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RESEARCH ARTICLE

# Revisiting security communities: What can IR theory learn from international law?

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**Abstract**

This paper draws attention to the untapped potential of international law (IL) in understanding how security communities develop. It focuses, among others, on 'transnational legal processes' – a key overlooked variable – by highlighting what international relations (IR) theory can learn from IL. In so doing, the paper contributes to the literature in three ways. First, it proposes a definition and conceptualisation of regional norms in the study of security communities. Second, by pointing out legal and judicial factors that facilitate or hinder the legal internalisation of regional norms, and consequently affect the development of a security community, it suggests new important research questions that can help broaden the ontology of security communities and bring theoretical heft to the fundamental concept of peaceful change. Third, the paper discusses how and under what conditions regional norms contribute to maintaining reasonable expectations of peaceful change not only at the systemic or state elite level, but equally at the domestic societal level.

**Keywords:** interdisciplinary research; legal focal point; peaceful change; regional norms; security communities; transnational legal processes

## Introduction

How security communities develop has been one of the most pervasive questions that international relations (IR) theorists have been trying to answer. Deutsch first addressed the issue in the 1950s, primarily outlining the conditions under which a 'peaceful change' could emerge within a group of states dealing with anarchy.[1] In his so-called transactional (or cybernetic) approach, he argued that 'the capacity of the participating political units or governments to respond to each other's needs, messages, and actions quickly, adequately, and without resort to violence' is one of the key conditions for the emergence of security communities.[2] Drawing on mainstream constructivist insights, Adler and Barnett addressed the issue anew after the Cold War. They emphasised trust and collective identity as the engines that drive the development of security communities.[3]

[1]Karl W. Deutsch, Sidney A. Burrell, Robert A. Kann, et al., *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience* (Princeton, NJ: Princeton University Press, 1957), and Karl W. Deutsch, *Political Community at the International Level: Problems of Definitions and Measurement* (New York: Doubleday & Company, 1954).

[2]Deutsch et al., *Political Community and the North Atlantic Area*, p. 66; see also Karl W. Deutsch, 'Security communities', in James N. Rosenau (ed.), *International Politics and Foreign Policy: A Reader in Research and Theory* (New York: Free Press, 1961), pp. 98–105.

[3]Emanuel Adler and Michael Barnett (eds), *Security Communities* (New York: Cambridge University Press, 1998); Emanuel Adler and Michael Barnett, 'Taking identity and our critics seriously', *Cooperation and Conflict*, 35:3 (2000), pp. 321–9; see also Janice Bially Mattern, 'Taking identity seriously', *Cooperation and Conflict*, 35:3 (2000), pp. 299–308; Janice Bially Mattern, 'The

From a different perspective, Pouliot has more recently advocated a 'practice turn', arguing that 'in social and political life, many practices do not primarily derive from instrumental rationality (logic of consequences), norm-following (logic of appropriateness), or communicative action (logic of arguing)'.[4] He pointed out that while the relationship between 'practicality', 'consequences', 'appropriateness', and 'arguing' is one of complementarity, 'socialization, learning, and persuasion follow rather than precede practice; at best, they co-evolve'.[5]

These three main theoretical approaches suffer from a similar bias: they are inattentive to the theoretical and empirical complexities regarding how and under what conditions security communities also develop through law at both the systemic (regional) and domestic levels. By (un)consciously failing to take the legal literature seriously, they have encapsulated their theoretical and analytical framework into a kind of 'iron cage' that leaves little room for a greater conceptualisation and understanding of security community building through norms and legal and judicial practices. Yet all social communities, including security communities, rely on 'societal norms'.[6] Understanding the processes through which these norms are created, internalised, and become 'embedded' in domestic legal and political systems could have helped avoid several shortcomings,[7] for instance, the lack of a convincing explanation for the origins of ASEAN norms and the failure to conceptualise 'norm robustness'[8] independently of the effects attributed to norms, leading to tautology.[9] This, in fact, is a common weakness in the constructivist literature.[10] As one constructivist acknowledged,[11] 'Whether one emphasizes the behavioral or the linguistic/discursive facet of norms, avoiding circular reasoning requires a notion of norm robustness that is independent of the effects to be explained. This is no easy task.'[12]

power politics of identity', *European Journal of International Relations*, 7:3 (2001), pp. 349–97; Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, 2nd ed. (London: Routledge, 2009).

[4]Vincent Pouliot, 'The logic of practicality: A theory of practice of security communities', *International Organization*, 62:2 (2008), pp. 257–88 (p. 257).

[5]Pouliot, 'The logic of practicality', p. 259; also see Vincent Pouliot, *International Security in Practice: The Politics of NATO–Russia Diplomacy* (Cambridge: Cambridge University Press, 2010); Niklas Bremberg, 'The European Union as security community-building institution: Venues, networks and co-operative security practices', *Journal of Common Market Studies*, 53:3 (2015), pp. 674–92; Emanuel Adler and Vincent Pouliot, 'International practices', *International Theory*, 3:1 (2011), pp. 1–36.

[6]Societal norms include legal and sociocultural norms. Cf. Måns Svensson, 'Norms in law and society: Towards a definition of the socio-legal concept of norms', in Mathias Baier (ed.), *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity* (London: Routledge, 2016), pp. 39–52 (pp. 43–4); see also Pierre Bourdieu, 'The force of law: Toward a sociology of the juridical field essay', *Hastings Law Journal*, 38:5 (1987), pp. 805–53; Mathias Baier (ed.), *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity* (London: Routledge, 2016).

[7]See, e.g., Amitav Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, 1st ed. (London: Routledge, 2001); and Adler and Barnett, *Security Communities*.

[8]Norm robustness encompasses a norm's validity and facticity: it is said to be 'high' when its claims are widely accepted by norm addressees (validity) and generally guide the actions of these addressees (facticity). Cf. Nicole Dietelhoff and Lisbeth Zimmermann, 'Norms under challenge: Unpacking the dynamics of norm robustness', *Journal of Global Security Studies*, 4:2 (2019), pp. 2–17 (p. 3); Jutta Brunnée and Stephen J. Toope, 'Norm robustness and contestation in international law', *Journal of Global Security Studies*, 4:1 (2019), pp. 73–87.

[9]Acharya, for example, used the 'non-use of force' to explain the behavior of the ASEAN security community. Acharya, *Constructing a Security Community in Southeast Asia*, 1st ed., p. 1; cf. Khoo's critics on this issue. Nicholas Khoo, 'Deconstructing the ASEAN security community: A review essay', *International Relations of the Asia-Pacific*, 4:1 (2004), pp. 35–46 (p. 41); also see Robert Jervis, 'Realism in the study of world politics', *International Organization*, 52:4 (1998), pp. 971–91 (p. 974).

[10]Khoo, 'Deconstructing the ASEAN security community', p. 41; Alice D. Ba, 'On norms, rule breaking, and security communities: A constructivist response', *International Relations of the Asia-Pacific*, 5:2 (2005), pp. 255–66.

[11]See Jeffrey Legro, 'Which norms matter? Revisiting the "failure" of internationalism', *International Organization*, 51:1 (1997), pp. 31–63 (p. 33).

[12]For the contributions of critical constructivists, see Michal Ben-Josef Hirsh and Jennifer M. Dixon, 'Conceptualizing and assessing norm strength in International Relations', *European Journal of International Relations*, 27:2 (2021), pp. 345–68; Jeffery S. Lantis and Carmen Wunderlich, 'Reevaluating constructivist norm theory: A three-dimensional norms research program', *International Studies Review*, 24:1 (2022), viab059.

This lack of engagement with legal works is a missed opportunity to broaden the ontology of security communities, and to bring theoretical heft to some of the fundamental concepts on which security communities rely, for example, 'dependable expectations of peaceful change'. Indeed, contrary to the constructivist and practice theory approaches, whose focus is on the state elite,[13] the subject of dependable expectations of peaceful change in Deutsch's pathbreaking book was the *population* of the territory covered by the community.[14] As Collins has argued, 'the state elite are necessary, but … not sufficient for building a security community. It is the sense of belonging together at the mass level that ensures the "we-feeling" is held by more than a select group of state elite.'[15] If we are to fully understand how security communities develop, we need a sophisticated theoretical and analytical framework that can capture all the relevant dimensions of this institution, for instance, a Bourdieu-type analysis including legal norms in both the delimitation of social fields and the habitus.[16]

To be sure, considering the concept of security communities as deeply rooted in international political theory,[17] or studying security communities solely by focusing on IR theory, is not a problem in itself. As many IR scholars have demonstrated,[18] all these approaches have made significant contributions to our understanding of how security communities develop. The problem rests with

[13]Emanuel Adler and Michael Barnett, 'A framework for the study of security communities', in Emanuel Adler and Michael Barnett (eds), *Security Communities* (New York: Cambridge University Press, 1998), pp. 29–65 (p. 44); Pouliot, 'The logic of practicality'.

[14]Deutsch et al., *Political Community and the North Atlantic Area*, p. 5; also see Andrew Hurrell, 'An emerging security community in South America?', in Emanuel Adler and Michael Barnett (eds), *Security Communities* (Cambridge: Cambridge University Press, 1998), pp. 228–64 (p. 260); Laurie Nathan, 'Domestic instability and security communities', *European Journal of International Relations*, 12:2 (2006), pp. 275–99 (p. 279). Cambridge.

[15]Allan Collins, 'Bringing communities back: Security communities and the Association of Southeast Asian Nations' plural turn', *Cooperation and Conflict*, 49:2 (2014), pp. 276–91 (p. 283). Unfortunately, drawing on Adler and Barnett, *Security Communities*, several works misidentified mature/ascendant security communities. See, e.g., Christian Leuprecht, Emmanuel Brunet-Jailly, Todd Hataley, and Tim Legrand, 'Patterns in nascent, ascendant and mature border security: Regional comparisons in transgovernmental coordination, cooperation, and collaboration', *Commonwealth & Comparative Politics*, 59:4 (2021), pp. 349–375. Also see Acharya's classification of ASEAN as a regional organization on the path to an ascendant security community. Cf. Acharya, *Constructing a Security Community in Southeast Asia*, 1st ed., p. 208. Although this was subsequently revised to nascent in the second edition (p. 298), whether ASEAN existed as a security community (at least prior to 2003) remains hotly contested. See, e.g., Aarie Glas, *Practicing Peace: Conflict Management in Southeast Asia and South America* (New York: Oxford University Press, 2022), p. 29; Khoo, 'Deconstructing the ASEAN security community', p. 35; and Alan Collins, *Building a People-Oriented Security Community the ASEAN Way* (New York: Routledge, 2013).

[16]A Bourdieu-type analysis can help in showing for example how legal norms, though together with socio-cultural norms, matter in the emergence of mutual trust (Deutsch et al., *Political Community and the North Atlantic Area*), collective identities (Adler and Barnett, *Security Communities*), and The logic of practicality (Pouliot).

[17]Simon Koschut, 'Regional order and peaceful change: Security communities as a via media in International Relations theory', *Cooperation and Conflict*, 49:4 (2014), pp. 519–35 (p. 519).

[18]Emanuel Adler, 'Imagined (security) communities: Cognitive regions in International Relations', *Millennium: Journal of International Studies*, 26:2 (1997), pp. 249–77; Emanuel Adler and Michael Barnett, 'Governing anarchy: A research agenda for the study of security communities', *Ethics and International Affairs*, 10:1 (1996), pp. 63–98; Amitav Acharya, 'A regional security community in Southeast Asia?', *Journal of Strategic Studies*, 18:3 (1995), pp. 175–200; Acharya, *Constructing a Security Community in Southeast Asia*, 2nd ed.; Emanuel Adler and Patricia Greeve, 'When security community meets balance of power: Overlapping regional mechanisms of security governance', *Review of International Studies*, 35:1 (2009), pp. 59–84; Bially Mattern, 'Taking identity seriously'; Bially Mattern, 'The power politics of identity'; Bremberg, 'The European Union as security community-building institution'; Simon Koschut, 'Transatlantic conflict management inside-out: The impact of domestic norms on regional security practices', *Cambridge Review of International Affairs*, 27:2 (2014), pp. 339–61; Naison Ngoma, 'SADC: Towards a security community?', *African Security Review*, 12:3 (2003), pp. 17–28; Vincent Pouliot, 'Communauté de sécurité', in Alex Macleod, Evelyne Dufault, Guillaume F. Dufour, and David Morin (eds), *Relations internationales: Théories et concepts* (Montréal: Athéna, 2008), pp. 39–43; Andrej Tusicisny, 'Security communities and their values: Taking masses seriously', *International Political Science Review*, 28:4 (2007), pp. 425–49.

the 'transnational legal process'[19] (TLP) that fuels reasonable expectations of peaceful change at the regional and domestic levels, but which neither practice theory nor the transactional and constructivist approaches explain.

Take for instance the case of illicit drug trafficking, one of the most salient and persistent threats to regional security, especially in the Western hemisphere.[20] The study of such an issue, from the perspective of security communities, should also require analysts to study regional norms and legal and judicial practices governing the fight against illicit drug trafficking in the Americas. This in turn raises several theoretical, analytical, and methodological questions, beginning with the definition and conceptualisation of regional norms: what is a regional norm, and how should it be approached in the context of security communities? Where do these norms come from? More importantly, through which mechanisms and practices do such norms penetrate domestic legal systems to the point of creating enforceable legal rights and obligations that, in turn, contribute to maintaining reasonable expectations of peaceful change among the population of a transnational region comprised of at least two sovereign states? Are these mechanisms and practices the same across states or do they vary? If they vary, how can these variations help better understand, explain, and perhaps predict the success or failure – or at least delays – in the development of security communities? Suppose the behaviour of one nation-state switches from the 'logic of consequences' to the 'logic of appropriateness' (what Checkel has termed socialisation type II), how could one rigorously assess the transformation of an instrumental or grudging compliance[21] into a legitimate, reflexive, and durable obedience?[22]

[19]TLP describes the theory and practice of how public and private actors – nation-states, international organisations, and private individuals – interact in a variety of public and private, domestic and international fora to make, interpret, enforce, and ultimately internalise rules of transnational law. Cf. Harold Hongju Koh, 'Transnational legal process', *Nebraska Law Review*, 75:1 (1996), pp. 181–207 (p. 183); Harold Hongju Koh, 'Why do nations obey international law', *Yale Law Journal*, 106:8 (1997), pp. 2599–659. Note that this concept embraces not just the descriptive workings of a process, but also the *normativity* of that process. It focuses not simply on how international interaction among transnational actors shapes law, but also on how law shapes and guides future interactions. See Koh, 'Transnational legal process', p. 183; for empirical studies on TLP, see Gregory Shaffer, 'Transnational legal process and state change: Opportunities and constraints', *International Law and Justice Working Papers* (2010), 43 pages; Caleb J. Stevens, 'Hunting a dictator as a transnational legal process: The internalization problem and the Hissène Habré case', *Pace International Law Review*, 24:1 (2012), pp. 190–232.

