) (preferential) conditions for acquiring citizenship based on belonging to a region or regional organization.

From the distribution of articles in table 3, it can be observed that the four most covered types of references are: (ii) belonging to a wider geo-political region, (iii) belonging to a specific regional organization, (iv) mandate to engage in further regional cooperation/integration, and (viii) compatibilization of national constitutional framework with supra-national rule-making.

In sum, a large number of national constitutions refers to international regions. However, this is done in a variety of ways with a variety of legal implications. There is still some way to go in the direction of a more homogeneous treatment of international regions in constitutions and thus contributing to definitional standardization, but the foundations are laid and through innovation, imitation and learning it is to be expected that further steps will follow.

Table 3: Type of references to regionalism, by Constitution

Country	Constitution	Number of relevant articles	Belonging to wider cultural region	Belonging to wider geo-political region	Belonging to regional organization – respect for its rules	Mandate to engage in further regional cooperation and/or formal regional integration in the future	Rights for citizens of regional organization in national elections	Elections of members of regional parliament	Compatibilization of sub-national autonomy and supra-national rule-making	Compatibilization of constitutional framework and autonomy of national parliament with supra-national rule-making.	Requirement of referendum on regional integration treaties/reforms	Conditions for acquiring citizenship based on belonging to a region
Algeria	1963	1	2	2								
Algeria	1976	4	87	87, 88	86, 88, 89	87						
Angola	1992	1			15							
Argentina	1994	2	25	75.24								
Austria	1929 (2008)	6			23c, 23f			23a, 23b	23d	23e		
Bahrain	1973 (2002)	2	1			10						
Bangladesh	1972 (2004)	1	25									
Barbados	1966	3										8.1, 8.2, 8.3
Belgium	1994 (2007)	2			8, 168		8			168		
Belize	1981	1		1								
Bolivia	2009	4	265	10, 265		265		266			257	
Brazil	1988 (2006)	1	4	4		4						
Bulgaria	1991 (2007)	1			4	4						
Burkina Faso	1991 (2002)	2		146		146					147	
Burundi	2005	1				291						
Cape Verde	1992	1	11	11	11	11						
Central African Republic	1995	1		67		67					67	
Colombia	1991 (2005)	2		9	227	9, 227		227				96.2

Congo (Brazzaville)	1992	1				177						
Congo (Brazzaville)	2001	1				182						
RD Congo	2003	1		195		195						
RD Congo	2005	1		217		217						
Costa Rica	1949 (2003)	1		14								14
Croatia	1990	2		2		2				2, 141	141	
Cuba	1976 (2002)	1		12		12						
Dominican Republic	2002	1		3								
East Timor	2002	2	8.3	8.4								
Ecuador	2008	6	416	416, 423		416, 423				417, 418, 419, 420, 421, 422	420	
Egypt	1971 (2007)	1	1									
Egypt	2011 (Interim)	1	1									
Eritrea	1996	1				13						
Finland	1999	3			93, 96, 97					93, 96, 97		
France	1958 (2011)	9	87	53-1	88-1, 88-2, 88-3, 88-4, 88-5, 88-6	53-1	88-3			88-2, 88-4, 88-5, 88-6, 88-7	88-5	
Germany	1949[18] (2010)	3		23	23	23, 24			23, 24	23, 24, 45		
Greece	1975 (2008)	1		28						28		
Guatemala	1985 (1993)	1		150		150						
Guinea-Bissau	1984 (1996)	1		18		18						
Hungary	2011	7		E	E, XXIII, XXVIII, 8, 19, 47	E	XXIII	XXIII, 9		E, XXVIII, 19, 47	8	
Ireland	1937 (2011)	1			29					29		
Italy	1947 (2007)	3			117		122	122	117, 120, 122	117		
Ivory Coast	2000	2				122, 123						
Jordan	1952	1	1									
Kazakhstan	1995	1				8						
Kenya	2010	1				240						

[18] As amended by the Unification Treaty of August 31, 1990 and Federal Statute of September 23, 1990.

