

## **Regional Integration and Law: Issues of Theory and Practice**

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**Abstract:** This article presents an original concept of establishment of international regional law as a branch of international law at the present stage of social development. The legal system is constantly being updated with new branches and sub-branches of law, institutions, and norms, which makes it more efficient overall. The study of integrational processes in the conditions of development of geopolitical competitiveness, active formation of new regional economic, social, and military-political spaces, demands mobilization of not only political, social, and economic resources, but also legal. A complex analysis of integrational processes within the framework of current regional formations allowed the author to determine a number of signs such as fusion and interconnection of national interests, which ensures balance of national interests of the member-states of regional formation on one hand, and the interests of the regional formation itself on the other. The author substantiates the conclusion that creation and functionality of such regional formations is impossible without presence of international regional law, the element of which can possess certain level of autonomy with regards to both, national law of the member-states, as well as the international law.

**Keywords:** principles of law, structuring, systematization, legal system, system of law, international regional law, global regionalization, regional integration, branch of law, military-political spaces, economic cooperation, social spaces, European law, Eurasian law; regional law in Asia and Oceania; African law; American law

### **INTRODUCTION**

In the context of State-organized society the law becomes the basic regulator of social relations that leads to the necessity of systematization. These questions concern the fundamental, underlying problems of the theory of law and constantly attracted the attention of scientists.

As it was correctly pointed out in the literature, in-depth analysis of questions of law determined not only for their theoretical significance, but also because their design serves as a prerequisite for the solution of many issues of the legislative system, study which, in turn, is essential for the Organization's norm-setting activities on a scientific basis. And the legal regulation of new spheres of social reality leaves no doubt in the elasticity and mobility of system of law now [1].

With the appearance of new relations, which require appropriate regulation, system of law is constantly updated with new sectors and subsectors of law, its institutions and rules that, in general, make it more efficient. One of these newly formed constituent elements of international law is the European law, which has become one of the priority directions of development of legal science in Russia. Lawyers, considering the main part of European law, European

Union law, note that it has incorporated "the best features of international law and national law most developed democratic States of Europe", with the supranational nature [2]. Without the task of a detailed analysis of the formation of European law as law education, science and academic discipline, we note that the process took quite a long time.

Issues of globalization and regionalization of the world at present time are becoming increasingly relevant. The rapid changing of the world encourages States to unite not only for successful development in the context of effective mutual cooperation, but also for organic "infusion" in the process of global integration against the background of the most developed group "civilized leaders." In addition to the European Union and Eurasia as examples of regional integration, the active development of various forms of interaction between countries and many other regions in Africa and Asia, North and Latin America, and so the build-up of various forms of regionalism and regional projects since the late 1980-ies became occur almost worldwide.

The revival and revision of regionalism, the formation of new theories has become one of the dominant trends in international studies. In this regard, increasingly talk about the "new regionalism", seen as the new wave, phase or even the era of regionalism [3].

Regional institutions to include a whole new set of missions, covering more and more areas, including transnational environmental issues, natural disasters, which were not previously included in their jurisdiction, and Member States are not limited to formal intergovernmental integration associations [4].

For example, according to the Polish economist G. Mosei, "... the rational model of regional cooperation opens new possibilities for economic integration of the countries with large economies, differences with different traditions and development models. ... It is this model of integration is most effective in terms of real devices to globalization" [5].

An important feature of the new regionalism is its "spread" around the world, spreading to several regions. In the concepts of the new regionalism there are various views on the criteria for formation of regions. For example, Ch. Hemmer and P. Katzenstein interpret the region as the political entities not based on geographical factors [6]. As a result of his study A. Hurrell finds that regions represent the activities aimed at achieving the common theoretical purposes, resulting in the formation of regions based on intellectual political necessity [7]. N.A. Vasilieva and M.L. Lagutina concluded that under modern conditions should talk about the global dimension of the region, which implies its cross-board nature, as well as his participation as a unit in micro-political processes [8].