[20]Roberto Zepeda and Jonathan D. Rosen (eds), *Cooperation and Drug Policies in the Americas: Trends in the Twenty-First Century* (Lanham, MD: Rowman & Littlefield, 2015); Bruce M. Bagley and William O. Walker, III (eds), *Drug Trafficking and Organized Crime in the Americas: Major Trends in the Twenty-First Century* (New Brunswick, NJ: North–South Center, 1994).

[21]On compliance, see Michael Zürn, 'Introduction: Law and compliance at different levels', in Michael Zürn and Christian Joerges (eds), *Law and Governance in Postnational Europe: Compliance beyond the Nation-State* (Cambridge: Cambridge University Press, 2014), pp. 1–39; Kal Raustiala and Anne-Marie Slaughter, 'International law, international relations and compliance', in Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (eds), *Handbook of International Relations* (London: Sage, 2002), pp. 538–58; Jeffrey L. Dunoff and Mark A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations* (Cambridge: Cambridge University Press, 2013). Note that (non-)compliance is a spectrum, not a dichotomy. See Jana Von Stein, 'The engines of compliance', in Jeffrey L. Dunoff and Mark A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations* (Cambridge: Cambridge University Press, 2013), pp. 477–501 (p. 478). Also, compliance may not mean an actual change in behaviour, since actors may be complying without doing anything. Beth A. Simmons, 'Compliance with international agreements', *Annual Review of Political Science*, 1 (1998), pp. 75–93; Raustiala and Slaughter, 'International law, international relations and compliance'. See also the literature on regime effectiveness, with effectiveness referring to behavioural change. Arild Underdal, 'The concept of regime "effectiveness"', *Cooperation and Conflict*, 27:3 (1992), pp. 227–40; Jon Hovi, Detlef F. Sprinz, and Arild Underdal, 'The Oslo–Potsdam solution to measuring regime effectiveness: Critique, response, and the road ahead', *Global Environmental Politics*, 3:3 (2003), pp. 74–96.

[22]As Koh indicates, 'Obedience occurs when a person or an organization adopts rule-induced behavior because the party has internalized the norm and incorporated it in its own internal value system'. Cf. Harold Hongju Koh, 'The 1998 Frankel Lecture: Bringing international law home', *Houston Law Review*, 35:3 (1998), pp. 623–81 (p. 628). On the differences between 'conformity', 'compliance', and 'obedience', see Koh, 'The 1998 Frankel Lecture', pp. 627–33.

Empirical works worth mentioning include Bassamagne Mougnok (2019, 2021),[23] which show how TLP led to the codification and institutionalisation of Inter-American drug law[24] between 1986 and 2009,[25] and how these processes facilitated the emergence of reasonable expectations of peaceful change within the region through an iterative process of interaction – at various levels (within states and at the level of CICAD, REMJA, OAS-General Assembly, Summit of the Americas, etc.) between various states and private actors (see, e.g., CICAD's expert groups on model regulations) – and socialisation to best practices and agreed norms in the context of the fight against illicit drug trafficking and related crimes.[26] Evidence from these works not only sheds light on the 'norm-generative process' as a process that is conscious of the two-tiered basis of norms as both fact-based (appropriateness, practicality) and value-based (contentedness, validity) but also reinforces Brunnée and Toope's argument that 'law is most persuasive when it is created through processes of mutual construction by a wide range of participants in a legal system'.[27] Through the lens of transnational law creation, internormativity, and recursivity, TLP provides an avenue for a more comprehensive understanding of 'dependable expectations of peaceful change' in the context of security communities, capturing a myriad of normative factors, sites, actors, processes, and outcomes.[28]

I argue that IR scholars can fill these gaps by drawing on the theoretical, empirical, and methodological analyses in international law (IL). This study starts from the premise that to fully understand or explain the development of security communities, it is necessary to move beyond

[23] Cyprien Bassamagne Mougnok, 'The codification of Inter-American drug law', *Canadian Yearbook of International Law*, 56 (2019), pp. 258–91; and Cyprien Bassamagne Mougnok, 'Puissances moyennes et construction des communautés de sécurité pluralistes: le cas du Canada dans la lutte contre le narcotrafic dans les Amériques', PhD Thesis, Université Laval (2021).

[24] On the definition of 'Inter-American drug law', see Bassamagne Mougnok, 'The codification of Inter-American drug law', p. 260, whose conclusion is that this specific law (or web of norms) is the result of the interplay between UN drug law, the Inter-American Drug Abuse Control Commission's (CICAD) model regulations, and national laws. As he shows, this web of norms emerged in a complex and very often continuous process of agenda setting, negotiation, and consensus (trust) building involving a wide variety of public and private actors interacting in different national and regional settings, while various socio-political, economic, and normative factors played a role in determining participants, issues, and normative outcomes. Cf. Bassamagne Mougnok, 'The codification of Inter-American drug law', pp. 263–69; 'Puissances moyennes', pp. 102–32; see also Philipp Dann and Julia M. Eckert, 'Norm creation beyond the state', in Marie-Claire Foblets, Mark Goodale, Maria Sapignoli, and Olaf Zenker (eds.), *The Oxford Handbook of Law and Anthropology* (Oxford: Oxford University Press, 2020), pp. 808–26 (p. 808). The legal pull of these norms manifested itself notably by shaping legislative actions, administrative rulings, criminal sanctions, and the interpretation of existing legal rules across the region, influencing the behaviour of individuals, states, and organisations at the domestic and transnational levels. Bassamagne Mougnok, 'Puissances moyennes', pp. 145–75; Rebecca Mignot-Mahdavi, 'The legal fabrique of the global security governance', *The Global Community Yearbook of International Law and Jurisprudence* (2023), pp. 47–68 (pp. 50–1).

[25] Bassamagne Mougnok, 'The codification of Inter-American drug law', pp. 258–91.

[26] Bassamagne Mougnok, 'Puissances moyennes', pp. 101–75.

[27] Jutta Brunnée and Stephen J. Toope, 'International law and constructivism: Elements of an interactional theory of international law', *Columbia Journal of Transnational Law*, 39 (2000), pp. 19–74 (p. 19).

[28] TLP differs from other approaches of norm diffusion or legal integration in several ways. (1) *Iterative interaction*: it emphasises the iterative process of interaction among a variety of actors, and this continuous process helps internalise transnational norms within domestic legal systems. (2) *Norm internalisation*: it focuses on how norms are internalised within domestic legal systems through repeated interactions and socialisation. The process involves not only the adoption of norms, but also their integration into domestic legal practices and institutions. (3) *Multilevel engagement*: TLP involves engagement at various levels, including local, national, and international. This multilevel approach ensures that norms are diffused and internalised across different layers of governance. (4) *Dynamic and adaptive*: TLP is dynamic and adaptive, allowing for the evolution of norms through continuous interaction and feedback ('recursivity'). This adaptability/recursivity distinguishes TLP from more static models of legal integration, which may rely on formal treaties or agreements. (5) *Its focus on compliance*: TLP places a strong emphasis on compliance with norms, examining the mechanisms through which state and non-state actors comply, including the role of socialisation, persuasion, and coercion. For a comprehensive study on TLP as a theory and method, see Maya Steinitz, 'Transnational legal process theories', *The Oxford Handbook of International Adjudication* (Oxford: Oxford University Press, 2014), pp. 339–56; Regina Jefferies, 'Transnational legal process: An evolving theory and methodology', in Cesare P. R. Romano, Karen J. Alter, and Yuval Shany (eds.), *Brooklyn Journal of International Law*, 46:2 (2021), pp. 312–67.

the boundaries and canonical narratives of how IL and IR have evolved as disciplines.[29] Of course, as Slaughter et al. emphasised, 'These narratives are valuable both as intellectual history, providing necessary context for current debates, and as bulwarks against ad hoc borrowing of terms and concepts'.[30] However, and even if one could agree with Cox, to some extent, that theory is always for someone and for some purpose,[31] it is time to move on. The purpose of this study, therefore, is to start enriching IR understandings of how security communities also develop through 'regional norms' and legal and judicial practices by pointing out what IR theory can learn from IL. In so doing, the article joins a larger trend advocating an interdisciplinary turn in the study of world politics.[32]

The argument proceeds as follows. The first section traces the evolution of the concept of security communities, critically reviewing its dominant approaches. I argue that the transactional, constructivist, and practice theory approaches all suffer from a similar bias whose epistemological roots run deep in the traditional divide between IR and IL.[33] Taking the level-of-analysis question seriously,[34] including the norm-generative process which remains to be targeted more systematically, the second section proposes a definition and conceptualisation of regional norms. Insights from IL not only reinforce the call to separate the international from the regional level[35] but also provide useful clues as to how to approach regional norms in the context of security communities.[36] The third section discusses the 'legal internalisation' of regional norms, highlighting legal and judicial factors that can facilitate or hinder the process and therefore affect the development of security communities. Building on empirical evidence provided by recent works on the focal point theory of (expressive) law,[37] the fourth section contends that regional norms, once internalised into domestic legal systems, can provide a repertoire of legal focal points around which individuals as

[29]Karl W. Deutsch, 'The probability of international law', in Karl W. Deutsch and Stanley Hoffmann (eds), *The Relevance of International Law* (Cambridge: Schenkman Publishing Company, 1971), pp. 80–114 (p. 80); Anne-Marie Slaughter, Andrew S. Tulumello, and Stepan Wood, 'International law and international relations: A new generation of interdisciplinary scholarship', *American Journal of International Law*, 92:3 (1998), pp. 367–97, and Friedrich V. Kratochwil, 'Politics, norms and peaceful change', *Review of International Studies*, 24:5 (1998), pp. 193–218.

[30]Slaughter et al., 'International law and international relations', p. 368.

[31]Robert W. Cox, 'Social forces, states, and world orders: Beyond International Relations theory', *Millennium: Journal of International Studies*, 10:2 (1981), pp. 126–55 (p. 128).

[32]Kenneth W. Abbott, 'Modern International Relations theory: A prospectus for international lawyers', *Yale Journal of International Law*, 14:2 (1989), pp. 335–411; Anne-Marie Slaughter, 'International law and International Relations theory: A dual agenda', *American Journal of International Law*, 87:2 (1993), pp. 205–39; Robert O. Keohane, 'International relations and International law: Two optics', *Harvard International Law Journal*, 38:2 (1997), pp. 487–502; Slaughter et al., 'International law and international relations'; Judith Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter (eds), *Legalization and World Politics* (Cambridge, MA: MIT Press, 2001); Jeffrey L. Dunoff and Mark A. Pollack, 'Reversing field: What can international relations learn from international law?', Paper prepared for presentation at the APSA Annual Meeting, 2015, San Francisco; Dunoff and Pollack, *Interdisciplinary Perspectives on International Law and International Relations*; Paul F. Diehl, Charlotte Ku, and Daniel Zamora, 'The dynamics of international law: The interaction of normative and operating systems', in Beth A. Simmons and Richard H. Steinberg (eds), *International Law and International Relations: An International Organization Reader* (Cambridge: Cambridge University Press, 2003), pp. 426–54.

[33]Kratochwil, 'Politics, norms and peaceful change'; Slaughter et al., 'International law and international relations'.

[34]David J. Singer, 'The level-of-analysis problem in International Relations', *World Politics*, 14:1 (1961), pp. 77–92.

[35]Bary Buzan and Ole Wæver, *Regions and Powers: The Structure of International Security* (Cambridge, Cambridge University Press, 2003); David A. Lake, 'Regional security complexes: A systems approach', in David A. Lake and Patrick M. Morgan (eds), *Regional Orders: Building Security in a New World* (University Park: Pennsylvania State University Press, 1997), pp. 45–67; Louise Fawcett, 'Regions and regionalism', in Mark Beeson and Nick Bisley (eds), *Issues in 21st Century World Politics*, 3rd ed. (London: Palgrave, 2016), pp. 97–112.

[36]Julio A. Barberis, 'Les règles spécifiques du droit international en Amérique latine', *Collected Courses of The Hague Academy of International Law*, 235:4 (1992), pp. 81–230.

[37]According to this theory, which draws on game theory, laws can be used to coordinate expectations on a beneficial equilibrium. See Roberto Galbiati and Pietro Vertova, 'How laws affect behavior: Obligations, incentives and cooperative behavior', *International Review of Law and Economics*, 38 (2014), pp. 48–57 (p. 49); Richard H. McAdams, 'A focal point theory of expressive law', *Virginia Law Review*, 86:8 (2000), pp. 1649–729 (p. 1663); Richard H. McAdams, 'The expressive power of adjudication', *University of Illinois Law Review*, 5 (2005), pp. 1043–121.

well as states coordinate their behaviour and expectations. By helping to solve coordination and distribution problems at the systemic and domestic levels, these focal points contribute to maintaining reasonable expectations of peaceful change at the transnational mass level – that is, as much within states as between states.

## The evolution of the concept of security communities

Introduced in the discipline of IR by Richard W. Van Wagenen,[38] the concept of security communities has gone through decades of heated debate[39] among scholars without losing its heuristic and practical relevance. Indeed, many scholars and practitioners have been using it.[40] They even have expanded its original scope to make it more applicable to the study of contemporary IR, broadening its empirical use and positioning it as an alternative concept to other forms of security governance and peaceful orders, such as alliances, regimes, international organisations, and imperial orders.[41] This section briefly reviews the dominant approaches of security communities, namely transactional, constructivist, and 'practice theory'.

The transactional approach emphasises the role of social communication and transnational transactions in the construction of a broader sense of community, a 'we-feeling' at the international level.[42] To be sure, in addressing the question of how humanity could learn to act together to eliminate war as a social institution, Deutsch was aware of the existence of political communities where wars, or the threat of using large-scale physical violence as a means of solving disputes, were no longer an option.[43] He called these political communities a security community, which he conceptualised as:

> A group that has become integrated, where integration is defined as the attainment of a sense of community, accompanied by formal or informal institutions or practices, sufficiently strong and widespread enough to assure peaceful change among members of a group with 'reasonable' certainty over a 'long' period of time.[44]

Without simplifying too much, a security community, from this perspective, refers to a group of political communities whose members continuously share the conviction that whatever the nature and degree of their disputes, they must settle them peacefully. Deutsch even went on to

[38] Richard Van Wagenen, *Research in International Organization Field: Some Notes on a Possible Focus* (Princeton, NJ: Princeton University Press, 1952).