Kuwait	1962	1	1									
Kyrgyzstan	1993 (1998)	1				9						
Kyrgyzstan	2007	1				9						
Latvia	1922 (2005)	2			68					68, 79	68, 79	
Liberia	1986	1		9		9						
Libya	1969	1	1	1								
Liechtenstein	1921 (2003)	1			67					67		
Lithuania	1992 (2004)	1								138		
Macedonia	1991	1								120	120	
Madagascar	2010	1								137	137	
Mali	1992	1		117		117						
Malta	1964 (2003)	3			23, 24, 65					65		23
Marshall Islands	1979 (1990)	1			XIII					XIII		
Monaco	1962 (2002)	1			1							
Montenegro	2007	1			15	15						
Myanmar	2008	2				96				96, 209		
Nepal	2007	1				35						
Nicaragua	2007 (2010)	3		5, 9		5, 9				9		17
Nigeria	1999	1		19		19						
Oman	1996	1				10						
Pakistan	1999 (2011)	1	40	40		40						
Paraguay	1992	1			144							
Peru	1993 (2005)	1		44		44						
Portugal	1976	2	7	7	118	7		118				
Portugal	1976 (2005)	5	7	7	7, 8, 15, 33	7	15	15		8, 33	295	
Qatar	2003	1	1									
Rumania	1991 (2003)	3			38, 148, 149			38		148, 149		
Saudi Arabia	1992	1	1									
Senegal	2001	1		96		96				96		
Serbia	2006	1	1									
Sierra Leone	1991 (2002)	1		10		10						
Slovakia	1992	1			7	7				7	7	
Slovenia	1991 (2006)	4	5, 64, 65		3a	3a, 5, 64, 65				3a, 64	3a	
Spain	1978	1										11
Sweden	1974	7			1.10, 2.19, 10.4, 10.6, 10.7			8.2		2.19, 10.4, 10.6, 10.7, 10.10		
Tunisia	1959 (2002)	1	2			2				2	2	
United Arab Emirates	1971 (1996)	1				123				123		
Uruguay	1967	1		6		6						
Venezuela	1947	1										12
Venezuela	1999 (2009)	2		153		153				153		33
Vietnam	1992	1				14						
Yemen	1990 (1994)	2	1		6							

Total number of constitutions containing a particular type of reference*			25	37	27	49	5	9	3	29	14	8

*independently of number of articles per type of reference.

Notes: Cells contain article numbers. Year of most recent amendments between brackets.

Source: see table 1.

The specific regional organizations to which references are found are shown in table 4. The European case is clearly the most developed at this level. Sixteen member states of the EU make reference to their belonging to the EU. The countries of other regions do not include this item, with very few exceptions.

Table 4: Explicit references to regional organizations in Constitutions, by regional organization

Country	Constitution	Articles explicitly referring to regional organization	Organization of African Unity/African Union	Arab League	European Community/EAEC/EU	European Economic Area	Council of Europe	Conventions France-Monaco	Andean Community	Organization of American States	North Atlantic Treaty Organization
Algeria	1976	86, 88, 89	X	X							
Angola	1992	15	X								
Austria	1929 (2008)	23c, 23f			X						
Belgium	1994 (2007)	8, 168			X						
Bulgaria	1991 (2007)	4			X						
Cape Verde	1992	11	X								
Colombia	1991 (2005)	227							X		
RD Congo	2003	195	X								
Finland	1999	93, 96, 97			X						
France	1958 (2011)	88-1, 88-2, 88-3, 88-4, 88-5, 88-6			X						
Germany	1949[19] (2010)	23, 45			X						
Hungary	2011	E, XXIII, XXVIII, 8, 19, 47			X						
Ireland	1937 (2011)	29			X						
Italy	1947 (2007)	117			X						
Latvia	1922 (2005)	68			X						
Liechtenstein	1921 (2003)	67				X					
Malta	1964 (2003)	23, 24, 65			X						
Monaco	1962 (2002)	1						X			
Montenegro	2007	15			X						
Paraguay	1992	144								X	
Portugal	1976	118			X						
Portugal	1976 (2005)	7, 8, 15, 33			X						
Rumania	1991 (2003)	38, 148, 149			X						X
Slovakia	1992	7			X						
Slovenia	1991 (2006)	3a			X						
Sweden	1974	1.10, 2.19, 10.4, 10.6, 10.7			X		X				
Yemen	1990 (1994)	6		X							

Note: Year of most recent amendments between brackets.

Source: see table 1.

