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SOLIDARITY IN INTERNATIONAL LAW

CHALLENGES, OPPORTUNITIES AND THE ROLE OF REGIONAL ORGANIZATIONS

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Chapter 1

INTRODUCTION. SOLIDARITY: TRADITIONAL INTERNATIONAL LAW VS. MODERN INTERNATIONAL LAW AND UNIVERSAL INTERNATIONAL LAW VS. LAW OF REGIONAL ORGANIZATIONS

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ABSTRACT: This opening chapter illustrates the aim of the book by detailing its topic. It approaches solidarity from a legal perspective, defines the research question and explains the methodology of the study. Furthermore, it provides an overview of the book's structure and briefly introduces the other chapters.

KEYWORDS: Solidarity, international law, regional organizations, EU law.

SUMMARY: 1.1. The concept of solidarity. – 1.2. International law and solidarity in the historical evolution of the international community. – 1.3. Research question and methodology. – 1.4. Plan of the book.

1.1. The concept of solidarity

How do we define “solidarity”? Generally speaking, the meaning of solidarity is complex. A convenient starting point is the derivation of the English word “solidarity” from the Latin adjective “*solidus*” which means “strong and firm structure”. It has been suggested that “*in this context [it] means not only an objective but also a basis for a moral attitude*”.¹

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¹ In this sense see B. Beutler, ‘Solidarity in the EU: A Critique of Solidarity and of the EU’, in A. Grimm, S. My Giang (eds), *Solidarity in the European Union. A Fundamental Value in Crisis* (Springer 2017) 24.

Distinguished scholars of social studies, of diverse disciplines and research strands, have actually defined and written at length about solidarity, also in very different contexts.² The notion is consequently debated, having been conceived in different ways by many competitive theories.

Stjernø argues that “*Solidarity is sometimes used as a nebulous concept that is not defined at all*”³ and that in various strands of solidarity there is a “*high degree of variation within each variable and that each combination changes the meaning of the concept being studied*”.⁴

Moreover, many assimilate solidarity to other, similar although different concepts⁵ such as brotherhood, charity, empathy, compassion, help or care.

Although solidarity shares its historical roots with these notions,⁶ it is not such a well-defined concept and creates problems of interpretation. Indeed, the notion of solidarity is undetermined. It is the only one among these concepts which can: be either institutionalized or voluntary; have conditionality attached to it or not; require reciprocity or not; have both intrinsic or extrinsic motivation; imply a risk of moral hazard or not; require shared norms, rights and obligations and same group identity or not.

In addition, even if all these concepts imply the “*preparedness to share resources with the others*”,⁷ the peculiarity of solidarity is that it requires inclusiveness⁸ and assumes the existence of a perceived “*community*”, of a “*common identity, forged through shared social and cultural experiences, and institutional and political bonds*”.⁹

² Although it has been argued that solidarity “*has seldom been the object of an elaborated theory*”; K. Bayertz, *Solidarity* (Kluwer Academic Publishers 1999) 3.

³ S. Stjernø, *Solidarity in Europe: The History of an Idea* (Cambridge University Press 2005) 2.

⁴ *Ibid.*, 89.

⁵ A. Sangiovanni, ‘Solidarity as Joint Action’ (2005), 32 *Journal of Applied Philosophy*, 340-59.

⁶ H. Brunkhorst, *Solidarity: From Civic Friendship to a Global Legal Community* (MIT Press 2005). In particular, the relationship between fraternity and solidarity in (French) law is the subject of a book by M. Borgetto, *La notion de fraternité en droit public français. Le passé, le présent et l’avenir de la solidarité* (L.G.D.J. 1993).

⁷ Stjernø (fn 3) 326.

⁸ “*all the concepts studied point to two necessary values, that an individual should identify with others, to some degree, and that a feeling of community should exist between the individual and (at least some) others, and as a consequence it can be argued that all these ideas of solidarity imply some sort of inclusiveness*”; *ibid.*, 88-89.

⁹ M. Dougan, E. Spaventa, ‘Wish You Weren’t Here... New Models of Social Solidarity in the European Union’, in M. Dougan, E. Spaventa (eds), *Social Welfare and EU Law* (Hart 2005) 185. It has been highlighted that: “*The phenomenon of group loyalty and sharing resources existed long before the idea of solidarity developed. The core social units of pre-*

Another peculiarity is that acts of solidarity are not purely individual acts of help and care, given that they must be part of mutual relations of support. Solidarity is not just an individual phenomenon: it is an interpersonal relation based on obligations (to help others) and correspondent rights (to be helped by others).

On the other hand, the difference between solidarity and notions such as camaraderie, community, association, and other social groupings resides in the positive moral duties which it entails.¹⁰

A comprehensive scientific elaboration of the concept of solidarity, based on sociological facts, owes much to the classic book “*De la division du travail social*” by Emile Durkheim.¹¹ Although many other scholars came after the French sociologist, it is undeniable that the latter has been very influential in defining the idea of solidarity in classic social theory. Notwithstanding the following experience and concept of the disruptive stages of developments, his book can still be considered as a guidance.

Durkheim makes a clear distinction between two different kinds of solidarity, which he calls respectively “mechanic” and “organic”.