[39] See, e.g., the debate of the 2000s. Adler and Barnett, 'Taking identity and our critics seriously'; Hakan Wiberg, 'Emmanuel Adler, Michael Barnett and anomalous northerners', *Cooperation and Conflict*, 35:3 (2000), pp. 289–98; Morten Bøås, 'Security communities: Whose security?', *Cooperation and Conflict*, 35:3 (2000), pp. 309–19; Bially Mattern, 'Taking identity seriously'; Janice Bially Mattern, 'The power politics of identity'.

[40] Anders Fogh Rasmussen, 'Renewing the transatlantic security community in the age of globalisation', speech by NATO Secretary General at the Central Military Club, Sofia (2010), available at: https://www.nato.int/cps/en/natolive/opinions_63773.htm; Adler and Barnett, *Security Communities*; Lamberto Zannier, 'OSCE security days tackles challenges of security community', Speech by the OSCE Secretary General at the 2012 OSCE Security Days conference, Vienna, 25 June 2012, available at: https://www.osce.org/sg/91579; Vincent Pouliot, 'Pacification without collective identification: Russia and the transatlantic security community in the post–Cold War era', *Journal of Peace Research*, 44:5 (2007), pp. 605–22; Niklas Bremberg, 'The European Union as security community-building institution: Venues, networks and co-operative security practices', *Journal of Common Market Studies*, 53:3 (2015), pp. 674–92; Acharya, *Constructing a Security Community in Southeast Asia*, 2nd ed.; Wiberg, Emmanuel Adler, Michael Barnett and anomalous northerners'; Bially Mattern, 'The power politics of identity'.

[41] See Koschut, 'Regional order and peaceful change', pp. 520–1; Acharya, *Constructing a Security Community in Southeast Asia*, 2nd ed., pp. 19–21; Collins, *Building a People-Oriented Security Community the ASEAN Way*, pp. 12–16.

[42] Deutsch et al., *Political Community and the North Atlantic Area*; Deutsch, 'Security communities'; also see Deutsch, *Political Community at the International Level*; Karl W. Deutsch, 'The impact of communications upon theory of international relations', in Abdul A. Said (ed.), *Theory of International Relations* (Englewood Cliffs, NJ: Prentice-Hall, 1968), pp. 74–92.

[43] Deutsch et al., *Political Community and the North Atlantic Area*, pp. 4–5.

[44] Deutsch, *Political Community at the International Level*, p. 33; Deutsch et al., *Political Community and the North Atlantic Area*.

say, by definition, that 'if the entire world were integrated as a security-community, wars would be automatically eliminated'.[45] Although this assertion appeared to realist scholars to be extremely optimistic and naive because of the difficulty of cooperation between political units in an anarchic system, it is worth highlighting the originality of Deutsch's reasoning. While realists were almost exclusively interested in studying the causes of war and analysed it as one of the consequences of anarchy and of the security dilemma, Deutsch reflected on the conditions of peace (like the so-called idealists) and, more interestingly, on a scientific approach to security communities. Peace, in his theoretical framework, was not defined as a truce or a lasting suspension of hostilities among political units in the shadow of past battles or for fear of future ones. Rather, it was defined as a state of relationships where wars or the threat of using large-scale physical violence had become unthinkable. Therefore, he insisted on the 'long period', arguing that the unthinkability of wars also depends on the level of mutual trust over a long period.

In designing a scientific approach to security communities, Deutsch distinguished two ideal types, namely amalgamated and pluralistic.[46] The former refers to 'the formal merger of two or more previously independent political units into a single larger political unit, with some type of common government after amalgamation'. The latter – the case under study – refers to two or more legally independent political units coexisting peacefully without a common government.[47] He then identified three conditions under which pluralistic security communities (PSCs) could emerge, namely the compatibility of the core values of political elites; the capacity of the political units to respond to each other's needs, messages, and actions quickly, adequately, and without resorting to physical violence; and the possibility of predicting the behaviour of the other and acting accordingly.[48] When Deutsch speaks of 'core values', he refers to those values that can foster 'mutual sympathies and loyalties' (a common political ideology, for example). According to him, it is indeed necessary to distinguish essential values from non-essential ones – like religion, to use his example. The observance of such a prerequisite can help bring the participating political units closer and encourage transnational transactions. It is through these collusive transactions that political units will learn to know each other and share fears as well as expectations for peaceful change (second condition). As for the third condition, he contended that as soon as political units trust each other over a long period, they become able to predict each other's behaviour and act accordingly.

Overall, the transactional approach has led to promising generalisations about the conditions under which PSCs could emerge.[49] Throughout the Cold War, however, this approach remained in the shadow of the so-called materialist and rationalist IR approaches, probably because of the conceptual, theoretical, and methodological shortcomings raised by Adler and Barnett.[50] Moreover, perhaps because of the dominant (neo)realist's view of IL as being 'an epiphenomenon concealing temporary cooperation among power – or security – seeking states', the transactional approach paid little attention to the role of law in the development of PSCs. Although Deutsch later acknowledged 'the need and the potential demand for law and law enforcement at the international level,

[45] Deutsch et al., *Political Community and the North Atlantic Area*, p. 5.

[46] This distinction is meant to capture the difference between those cases of security community-building processes that lead to two or more states becoming integrated to the point where it no longer makes sense to distinguish between regional and domestic norms because the problem of enforcement has been centralised (amalgamated) and those cases where it doesn't, even though dependable expectations of peaceful change still emerge (pluralistic).

[47] Deutsch et al., *Political Community and the North Atlantic Area*, p. 6.

[48] Ibid., pp. 66–7.

[49] Pouliot, 'Communauté de sécurité', p. 41; Acharya, *Constructing a Security Community in Southeast Asia*, 2nd ed.; Nathan, 'Domestic instability and security communities'; Tusicisny, 'Security communities and their values'.

[50] Emanuel Adler and Michael Barnett, 'Security communities in theoretical perspective', in Emanuel Adler and Michael Barnett (eds), *Security Communities* (New York: Cambridge University Press, 1998), pp. 3–28 (p. 5); also see Pouliot, 'The logic of practicality'.

he was still speaking in terms of 'probability of international law'.[51] Thanks are due to Adler and Barnett, who – taking advantage of the systemic changes surrounding the end of the Cold War – pulled *Political Community and the North Atlantic Area* out of its theoretical anonymity.

In their efforts 'to resurrect the concept', Adler and Barnett refined Deutsch's framework by taking intersubjective structures seriously, including transnational interactions, power, and security practices.[52] They also exploited the conceptual architecture of a security community in order to provide an alternative view of the dynamics underlying the development of security communities.[53] This led them, first, to focus on PSCs, which they defined as 'a transnational region comprised of sovereign states whose people maintain dependable expectations of peaceful change' – peaceful change meaning 'neither the expectation of nor the preparation for organized violence as a means to settle interstate disputes'.[54]

Building on several empirical works, they then identified three conditions under which PSCs could develop. The first condition is what they termed 'precipitating factors'. These are situations where states are individually and collectively dealing with a common transnational issue that forces political elites to coordinate their policies. The second condition is a positive and dynamic relationship between the 'structure' and 'social processes'. By structure, they mean power and knowledge.[55] Regarding social processes, they refer to the need to take transactions and social learning seriously. According to them, without transactions, there is no social learning; communication enables mutual understanding and conveys representations of the world, as well as expectations for peaceful change. The third condition is mutual trust and collective identification.[56]

Unlike Deutsch, whose work was limited to studying the conditions of the emergence of security communities, Adler and Barnett moved deeper by suggesting three stages of the development of PSCs, namely, nascent, ascendant, and mature.[57] In the nascent stage, states begin to consider how they can coordinate their policies in order to enhance mutual security, reduce transaction costs, or encourage reliable and predictable new social and political interactions. Such initiatives do not initially aim at creating a PSC;[58] but because they are motivated by the awareness of a common transnational issue, they promote interactions between participating states. It is through these interactions that regional institutions are created in order to foster cooperation, uncover new areas of mutual interest, shape common norms, and help build a common identity.[59]

The ascendant stage sees a deepening of mutual trust and the emergence of a collective identity. Because transnational interactions are intensifying, and because they contribute to socialisation and social learning, Adler and Barnett contend that they favour mutual trust and collective identification. Something akin to a pacifist 'habitus' develops during this stage, fostering reasonable

[51] Karl W. Deutsch, 'The probability of international law', in Karl W. Deutsch and Stanley Hoffmann (eds), *The Relevance of International Law* (Cambridge: Schenkman Publishing Company, 1971), pp. 80–114 (p. 89).

[52] Adler and Barnett, *Security Communities*; 'Taking identity and our critics seriously'. On the role of intersubjective structures in shaping states' choices regarding their international commitments, see Cyprien Bassamagne Mougnok, 'Structures intersubjectives et design des engagements internationaux: le cas de l'adhésion du Chili au Mercosur', *Études internationales*, 46:1 (2015), pp. 49–71.

[53] Adler and Barnett, 'Security communities in theoretical perspective', p. 6.

[54] Adler and Barnett, 'A framework for the study of security communities', pp. 30, 34; Pouliot, 'Pacification without collective identification', p. 607.

[55] Adler and Barnett, 'A framework for the study of security communities', pp. 39–41; also see Emanuel Adler and Michael Barnett, 'Governing anarchy: A research agenda for the study of security communities', *Ethics and International Affairs*, 10:1 (1966), pp. 63–98 (p. 64).

[56] Adler and Barnett, 'A framework for the study of security communities', p. 45.

[57] Ibid., pp. 50–7.

[58] This raises an interesting question: under what conditions can regimes lead to PSCs? On regime theory in IR, see Robert Jervis, 'Security regime', *International Organization*, 36:2 (1982), pp. 357–78; Oran R. Young, 'International regimes: Toward a new theory of institutions', *World Politics*, 39:1 (1986), pp. 104–22; Maria A. Gwynn, 'Structural power and international regimes', *Journal of Political Power*, 12:2 (2019), pp. 200–23.

[59] Adler and Barnett, 'A framework for the study of security communities'; Tusicisny, 'Security communities and their values'.

expectations of peaceful change.[60] As for the mature stage, it is characterised by a high level of mutual trust and collective identification.[61] Mature PSCs can be 'loosely' or 'tightly' coupled depending on whether their members retain separate identities and institutions. The indicators illustrating the existence of loosely coupled PSCs also apply to tightly coupled PSCs. But to distinguish the two, Adler and Barnett identified indicators that apply only to the latter.[62] For example, a 'multiperspectival' polity – rule is shared at the national, transnational, and supranational levels – and the 'internalization of authority',[63] which refers to the process by which authority and governance structures extend beyond national borders to include international organisations and institutions.[64]

Insisting on the origins of collective identification, Adler and Barnett[65] suggest it is something actors learn through shared meanings and norms.[66] Once they collectively recognise the shared meanings and norms they have learned (or developed through behaviour), their new knowledge becomes an active component in the production and reproduction of order among them.[67] Of course, this is one of the key contributions of constructivist scholars, stating that agents (states) and structures (international norms) are mutually reinforcing and constituted.[68] Acharya drew a useful distinction in this regard between 'legal-rational' norms and 'socio-cultural' norms in the context of PSCs.[69] While the former refers to 'formal rationalistic principles of law', the latter refers to 'the basis of informal social control and social habits'. As illustrated in Figure 1, both play an important role in the development of PSCs. 'By making similar behavioral claims on different states, [they] create parallel patterns of behavior among states over wide areas.'[70] These patterns

[60] Adler and Barnett, 'A framework for the study of security communities', pp. 53–4.

[61] Ibid., pp. 55–7.

[62] Ibid., pp. 56–7.

[63] The concept of 'internationalisation of authority' captures three important dimensions: (1) the *delegation of authority* (states delegate certain powers and responsibilities to other actors, such as international organisations; for instance, the power to enact laws and, to some extent, enforce them. See, e.g., the powers of the European Union Court of Human Rights), (2) *shared governance* (authority is not centralised within a single state but distributed among several actors, including international organisations), and (3) *norm diffusion* (international organisations help in creating, spreading, and enforcing norms and values).

[64] Taking IL seriously, a stronger connection can be drawn to the TLP literature, which offers a valuable framework for understanding the evolution of legal norms and governance structures beyond national borders. The concept of a multiperspectival polity aligns with TLP's recognition that legal authority is not confined to a single sovereign entity but is shaped through continuous engagement among various actors. Likewise, the expansion of governance structures to international organisations reflects TLP's emphasis on the internalisation of transnational law, demonstrating how legal norms gain legitimacy and influence across diverse legal systems.

[65] Adler and Barnett, 'Taking identity and our critics seriously', p. 324.

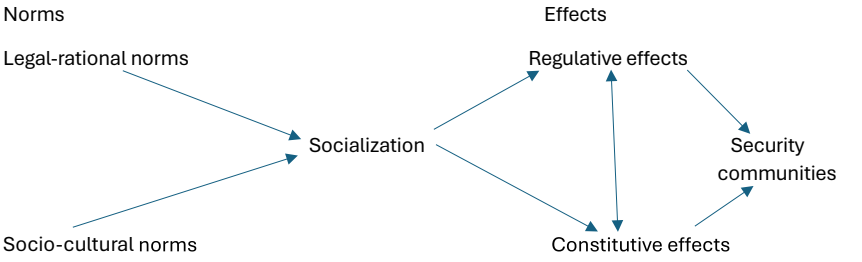
[66] There is a growing literature highlighting the importance of norms in the formation of security communities. See, among others, Glas, *Practicing Peace*, pp. 152–6 and chapter 2; Collins, *Building a People-Oriented Security Community the ASEAN Way*; Acharya, *Constructing a Security Community in Southeast Asia*, 2nd ed.

[67] See also Bially Mattern, 'The power politics of identity', p. 353.

[68] Jeffrey T. Chekel, 'The constructivist turn in IR theory', *World Politics*, 50:2 (1998), pp. 324–48 (p. 345); Alexander Wendt, 'Collective identity formation and the international state', *American Political Science Review*, 88:2 (1994), pp. 384–96; Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999); Thomas Risse-Kappen, 'Collective identity in a democratic community: The case of NATO', in Peter Katzenstein (ed.), *The Culture of National Security* (New York: Columbia University Press, 1996), pp. 357–97; Martha Finnemore, *National Interest in International Society* (Ithaca, NY: Cornell University Press, 1996).

[69] Acharya, *Constructing a Security Community in Southeast Asia*, 2nd ed.