[19] As amended by the Unification Treaty of August 31, 1990 and Federal Statute of September 23, 1990.

Let us now have a more detailed look at the constitutional regulations regarding regional integration in the Americas and Europe, and –more concisely- in other world regions. The following patters can be identified:

The Americas

In North America, the constitutions of Canada, Mexico and the US do not establish any concrete reference to the regional groupings to which they belong. In the US the commerce clause of the Constitution (I,8.3.) gives the competence to the Congress "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The competence to negotiate regional integration treaties is based on this clause.

In Latin-America, as elsewhere, the main trend is to strengthen intergovernmental institutions. But in this region, this occurs in spite of existing supranational law and institutions. In South America, one finds a more-than-average number of relevant constitutional clauses referring to international regionalism (table 2). However, only two countries explicitly refer to existing regional organizations in their constitutions, and only the Colombian constitution refers to a concrete existing economic regional integration grouping (Andean Community –CAN-).[20] The latter has shown a noticeable development of supranational law and institutions but it has been progressively losing members, political relevance and national support. Apart from pursuing a political agenda, the expectation of the recently created Union of South American Nations (UNASUR) is to succeed in the unification of the Common Market of the South –MERCOSUR- and CAN, but this regional grouping has a clear intergovernmental character. The emergence of UNASUR (and also of the Pacific Alliance) has certainly affected the sustainability of CAN as an institution with supranational characteristics. UNASUR is promoting a flexible intergovernmental way of regional association without having the intention to follow the 'European style' route of deepening regional integration (Escobar 2009; Vilosio 2010). In any event, some constitutions of South America contain "integration clauses", but there has not been enough interest in the development of a supranational regional integration grouping.

In South America, the types of references that are used mostly follow the general pattern as indicated above, i.e. (ii) belonging to a wider geo-political region, (iii) belonging to a specific regional organization, (iv) mandate to engage in further regional cooperation/integration, and (viii) compatibilization of national constitutional framework with supra-national rule-making.

The Chilean constitution does not have any clause referring to regional integration. It has been the most independent country of the region, following unilateral and bilateral trade policies, and only being part of the Andean Pact for a very short period of time. It has been active in the promotion of interregional relations with the Pacific basin and in the negotiation of bilateral FTAs. More recently, it has entered into a regional agreement with Mexico, Colombia and Peru when the Pacific Alliance was created.

By contrast, although the constitutions of other countries refer firmly to the respect of national sovereignty and to the principle of non-intervention in internal affairs, they make explicit reference to the promotion of Latin-American regional integration. This is the case of Brazil (1988), Peru (1993 (2005)), and Bolivia (2009) (which adds the integration with indigenous peoples of the world). Colombia (1991) and Venezuela (1999 (2009)), being part of the Caribbean, in addition refers to the promotion of regional integration with this region.

Uruguay (1967) mentions as goals of Latin-American integration, the defense of their products and raw materials and complementarity of public services. The Paraguayan constitution (1992) refers to the Organization of American States (OAS) and mentions the possibility to sign integration treaties in general (144).

[20] On the constitutional aspects of FTAs in Colombia, see: De Lombaerde and Lizarazo (2013).

The Constitution of Argentina expressly refers to integration treaties with a supranational character, although it has also been interpreted in such a way as to place them hierarchically below the constitution (Gordillo 2005:II17). It is also remarkable that the Constitution imposes as limits to regional integration, the respect of the democratic order and human rights. In Brazil, the necessary intervention of the legislative and executive branches to execute international treaties, such as regional integration agreements, situates them below the Constitution and therefore they can be subject to judicial review by the Supreme Court (Fontes 2000:8). In addition, given that Brazil is the major player inside MERCOSUR, it is not particularly pushing for the transfer of sovereignty in favor of MERCOSUR (Fontes 2000:15-6).