“Mechanic” solidarity has intrinsic motivations and comes to life under specific existing conditions. Namely when, within a community, living conditions are similar, beliefs and – as a consequence – norms are shared, culture and religion are common, and labor division is not too specialized. This kind of solidarity is aimed at reducing any inequality among different subjects at the beginning. It is generally less binding than organic solidarity and tends to decrease with social evolution.¹²

The source of solidarity is the sameness of the subjects who compose it, who are alike and think alike.

capitalist society were the family and the extended family. Ties of kinship were the basis for reciprocal loyalty, constituting specific duties and moral obligations. Moral norms required family members to help each other, remain together and defend each other against external threats and hazards. Outside the bounds of family in feudal society, peasants would help one another in the fields or when building houses. In some countries during the nineteenth century peasant solidarity developed a sophisticated cooperative movement that protected against the hazards of life and the growth of a market economy. Craftsmen established guilds that controlled the recruitment of apprentices, organised education and established security funds for their members. Neighbours sometimes helped one another with food and money, when untimely death disrupted the household economy. Help with funeral expenses and looking after the neighbours' children, were not uncommon practices... Historically speaking, the phenomenon of solidarity existed before the idea was formulated”; Stjernø (fn 3) 25.

¹⁰ The traits that distinguish solidarity from the other concepts mentioned are explored by S.J. Scholz, *Political Solidarity* (Penn State University Press 2008).

¹¹ E. Durkheim, *De la division du travail social* (Quadrige/Presses Universitaires de France 1930). It has been argued that Durkheim's book is “*The most famous and probably the most cited work in classic sociology on solidarity*”; Stjernø (fn 3) 33.

¹² *Ibid.*, 124 ff.

In contrast, “organic” solidarity has extrinsic motivations. It is typical of more differentiated and wider communities, in which beliefs, norms and behaviors are different, a rather individualistic approach is followed, and the division of labor is better defined.¹³ This kind of solidarity is supported by awareness of mutual benefits of free exchange between participants.

The specific aspect of Durkheim’s theory that has been considered “*in-
genious*”¹⁴ is that he distinguishes between primitive and modern societies and considers the former an ideal milieu for mechanic solidarity and the latter one for organic solidarity.¹⁵

In order to understand why solidarity in traditional societies is mechanic, one has to consider that individuals (or their families) are much more independent than in more recent societies. They are able to survive departure from the original society initiating their own society, by hunting or farming a field by themselves. Their independence is a consequence of the lack of significant differences with the other individuals of the same society.¹⁶ Paradoxically, this absence of individuality favors individualism. In this framework, solidarity can only develop insofar as the ideas and tendencies common to all members of society exceed in number and intensity those that belong personally to each individual. Solidarity deriving from resemblances is at its maximum when individual personality is absorbed into collective personality. There are two opposing forces here, one centripetal, the other centrifugal, which cannot grow at the same time. The reason why Durkheim chooses to call this kind of solidarity “mechanic” is not because it is produced artificially, by mechanical means, but because in this context the social molecules could therefore move with the whole only insofar as they do not have their own movements, as do the molecules of inorganic bodies. Thus, the link that unites the individual to society is “mechanic”, being quite similar to the one linking a thing to a person.¹⁷

¹³ Actually, Durkheim calls this kind of solidarity “*Solidarité due à la division du travail ou organique*”; *ibid.*

¹⁴ See U. Steinworth, ‘Applying the Idea of Solidarity to Europe’, in Grimmel and My Giang (fn 1) 11.

¹⁵ It has been observed that “*The Division of Labour in Society was published between the publication of the two first volumes of Das Kapital by Karl Marx, and Durkheim saw the difference between the old and the present and future structure of solidarity in what he called an organic solidarity as emerging in an ever more complex society*”; B. Beutler (fn 1) 24.

¹⁶ Durkheim argues strongly that “*Plus le sociétés sont primitives, plus il y a des ressemblances entre les individus dont elles sont formées*”, giving plenty of examples demonstrating this and concluding that “*Nous pouvons donc être assurés que, plus on recule dans l’histoire, plus l’homogénéité est grande*”; Durkheim (fn 11) 103-108.

¹⁷ *Ibid.*, 99 and 100.

Conversely, organic solidarity (or solidarity due to the division of labor) implies that individuals are different from each other, in living conditions, culture and ideology. In fact, on the one hand, the more labor is divided the more everyone depends closely on society and, on the other hand, the more everyone's activity is specialized the more personal it is. A complex division of labor, as the one typical of modern societies, requires individuals to develop specific characteristics in order to perform specialized work. As a consequence, they are not able to depart from their society without causing damage to themselves and to society because occupational differences create a complex interdependence between the activities of different producers. Their individuality favors mutual dependence created by the increased division of labor and specialization (and not by tradition and common values as in mechanic solidarity). Indeed, this increased division of labor creates social differentiation and reduces the space available for common consciousness, while at the same time increasing the space available for individual consciousness. That is the reason why they need solidarity. This kind of solidarity is required in complex societies to create and guarantee the necessary cohesion.¹⁸ As an example of this, Durkheim mentions guilds.