[70] Acharya, *Constructing a Security Community in Southeast Asia*, 2nd ed., p. 26. Note that it is not the norms by themselves that create parallel patterns of behaviour. Those patterns, as we shall see, are the result of legal and judicial practices of various actors at different levels of governance. For various discussions and contributions of the critical constructivist norms research programme in both IR and IL, see Jutta Brunnée and Stephen J. Toope, 'Interactional international law: An introduction', *International Theory*, 3:2 (2011), pp. 307–18; Jutta Brunnée and Stephen J. Toope, 'Constructivism and international law', in Jeffrey L. Dunoff and Mark A. Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of Art* (Cambridge: Cambridge University Press, 2012), pp. 119–45; Jutta Brunnée and Stephen J. Toope, 'Norm robustness and contestation in international law', *Journal of Global Security Studies*, 4:1 (2019), pp. 73–87; Stephan Engelkamp and Katharina Glaab, 'Writings norms: Constructivist norm research and the politics of ambiguity', *Alternatives:*




Source: Acharya (2009, p. 31).

**Figure 1.** Norms, socialisation, and security communities.
Source: Acharya, *Constructing a Security Community in Southeast Asia*, 2nd ed., p. 31.

vary according to the nature and degree of internalisation, however.[71] That is why building on the logic of appropriateness,[72] Adler and Barnett hypothesised[73] that:

> Security community can count for compliance on the acceptance of collectively-held norms … because some of these norms are not only regulative, designed to overcome the collective action problems associated with interdependent choice, but also constitutive, a direct reflection of the actor's identity and self- understanding.

To sum up, PSCs are socially constructed. Their development relies mainly, but not exclusively, on intersubjective structures, such as norms, trust, and identity. While the focus on the importance of norms is welcome, the constructivist approach tells us little about the processes through which these norms are created, internalised, and become 'enmeshed' in domestic legal and political systems to the point of facilitating, maintaining, or fostering reasonable expectations of peaceful change at the transnational mass level. As Jervis rightly emphasised, 'it is one thing … to point to the importance of regulative and constitutive norms, shared understandings, and common practices. It is quite another to say how norms are formed, how identities are shaped, and how interests become defined as they do.'[74]

These gaps are not the preserve of the constructivist approach. The theory of practice of PSCs also fails to account for these dimensions. This is not surprising, however, since Pouliot did not pay attention to the legal literature, as can be seen at first glance in his references.[75] Although he implicitly acknowledged the relevance of norms and legal and judicial practices by emphasising the complementarity between 'practicality', 'consequences', and 'appropriateness',[76] he was not interested in understanding the normative or practical conditions under which PSCs could also develop through law. Rather, one of his main objectives was 'to bolster the practice turn in IR theory by offering an in-depth discussion of the logic of practicality'.[77] According to this logic, if we want to better understand the development of PSCs, it is more productive to start with practice

*Global, Local, Political*, 40:3 (2015), pp. 201–18; Christian Reus-Smit (ed.), *The Politics of International Law* (Cambridge: Cambridge University Press, 2004); Wayne Sandoltz and Christopher A. Whytock (eds), *Research Handbook on The Politics of International Law* (Cheltenham: Edward Elgar Publishing, 2017); Christian Bueger and Frank Gadinger, *International Practice Theory*, 2nd edition (Cham: Palgrave Macmillan, 2018); and Kratochwil, 'Politics, norms and peaceful change'.

[71] Wendt, *Social Theory of International Politics*, pp. 268–312; Glas, *Practicing Peace*.

[72] For an excellent discussion on the three main strands of constructivist research that construe appropriateness as a motivationally externalist logic of social action, see Pouliot, 'The logic of practicality', pp. 262–5.

[73] Adler and Barnett, 'A framework for the study of security communities', pp. 35–6.

[74] Jervis, 'Realism in the study of world politics', p. 974.

[75] Pouliot, 'Pacification without collective identification'; 'The logic of practicality'; *International Security in Practice*.

[76] Pouliot, 'The logic of practicality', p. 259.

[77] Ibid.

than with collective identification, because collective identity is at best embedded in practice.[78] Put differently, instead of conceiving 'we-ness' as the driver of practice – that is, a representation that precedes action – the practice theory approach suggests construing collective identification as the result of practice.[79] It represents 'an invitation to see the agent not as the locus of representations, but as engaged in practices, as a being who acts in and on a world'.[80]

All in all, the theory of practice of PSCs focuses on 'what security practitioners actually do when they interact'.[81] Surprisingly, it evacuates the whole issue of rules enabling or governing those interactions.[82] Yet, as Lamp showed,[83] rules are implicated in practices in at least three ways: they constitute a pattern of action as a 'practice'; they regulate the conduct that makes up the practice; and they provide a formula for extending and adapting the practice to ever new situations.[84] Taking the IL literature[85] seriously promises to help overcome the above-mentioned gaps, whether studying PSCs from the transactional, constructivist, or practice theory perspective.

## On regional norms

Although there are no legal works dealing with PSCs, there is an abundant literature on 'socio-legal theory and methods',[86] including the TLP literature,[87] which can help better understand 'the force of law' in the context of PSCs. Building on the legal literature, this section deals with the definition and conceptualisation of regional norms.[88] I propose first to distinguish between 'legal' and 'non-legal' norms at both the domestic and international levels, since a *regional non-legal norm* can become a *domestic legal norm* through 'the logic of internormativity'.[89] This distinction will not only help shed light on the cross-referencing interplay between regional norms and domestic legal norms in the development of PSCs but will also ease the definition and conceptualisation of regional norms,

[78] Pouliot, *International Security in Practice*, p. 237; 'Pacification without collective identification'.

[79] Pouliot, *International Security in Practice*, p. 237.

[80] Pouliot, 'Pacification without collective identification', pp. 617–18; see also Adler and Pouliot, 'International practices'.

[81] Pouliot, 'The logic of practicality', p. 257.

[82] Note the contribution of the 'new voices' on this issue (see, e.g., Glas, *Practicing Peace*; Aarie Glas and Emmanuel Balogun, 'Norms in practice: people-centric governance in ASEAN and ECOWAS', International Affairs 96:4 (2020), pp. 1015–1032. Miles M. Evers, 'Just the facts: why norms remain relevant in an age of practice', International Theory 12:2 (2020), pp. 220–230).

[83] Lamp, 'The "practice turn" in international law', p. 293.

[84] Miles M. Evers, 'Just the facts: why norms remain relevant in an age of practice', *International Theory* 12:2 (2020), pp. 220–30.

[85] This literature includes customary IL (see, e.g., Panos Merkouris, Jörg Kammerhofer, and Noora Arajärvi [eds], *The Theory, Practice, and Interpretation of Customary International Law* [Cambridge: Cambridge University Press, 2022]); global constitutionalism (see Anne Peters, 'The merits of global constitutionalism', *Indiana Journal of Global Legal Studies*, 16:2 [2009], pp. 399–411); as well as global administrative law (Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, 'The emergence of global administrative law', *Law and Contemporary Problems*, 68:3/4 [2005], pp. 15–61.

[86] Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (London: Routledge, 2019); Reza Banakar and Max Travers (eds), *Theory and Method in Socio-legal Research* (Oxford: Bloomsbury, 2005).

[87] Koh, 'Transnational legal process'; 'Why do nations obey international law'; 'The 1998 Frankel Lecture'; Robert O. Keohane, 'When does international law come home?', *Houston Law Review*, 35:3 (1998), pp. 699–713; Eric A. Posner, 'International law and the disaggregated state', *Florida State University Law Review*, 32:3 (2005), pp. 797–842.

[88] On the origins of regional norms, see Barberis, 'Les règles spécifiques du droit international en Amérique latine' and Bassamagne Mougnok, 'The codification of Inter-American drug law'.

[89] Cf. Cathérine Thibierge, 'Synthèse: la force normative', in Cathérine Thibierge (eds), *La force normative: naissance d'un concept* (Montchrestien: LGDJ, 2009), pp. 741–838 (p. 806); Karim Benyekhlef, *Une possible histoire de la norme: les normativités émergentes de la mondialisation*, 2nd ed. (Montréal: Éditions Thémis, 2015), p 21. Note that this was the case in the context of the constitution of the drug security community in the Americas, where CICAD's model regulations (soft law) became hard law after their internalisation in domestic legal systems. See Bassamagne Mougnok, 'The codification of Inter-American drug law', pp. 273–9, 'Puissances moyennes'.

including the analysis of various legal and judicial dynamics that shape reasonable expectations of peaceful change at the regional and domestic levels.

### *Legal and non-legal norms in domestic and international law*

Contrary to IR scholars who seem to agree on the definition of the norm 'as a standard of appropriate behavior for actors with a given identity',[90] the issue of defining norms is still controversial in Law.[91] Millard even argued that it would be illusory to characterise what a (domestic) legal norm is, especially if one focuses on its ontological dimension. According to him, one can only pinpoint some elementary consequences that the reference to a legal norm implies and seek a minimum consistency requirement for its use.[92] Indeed, the term, when not used carefully, can lead to confusions, as Finnemore and Sikkink have shown.[93] 'But used carefully, [it] can help to steer scholars toward looking inside social institutions and considering the components of social institutions as well as the ways these elements are renegotiated into new arrangements over time to create new patterns of politics.'[94]

Drawing on Kelsen,[95] several legal scholars nonetheless define norms as the meaning of a proposition prescribing individuals or institutions a pattern of behaviour.[96] Here, the norm expresses the idea that an actor must behave in a certain way. It is a *devoir être* (*sollen*) and, as such, imperative in essence. However, norms do not only articulate obligations since in practice their contents are often a combination of rights and obligations that one can extract through an exegetical interpretation.[97] It seems more appropriate to consider that they articulate obligation, permission, and interdiction.[98] But in domestic systems, what makes certain norms so different from others to the point of being labelled 'legal'? Kelsen emphasised 'the sanction',[99] but as many scholars[100] noted, sanction is not the preserve of domestic legal norms since we can find it, with all its various components, in ethical experiences, for example. Drawing on Amselek's conceptualisation,[101] this study considers that the only thing specific to domestic legal norms, and what precisely makes them 'legal', is the status of public authority of the leaders who create, interpret, and institutionalise them in the context of national governance.[102]

[90] See Finnemore, *National Interest in International Society*, p. 22; Martha Finnemore and Kathryn Sikkink, 'International norm dynamics and oolitical change', *International Organization*, 52:4 (1998), pp. 887–917 (p. 891); Margaret E. Keck and Kathryn Sikkink, 'Transnational advocacy networks in international and regional politics', *International Social Science Journal*, 51:159 (2022), pp. 89–101 (p. 90); Annika Björkdahl, 'Norms in international relations: Some conceptual and methodological reflections', *Cambridge Review of International Affairs*, 15:1 (2002), pp. 9–23.

[91] François Chazel and Jacques Commaille (eds), *Normes juridiques et régulation sociale* (Paris: LGDJ, 1991); Denys de Béchillon, *Qu'est-ce qu'une règle de droit?* (Paris: Odile Jacob, 1997); Jean Carbonnier, *Sociologie juridique* (Paris: PUF, 1994).

[92] Eric Millard, 'Qu'est-ce qu'une norme juridique?', *Les Cahiers du Conseil Constitutionnel*, 21 (2006), pp. 59–62.

[93] Finnemore and Sikkink, 'International norm dynamics and oolitical change'.

[94] Ibid., p. 891; see also Bourdieu, 'The force of law'. On norms as system properties, see Carla Winston, 'A system approach to norm theory', in Phil Orchard and Antje Wiener (eds), *Contesting the World: Norm Research in Theory and Practice* (Cambridge: Cambridge University Press, 2024), pp. 151–63.

[95] Hans Kelsen, *Pure Theory of Law* (Berkeley: University of California Press, 1967); Hans Kelsen, 'The essence of international law', in Karl W. Deutsch and Stanley Hoffmann (eds), *The Relevance of International Law* (Cambridge: Schenkman Publishing Company, 1971), pp. 115–23.

[96] Béchillon, *Qu'est-ce qu'une règle de droit?*, pp. 165–6; François Terré, 'Forces et faiblesses de la norme', in Cathérine Thibierge et al. (eds., *La force normative: naissance d'un concept* (Montchrestien: LGDJ, 2009), pp. 19–21 (p. 19).

[97] Paul Amselek, 'Autopsie de la contrainte associée aux normes juridiques', in Cathérine Thibierge et al. (eds), *La force normative: naissance d'un concept* (Montchrestien: LGDJ, 2009), pp. 3–11 (p. 6).

[98] Denis Alland and Stéphane Rials (eds), *Dictionnaire de la culture juridique* (Paris: PUF, 2003), p. 1082; Kratochwil, 'Politics, norms and peaceful change'.

[99] Kelsen, 'The essence of international law', pp. 115–25.

[100] See, e.g., Amselek, 'Autopsie de la contrainte associée aux normes juridiques'; Chazel and Commaille, *Normes juridiques et régulation sociale*; Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006).

[101] Amselek, 'Autopsie de la contrainte associée aux normes juridiques', p. 4.

[102] The concept of national governance refers to 'the exercise of economic, political and administrative authority to manage a country's affairs at all levels, and it comprises mechanisms, processes, and institutions, through which citizens and groups

The reality is somewhat different with respect to international legal norms whose formal sources are listed in the article 38(1) of the Statute of the International Court of Justice. According to this provision, the sources of IL are treaties signed by two or more subjects of IL, customs, and general principles of law. Members of the international community have set up two other ways of creating international legal norms through treaties, namely the resolutions of multilateral organisations and the decisions of judicial or arbitral tribunals.[103] It follows that international legal norms are those created from one of the above-mentioned sources and, more importantly, they are *legally binding* – legally binding meaning their violation entails legal consequences (in principle at least). This is key to understanding the difference between international legal norms and the so-called non-legal, pre-legal, or para-legal norms which are not legally binding (soft IL).[104]

Before delving into the definition and conceptualisation of 'regional norms', note that at the systemic (regional) level, the concept of 'norm' encompasses both legal norms that are practised and socially internalised, as well as socio-cultural and behavioural norms that are eventually codified into law or contribute to the codification of law, whether it be hard, soft, or some combination of the two.[105] At the domestic (states) level, the focus is on 'legal' norms, considering social groups and communities, as well as organisations within states as 'semi-autonomous social fields',[106] and including these specific norms in both the delimitation of social fields and the 'habitus'.[107]

## Regional norms: Definition and conceptualisation

Since the end of the Cold War, IR scholars have been studying 'the region' as one of the most relevant levels of analysis.[108] Paradoxically, its definition and conceptualisation have raised a lot of controversy in the discipline. For instance, Nye defined regions as a 'limited number of states linked together by a geographic relationship and by a degree of mutual interdependence',[109] whereas Grugel and Hout contended that 'although territoriality is a sine qua non of regions … they are not naturally constituted geographical units nor the straightforward "common-sense" expressions of shared identities'.[110] Regions, they argued, are made and re-made, and their membership and frontiers are decided through political and ideological struggle and through the conscious strategies of

articulate their interests, exercise their legal rights, meet their obligations and mediate their differences'. Cf. World Economic and Social Survey, *Chapter VI: Governance and Institutions* (2014–15), p. 142, available at: www.un.org.