The constitution of Ecuador (2008) mentions as a strategic objective the regional integration with the Andean region, South America and Latin America (and the Caribbean). It is the most detailed in this respect and seeks the promotion of a global order with economic and political regional blocs with horizontal relations. It refers to the free movement of people worldwide and the end of conditionality in north-south relations. It also refers to the respect of human rights, in particular the rights of migrants, and rejects colonialism and imperialism and promotes the democratization of international institutions. At the institutional level, the Constitution of Ecuador is again the most progressive of South America. It promotes Latin-American and Caribbean citizenship and free movement of persons in the region, and the creation of supranational institutions of regional integration. Regional integration may include a productive, financial and monetary union, the adoption of a common international political economy, taking into account the existence of asymmetries. It also includes the strengthening of the harmonization of national legislation related with labor, migration, environmental, social and educative and health. However, international trade agreements should not affect the right to health, the access to medicines, services or technical and scientific progress. It is also forbidden to conclude treaties that transfer judicial competences to international arbitration institutions related with commercial issues, except for the resolution of disputes among states or citizens within Latin America.

Concerning the creation of supranational organizations and the character and scope of the regional integration regime, the constitution of Colombia (1991) promotes the creation of supranational organisms, including the creation of a Latin-American Community of Nations, as also mentioned in the Brazilian constitution (1988). The Colombian constitution establishes the possibility of elections of Regional Parliaments. The constitution of Bolivia stipulates that the approval of treaties of "structural economic" regional integration, monetary integration or the transfer of competences to international or supranational institutions in the framework of regional integration processes should be approved by referendum. The Venezuelan constitution (2009) also accepts the creation of supranational organizations and stipulates that the legal rules adopted in integration agreements are part of the national legal order and of direct and preferential enforcement vis-à-vis internal law.

The Central American Integration System (SICA) is also based on an intergovernmental logic, but not all the member states are bound to the same extent because each of them has concluded international agreements with different scopes, instead of entering in a completely reciprocal arrangement. The creation of a Court inside the organization has been regarded as an advance in the process of supra-nationalization but not all the member states have approved its creation (Carducci and Castillo 2012: 24-27).

Europe

Although European constitutions tend to refer relatively more to international regionalism than constitutions in most world regions (table 2), not all constitutions do so, not even all EU member states. The Czech Republic (1992 (2009)), Denmark (1849 (1953)), Luxembourg (1968 (1998)), the Netherlands (1983), Norway (1814), Poland (1997), Estonia (1992) and Lithuania (1992 (2004)) do not have any reference to "Europe" or an integration clause. The constitution of Greece (1975 (2008)) does not refer explicitly to the EU neither, whereas Bulgaria (1991 (2007)) makes a short reference to its participation in the building and development of the EU.

The Constitutions of former imperia (France (1958 (2011)), Portugal 1976 (2005) and Spain (1978 (2011)) establish the promotion of solidarity and special cooperation with countries with the same language, which is an example of the type of reference consisting in belonging to a wider cultural region (II). In addition, Portugal includes the principle of non-intervention in internal affairs and rejects imperialism and colonialism. Sweden makes reference to its membership in the EU but also to its participation in international cooperation within the framework of the United Nations and the Council of Europe. Hungary (2011) states that the government shall take into account decisions of the EU and the North Atlantic Treaty Organisation in security issues.

Rules that may be included in the category 'compatibilization of national constitutional framework with supranational rule-making' (viii), *in casu* the EU, can be classified in four groups:

A first group includes references such as in the constitution of Germany (1949 (2010)) which highlights that the EU should respect the democratic, social and federal principles, the rule of law, but it states in particular that EU law should guarantee a level of protection of basic rights, essentially comparable to that afforded by its Basic Law. Along the same lines, Sweden (1974) allows the Parliament to transfer decision-making authority without affecting the basic principles and protecting rights and freedoms recognized by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It forbids the transfer of decision-making authority related to the enactment, amendment or abrogation of fundamental law, the Parliament Act and its elections, or related to the restriction of any of the recognized rights and freedoms. Slovenia (1991 (2006)) also conditions the transfer of rights to the respect for human rights and fundamental freedoms, democracy and the principles of the rule of law. The constitution of Greece (1975 (2008)) allows limiting national sovereignty, insofar as this does not infringe human rights, the democratic government and the principles of equality and reciprocity. The constitution of Bulgaria (1991 (2007)) also makes reference to the respect for the rule of law and for human rights.

References in a second group include the constitutions of France and Germany which establish the superiority of the principle of subsidiarity with respect to a draft European law. National authorities may present an action before the Court of Justice of the EU to challenge a legislative act of the EU for infringing the principle of subsidiarity. Portugal also refers to the European identity but under the principles of reciprocity, the rule of law, and subsidiarity.