This specific solidarity is called "organic" because it resembles that observed in higher animals. Each organ, in fact, has its special physiognomy, its autonomy, and yet the organism as a whole is more evolved when this individuation of the parts is more marked.¹⁹ As highlighted by Steinvorth, "*Durkheim succeeded in proving that both the idea of individual liberty and the idea of solidarity are required in a liberal society*".²⁰

The common element between the two kinds of solidarity is the role played by social interaction:²¹ both require it and depend on it, in the sense

¹⁸ *Ibid.*, 100 and 101.

¹⁹ It has been written that "*As the term 'organic' already indicates Durkheim had something evolutionary in mind, that nonetheless guarantees the cohesion of society by evolving the mutual interdependence between the individual and the society in their proper social context*"; Beutler (fn 1) 24.

²⁰ Steinvorth (fn 14) 11. The author follows explaining that: "*These ideas can seem incompatible because solidarity can require actions not required by justice. This is because justice requires me to compensate for damage D suffered by B only if I'm responsible for D, while solidarity requires me to help even if I am not responsible for D. This proof is important because, without individual liberty and responsibility, solidarity will degenerate into parasitism; yet, without solidarity, individual liberty will be defeated by authoritarianism, which will always prove stronger than any individual fighting alone for their liberty*".

²¹ The concept has to be understood in a broad sense, as "*social relationships and ties that bind individuals to groups, organisations and ultimately to society itself*"; S. Stjernø (fn 3) 35. The author argues also that: "*Durkheim is somewhat unclear about the relationship between mechanical solidarity in traditional society and organic solidarity in modern society. In some of his writings, he argues that the first simply disappears as a consequence of the in-*

that the intensity of solidarity is proportional to the intensity of social interaction.

In a book about solidarity in international law one cannot merely content oneself with the idea of solidarity in sociology, politics and religion; one should also wonder about solidarity as a legal concept.²²

Generally speaking, it has been suggested that solidarity as a legal concept has two components, a negative and a positive one. While negative solidarity is a mere response to certain danger or events, positive solidarity creates joint rights and obligations.²³

It seems appropriate to point out that this theoretical reconstruction distinguishes between solidarity which describes a *de facto* situation (called by the author negative solidarity) and (positive) solidarity which is focused on the legal, *de jure*, consequences of such a factual situation, i.e. on the subjective legal situations, both negative (obligations) and positive (rights) arising from a specific event. In other words, the second (or positive) component of solidarity transforms a simple notion into a legal principle. The first (or negative) component of solidarity is a descriptive one, while the second (or positive) one gives it a prescriptive or normative meaning.

Actually, the traditional use of the term “solidarity” in a legal context is a “negative” one, since it imposes obligations rather than rights: in ancient Roman law it characterized the liability of each member within a family or community to pay common debts as *obligatio in solidum*.²⁴

This was still true at the beginning of modern law. Although the idea of solidarity is encompassed in the French Revolution’s programmatic leitmotif “*Liberté, Égalité, Fraternité*” and specifically in the “*all-too-often neglected*”²⁵ revolutionary ideal of brotherhood, the concept of solidarity used in the *Code Napoléon* enacted in 1804 is still a negative one. According to its article 1200 “*Il y a solidarité de la part des débiteurs, lorsqu’ils*

creasing division of labour. At other times, when he argues in more detail, he maintains that the two forms of solidarity are, in fact, facets of the same social reality. Our common consciousness continues to exist in modern society, but it is a reduced entity. The advance of our individual consciousness has had this effect”; *ibid.*, 34.

²² References on this topic include: M. Hecquard-Théron (ed), *Solidarité(s). Perspectives juridiques* (Presses de l’Université de Toulouse 2009); A. Supiot (ed), *Solidarité. Enquête sur un principe juridique* (Odile Jacob 2015).

²³ K. Wellens, ‘Revisiting solidarity as a (re-)emerging constitutional principle: Some further reflections’, in R. Wolfrum, C. Kojima (eds), *Solidarity: A Structural Principle of International Law* (Springer 2010) 3-4.

²⁴ See Bayertz (fn 2) 3. Further information on solidarity in Roman law can be found in the chapter by Petrucci in this volume.

²⁵ In this sense M. Kotzur, ‘Solidarity as a Legal Concept’, in Grimmel, My Giang (fn 1) 40.

sont obligés à une même chose, de manière que chacun puisse être contraint pour la totalité, et que le paiement fait par un seul libère les autres envers le créancier".

The step forward, towards a legal concept of solidarity involving not only negative subjective legal situations (i.e. obligations) but also positive ones (rights) is due to the development of constitutional law and theory,²⁶ which "*have established some tradition to conceive solidarity as programme and/or principle*".²⁷

The point is that we do not even know if all this scholarly writing about solidarity is a sufficient starting point for a study of solidarity in international law. Find out if, how and to what extent Durkheim's and the other modern theories on solidarity mentioned above can find application in current international law is the challenge.

1.2. International law and solidarity in the historical evolution of the international community

The contemporary international community is commonly considered as the evolution of the international community born in the 16th century and crystallized in 1648, with the Peace of Westphalia.