[103]See Barberis, 'Les règles spécifiques du droit international en Amérique latine', p. 108. Note that some resolutions or decisions may fall into the category of non-legal norms if they are not binding.

[104]In certain circumstances, a permanent non-compliance even with soft IL can entail legal consequences. On 'the Estoppel doctrine', see Michael Bothe, 'Legal and non-legal norms: A meaningful distinction in international relations?', *Netherlands Yearbook of International Law*, 11 (1980), pp. 65–95; and on 'the principle of good faith' in IL, see Robert Kolb, 'La bonne foi en droit international public', *Revue belge de droit international*, 31:2 (1998), pp. 661–732.

[105]Barberis, 'Les règles spécifiques du droit international en Amérique latine'; Bassamagne Mougnok, 'The codification of Inter-American drug law'.

[106]See Sally Falk Moore, 'Law and social change: The semi-autonomous social field as an appropriate subject of study', *Law & Society Review*, 7:4 (1973), pp. 719–46. Semi-autonomous social fields are examples of the in-betweens of law and other types of norms. Måns Svensson, 'Norms in law and society: Towards a definition of the socio-legal concept of norms', in Matthias Baier (ed.), *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity* (London: Routledge, 2016), pp. 39–52. As Moore (1973) explained, social fields, such as communities, entities, or organisations, have their own internal rules and norms that govern behaviour, but they are also influenced by external legal and social forces. These fields are 'semi-autonomous' because they have some degree of independence in creating and enforcing their own norms, yet they are not completely isolated from the broader legal and social environment. Note that law may conflict with social norms in certain cases. See Matthias Baier (ed.), *Social and Legal Norms: Towards a Socio-legal Understanding of Normativity* (London: Routledge, 2016).

[107]Bourdieu, 'The force of law'; Baier, *Social and Legal Norms*.

[108]David A. Lake and Patrick M. Morgan, *Regional Orders: Building Security in a New World* (University Park: Pennsylvania State University Press, 1997); Buzan and Wæver, *Regions and Powers*; Adler and Barnett, 'Governing anarchy'; *Security Communities*; Fawcett, 'Regions and regionalism'.

[109]Joseph S. Nye, 'Introduction', in Joseph S. Nye (ed.), *International Regionalism: Readings* (Boston: Little, Brown and Company, 1968), pp. v–xvi (p. vii).

[110]Jean Grugel and Wil Hout, 'Regions, regionalism and the south', in Jean Grugel and Wil Hout (eds), *Regionalism across the North/South Divide: State Strategies and Globalization* (London: Routledge, 1998), pp. 45–67 (p. 8).

states and other social actors.[111] Not so distant, finally, is Adler and Barnett's conceptualisation,[112] which suggests the geographical criterion should not be considered a necessary condition since states situated in very separate geographic areas could create 'cognitive regions'.[113]

Starting from the premise that 'the whole regionalist approach [hangs] on the necessity of keeping and the ability to keep analytically separate the global and regional levels',[114] I consider Nye's definition of the region – which is similar to that of Fawcett[115] and Deutsch[116] – as one of the most appropriate to the study of regional norms. In my view, a definition that hardly pays attention to 'territoriality' not only conflates the international and regional levels into one level; but, as Buzan and Wæver have argued,[117] it also 'voids the concept of region, which if it does not mean geographical proximity does not mean anything', particularly in the context of new regionalism.[118] Hence, I suggest considering countries that share a history, culture, values, or interests, but which are not linked by a geographic relationship (e.g. Commonwealth or oil-producing countries), as a group; at best, as a community,[119] not a region.[120] As Herz emphasised,[121] the term region originates in fact from the idea of rule, as *in regere*, command. Taking the level-of-analysis problem seriously, we should be considering regions and their product – regional organisations[122] – as the locus for the production of 'regional norms', with regional norms referring to special international norms whose scope of application is not general, and which govern the interactions among states within a given geographical area. Without a clear and systematic organisation of elements, however, it will be nearly impossible to properly use this concept in order to shed light notably on the conditions under which such norms (could) play a pivotal role in facilitating or maintaining reasonable expectations of peaceful change. This raises the question of the conceptualisation of regional norms: how should they be approached in the context of PSCs?

[111] Ibid.

[112] Adler and Barnett, 'A framework for the study of security communities', p. 33.

[113] Emanuel Adler, 'Imagined (security) communities: Cognitive regions in international relations', *Millennium: Journal of International Studies*, 26:2 (1997), pp. 249–77. While this approach is valuable for understanding security cooperation beyond physical borders, it has several limitations, notably: (1) Geopolitical realities: geography plays a crucial role in shaping security dynamics. Proximity often influences threat perceptions, military alliances, and economic interdependence, which their framework does not fully address. (2) Regional constraints: as Buzan and Wæver have shown (*Regions and Powers*), geography remains central to security studies. Security interactions are often regionally bound due to geographic proximity and historical conflicts. (3) Empirical cases: in regions like Eastern Europe, the Persian Gulf, and East Asia, security arrangements are heavily influenced by territorial disputes, border security, and regional power balances – factors that Adler and Barnett's framework does not sufficiently prioritise.

[114] Buzan and Wæver, *Regions and Powers*, p. 80; Lake, 'Regional security complexes', p. 48.

[115] Fawcett, 'Regions and regionalism', p. 98.

[116] Deutsch et al., *Political Community and the North Atlantic Area*.

[117] Buzan and Wæver, *Regions and Powers*, p. 80.

[118] Lake, 'Regional security complexes', p. 48.

[119] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006).

[120] Adler and Barnett, 'A framework for the study of security communities', p. 33.

[121] Monica Herz, 'Regional governance', in Thomas G. Weiss and Rorden Wilkinson (eds), *International Organization and Global Governance* (New York: Routledge, 2014), pp. 236–50 (p. 237).

[122] As noted earlier, specifying the differences between TLP and other norm diffusion/integration approaches, regional organisations like the Organization of American States, the European Union, the African Union, or ASEAN play crucial roles, among others, in the creation, codification, diffusion, and enforcement of regional law, fostering and enhancing regional cooperation and peaceful change. See Bassamagne Mougnok, 'The codification of Inter-American drug law'; 'Puissances moyennes'; Glas, *Practicing Peace*. On international organisations as lawmakers, see José E. Alvarez, *International Organizations as Law-Makers* (Oxford: Oxford University Press, 2006). For empirical contributions on the role of regional organisations, see Fredrik Söderbaum and Rodrigo Tavares (eds), *Regional Organizations in African Security* (London: Routledge, 2009); Rodrigo Tavares, *Regional Security: The Capacity of International Organizations* (London: Routledge, 2009); Rodrigo Tavares, *Security in South America: The Role of States and Regional Organizations* (Boulder, CO: Lynne Rienner, 2014); Alex Vines, 'A decade of African Peace and Security Architecture', *International Affairs*, 89:1 (2013), pp. 89–109; Collins, *Building a People-Oriented Security Community the ASEAN Way*.

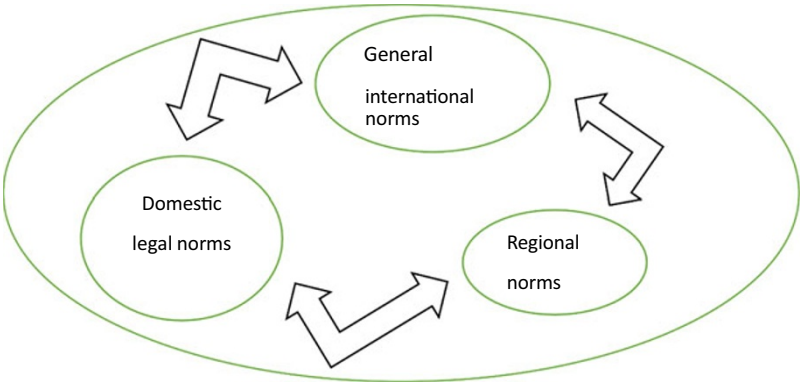



**Figure 2.** The socio-legal universe of security communities.

To answer this question, I first outline what I call 'the socio-legal universe of PSCs',[123] which is comprised of general international norms (universal law), regional norms (regional law), and domestic legal norms (domestic laws). As illustrated in Figure 2, which additionally shows the legal pluralism[124] surrounding the development of PSCs, these three categories of norms are cross-referenced and interplay. As we shall see later, this cross-referencing interplay, especially between regional norms and domestic legal norms, critically contributes to fostering reasonable expectations of peaceful change at the transnational societal level by providing a common legal framework[125] to state and non-state actors, as well as 'legal focal points' that help solve coordination and distribution problems within states, between states, and beyond states.[126]

Contrary to Adler and Barnett's opinion that 'a security community which depends heavily on enforcement mechanisms is probably not a security community',[127] I suggest construing the

[123]This approach is consistent with Bourdieu's conceptualisation of a 'field'. See Bourdieu, 'The force of law'. As Madsen notes, 'A field is a network, or a configuration, of objective relations between positions. These positions are objectively defined, in their existence and in the determinations they impose upon their occupants, agents, or institutions, by their present and potential situation (situs) in the structure of the distribution of species of power (or capital) whose possession commands access to the specific profits that are at stake in the field, as well as by their objective relation to other positions (domination, subordination, homology, and so on)'. Cf. Mikael Rask Madsen, 'Reflexive sociology of international law: Pierre Bourdieu and the globalization of law', in Moshe Hirsch and Andrew Lang (eds), *Research Handbook on the Sociology of International Law* (Cheltenham: Edward Elgar Publishing, 2018), pp. 189–207 (p. 195).

[124]Engle Merry Sally, 'Legal pluralism', *Law & Society Review*, 22:5 (1988), pp. 869–96.

[125]A common legal framework is pivotal in the constitution of security communities for several reasons: (1) it encourages cooperation and coordination among member states, ensuring that all parties have a mutual understanding of their rights and obligations; (2) it provides mechanisms for the peaceful resolution of disputes ('legal focal points'), reducing the likelihood of conflicts escalating into a large-scale physical violence (Nathan, 'Domestic instability and security communities'); (3) it helps harmonise policies and regulations across states, ensuring that regional norms align with domestic legal norms, which is vital for effective governance and enforcement at the transnational level; (4) by ensuring and encouraging predictability, it fosters trust and stability, which is essential for maintaining long-term peace and security; and (5) through states' internalisation of regional norms, it provides not only states but also individuals, civil societies, and other private actors with common rules. From a regional IL governing the exclusive relationships between states, we transition to a 'common law' applicable to all individuals within a region (Bassagne Mougnok, 'The codification of Inter-American drug law').

[126]See, e.g., the intervention of the EU Court of Human Rights in the case of Loizidou v. Turkey. On this case, see Bernard H. Oxman and Rudolf Beate, 'Loizidou v. Turkey', *American Journal of International Law*, 91:3 (1997), pp. 532–7.

[127]Adler and Barnett, 'A framework for the study of security communities', p. 35. Note that empirical cases challenge this claim. For example, The North Atlantic Treaty Organization (NATO) functions as a security community. See Vincent Pouliot, 'The alive and well transatlantic security community: A theoretical reply to Michael Cox', *European Journal of International Relations*, 12:1 (1996), pp. 119–27; Pouliot, *International Security in Practice*. Yet it relies on enforcement mechanisms like collective defence commitments. This suggests that enforcement does not necessarily contradict the existence of a security community.

legalisation[128] of PSCs as a two-level game involving horizontal interactions among states (systemic level) and a vertical process of internalisation.[129] This TLP is a key variable that has been overlooked. While I agree with Adler and Barnett[130] that 'soft legalisation' might be desirable at the systemic level,[131] I contend that peaceful change in domestic societies rests mostly on the (expressive) power of law.[132] This is because actors – whether the state apparatus, government and opposition elites, interest groups, individuals, or other social actors – 'must have some binding sense of obligation[133] to the law before it becomes viewed as the appropriate standard of behavior'.[134] Of course, people might comply with domestic law out of sense of moral duty.[135] But since we cannot directly peer into the consciences of millions of individuals,[136] it seems more productive and transparent to start with a binding sense of legal obligation and an identifiable course of appropriate action.[137] This added transparency, from a heuristic perspective, should make it easier to track, assess, and better understand how various actors are socialised through domestic legal norms,[138] and how this process of socialisation facilitates the coordination of behaviours and expectations of peaceful change at the transnational societal level.

Second, building on Barberis,[139] I define three scopes of application (i.e. dimensions) of a regional norm, namely spatial, personal, and material. I exclude the temporal one, since it may vary notably depending on the norm's life cycle.[140] As a general proposition, a norm can be applicable all over the world or in one region or country; the geographic space within which the norm is applicable is referred to as its *spatial scope of application*. Norms also have a *personal scope of application*, which identifies the subjects to whom they apply. For instance, some norms may refer to all the inhabitants of a country (e.g. civil law or criminal code), whereas others may concern specific groups (civil servants, refugees, etc.). Finally, the behaviour prescribed by a norm is referred to as its *material scope of application*: the material scope is always defined with reference to human behaviour which may be authorised, prohibited, or obligatory.

[128]Judith L. Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter (eds), *Legalization and World Politics* (Cambridge, MA: MIT Press, 2001).

[129]On the domestic level, see Koh, 'The 1998 Frankel Lecture', p. 677.

[130]Adler and Barnett, 'A framework for the study of security communities', p. 35.

[131]We shall come back to this issue, specifying the very conditions under which 'soft legalisation' might be privileged at the expense of 'hard legalisation'. See Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal, 'The concept of legalization', *International Organization*, 54:3 (2000), pp. 401–19; Kenneth W. Abbott and Duncan Snidal, 'Hard and soft law in international governance', *International Organization*, 54:3 (2000), pp. 421–56. Note that even in a context of hard legalisation, states may reach peaceful change through an iterative process of interaction, social learning, and persuasion. This may be facilitated by a variety of knowledgeable actors, such as regional organisations, transnational advocacy networks, or international courts and tribunals.

[132]See McAdams, 'A focal point theory of expressive law'; 'The expressive power of adjudication'.

[133]On the conceptualisation of obligation, see Annette Stimmer, 'The interaction of law and politics in norm implementation', in Phil Orchard and Antje Wiener (eds), *Contesting the World: Norm Research in Theory and Practice* (Cambridge: Cambridge University Press, 2024), pp. 164–88 (pp. 168–9).