A third group concerns the participation of national parliaments in the decisions of the EU. Austria, for example, has a very detailed regulation of the control of the National Council over the position that the Government would assume before EU authorities. The government is bound by the opinion of the National Council during EU negotiations and voting. The government may deviate only for imperative foreign and integrative policy reasons, but if a constitutional amendment is necessary, then the deviation is only possible when the National Council does not controvert it. Germany also regulates in detail the duty of the Federal Government to consult and take into account the position of the Bundestag during the EU negotiations. The consent of the Federal Government is necessary when an issue may increase expenditures or reduce revenues for the Federation. Finland (1999) establishes that the government should prepare the decisions to be made in the EU, unless the decision requires the approval of the Parliament in which case, the Parliament will participate in the decisions of the EU. France orders the government to submit to the Parliament the draft European laws. The Parliament may oppose reforms on the rules of adoption of European treaties according to the rules of the TFEU. Belgium only mentions that treaties reforming the EU treaties in force should be approved by the Parliament before their signature. The constitutions of Finland, Hungary, Croatia, Romania 1991 (2003), Slovenia and Sweden establish the duty of their respective governments to keep the Parliament informed on matters related with the EU decisions/law creation and some of them refer to the amendments being prepared to the treaties of the EU. The binding force of Parliamentary opinion for the governments when negotiating before the EU institutions has different levels of intensity in the various constitutions.

Finally, a fourth group concerns the status of EU Law in the internal legal systems. Croatia 1990 (2010) retains its sovereign right to decide upon the powers to be delegated and the right to freely withdraw therefrom. As a consequence of the transfer of competences to the EU, national authorities should apply EU law directly and Croatian courts shall protect subjective rights based on the EU. In Hungary, EU law is binding. Romania establishes the prevalence of treaties of the EU and other mandatory community regulations over opposite provisions of the national laws and all the national authorities should guarantee their implementation. In Slovakia, legally binding acts of the EU also take precedence over national laws. The transposition of legally binding acts which require implementation should be realized through a law or governmental regulation. The Constitution of Ireland 1937 (2011) clarified that it does not invalidate laws enacted before, on or after the entry into force of the Treaty of Lisbon, that are necessary for the compliance of obligations of membership of the EU, or prevents laws enacted by the EU existing before the entry into force of the Treaty of Lisbon. In Portugal, EU law is enforced in the internal order taking into account democratic principles. The Constitution recognizes the rules of judicial cooperation in the EU. The only explicit reference of the Spanish Constitution 1978 (2011) to EU Law is that the volume of public debt held by the public administration services may not exceed the reference value established in the TFEU[21]. Spain also refers to its cultural ties with Latin-America and with other countries with which they have had or have special links, by facilitating access to Spanish nationality for citizens originating in these regions or countries. Slovenia refers in general to the principle that legal acts adopted within international organizations shall be applied in accordance with the legal regulation of these organizations. Greece stipulates that generally recognized rules of international law ratified by statute shall be an integral part of domestic law and shall prevail over any contrary provision of the law.

With respect to the type of reference referring to the compatibilization between sub-national autonomy and supranational rulemaking (vii), the constitutions of Austria (1929 (2008)) and Germany establish a very detailed constitutional regulation of the proceedings in case EU law creation or modification could affect subnational entities (the *Länder*), and in this way it assures the concrete participation of subnational authorities in the harmonization of their competences with EU law. Along the same lines, the constitution of Italy (1947 (2007)) establishes that legislative powers of the State and the Regions are constrained by the constitution and by EU-legislation and international obligations. Regions may not adopt measures that obstruct the freedom of movement of persons or goods between regions, otherwise the Government can act if they fail to comply with international rules and treaties or EU legislation. Conversely, regions may take an active part in the preparatory decision-making process of EU legislative acts in areas of their competences.

The references related to the rights for citizens of regional organization co-member states in national elections (v), i.e. the right to vote in local elections for citizens of the EU with residence in their countries, is recognized by Belgium 1994 (2007), Croatia (1990 (2010)), France, Portugal and Hungary (2011), which in addition recognizes this right to every person recognized as a refugee, immigrant or resident. Some of them refer to the elections for the European Parliament too. Referring to people living in EU countries, France creates the possibility of concluding agreements with EU members on issues of asylum and Slovenia protects and guarantees the rights of minorities (Italian and Hungarian) and stipulates that the rights of the Roma community will be regulated by law.