Representatives of the new regionalism (both western and domestic) give different interpretation for the concept of "region", but they are unanimous on the issue to "go away" from the traditional its understanding, based on the geographical aspect.

Agreeing in many ways with representatives of the new regionalism we should consider the region as the political, economic, social and other entities, currently derives not only from the geographical (social) factors, but can also be based on a functional approach (common doctrine and purpose) and have a cross-border nature.

In the process of regional integration in the field of law are also powerful integration processes, most regional groupings aimed at harmonization and unification of national legislation that leads to "bridging" legal systems and makes it possible for a common regulation. Such mergers may vary in nature and degree of integration associations, their pace, reasons for integration and other aspects.

Processes taking place in the modern world at the of global regionalization, including in the legal sphere, require no longer applied, instrumental, functional or other similar matters, and expanding the frontiers of legal thinking of this phenomenon, which

suggests an objective necessity of forming a new legal direction - international regional law, and, in the light of the development of integration processes in the world, theoretical aspects of international regional law should be counted among the most pressing contemporary problems of legal science worthy of independent study and development.

#### *The concept and subject of international regional law*

The doctrine previously expressed in the views on the process of the formation of the so-called "integration law", "law of regional integration", as well as the position that under international law allocated regional international law [9] or so-called regional international legal systems.

We knowingly used the term "regional" because it is a key word in the description of those processes that forms the subject of international regional law, in turn, the notion of "integration" is a distinguishing trait of the whole process of regionalization, and secondly, the most part of the western and some domestic scientists regard the integration processes as a process taking place only within the framework of the European Union. The use the term "international" in the title of regional law is due to two factors: on the one hand, by analogy with the names of the branches of international law, since regional law is an integral part of international law, on the other hand, without reference to the international character of the regional law may arise association with "regions" within federal States, such as Russia, Switzerland, USA etc.

#### *The subject of international regional law*

It can be argued that international regional law is a unique special part of international law, which includes features of different legal systems, depending on the regions. The subject of regional law is also specific, and it is a fairly complex structure of relations.

*The first level of relations* make up relations between States on the formation (establishment) of regional entity and its elimination (dissolution).

Named group of relations appropriate to include it in the subject of legal regulation of international regional law on the following grounds.

Firstly, such relationships have some specificity, different from the relations which are the subject of the law of international organizations, including the relations for establishment of the international organization. When countries are negotiating the establishment of (creation) regional formation they intend to solve common problems indirectly through created regional formation.

Secondly, at the global level, there are more than one hundred and thirty regional entities, which vary in extent (depth) integration, areas of interaction, the presence of institutional bodies, etc., which require a separate legal regulation.

*The second group of relations* constitute the relationship of already established regional entities with States - its parties.

Such relationships vary within each specific entity and have inherent in them peculiarities taking into account standards adopted at the regional level of entity, as well as the influence of border rules of international and national law of each member of a certain entity.

Validity rules, adopted at the regional level vary and are determined by the founding documents of the regional entity. On the legal force of domestic law of regional entity can be divided into:

1. acts of regional organizations, which are coming into force without a ratification;
2. acts of regional organizations that are obligatory for execution only after the required action by the latter (signature, ratification, etc.);
3. reference acts of regional organizations.

*The third group of relations* are relations between member states envisaged in the founding documents of the spheres (economic, social, military and political) governed by both private and public sectors and institutions. The relationship of these countries among themselves in other spheres of social life (not provided for in the framework of the regional entities) should be regulated by other branches of international law. Such relationships (relationships between member states) should be regulated within the framework of international regional law, as interstate relations of those parties that are contracting parties (members) of one regional association, may be complicated by their own standards of regional association, as well as the rules of bi-and multilateral agreements concluded in the framework of the regional association for the achievement of the objectives of the parties.

*The fourth group of relations* regulated by regional law, should include institutional relations within the regional association.