[134]See Dana Zartner, 'Internalization of international law', *International Studies* (2017), Oxford Research Encyclopedia, available at: https://www.oxfordreference.com/display/10.1093/acref/9780191842665.001.0001/acref-9780191842665-e-0211; on socialisation type II, see Jeffrey T. Checkel, 'Why comply? Social learning and European identity change', *International Organization*, 55:3 (2001), pp 553–88; on the logic of appropriateness, see James G. March and Johan P. Olsen, 'The institutional dynamics of international political orders', *International Organization*, 52:4 (1998), pp. 943–69.

[135]Tyler, *Why People Obey the Law?*; Lawrence M. Friedman and Grant M. Hayden, 'On legal behavior', in Lawrence M. Friedman and Grant M. Hayden (eds), *American Law: An Introduction* (Oxford: Oxford University Press, 2017), chapter 11.

[136]Posner, 'International law and the disaggregated state'.

[137]Dana Zartner Falstrom, 'Thought versus action: The influence of legal tradition on French and American approaches to international law', *Maine Law Review*, 58:2 (2006), pp. 338–77.

[138]The outcome of such a socialisation can be termed 'legal behaviour', which means behaviour influenced in some way by a rule, decision, order, or act, given out by somebody with legal authority. See Friedman and Hayden, *American Law*, p. 203.

[139]Barberis, 'Les règles spécifiques du droit international en Amérique latine', pp. 113–14.

[140]Note that regional norms have a life cycle, whose culmination could be their extinction to the benefit of a new general international rule or an imperative rule (*jus cogens*).

Most legal scholars agree on two necessary conditions for the identification of regional norms.[141] The first one deals with the spatial scope of application of the norm, which must be limited to a given transnational region. In other words, a regional norm must not pretend to be applicable all over the world (universal law). Rather, it must meet the specific needs of a region (see, e.g., the first introductory paragraph of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials, which clearly indicates the spatial scope of application of the Convention).

The second condition refers to the personal scope of application of the norm, which must be limited, too. It should be noted that an international norm can be limited solely in its spatial scope of application. For example, member states of the international community can agree on norms of sailing on the high seas or fishing in the Indian Ocean. Conversely, another international norm can be limited solely in its personal scope of application. The Benelux states, for instance, can agree to open joint embassies in the United States, China, or South Africa. In both cases, we are not in the presence of a regional norm since the two conditions are not met. By contrast, imagine that member states of the Central African Economic and Monetary Community (CEMAC) ratified an agreement that authorises their citizens to travel within the CEMAC zone without a visa, the presentation of a national identity card being the necessary and sufficient condition. Here, both the spatial (CEMAC zone) and personal conditions (citizens of the member states) are met.

It follows that an international norm is said to be regional only if its spatial and personal scopes of application are both limited. But if this norm prescribes the same behaviour as that of general IL, then it probably is nothing special. Hence, the need to also examine the material scope of application of the norm, which must be different from that of general IL.[142] This difference can be found in what the norm prescribes as authorised, prohibited, or obligatory.[143] It can even happen that such a norm does not prescribe anything different but establishes a source of law distinct from those of general IL.[144] It would be a mistake, however, to assume that such differentiation entails the fragmentation of general IL, since a set of general international rules remains valid and applicable to all international relations, forming the general framework from which regional norms[145] are negotiated, elaborated, and institutionalised.

To sum up, *an international norm is said to be regional only if its spatial and personal scopes of application are both limited, and its material scope of application is different from that of general international law*. This conceptualisation allows us to keep analytically separate the global and regional levels, while also providing keys for a more systematic approach to targeting the norm-generative process in the study of PSCs. It can also be helpful in better understanding how the regional is very often, but in different ways, produced in conjunction with the evolution of domestic societies, including how such a 'transnational field'[146] is renegotiated over time to maintain reasonable expectations of peaceful change at the transnational mass level.

[141] Barberis, 'Les règles spécifiques du droit international en Amérique latine'; José Ramon de Orue y Arregui, 'Le régionalisme dans l'organisation internationale', *RCADI*, 53 (1935); Francisco-José Urrutia, 'La codification du droit international en Amérique', *RCADI*, 22 (1928), pp. 81–236.

[142] Acharya overlooked this critical dimension, noting that the first source of ASEAN's norms is a variety of official documents, the most important being the Treaty of Amity and Co-operation; but since the Treaty of Amity and Co-operation codifies principles that are present in various UN and other international documents, there is nothing particularly unique about them. Therefore, he switched to the second source, assuming that 'what made ASEAN really distinctive were the norms which came to be known as the ASEAN Way'. See Acharya, *Constructing a Security Community in Southeast Asia: ASEAN and the Problem of Regional Order*, 1st ed., p. 63. By examining the material scope of application of the norms, perhaps he would have reached a different conclusion and provided a better explanation for the origins of ASEAN's dominant norms.

[143] Bassamagne Mougnok, 'The codification of Inter-American drug law', pp. 282–9.

[144] Barberis, 'Les règles spécifiques du droit international en Amérique latine', pp. 121–2.

[145] Regional legal norms can be treaties, customs, binding decisions of judicial or arbitral tribunals; they cannot be general principles of law, since the scope of application of such norms is always general. See Barberis, 'Les règles spécifiques du droit international en Amérique latine', pp. 119–20.

[146] Rebecca Adler-Nissen, 'Inter- and transnational field(s) of power: On a field trip with Bourdieu', *International Political Sociology*, 5:3 (2011), pp. 327–45.

## The legal internalisation of regional norms

Legal internalisation is defined as the process by which a regional norm is incorporated into the domestic legal system and becomes domestic through executive action, legislative action, judicial interpretation, or some combination of the three.[147] Understanding this process in the context of PSCs matters not only because it is a key variable in explaining the pivotal role regional norms play in the 'constitution'[148] of state and non-state actors, but also because it is at the domestic level where regional norms gain their authority in the way that all citizens of a state, from the leaders to the general populace, are bound by their tenets – the tenets which form the general framework within which all decisions are made.[149] Put differently, internalising regional norms into the domestic legal system makes those norms part of domestic law in a way that their violations become violations of domestic law and are then subject to the same enforcement and adjudication mechanisms as all other domestic law.[150]

It follows that the easier the legal internalisation in different domestic systems, the more likely it will be that regional law considerations[151] form part of the basis for the lawful and appropriate course of action within a given transnational region.[152] The nature and speed of legal internalisation varies across states, however.[153] For instance, in legal systems where it is more difficult or time-consuming to transfer IL provisions from the level of diplomats to the level of domestic law, attention and adherence to IL have proven difficult.[154] This suggests that, in addition to help broaden the ontology of PSCs, understanding the legal internalisation of regional norms can help explain variations in the pace of development of reasonable expectations of peaceful change across states and within a security community. This in turn can contribute to a better understanding or explanation of variations across PSCs. Finally, understanding this process can be useful in predicting a wide range of systemic issues, including, as we shall see, variations in the level of legalisation of PSCs.

This third section concentrates on the legal internalisation of regional treaties. I do not deal with the other important and similar issue of customary IL, nor am I concerned with the states' treaty-making idiosyncrasies.[155] Rather, like many other works that consider the importance of legal internalisation by focusing on factors that facilitate or hinder the process,[156] I seek to draw

[147] Koh, 'The 1998 Frankel Lecture', p. 642; 'Transnational legal process'. Also see Harold Hongju Koh, 'Internalization through socialization', *Duke Law Journal*, 54:4 (2005), pp. 975–82; and Stevens, 'Hunting a dictator as a transnational legal process'.

[148] As Koh notes, the most effective legal regulation aims to be constitutive, in the sense of seeking to shape and transform actors' interests and identities. Cf. Koh, 'The 1998 Frankel Lecture', p. 629.

[149] Zartner Falstrom, 'Thought versus action', p. 346.

[150] Zartner, 'Internalization of international law', p. 5.

[151] Note that the relationship between 'regional norms' and 'regional law' is very often dynamic and mutually reinforcing. Regional norms often serve as the foundation for the codification of regional law, reflecting the shared values, practices, and specific needs of their addressees. Regional law, in turn, reinforces and shapes regional norms by establishing legal standards and expectations. This interplay creates a feedback loop where regional norms influence the development of regional law, and regional law, in turn, influences the evolution of regional norms. This helps ensure that regional law remains relevant and reflective of the specific needs of the region. See Bassamagne Mougnok, 'The codification of Inter-American drug law'.

[152] Zartner Falstrom, 'Thought versus action'; Koh, 'Internalization through socialization'; 'The 1998 Frankel Lecture'.

[153] Zartner, 'Internalization of international law'; Antonio Cassese, *International Law*, 2nd ed. (Oxford: Oxford University Press, 2003); Thomas Buergenthal, 'Self-executing and non-self-executing treaties in national and international law', *Collected Courses of The Hague Academy of International Law*, 235:4 (1992), pp. 303–400.

[154] Zartner Falstrom, 'Thought versus action', p. 346; Zartner, 'Internalization of international law'; also see Emmanuelle Jouannet, 'French and American perspectives on international law: Legal cultures and international law', *Maine Law Review*, 58:2 (2006), pp. 292–336.

[155] See Anthony Aust, *Modern Treaty Law and Practice* (Cambridge: Cambridge University Press, 2007).

[156] Zartner, 'Internalization of international law'; Zartner Falstrom, 'Thought versus action'; Koh, 'The 1998 Frankel Lecture'; Dana Zartner, *Courts, Codes, and Custom: Legal Tradition and State Policy toward International Human Rights and Environmental Law* (New York: Oxford University Press, 2014); Sara McLaughlin Mitchell and Emilia Justyna Powell, *Domestic Law Goes Global: Legal Traditions and International Courts* (Cambridge: Cambridge University Press, 2011); Beth A. Simmons,

attention on two institutional factors that can affect the development of PSCs, namely, the attitude of states towards IL and institutional similarity between domestic and IL.

### *The attitude of states towards IL: Monism versus dualism*

Whether a state adopts a 'monist' or 'dualist' attitude can significantly influence how easily regional norms will be internalised into the domestic legal system.[157] By definition, a monist state is one in which, after ratification or government acceptance of a principle of IL, that law automatically becomes part of the domestic law of the state and can be applied by state courts and relied on by citizens of that state.[158] This does not mean that in monist states[159] the ratification of a regional treaty automatically integrates the treaty provisions into the domestic societal perceptions of law, since the norm internalisation process still occurs.[160] What it means is that legal internalisation may be facilitated by the absence of additional layers of institutional involvement before the regional norm has a chance to cascade into the domestic societal consciousness.[161]

The situation is different in dualist states,[162] where at least one additional action is required to make the treaty part of domestic law. Here, although the treaty binds the state internationally upon its ratification, that act alone does not have the legal consequence of translating the treaty provisions into domestic law, because IL and domestic law are considered to be two distinct, equal, and independent orders.[163] This is why it is generally said that for a treaty rule to operate in the domestic legal system of a dualist state, there must be an 'act of transformation',[164] that is, an action by which a government translates the treaty provisions into national legislation, setting out in detail the various obligations, powers, and rights stemming from those international provisions.[165]

*Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009); Richard A. Falk, 'The role of domestic courts in the international legal order', *Indiana Law Journal*, 39:3 (1964), pp. 429–45.

[157] Zartner, 'Internalization of international law'; Buergenthal, 'Self-executing and non-self-executing treaties in national and international law'; and John H. Jackson, 'Status of treaties in domestic legal systems: A policy analysis', *American Journal of International Law*, 86:2 (1992), pp. 310–40.

[158] Example of monist states include Japan, the Netherlands, Mexico, Portugal, Spain, and Switzerland. See Zartner, 'Internalization of international law', p. 7; Buergenthal, 'Self-executing and non-self-executing treaties in national and international law', p. 315; Jackson, 'Status of treaties in domestic legal systems', pp. 313–15; Eileen Denza, 'The relationship between international law and national law', in Malcom D. Evans (ed.), *International Law*, 3rd ed. (Oxford: Oxford University Press, 2010), pp. 411–38 (p. 417).

[159] The extent of monism may vary in practice. Also, there are two types of monism, namely monism with the primacy of IL over domestic law and monism with the primacy of domestic law over IL. Of course, the latter distinction is relevant only in situations of clash between IL and domestic law.

[160] Zartner, 'Internalization of international law', p. 7; Koh, 'The 1998 Frankel Lecture'.

[161] Zartner, 'Internalization of international law', p. 7.

[162] Examples of dualist states include Canada, the United Kingdom, Ireland, Australia, Italy, and Germany (Zartner, 'Internalization of international law', p. 8; Buergenthal, 'Self-executing and non-self-executing treaties in national and international law', p. 315; Louis LeBel and Gloria Chao, 'The rise of international law in Canadian constitutional litigation: Fugue or fusion? Recent developments and challenges in internalizing international law', *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference*, 16 [2002], pp. 23–60 [pp. 33–55]).

[163] Buergenthal, 'Self-executing and non-self-executing treaties in national and international law', p. 315; Jackson, 'Status of treaties in domestic legal systems', p. 314; Denza, 'The relationship between international law and national law', p. 417. Another common form of dualist states are those with religious legal traditions, where any IL must conform with the foundational religious laws of the land, which often requires review by a religious council, court, or clergy. See Zartner, 'Internalization of international law', p. 8.

[164] This concept is not uniformly defined. There are several other terms that compete with, or may be subsumed within, this notion, such as incorporation, adoption, reception. See Jackson, 'Status of treaties in domestic legal systems', pp. 310–11.

[165] Cassese, *International Law*, p. 221.

As Zartner notes,[166] one of the key blockages which must be overcome in dualist systems is that there are additional political entities brought into the legal process, and the greater the number of actors that must be involved, the more difficult it becomes for regional law provisions to rapidly become part of domestic law. Here, the process usually takes longer than in states where internalising action is solely within the purview of one branch of the government. The situation is far more complicated in those federal systems where not only do treaties have to pass muster among the legislative or judicial branches at the federal level but must also overcome any objection at the substate level.[167] Clearly, this contributes to delaying legal internalisation, which in turn may impact, at least, the speed of development of a PSC. To better capture the socio-legal implications of these two major approaches to IL[168] in the context of PSCs, consider Mexico (a amonist state) and Canada (a dualist state), both having duly ratified a treaty which includes the following provision:

> *With respect to the right to own land within the territory of either contracting party, citizens of the states' parties shall receive equal and non-discriminatory treatment.*

The intent here is to balance the rights of the citizens of both states within the jurisdiction of each contracting party. But imagine that in each of these states, a citizen of the other party has been refused the right to own land by the local government, even though the treaty provision unambiguously states this right.[169] In that case, does a Canadian citizen have legal standing in Mexican domestic courts and vice versa? Based on the preceding distinction between monist and dualist states, a Canadian citizen will indeed be able to sue in the domestic courts of Mexico. The reverse, however, may not obtain for a Mexican citizen, who will not be able to sue in Canada's courts unless the treaty provisions have been incorporated into Canadian domestic law.[170] Legal and judicial practices of member states of the European Union (EU) provide an additional illustration.[171] As Zartner notes:

> Individual member states of the EU each have monist or dualist positions ingrained in their domestic legal structures. … Upon joining the European Union, however, each member state agrees to essentially act as a monist state in relation to European Union law. Particularly in the case of EU regulations, EU law is held to be immediately applicable in member states without further action [on] the part of domestic legislatures. Moreover, because the European Union has begun to legislate at the regional level on a number of subjects that are traditional topics of international treaties – such as human rights and the environment – this has allowed even dualist states that are members of the EU to more easily internalise certain international legal provisions into their domestic systems.[172]

[166]Zartner, 'Internalization of international law', pp. 8–9.