If we consider the structure and configuration of this community during the first stage of its life (i.e., from the Peace of Westphalia to the end of the First World War), we can conclude that it was a primitive society. States were few (around forty at the beginning of the 20th century) and they shared beliefs and a common culture and religion, besides being much more independent from each other than they are nowadays.

Although some States – such as Ethiopia, Liberia, the Ottoman Empire, Persia, the Moghul Empire in India, China, Japan or Haiti – belonged to different cultural and religious areas, it is undeniable that the international community was basically composed of European States (joined by the U.S. in 1783 and Latin-American States in the second decade of the 19th century), which played the most prominent role. They had a common religion (Christianity) and, as a consequence, a common culture and ideological background. They shared the same political and economic ideology: in politics, absolutism first and parliamentary democracy more recently; in the economy liberalism and capitalism.

²⁶ Solidarity in constitutional law is discussed in the chapter by Catelani and Milazzo in this volume.

²⁷ Koztur (fn 25) 39.

Not surprisingly, their (traditional) international law represented a “*primitive legal systems where groups play a much greater role than individuals, responsibility for violations of the rules governing the behaviour of States does not fall upon the transgressor but on the group to which he or she belongs (the State community)*”.²⁸

The above was explicitly acknowledged by Hans Kelsen, who pointed out that collective responsibility is typical of rudimentary legal systems.²⁹

Following Durkheim’s teaching illustrated above, one might think that the traditional international community could have been a candidate for the implementation of mechanic solidarity, if any.

But, as mentioned, the international community in a sense is even worse than “normal” primitive societies, because it is not based on a strong integration of the subjects who compose them, from the point of view of social interrelations. On the contrary, it is basically non-integrated.³⁰

The consequence, at least from a theoretical point of view, is that the traditional international community seems to be far from being an ideal place for the development of solidarity.

That seems quite clear if one considers that the absence of integration among subjects of this primitive society (i.e. of States in the traditional international community) prevents the development of a mechanic solidarity which, in Durkheim’s words, is aimed at reducing any inequality in the starting points of the different subjects.

Individual personality cannot be absorbed into collective personality because subjects are not sufficiently integrated.

But is this theoretical hypothesis confirmed by practice or not? Let us examine the role that international law actually played in the traditional international community.

In such a society, formed by sovereign States *superiorem non recognoscetes*,³¹ international law was primarily aimed at balancing the interests

²⁸ See, for instance, A. Cassese, *International Law* (Oxford University Press 2001) 6.

²⁹ “*Collective responsibility exists in case of blood revenge which is directed not only against the murderer but also against all the members of his family. Collective responsibility is established in the Ten Commandments when Yahweh threatens to punish the children and the children’s children for the sins of their fathers*”; H. Kelsen, *Principles of International Law* (Rinehart & Company 1952) 10.

³⁰ In this sense see, among others, S. Hoffmann, ‘International Law and the Control of Force’, in K. Deutsch, S. Hoffmann (eds), *The Relevance of International Law* (Anchor Books 1971) 36.

³¹ Such model of society is defined in the literature as “Grotian”. In this sense, see Cassese (fn 28) 18.

that the above-mentioned subjects tried to preserve and develop, in opposition to each other.

Alongside this primeval and essential function, which consisted in trying to guarantee the coexistence among the States themselves, there was another one, secondary to some extent (since from a theoretical point of view it is not indispensable *stricto sensu*, unlike the first one), consisting in favoring the cooperation among them.

Solidarity was definitely not high on the agenda.

Things started to change during the 20th century, and particularly in the years following World War Two.

The features of the contemporary world community are not the same as those of the traditional one. The first relevant difference is the number of States composing it. Today there are almost two hundred of them (193 are the current members of the United Nations³²), while at the beginning of the last century there were about forty States.

The first factor at the bottom of this impressive increase is the downfall of colonial empires, that escalated after World War Two, and the consequent political independence of many countries subjected to colonial domination.³³ This trend was eventually confirmed at the end of the Cold War, when the collapse of the Soviet Union first and of Yugoslavia a few months later further increased the number of States in the world community.

Today States are not only much more numerous than in the past, but they are also less homogeneous than they used to be. At present, the vast majority of the international community (about 75%) is composed of the so-called developing countries, which are in many respects very different from the States that formed the bulk of international community before World War Two, i.e. the “European” or rather “Western” countries,³⁴ but also from each other.³⁵

³² As of April 2021.

³³ It has been highlighted that “*After 1960 the bulk of the international community consisted of Third World countries*”; Cassese (fn 28) 38.

³⁴ “*For instance, most of them are community-oriented countries, where the leader is not viewed as a sort of possible oppressor, and his being in a way legibus solutus (unbound by law) is not regarded, as it would be in the West, as an outrageous deviation from the sacred postulate of the rule of law. Furthermore, the State – which in the West is almost the incarnation of law – is often felt to be an extraneous entity... To developing countries, international law was (and still is) relevant to the extent that it protected them from undue interference by powerful States... A further characteristic of the Third World countries’ strategy was its tendency to expand national jurisdictions*”; *ibid.*, 41.

³⁵ “*They differ in their cultural and ideological background, in their degree of economic or social development..., in their respective systems of public order and so on*”; *ibid.*, 40.