Concerning the reference to referenda on regional integration issues (ix), the constitution of France establishes that all ratifications of treaties referring to membership of the EU should be approved by referendum. Latvia 1922 (2005) establishes that membership and substantial changes in the terms regarding the membership in the EU shall be decided by a referendum. Portugal establishes the possibility to organize referenda to approve treaties related with the construction or deepening of the EU. Slovenia offers the possibility to call a referendum before ratifying treaties that transfer sovereign

[21] This article was not included in the tables because our study took as reference the version of the constitution that is on Constitution Finder and which did not yet have the constitutional amendment of 2011.

rights to supranational organizations. Slovakia establishes that a constitutional law confirmed by referendum decides on the entry into a state union. Hungary's, by contrast, states that no national referendum may be held on any obligation arising from an international agreement.

Some general patterns in other regions

Generally speaking, the constitutions of countries in Asia and Oceania refer relatively less to international regionalism (table 2). Those who do, refer mostly to a belonging to a wider cultural region (category i) and/or to a mandate to engage in further regional cooperation or integration in the future (iv) (table 3). In Central Asia, after the disintegration of the USSR, the agreements that seek regional integration take into account the European model, considering not only trade but also political cooperation and security matters. However, the development of supranational institutions has not been pursued. According to some observers, this is related to the lack of democracy and transparency in the member states (Kembayev 2006:983).

In Africa, the proliferation of regional integration agreements is prevalent and constitutions tend to refer to regionalism relatively more than elsewhere (table 2). Especially references to belonging to a wider geo-political region (ii) and to a mandate to engage in further regional cooperation or integration (iv) are often found (table 3). We refer to the theoretical part where the evolution of some trends in regional integration in this continent is briefly explained.

5. Results: further analysis

In this section we present some further exploratory analysis of the available data. The questions that are addressed are the following: "are constitutional references to regionalism increasing over time?", and "is the intensity of constitutional referencing related to the intensity of the regional integration processes?" In order to answer our first question, by looking at consecutive (i.e. replaced, reformed or amended) constitutional texts, the evolution over time of referencing patterns can be analyzed. Based on the, admittedly, small sub-sample of consecutive constitution pairs, it would seem that the increase of references is not necessarily spectacular over time (table 5). On the contrary, it would appear to be a slow and gradual process. However, the sample size is probably too small here to extract robust conclusions.

The second question which can be addressed is whether the intensity of constitutional referencing is related to the intensity of the regional integration processes. We therefore selected a sub-set of 31 constitutions enacted or amended since 2000 (see table 3), and identified the relevant constitutional references. This information was then re-organized by regional organizations to which the corresponding states belong (table 6). This allows us then to contrast this information with statistics reflecting the depth of the integration processes in a cross-section setting. For this purpose, we selected indices of institutional integration and intra-regional trade shares (see section 2.3). The former is a proxy of *de jure* integration, the latter a proxy of *de facto* integration or interdependence.

As expected, the regions with highest and lowest degrees of institutionalized integration (EU and NAFTA) are also the ones with the, respectively, highest and lowest referencing intensity (table 6 and figure 1). However, the association between both variables within the extreme values (i.e. for the remaining cases) is not linear. In addition, as explained before, the average values that are reported here, cover quite some variation at individual country level. It is interesting to note that the two cases that are generally considered as being characterized by supra-national institutional designs (EU and CAN), are the ones that show highest average frequencies of compatibilization references (i.e. clauses that seek to make sub-national autonomy compatible with supra-national rule-making (vii); and clauses that seek to make the constitutional framework and autonomy of the national parliament compatible with supra-national rule-making (viii)).

Apart from the outlier case (EU), the relationship between constitutional referencing and *de facto* regionalization seems even less straightforward, at least on the basis of the available data (figure 2).

Table 5: Evolution of number of references in consecutive constitution-pairs in sample

	Total	No references over whole period	Growing number of references (+)	No change (=) (excluding cases without any reference)	Declining number of references (-)
Number of constitution-pairs in sample	16	5	5	5	1

Note: all consecutive constitution-pairs in database were selected, see table 3.

Source: see table 1.