[167]Zartner Falstrom, 'Thought versus action', pp. 363–4.

[168]In certain cases, the extent of monism or dualism may vary somewhat. Consider for instance the case of the United States. By declaring that treaties are the supreme law of the land, Article VI of the US Constitution appears to indicate that the US is a monist state. In practice, however, the United States acts primarily as a dualist state. See Zartner, 'Internalization of international law', p. 8.

[169]Jackson, 'Status of treaties in domestic legal systems'.

[170]LeBel and Chao, 'The rise of international law in Canadian constitutional litigation'. Note that an unincorporated treaty can have some 'legal effects' in a dualist system. See Buergenthal, 'Self-executing and non-self-executing treaties in national and international law'.

[171]Note, however, the fact that several national governments in EU member states (e.g. Hungary and Slovakia) are now controlled by political parties that are openly challenging the primacy of EU law and European institutions, and that several right-wing populist parties across Europe are enjoying electoral successes, combining xenophobic and anti-Brussels rhetoric, which might suggest that TLP could, in certain cases, undermine a sense of we-feeling. This potential 'undermining effect', which could be another line of inquiry (negative cases), is ultimately an empirical question and should be considered on a case-by-case basis.

[172]Zartner, 'Internalization of international law', p. 8.

### *Institutional similarity between domestic and international law*

Institutional similarity between domestic law and IL can also play an important role in facilitating or hindering the legal internalisation of regional treaties[173] and, therefore, affect the development of a PSC. Indeed, several works support the conjecture that states where there is institutional similarity between the structures of domestic law and IL are more prone to negotiate and accept IL as valid and binding.[174] For instance, Powell and Weigand showed that domestic legal systems influence states' choices of peaceful dispute resolution methods.[175] They noted that 'in order to increase familiarity with rules of peaceful resolution of disputes, states use their domestic legal systems to provide them with clues about the most trustworthy ways to settle disputes, and they tend to choose methods of dispute resolution that are similar to those embedded in their domestic legal systems'.[176] Similarly, insisting on the role of legal traditions[177] in states' preferences towards the legal design of international courts, Mitchell and Powell argued that a state's internal laws largely determine how states negotiate, draft, interpret, and internalise international commitments.[178] Specifically in states where the judicial branch has substantive power to make and interpret law – common law tradition – the internalisation of IL can be hindered because the judiciary at the international level is not responsible for lawmaking, only law application.[179] Thus, states like the United States which follow the rule of precedent (*stare decisis*) may have greater difficulty internalising IL than states like France – in the civil law tradition – which do not adhere to this rule, because IL does not formally adhere to the doctrine of precedent the way common law systems do, aligning more closely with civil law traditions.[180]

These observations provide us with a basis for addressing or predicting the legalisation of PSCs at the systemic level. Indeed, based on the degree of formalism and the features of domestic legal systems, one can distinguish several dyads at the international level, notably civil law, common law, and Islamic law.[181] As Powell and Weigand showed,[182] civil law dyads prefer more legalised dispute resolution methods, since civil law tradition promotes a high formalism and strict interpretation of legal rules and principles. Also appealing to civil law dyads is the fact that international adjudication entails judicial decision-making within a well-defined framework of IL. Common law dyads, on the other hand, prefer less legalised methods – that is, 'softer forms of legalization'[183] – since

[173] As Mitchell and Powell observed, this factor has received less attention in the rational design literature, which points to a variety of factors that may explain the rich variation in the design and depth of cooperation in states' international commitments. See Mitchell and Powell, *Domestic Law Goes Global*, p. 164.

[174] Zartner, 'Internalization of international law', p. 9; Mitchell and Powell, *Domestic Law Goes Global*, p. 164; Zartner Falstrom, 'Thought versus action'; Emilia Justyna Powell and Krista E. Wiegand, 'Legal systems and peaceful attempts to resolve territorial disputes', *Conflict Management and Peace Science*, 27:2 (2010), pp. 129–51.

[175] Powell and Weigand, 'Legal systems and peaceful attempts to resolve territorial disputes'.

[176] Ibid., p. 129.

[177] Legal tradition refers to 'a set of deeply rooted, historically conditioned attitudes about the nature of law, the role of law in the society and the polity, and the proper organization and operation of a legal system'. Zartner Falstrom, 'Thought versus action', p. 342; William Tetley, 'Mixed jurisdictions: Common law v. civil law (codified and uncodified)', *Louisiana Law Review*, 60:3 (2000), pp. 676–738.

[178] Mitchell and Powell, *Domestic Law Goes Global*, pp. 225–7.

[179] Zartner, 'Internalization of international law', p. 9. Note, however, that international courts have an increasingly important role in developing the law. Moreover, the difficulties in internalising IL in some common law states may have less to do with the institutional setting of IL lawmaking (treaty vs custom vs courts), than with the particularities of the domestic legal system.

[180] Zartner, 'Internalization of international law', p. 9; Zartner Falstrom, 'Thought versus action', pp. 357–8; Jouannet, 'French and American perspectives on international law'.

[181] Other dyads may include civil/common law, civil/Islamic law, or common/Islamic law, but civil law, common law, and Islamic law are the three major domestic legal traditions across the world. See Mitchell and Powell, *Domestic Law Goes Global*, pp. 20–67. In addition to the sources of law themselves, the actual methods of interpretation influence the way in which a state approaches IL. Modes of legal reasoning include formal versus pragmatic, deductive versus inductive, and abstract versus contextual. These different modes provide different methods of interpretation and application of the law. Zartner Falstrom, 'Thought versus action', p. 357.

[182] Powell and Weigand, 'Legal systems and peaceful attempts to resolve territorial disputes', pp. 129, 137–8.

[183] Abbott et al., 'The concept of legalization'.

interpretation of rules and principles in this system entails a free and dynamic process. Common law dyads especially prefer negotiations and non-binding third-party methods ('low delegation'), since all of these involve relatively flexible mechanisms. Finally, 'Islamic law dyads prefer nonbinding third party because Islamic law embraces simple reconciliation between the contestants guided by an insider (*the qadi*) and speaks against formalized adjudication'.[184]

Clearly, the legalisation of PSCs may vary at the systemic level depending on the participating states' legal systems and traditions. This is because 'Domestic law influences not only the willingness of states to utilize legalized dispute resolution methods in world politics but also delineates the strategies that states will be most comfortable employing on the international scene'.[185] If it is correct that states often choose binding arbitration and adjudication as effective means of solving disputes peacefully,[186] then there should be no a priori reason to presume that a security community which relies heavily on enforcement mechanisms is not a security community.[187] After all, what characterises a security community is *the peaceful resolution* of conflicts among its members – that is, 'peaceful change'.[188] Of course, Adler and Barnett conceived of collective identification as one of the two 'necessary conditions of dependable expectations of peaceful change', the other condition being trust.[189] But as Pouliot has shown, collective identification is not a necessary condition for pacification. Peace can exist as a social fact when (non-coercive) diplomacy becomes the self-evident practice among security elites to solve interstate disputes.[190] Importantly, as mentioned above, when we talk of peaceful change, we should not be concerned only with interstate disputes, but equally with large-scale physical violence within domestic systems.

## Regional norms, legal focal points, and security communities

To understand how regional norms contribute to maintaining reasonable expectations of peaceful change at the transnational mass level, it seems more appropriate to focus on a different but complementary logic of strategic interaction, that is, *coordination*.[191] Coordination is pervasive in PSCs. States as well as millions of individuals need to coordinate their behaviour and expectations in order to reach an equilibrium – peaceful change – in mixed-motive and (tacit) bargaining games involving multiple equilibria. In other words, several different outcomes are rationally possible in these games, but actors' expectations must converge towards a particular outcome. The strategic problem, therefore, is selecting one means of coordinating among many, capable of creating, aligning, and maintaining actors' expectations of peaceful change.

Decades ago, Schelling suggested that, in exactly these sorts of situations, certain 'solutions' stand out from the others as the sort that will attract the attention of the players. He called these

[184] See also Mitchell and Powell, *Domestic Law Goes Global*.

[185] Mitchell and Powell, *Domestic Law Goes Global*, pp. 226–7.

[186] Stephen E. Gent and Megan Shannon, 'Decision control and the pursuit of binding conflict management: Choosing the ties that bind', *Journal of Conflict Resolution*, 55:5 (2011), pp. 710–34 (p. 711); Paul K. Huth, Sarah E. Croco, and Benjamin J. Appel, 'Does international law promote the peaceful settlement of international disputes? Evidence from the study of territorial conflicts since 1945', *American Political Science Review*, 105:2 (2011), pp. 415–36; David B. Carter, Rachel L. Wellhausen, and Paul K. Huth, 'International law, territorial disputes, and foreign direct investment', *International Studies Quarterly*, 63:1 (2019), pp. 58–71. Also see Powell and Weigand, 'Legal systems and peaceful attempts to resolve territorial disputes'.

[187] Adler and Barnett, 'A framework for the study of security communities', p. 35.

[188] Vincent Pouliot 'The Alive and Well Transatlantic Security Community: A Theoretical Reply to Michael Cox', *European Journal of International Relations* 12:1 (2006), pp. 119–127 (p. 120); Deutsch et al., *Political Community and the North Atlantic Area*, p. 5.

[189] Adler and Barnett, 'A framework for the study of security communities', p. 38.

[190] Pouliot, 'Pacification without collective identification', p. 605.

[191] On substantial areas of agreements and complementarities between rationalism and constructivism in IR theory, see James Fearon and Alexander Wendt, 'Rationalism v. constructivism: A skeptical view', in Walter Carlnaes, Thomas Risse, and Beth A. Simmons (eds), *Handbook of International Relations* (Sage: London, 2002), chapter 3.

special solutions *focal points*, which he defined as everything that is salient. For example, a pattern of behaviour, a strategy, an outcome, anything that leads the players to perceive an outcome as the solution of the game.[192] Focal points, from this perspective, help solve coordination and distribution problems by providing ways for actors to 'coordinate their expectations'. Specifically, they first *allow* coordination by making actors' expectations converge on a specific solution and, second, *maintain* coordination by reinforcing the coherence of individual expectations regarding everybody else's behaviour.[193] The identification or emergence of focal points is particularly important in 'tacit bargaining',[194] which happens within security communities – on a vast scale, as among millions of citizens who cannot possibly all talk to each other, and on a small scale, as among regional leaders who cannot say or communicate everything they might wish. Because it is impossible to explicitly coordinate action in such situations, the implicit appeal of focal points – that is, 'tacit coordination'[195] – becomes decisively important.[196]

Recently, drawing on the insights of Schelling and others, several scholars have shown that law can serve as a legal focal point or help construct legal focal points through regulation, arbitration, or adjudication, both at the international and domestic levels.[197] Building on these empirical findings, the remainder of this section briefly discusses the role of regional norms as legal focal points, explaining how a transnational legal process can enhance expectations of peaceful change and strengthens a security community. The point here is not to be exhaustive,[198] but rather to draw attention to the untapped potential of IL in better understanding how reasonable expectations of

[192]Thomas Schelling, *The Strategy of Conflict* (Cambridge, MA: Harvard University Press, 1980 [1960]), pp. 57, 70; see also McAdams, 'A focal point theory of expressive law', p. 1659.

[193]Lauren Larrouy and Guilhem Lecouteux, 'Choosing in a large world: The role of focal points as a mindshaping device', available at: GREDEG Working Papers 2018-29, p. 15; Richard H. McAdams and Janice Nadler, 'Testing the focal point theory of legal compliance: The effect of third-party expression in an experimental hawk/dove game', *Journal of Empirical Legal Studies*, 2:1 (2005), pp. 87–124; Richard H. McAdams and Janice Nadler, 'Coordinating in the shadow of the law: Two contextualized tests of the focal point theory of legal compliance', *Law & Society Review*, 42:4 (2008), pp. 865–98.

[194]Tacit bargaining refers to a 'game' in which communication is incomplete or impossible. Cf. Schelling (1980 [1960]), p. 53.

[195]Tacit coordination arises when parties attempt to imagine what the other is thinking about how to solve the problem. Schelling (1980 [1960]), p. 71; McAdams, 'A focal point theory of expressive law', p. 1659.

[196]Richard Jordan, 'Lessons from game theory about humanizing next-generations weapons', *Penn State Journal of Law & International Affairs*, 7:3 (2020), pp. 1–34.

[197]See, e.g., McAdams, 'The expressive power of adjudication'; McAdams and Nadler, 'Testing the focal point theory of legal compliance'; 'Coordinating in the shadow of the law'; Galbiati and Vertorva, 'How laws affect behavior'; Tom Ginsburg and Richard H. McAdams, 'Adjudicating in anarchy: An expressive theory of international dispute resolution', *William and Mary Law Review*, 45:4 (2004), pp. 1229–339; Alyssa K. Prorok and Paul K. Huth, 'International law and the consolidation of peace following territorial changes', *Journal of Politics*, 77:1 (2015), pp. 161–74; David B. Carter and Heine E. Goemans, 'The making of the territorial order: New borders and the emergence of interstate conflict', *International Organization*, 65:2 (2011), pp. 275–310; Gillian K. Hadfield and Barry R. Weingast, 'What is law? A coordination model of the characteristics of legal order', *Journal of Legal Analysis*, 4:2 (2012), pp. 471–514; Carter et al., 'International law, territorial disputes, and foreign direct investment'; Huth et al., 'Does international law promote the peaceful settlement of international disputes?'; Paul K. Huth, Sarah E. Croco, and Benjamin J. Appel, 'Law and the use of force in world politics: The varied effects of law on the exercise of military power in territorial disputes', *International Studies Quarterly*, 56:1 (2012), pp. 17–31; Paul K. Huth, Sarah E. Croco, and Benjamin J. Appel, 'Bringing law to the table: Legal claims, focal points, and the settlement of territorial disputes since 1945', *American Journal of Political Science*, 57:1 (2013), pp. 90–103; Jordan, Lessons from game theory about humanizing next-generations weapons'.