Notwithstanding the collapse of the so-called “socialist democracies” in the last decade of the 20th century and the historical defeat of their ideology – which diminished the ideological and political differences existing in the international society in the decades between the end of World War Two and the end of the Cold War – the reality is that the world community today is anyway much less homogeneous than the one existing before 1939.³⁶

The conditions for the development of Durkheim’s mechanic solidarity – i.e. when, within a community, living conditions are similar, beliefs and as a consequence norms are shared and there is a common culture and religion – are absent.

But another fundamental difference between the world community existing before and after the beginning of the 20th century involves the presence of a new category of international subjects: intergovernmental organizations. In a few years, particularly after World War Two, their number increased rapidly. Through them, indeed, the States establish, although on a conventional basis, relationships of institutionalized cooperation. Such institutionalized cooperation – which, initially, was often limited to technical matters and functional to the pursuit of common interests – has subsequently resulted, in some cases, in a true political cooperation.³⁷

1.3. Research question and methodology

There are 105.000.000 results on Google concerning the word “solidarity”, with a peak in April/June 2020 and 374.000 results concerning the words “solidarity in international law”. This is not surprising, considering the Covid-19 pandemic.

The principle of solidarity nowadays is particularly important in juxtaposition with a current trend in politics: populism as a modern version of nationalism, where the interests of a few (for instance those who have the same citizenship) or those of a specific State are considered a priority by some politicians. Such ideas tend to be summarized in slogans such as Trump’s “America first” and many others.

³⁶ “Come già in precedenza sottolineato, se gli Stati del XX secolo presentavano una omogeneità piuttosto elevata, non esiste più nulla di simile nel XXI secolo. Ciò non deve sorprendere, dato il gran numero di Stati oggi esistenti”; D. Carreau, F. Marrella, *Diritto internazionale* (Giuffrè 2018) 29.

³⁷ An entrance into the literature on the origins and development of international organizations can be found in G. Martino, ‘Origine del fenomeno e sua evoluzione’, in P. Pennetta, S. Cafaro, A. Di Stasi, I. Ingravallo, G. Martino, C. Novi, *Diritto delle organizzazioni internazionali* (Wolters Kluwer 2018) 33.

The crises that have occurred in the world in recent years (the Covid-19 pandemic, migration crises...) have made clear the importance of solidarity, pointing out how States need other States' help to face these kinds of situations. In other words, they have highlighted the inadequacy of nationalist paradigms.

But, at the same time, they have perversely risked undermining solidarity, nourishing populism and, consequently, nationalism and xenophobia. Since solidarity between States and among people is the antidote to populism, understanding what its place is in the framework of international law seems particularly relevant.

The research question is whether international law is witnessing a progressive shift from cooperation to integration, and from integration to solidarity and what role intergovernmental organizations are playing in all this.

Hence, the research question is twofold. The first is if and to what extent solidarity exists today in international law. The second is whether there is a link between the deepening of regional cooperation and integration, on the one hand, and the strengthening of the principle of solidarity, on the other.

How deeply have international organizations been influencing international relations? Do they just promote cooperation among sovereign States (actually institutionalizing it) or rather have they become an instrument of cooperation and solidarity among peoples, as some scholars seem to think?³⁸ In other words, what is the actual contribution of intergovernmental organizations to the transformation of the world community and international law from the original Grotian paradigm to the more recent "Kantian" model, "*based on a universalist or cosmopolitan outlook, 'which sees at work in international politics a potential community of mankind' and lays stress on the element of 'trans-national solidarity'*"?³⁹

Among intergovernmental organizations, the main candidates to play such role seem to be the regional ones, at least from a theoretical point of view.

Also in practice, though, regional organizations tend to manifest a form of cooperation which, in general, is more intense than at an universal level, because of the generally deeper integration among States.

Scholars have actually defined and written about "regional solidarity".⁴⁰ Specific political factors and better perceived mutual benefits are the main

³⁸ See for instance B. Conforti, *Scritti di diritto internazionale* (Editoriale Scientifica 2003) 96.

³⁹ Cassese (fn 28) 18. The place of solidarity in Kant's theories is discussed in the chapter by Ridolfi in this volume.

⁴⁰ References on specific regional solidarity include the following: J.G. Merrills, *International Dispute Settlement* (Cambridge University Press 2011) 272.

elements explaining why regional organizations might be an appropriate environment for implementing this kind of solidarity.

Let me explain further. Generally speaking, solidarity by States requires earning widespread public support. Such consensus is not easy to reach, in particular when populism is on the rise, since the moral problem alone might not be a sufficient reason to be concerned about solidarity.

But the Member States of a regional organization are strictly connected. As a consequence, when a major problem requiring help (e.g. a crisis) occurs in such a State, there is an actual risk of its effects spreading in the region, which is higher if the ties among the States are stronger. Hence, the other States belonging to the regional organization (and the organization itself) have an immediate and direct interest in intervening in order to try to prevent being hit themselves by the negative situation, or at least to reduce its consequences.