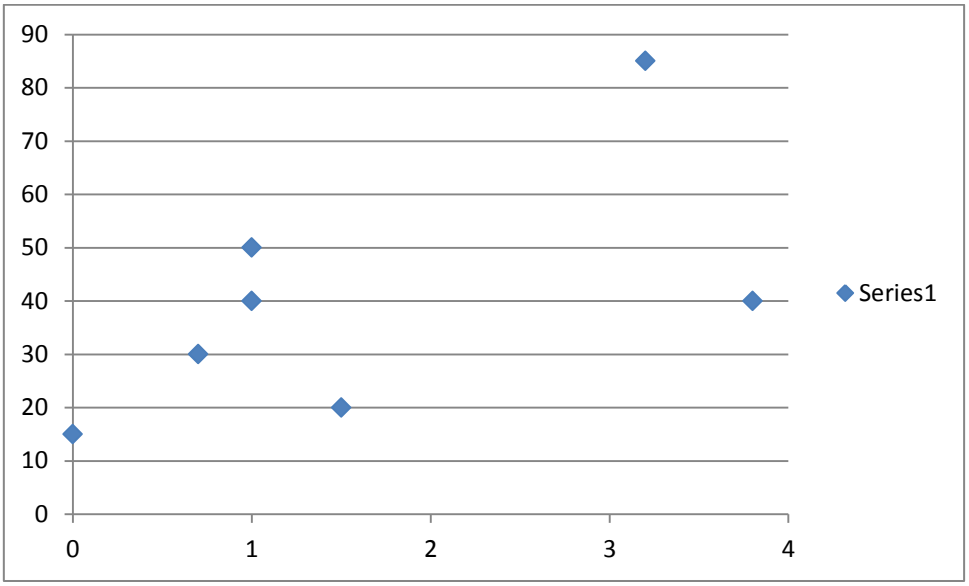
Table 6: Constitutional references and integration indicators, for selected regional organizations

	Number of constitutions in sample (> 2000)	Average number of constitutional references	Average number of compatibi-lization provisions	Index of institutional integration (0-100) (2003)	Intra-regional trade share (%) (2010)
ASEAN	3	0,7	0,7	30	26,1
EU	16	3,2	1,9	85 (EU-15)	60,8
NAFTA	1	0	0	15	40,0
CAN	4	3,8	1,5	40	8,8
MERCOSUR	2	1,5	0,5	20	11,8
SICA	4	1	0,3	40	16,3
CARICOM	1	1	0	50	18,1

Note: the scores for the index of institutional achievement

Data: see table 1 (constitutional references); De Lombaerde et al. (2011) (index of institutional integration); Regional Integration Knowledge System (RIKS) [http://www.cris.unu.edu/riks/web/data] (intra-regional trade shares).

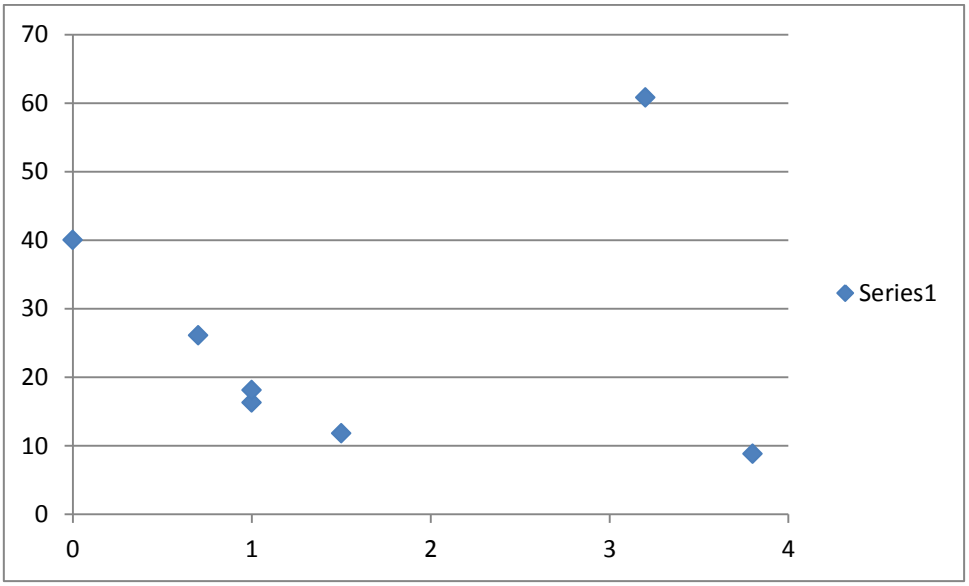
Figure 1: Correlation between constitutional referencing and *de jure* integration



Note: 'Constitutional referencing' refers to the average number of constitutional references to regionalism per integration grouping (horizontal axis); '*de jure* integration' refers to the index of institutional integration per integration grouping (vertical axis).