[198]Consistent with the above arguments, note that law can also serve in various forms, for example, as a 'third-party communication', for constructing legal focal points. For instance, when two parties disagree about conventions, such as a convention of deferring to territorial claims of first possessors, the pronouncements of third-party legal decision makers – adjudicators – can influence their behaviour in two ways. First, adjudicative expression constructs focal points that clarify ambiguities in the convention. Second, adjudicative expression provides signals that cause parties to update their beliefs about the facts that determine how the convention applies. See Ginsburg and McAdams, 'Adjudicating in anarchy', pp. 1229–30. The same is true in domestic legal systems. See McAdams, 'A focal point theory of expressive law', p. 1663; 'The expressive power of adjudication'; McAdams and Nadler,'Testing the focal point theory of legal compliance'; 'Coordinating in the shadow of the law'.

peaceful change emerge and are held not only at the systemic or state elite level, but equally at the domestic mass level.

### *At the systemic level*

Consider as an example the case of territorial disputes. Empirical evidence suggests that regional norms can serve as legal focal points in such situations if the legal principles relevant to the dispute are clear and well established,[199] and if one of the states in the dispute has a stronger legal claim to the disputed territory.[200] Of course, this presupposes that IL and legal principles are 'common knowledge' among states – having been established through either formal means (e.g. treaties, agreements, court rulings) or less formal means (e.g. customary IL, writings of legal scholars) – and that IL provides a common set of standards to assess the relative merits of competing claims.[201] As Huth et al. observed, this latter feature of IL is particularly important for resolving distribution problems because it provides a means of identifying which of the many potential ways to divide the contested territory the leaders should choose.[202] To be sure,

> By narrowing the bargaining range, the focal point solves both coordination and distribution problems by identifying which of the many possible settlements to start with. It also makes negotiations more efficient by discouraging parties from offering terms their adversaries would reject with certainty. Consequently, even though the existence of a distribution problem necessarily implies that parties have divergent preferences regarding the settlement terms, a focal point that identifies a single solution to the dispute can affect leader behavior.[203]

It follows that the emergence or identification of a regional legal focal point can significantly increase the probability that two neighbours will peacefully settle their dispute through negotiations or adjudication.[204] As an empirical illustration,[205] take the territorial dispute between Peru and Ecuador, settled in 1998, in which a legal focal point that favoured Peru was identified.[206] As Carter et al. reported:

> Argentina, Brazil, and Chile (the 'ABC' powers) all made it clear that [IL] favored Peru. … In particular, and consistent with the legal focal point that favored Peru, the United States and the ABC regional powers conveyed to Ecuador the need for a settlement based on the 1942 Rio Protocol … As mediators of the dispute, the weight of the ABC states' united interpretation … reinforced the movement toward peace. In a 1998 letter to the editor of the *Wall Street Journal*, Ecuador's ambassador to the United States was confident enough to call the state a 'peaceful

[199] An example of a clear and well-established legal principle in the context of territorial disputes is the thalweg, which is the legal notion that a boundary line should lie in the centre of the main navigable channel of the river. As Huth et al. indicated, this general principle is both well known and clearly understood by leaders because customary state practice has used the thalweg as a guide to establishing river boundaries for hundreds of years. Cf. Huth et al., 'Does international law promote the peaceful settlement of international disputes?', p. 421. By establishing a clear focal point, the thalweg helps leaders solve distribution problems. See also Huth et al., 'Bringing law to the table'.

[200] See Huth et al., 'Bringing law to the table', p. 90; Huth et al., 'Does international law promote the peaceful settlement of international disputes?', p. 415; Prorok and Huth, 'International law and the consolidation of peace following territorial changes'; Carter et al., 'International law, territorial disputes, and foreign direct investment'.

[201] Huth et al., 'Does international law promote the peaceful settlement of international disputes?', p. 420; 'Bringing law to the table'. Also see Huth et al., 'Law and the use of force in world politics'.

[202] Huth et al., 'Does international law promote the peaceful settlement of international disputes?', p. 420.

[203] Huth et al., 'Bringing law to the table', p. 93.

[204] Huth et al., 'Law and the use of force in world politics'; Ginsburg and McAdams, 'Adjudicating in anarchy'.

[205] Other notable example includes *the Gabčíkovo-Nagymaros Project case* between Hungary and Slovakia in 1993. Also see *the Beagle Channel Arbitration* between Argentina and Chile in 1977, even though Argentina initially rejected the ruling.

[206] Carter et al., 'International law, territorial disputes, and foreign direct investment', p. 59.

> island in the continent' and to tout Ecuador's deepening economic integration – even though a settlement was only just appearing on the horizon.[207]

Overall, this suggests that at the systemic level, regional norms help solve coordination and distribution problems between member states of a PSC. By providing a common legal framework and facilitating the identification of legal focal points, they contribute to (1) fostering effective cooperation and coordination, ensuring that all parties have a 'common knowledge'; (2) promoting consistency in legal interpretations and applications, reducing misunderstandings and the likelihood of large-scale physical violence; (3) enhancing confidence and trust, strengthening the belief in mutual security and peaceful change; (4) and fostering stable and predictable interactions, leading to a more cohesive and resilient interstate community.

#### *At the domestic level*

Recall that, once internalised into domestic legal systems, regional norms become part of domestic laws.[208] According to 'the constitutive theory of law', law helps structure the most routine practices of social life by either eliciting compliance or generating acts of resistance.[209] In most instances, it also provides the framework for legitimate discourse and action and defines what are to be considered legitimate needs, claims, and aspirations, circumscribing the array of legitimate means for their satisfaction and fulfilment.[210] Finally, by imposing constraints and affording opportunities for individual and collective action, domestic laws, in all these ways, become part of the 'reality' within which social actors must live their lives and coordinate their behaviours.[211]

This suggests that norm internalisation in domestic legal systems is critical in the context of security community-building for several reasons:

*Consistency and coherence*: When domestic laws align with regional norms and principles, it ensures consistency and coherence across member states. This alignment not only helps create a harmonised approach to security issues but also fosters mutual trust and cooperation. *Commitment to shared values*: By internalising norms, states demonstrate their commitment to shared principles. This commitment strengthens the collective identity of the community, while also reinforcing the belief in mutual security and peaceful change. *Effective implementation*: Internalised norms are more likely to be effectively implemented and adhered to by the population and institutions within a member state (at least in highly democratic countries). *Conflict resolution*: Internalised norms provide a framework for resolving disputes that may arise within the region. Having a common legal framework allows for more effective and consistent conflict resolution, maintaining stability and cohesion within the community. *Building trust*: By internalising norms that reflect regional needs and values, states demonstrate their reliability and commitment to a shared security agenda. This helps build and reinforce trust among community member, facilitating more effective cooperation, coordination, and collaboration in addressing security challenges at the transnational level. *Transnational impact*: When states integrate community's norms into their domestic legal systems, it sets a precedent and encourages other states to follow suit, contributing to the broader diffusion of these norms and strengthening the overall regional security community.

[207] Ibid.

[208] Of course, knowledge of law, like knowledge of anything else, is a matter of degree, but note that in domestic systems, legal norms are considered to being 'common knowledge' – in principle at least. Cf. Friedman and Hayden, *American Law*, p. 208; also see McAdams and Nadler, 'Testing the focal point theory of legal compliance'.

[209] Efrén Rivera Ramos, *The Legal Construction of Identity: The Judicial and Social Legacy of American Colonialism in Puerto Rico* (Washington: American Psychological Association, 2001); Austin Sarat and Thomas R. Kearns (eds), *Law in Everyday Life* (Ann Arbor: University of Michigan Press, 1995); Bourdieu, 'The force of law'.

[210] Ramos, *The Legal Construction of Identity*, p. 21; Tyler, *Why People Obey the Law?*; Friedman and Hayden, *American Law*.

[211] Ramos, *The Legal Construction of Identity*, p. 21; Sarat and Kearns, *Law in Everyday Life*.

Several legal scholars have shown that where there are multiple self-enforcing coordination equilibria, law can serve as a focal point institution to deliberately select an equilibrium.[212] For example, taking the case of a property dispute, McAdams[213] and Myerson[214] argued that 'a rule that deemed the immediate possessor of a piece of property to be its rightful owner can coordinate the strategies of rival claimants so as to avoid wasteful contests over the property. If both claimants expect the other to apply the concept of "rightful" ownership, then the "rightful" owner will rationally claim and the other will rationally recede.'[215] Similarly, in testing 'the focal point theory of legal compliance', McAdams and Nadler demonstrated that, in certain circumstances, domestic laws generate compliance not only by sanctions and legitimacy, but also by facilitating coordination around a focal outcome.[216]

### *At the transnational mass level*

Suppose that states A, B, C, and D in region X agree to a customary norm among themselves, such as to prohibit arms sales to rebels operating in the region. At some point, rebels start fighting the government in A. An arms dealer in B sends arms to the rebels in A. State A complains to state B, which triggers a transnational legal process. State B (or some other actor) initiates actions to domesticate the customary norm prohibiting arms sales and enforce it against the arms dealer. As a result of this legal process, the flow of arms stops. Achieving this outcome through a domestic legal process would, in turn, enhance expectations of peaceful change and strengthen the regional security community.

Note that the fact pattern above involves three discrete steps, namely the creation of a regional customary norm; the initiation of a legal process resulting in the successful incorporation and implementation of that norm in one of the members of the security community; and the outcome of the domestic proceedings in one state serving to enhance confidence and intersubjective understandings among the members of the security community. This suggests that domestic laws can significantly influence security community-building dynamics notably through compliance and enforcement,[217] fostering or facilitating the emergence of mutual trust,[218] collective identity,[219] and practical understandings[220] at the transnational societal level.

Overall, the connection between legal focal points, TLPs, and peaceful change in PSCs unfolds through a dynamic, iterative process:

[212]Hadfield and Weingast, 'What is law?', p. 503; McAdams, 'A focal point theory of expressive law'; 'The expressive power of adjudication'; McAdams and Nadler, 'Testing the focal point theory of legal compliance'; 'Coordinating in the shadow of the law'); Roger B. Myerson, 'Justice, institutions, and multiple equilibria', *Chicago Journal of International Law*, 5:1 (2004), pp. 91–107.

[213]McAdams, 'The expressive power of adjudication'.

[214]Myerson, 'Justice, institutions, and multiple equilibria'.

[215]See also Hadfield and Weingast, 'What is law?', p. 503.

[216]McAdams and Nadler, 'Testing the focal point theory of legal compliance', p. 87; McAdams and Nadler, 'Coordinating in the shadow of the law', p. 866.

[217]Other mechanisms through which domestic law might influence security community dynamics include legal harmonisation (essential for the peaceful resolution of conflicts within states and across states); standardisation of the implementation of security policies and practices within a region; capacity building within member states by providing legal frameworks for training, resource allocation, and institutional strengthening; information sharing; accountability and transparency; and legal adaptation. See Roger Cotterrell, *Law's Community: Legal Theory in Sociological Perspective* (Oxford: Clarendon Press, 1995); Filiz Kahraman, Nikhil Kalyanpur, and Abraham L. Newman, 'Domestic courts, transnational law, and international order', *European Journal of International Relations*, 26:1 (2020), pp. 184–208; Andrew P. Cortell and James W. Davis, Jr., 'Understanding the domestic impact of international norms: A research agenda', *International Studies Review*, 2:1 (2000), pp. 65–87; Shaffer, 'Transnational legal process and state change'; Ramos, *The Legal Construction of Identity*.

[218]Deutsch et al., *Political Community and the North Atlantic Area*.

[219]Adler and Barnett, *Security Communities*.

[220]Pouliot, 'The logic of practicality'.

1. *Defining or establishing legal focal points*: legal focal points – such as shared norms, principles, or institutions – are defined, identified, or established to address coordination and distribution problems. These focal points provide a common framework that guides the behaviour and expectations of both public and private actors within the security community.
2. *Operationalising through TLPs*: legal focal points are embedded in TLPs, which involve interactions between state and non-state actors across borders to create, interpret, and enforce regional law. TLPs promote the diffusion of legal norms across states, shaping both domestic and regional legal frameworks. They also help to institutionalise peaceful mechanisms for resolving disputes, ensuring that legal systems evolve to support stability.
3. *Norm internalisation and trust-building*: through repeated engagement in TLPs, actors internalise the norms represented by legal focal points. This internalisation fosters trust and predictability, reducing the likelihood of conflicts escalating into large-scale physical violence.
4. *Conflict resolution and adaptive mechanisms*: the shared legal framework, established by focal points, enables the peaceful resolution of disputes. Over time, these processes adapt to emerging challenges, ensuring the continued relevance and effectiveness of the regional legal system.
5. *Strengthening PSCs*: as trust and cooperation deepen, the security community becomes more cohesive. Shared legal norms and TLPs contribute to fostering stable expectations of peaceful change at the transnational mass level.

## Conclusion

In this article, I made a case for an interdisciplinary turn in the study of PSCs in four steps. First, I argued that the three main theoretical approaches of PSCs – namely transactional, constructivist, and practice theory – all suffer from a similar bias in that they overlook the TLP at the heart of PSCs. Second, taking the level-of-analysis problem seriously, including the norm generation process which remains to be targeted more systematically, I suggested a definition and conceptualisation of regional norms. Empirical evidence[221] suggests that PSCs could benefit from a more refined approach about bottom-up norm generation. Third, I discussed the legal internalisation of regional norms, pointing out legal and judicial factors that can facilitate or hinder the process and therefore affect the development of a security community. As we have seen, in addition to helping broaden the ontology of PSCs, understanding the legal internalisation of regional norms can be useful in explaining variations not only within a PSC, but also across PSCs. It can also be helpful in addressing or predicting a wide range of systemic issues, including variations in the level of legalisation of PSCs. Fourth, in addition to explaining how domestic law can influence security community-building dynamics, I argued that regional norms, once internalised into domestic legal systems, can serve as legal focal points (or help construct/identify legal focal points) around which individuals as well as states of a given region coordinate their behaviour and expectations. By helping to solve coordination and distribution problems *within* states, *between* states, and *beyond* states, they contribute to maintaining reasonable and stable expectations of peaceful change at the transnational societal level.

All in all, PSCs' scholars should not ignore the potential of IL. As the above shows, it is only by combining the two disciplines that one can provide a full picture of the development of PSCs. Taking the IL literature seriously not only suggests a myriad of new and important research questions but also fosters the much-needed interdisciplinary dialogue in the study of PSCs.

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[221] See Bassamagne Mougnok, 'The codification of Inter-American drug law'; 'Puissances moyennes'.

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