This fact makes solidarity easier, because it can be perceived by citizens of the States showing it, not just as a gratuitous act, but rather as an advantage. This occurs as long as solidarity is also (or perhaps mostly) aimed at reducing the impact that the major problem occurring in a State belonging to the same region can have on the same State that practices solidarity (and its population). The advantage for the States exercising solidarity is clear: every State has a direct interest in regional wealth and stability.⁴¹ All this contributes to forming the political will that is necessary in order to trigger solidarity. The population's perception of this advantage helps to build a widespread agreement, mitigating the risk of a negative reaction (which can always occur within the State showing solidarity).

As a matter of fact, generally speaking, individuals tend to be driven not only by moral considerations but also by self-interest (and more so for States). In any given group of individuals, at one extreme you can find those who can actually be driven only (or mostly) by moral considerations. At an intermediate stage those driven by both moral considerations and self-interest, in varying degrees. At the opposite end are those driven only (or substantially) by self-interest. Hence, many more citizens of any given State would be more concerned about what happens in another State if they realized that those events can affect them personally, besides being an abstract moral issue. That is why consensus about showing solidarity to the

⁴¹ For example, a field where the so-called "regional solidarity" led to concrete results of a certain importance is maintenance of international peace and security with measures not involving the use of force. My book L. Pasquali, *Il contributo delle organizzazioni regionali al mantenimento della pace e della sicurezza internazionale con mezzi non implicanti l'uso della forza* (Giappichelli 2012) provided the starting point for my thinking about the subject.

other State and its people would be easier to reach. It is, in short, an “easier” kind of solidarity.

The result of this reasoning is that the higher the degree of integration among the States of a given region, the greater and more direct will be the interest to fight the crisis and the drive to exercise solidarity in order to reduce the negative effects that can occur (also for the State that exercises it).

I shall conclude this argument with a couple of examples. The first one concerns the consequences that an economic crisis in a State that has the same currency as other States (such as the case of the euro) could cause in the latter and, therefore, their interest in exercising solidarity towards the former. The second is based on the situation we have been experiencing in these last few months: think about the outbreak of an epidemic in a State belonging to a regional organization characterized by freedom of movement of goods and people and the interest that every Member State and the organization itself have in practicing solidarity.

Let us counter-check these assumptions by going back to Durkheim’s theory. Can one argue that contemporary regional organizations are a good milieu for his organic solidarity (since the international community is not adequate for his mechanic solidarity, as discussed above, in the previous paragraph)?

Durkheim’s book, though, is about solidarity among individuals and not among States. But, although there are parallels between individuals and States with respect to solidarity, there are also glaring differences that we should acknowledge. One of the most convincing examples demonstrating this concerns the division of labor, which is actually one of the most important factors underpinning Durkheim’s theory (his book is actually titled *De la division du travail social*, as already mentioned above). Although States, for multiple and complicated reasons, also tend to differ in their production of goods and services, the differences among them are usually not so radical as they are with regard to the division of labor among individuals.

Hence, what use can one expect to make of Durkheim’s ideas about solidarity among individuals, when trying to understand the place of solidarity in relations among nations, i.e. in international law?

As mentioned above, a cornerstone of Durkheim’s reasoning is that organic solidarity is supported by the awareness of the mutual benefits of free exchange between participants. Well, there is no doubt that the awareness of the mutual benefits of free exchange between participants is one of the main factors (if not the most prominent one) behind the existence itself of regional organizations.

The prevailing tendency worldwide has been to create economic blocs, i.e. organizations established with the free trade in goods among the members of the bloc as a founding idea.

A typical example is MERCOSUR. The key provisions of the Asunción Treaty (the 1991 founding treaty of MERCOSUR) clearly state that the main aim of the organization is the free trade in goods among Member States.⁴²

The same is basically true for all regional organizations of this kind.

Let us think about what has happened in Europe in the last 70 years. The European Union today is unanimously considered the most politically integrated regional organization.

But in the 1950s the program to set up the European Coal and Steel Community was adopted, followed by the establishment of the economic and political structures leading to the European Common Market first and the European Union later. The founding idea of the European Economic Community (which eventually developed into the European Union) was actually the mutual benefits of free exchange between Member States and even today the free movement of goods is a cornerstone of the EU (even though the EU is currently much more than that).

There is another aspect of Durkheim's theory which makes me think that regional organizations might actually be the ideal environment for the assertion of solidarity in international (regional) law.

Generally speaking, States were much more self-sufficient in the past than today, often with negligible imports and exports. During the last centuries – and in particular since the end of World War Two – communications and economic connections have progressively become more and more global and States that were once basically self-sufficient from an economic point of view are dependent today on imports and exports. That is particu-

⁴² Article 1: “*The States Parties hereby decide to establish a common market, which shall be in place by 31 December 1994 and shall be called the ‘common market of the southern cone’ (MERCOSUR). This common market shall involve: The free movement of goods, services and factors of production between countries through, inter alia, the elimination of customs duties and non-tariff restrictions on the movement of goods, and any other equivalent measures; The establishment of a common external tariff and the adoption of a common trade policy in relation to third States or groups of States, and the co-ordination of positions in regional and international economic and commercial forums; The co-ordination of macroeconomic and sectoral policies between the States Parties in the areas of foreign trade, agriculture, industry, fiscal and monetary matters, foreign exchange and capital, services, customs, transport and communications and any other areas that may be agreed upon, in order to ensure proper competition between the States Parties; The commitment by States Parties to harmonize their legislation in the relevant areas in order to strengthen the integration process.*”

larly true for the States belonging to a regional organization, because of the free movement of goods, services and factors of production between them.