Source: Table 6.

Figure 2: Correlation between constitutional referencing and *de facto* integration



6. Conclusions

With deeper integration, the paradigms of formal international public law (based on intergovernmental treaties) and the capacity of national constitutions to interact with it, are tested. This is so for a number of reasons. A first reason is that deepening regional integration can lead to the creation of supranational authority and –logically- to constrained, conditioned or diluted national sovereignty. Although it should be added that, in practice, supra-nationalism and intergovernmentalism are not necessarily mutually exclusive. A second reason is that regional governance is not only about hard law

but it also has an important soft law component. The proliferation of soft law is not very well visible in the constitutions but it should not be ignored in the design of regional legal systems. Combining these two reasons, one can say that increasingly tensions can be sensed between the functioning of national legal systems and the multi-level governance world surrounding them. Outside Europe, a third reason is that an evolution can be observed with respect to treaty enforcement by national authorities, especially courts (i.e. case law on self-executing versus non-self-executing treaties). Finally, a fourth reason is that in federal or quasi-federal states, there are increasing tensions between the outward (i.e. international) regional commitments of the federal states, on the one hand, and the constitutional autonomy and prerogatives of the federated states, on the other hand.

The observation of these increasing complexities leads to the central question which is addressed in this paper: to what extent do constituents and legislators worldwide refer in their constitutions to the emerging reality of regionalism and explicitly deal with potential sources of tensions and contradictions between the national legal systems, on the one hand, and the emerging regional regulatory universes, on the other. For that purpose, a global mapping exercise was presented. It was based on an analysis of a sample of 171 constitutional texts, without pretending that the sample necessarily and systematically included the most recent amendments. We were basically interested in global and longer-term tendencies.

The main results from our analysis are the following: Firstly, about half of our worldwide sample of constitutional texts refers to (international) regionalism in one way or another. Secondly, constitutional references to regionalism come in a great (formal and substantive) variety. In our assessment, we considered ten different 'types'. However, many of these references are more political in nature, with unclear implications for constitutional case law. Our global mapping exercise reveals a still very fragmented landscape, with a lot of room for conceptual harmonization and convergence, learning and imitation. In the coming years, more activity is to be expected from constitutional assemblies and constitutional courts that will re-shape national legal systems to become more compatible with the changing reality of (international) regional governance.

We also presented some further preliminary analysis. On the one hand, we looked at the dynamics of constitutional referencing over time. Although comparisons over time are not too robust due to lack of data, it seems that the number of constitutional references to regionalism over time is increasing only very slowly. It is still soon to evaluate whether the current global financial and economic crisis is acting as a catalyst in this respect, but there are indications that this is indeed the case, especially in Europe (Contiades 2013). On the other hand, we looked at the relationship between constitutional referencing and (*de jure* and *de facto*) depth of the integration processes. Although deeper *de jure* integration seems to increase the need for the inclusion of 'integration clauses' in the constitutional texts, this seems to be a loose relationship with a lot of variation. Even in the EU, for example, there are still various national constitutions without any reference to the EU at all. The relationship between constitutional referencing and *de facto* integration is even less straightforward.

These empirical results should be read with a lot of caution. They mainly illustrate how data on constitutional referencing (to international regionalism) can be related to data on *de jure* and *de facto* regionalism/regionalization and then statistically tested. Before embarking on the latter, however, further work is needed on building more complete databases (i.e. by including more countries and more observations per country), more detailed coding, and gathering data on other relevant variables reflecting the depth, causes and consequences of regionalism. Only then will it be possible to draw firmer conclusions on the complex causalities between (aspirational and reactive) constitutional drafting, on the one hand, and *de jure* and *de facto* regionalism, on the other.

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