As a consequence, each country depends ever more closely on the community which constitutes the regional organization. Furthermore, because of the complex interdependence among them (i.e. to their being members of the regional organization), they are not able to leave the community without causing damage to themselves and to the regional organization itself. The most convincing example demonstrating this is Brexit.

This is exactly one of the characteristics of Durkheim's organic solidarity, as we have seen above and, paraphrasing the French sociologist, it is the reason why these States need solidarity. This kind of solidarity is needed in complex societies in order to produce and guarantee the necessary cohesion and a regional organization is actually a complex society.

Finally, one last reason why regional organizations might be a good milieu for the assertion of solidarity is that solidarity is considered "*a prerequisite for integration*"⁴³ and all these kinds of organizations tend to integrate – at least economically – their Member States.

Given this theoretical framework, the challenge is to figure out whether our scientific hypothesis – which is that solidarity has a greater place in modern than in traditional international law and that it is particularly strong in the law of regional organizations – based on such theoretical considerations is corroborated by actual legislative choices as well as by current practice. After investigating the meaning of solidarity, the authors of the book deal with its practical implementations in international law and in regional organizations.

The research will not take into account only distinctive areas (such as migration law), or a specific institutional context where solidarity is a declared principle, objective or value (for instance the European Union), but it aims at finding out whether in different scenarios the manifestations of solidarity also differ and, if so, the reasons behind such divergences.

This book is an exploratory study of solidarity both in universal and in regional (*rectius* regional organizations') law. The method used is also comparative, because the book does not devote its pages to discussing just one regional organization, but several of them.

Among the world's numerous regional organizations, this book discusses five of them.

Of course, the regional organizations that we selected are not a random sample of the existing ones.

⁴³ Kotzur (fn 25) 40.

There is no denying that the most advanced set of regional agreements, with the widest range of institutions and agreement spheres as well as binding rules, is that of the European Union, currently comprising 27 Member States. Hence, if our hypothesis proves to be true, its law (EU law) should be the branch of international law where solidarity is at the top.⁴⁴ Unsurprisingly, this book devotes a higher number of pages to EU law than to the other selected organizations.

Among the others, two are African, one is American and one Middle-Eastern and have been selected by virtue of the degree of integration among their Member States. This, in order to find out if this supposed enshrinement of solidarity within the European Union and its law represents a *unicum* or if it is just an example, albeit advanced, of what is happening in international regional organizations and the actual correspondence between level of solidarity and degree of integration. For instance, the Southern Cone Common Market (or MERCOSUR) is probably one of the comparatively closest experiences to what happens in Europe (although the degree of integration is actually much lower in MERCOSUR than in the EU⁴⁵), while the political and economic ties among the States belonging to the Arab League are definitely less developed.

If we contemplate our choice from a geographical point of view, the following obvious question has probably occurred to readers already: why did you not consider any Asian organization? The answer is that regional integration in Asia is not high on the agenda, and no Asiatic organization can be considered a true regional integration organization.

1.4. Plan of the book

Here is a road-map to the book. Since, as mentioned above, the research question is twofold (i.e. firstly whether in international law there is a progressive shift from cooperation to integration, and from integration to solidarity and secondly if solidarity is more effective and better implemented when relationships between States get stronger, such as in regional organizations) the book is divided into two parts, plus an introductory chapter and a conclusive chapter.

⁴⁴ On various aspects of solidarity in EU law see the chapters by Martines, Crespo Navarro and Russo in this volume. Books on solidarity in EU law include C. Jimenez Piernas, L. Pasquali, F. Pascual Vives (eds), *Solidarity and Protection of Individuals in EU Law* (Giappichelli 2017).

⁴⁵ See my recent article: L. Pasquali, 'Solidarity in MERCOSUR Law – Solidarity Beyond EU Law' (2021), *Osservatorio sulle fonti* 1/2021, available at: <http://www.ossevatoriosullefonti.it>.

In this introductory chapter 1 discuss the aim of the book by detailing its topic. The chapter approaches solidarity from a legal perspective, it defines the research question and explains the methodology of the study. It provides an overview of the structure of the book and briefly introduces the other chapters.

It is followed by two sets of chapters, consisting of four chapters each, all written by a different author with specific experience on the topic under consideration. The first set of chapters is dedicated to reconstructing the foundations of solidarity in law and investigating the legal origins of the principle, from the historical, philosophical and constitutional perspective, while the second one is aimed at finding out whether solidarity does actually exist as a principle in contemporary universal international law and, if so, to what extent.

Chapter 2 searches for the roots of the principle of solidarity in law going back to Roman law and its role in the European (and in the world's) legal tradition. Most 20th century scholars, focusing on certain institutions of Roman law (such as the powers of the head of the household, the freedom of will, the owner's powers over his land, house and slaves and the creditor's powers over his debtor's body) argued that Roman law was the highest legal expression of individualism and of the ideology of capitalistic societies. Conversely, Aldo Petrucci explores the sources of Roman law (in particular Family law, Inheritance law, Property law and the law of obligations) in order to understand whether the role of solidarity was actually more important (and that of individualism less important) than according to these theories.

In chapter 3, Pierluigi Consorti focuses on the implementation of solidarity in relation to religious issues both at the institutional level (i.e. between the EU and Churches and other established religious communities) and at the citizens' level, between the EU and individual believers. This issue concerns specifically foreigners and in particular the integration of the second and third generations of immigrants. Hence Professor Consorti analyzes how EU law (and specifically article 17 TFEU) can play a facilitating role in mediating social conflicts on a religious basis.

The origin and meaning of the principle of solidarity within constitutional laws is the topic of chapter 4, by Elisabetta Catelani and Pietro Milazzo. In particular, the research intends to show if and to what extent the principle of solidarity could be considered as a self-standing principle or, conversely, if it should be interpreted in the light of other constitutional principles and if the historical-constitutional peculiarities of a State could affect its nature. The challenge is to figure out whether a shared unique constitutional notion of solidarity is possible.

Studies on federalism show an evolution in the field of the division of competencies: from the dual federalism model to the cooperative federalism model. Chapter 5, by Marcelo Labanca intends to analyze a third step: from the cooperative federalism model to the solidarity federalism model. In this sense, it would be possible for the federation to act even when it does not have exclusive competencies (dual model) or concurrent competencies (cooperative model). The solidarity model allows the federation to go beyond the limits of its competence, acting to support, coordinate and complete the actions of the federate States.

The second question approached in this first part of the book is about the development of solidarity in international universal law.

The question is approached from a philosophical point of view by Giorgio Ridolfi in chapter 6. The author shows that solidarity for Kant has a specific meaning because men are limited by nature, and they need each other's assistance in every moment of their lives. Moreover, according to the German philosopher, solidarity also has an ethical meaning, in accordance with the formulations of the categorical imperative. Therefore, there is a kind of duality in Kant's political philosophy, since it pays attention to the concreteness of the real experience, but at the same time it is oriented towards an ideal perfection. This "utopian realism" is evident in the Kantian discourse about cosmopolitanism, and it provides fundamental support to face the modern challenges of solidarity in international law.

Viewed from the historical perspective, one should consider that the Treaties of Westphalia built a "horizontal system", made up of States with equal dignity and free from any external interference, replacing the previous system of legal relations in which the Pope and the Emperor were at the top, as illustrated in chapter 7 by Gerardo Martino. In such a system States were secluded monads, "*superiorem non recognoscentes*", which aimed exclusively at the pursuit of their own individual interests and were indifferent to values of solidarity. Indeed, as Grotius pointed out in *De iure belli ac pacis* and in *Mare liberum*, the restricted number of sovereign and independent subjects, probably by virtue of their common Christian matrix, recognized the need to preserve some of these values. On this basis, the author seeks to demonstrate the beginning of an evolutionary process that – as a consequence of the universalization and globalization of the international community and, above all, of the development of international organizations – made solidarity a crucial reference for the international legal system.

After this general, theoretical introduction of the topic, the following chapter 8, by Francisco Pascual-Vives, maps out the normative areas where the principle of solidarity can be found in contemporary international law,

before focusing on a peculiar and unexpected feature of the relationship between the principle of solidarity and public international law. In particular, the author discusses if and to what extent the former principle can be applied in international investment law, exploring if any of the mechanisms that are being developed to enhance the interplay between international human rights law and international investment law – a task in which the EU is playing a leading role – could promote solidarity in a highly decentralized legal regime such as international investment law.

In order to begin to understand if and to what extent the phenomenon of international organizations has influenced the development of solidarity in international law chapter 9, by Miriam Schettini, investigates the role that the United Nations have been playing in the implementation of a right to international solidarity. To this purpose, the first question is whether a principle of solidarity does exist in the United Nations system. The following analysis of UN documents such as the UN “Draft declaration on the right to international solidarity” will then help to answer the following question about solidarity as a claimable right.

The second part of the book investigates the level of implementation of the principle of solidarity in regional organizations in order to find out whether solidarity in the law of regional organizations is actually more advanced than in universal international law and whether it depends on the degree of integration among Member States.

This part is divided into two sections, consisting of three chapters and five chapters respectively, all of them by a different author with specific experience of the topic dealt with in the chapter. The first three chapters of this part (i.e. chapters 10-12) are about EU law, as this is the branch of international law where the implementation of the principle of solidarity is at its highest.

Each chapter of the final part of the book concerns a different regional (or sub-regional) organization, with the aim of investigating whether the principle of solidarity is implemented and, if so, to what extent.

The first chapter about solidarity in EU law offers an introduction to the topic. Hence, it analyses the notion of solidarity and of related concepts in its inter-State (or horizontal) dimension in pre-Lisbon treaties as well as in the EU Treaties and in the Charter of Fundamental Rights of the European Union, in the light of the interpretation by the European Court of Justice. In order to understand the actual implementation of the principle, Francesca Martines considers the emblematic case of the relocation of asylum seekers.

This is not an article about current affairs, which is only going to be relevant for a certain period of time, and then fall out-of-date. Instead, this book is a wide-ranging study aimed at understanding the place of solidarity