*Thus, relations regulated by the international regional law, form four independent groups that have some specifics and enable to highlight it in a special structural element of international law.*

*Based on the above, it is proposed the following definition of international regional law. International regional law is a branch of international*

*law governing the complex relations of States on creation and the elimination of regional organizations, of regional organizations and member states cooperation between themselves within the framework of regional organizations in various sectors arising from the objectives of regional organizations, as well as the interaction of regional institutional structures within the regional organizations.* It must be assumed that this branch of law is complex, due to its subject matter.

#### *Methods of international regional law*

Regional law is inherent with the basic techniques (discretionary and mandatory) used in international and national law. However, it should be pointed out that there is no consensus in the doctrine on methods of legal regulation, used in international law. In public international law, without a doubt, there is a public-legal regulation, which in our view is different and has some specificity. The application of mandatory method that increasingly characterized the public law in contemporary international law contradicts the essence of the latter. Relations between states should be based on the principle of equality, and not on the basis of power and subordination. *Thus, the specificity of public-legal regulation in the international public law is that public law aspect may occur when the relationship between the subjects are constructed on the basis of equality.*

The specificity of the methods used in international regional law is in the fact that they are increasingly characterized by centralization, owing to the specificity of interaction between states within the framework of regional integration associations. The formation of law, and therefore the choice of the priority method of legal regulation (together) within each individual regional entity depends on some factors. It includes, primarily, the specifics of relations regulated by regional law. In particular, in the relations of states on the establishment of a regional entity priority supports a discretionary method of regulation, which implies equality of the parties. The choice of the same basic method of legal regulation of relations between regional entity and its members depends on the powers of the structural bodies of regional entity, i.e. the solution of this question is derivative and depends on regional entity members.

#### *The sources of international regional law*

The sources of regional law are subdivided into primary law sources of regional integration associations and sources of secondary (derivative) law.

The primary law of regional entity forms the documents that were fundamental in nature. First of all, the primary sources of law include incorporation documents (contracts, acts, declarations, regulations), revised contracts by which amend the constituent

documents, as well as the treaties of accession (joining) of other states. In addition, the part of this kind of contracts is the Act (Agreement) of the conditions of accession. In most cases such acts (agreements) are attached numerous protocols (they may establish specific changes or additions to the legal status of the acceding states), which are also an integral part of them.

In turn, the secondary sources of international regional law are legal acts which are taken by the competent authorities of regional association.

The procedure for the adoption of legal acts of this kind are regulated by norms of primary law and not uniform in different integration entities.

In particular, in the EU there are different ways to vote: unanimously and by a qualified majority, with each EU Member States has the number of votes recorded in the treaty. However, the principle of the "majority" are given more preference, which greatly simplifies the adoption of decisions on various issues.

A different situation is envisaged in the Treaty of CIS on "The creation of the economic union", according to which the decision of the authorized bodies of the CIS, (the Council of Heads of State and heads of Government Council) on the functioning of the economic union are taken by common consent, i.e. by consensus.

Some regional formations use so-called combined order of voting. For example, in one of the largest regional entity-African Union-AU Executive Council decisions are taken by consensus, or 2/3 votes of the member states of the AU. Decisions on procedural matters shall be taken by a simple majority.

It is typical for acts of secondary law, that they entry into force without subsequent ratification or acceptance by the Member States. We can say that such acts are legislative rather than contractual in nature. In comparison with primary law, secondary regional law has much more material sources, because of the nature of the activities of regional integration entities, aimed at achieving their goals [10]. Institutions of regional integration structures through the implementation of its powers issue acts of secondary law, derived from primary, because activity of authorized bodies outside their limited competence.

Despite the primary priority law over the rules of secondary law, the latter are more dynamic in the international regional legal system, because regional integration organizations carry out regulation of relations in all matters through the adoption of acts of secondary law within the competence of their bodies.

#### *Principles of international regional law*

International regional law is built on a system of principles, based on the general principles of international law, and some principles have an original nature.

The general principles of international law can be attached directly at the documents of a regional entity. For example, in the 1990-ies the Treaty on European Union includes a number of basic legal principles: the principles of liberty, democracy, respect for human rights and fundamental freedoms and the principle of the rule of law. Art. 3 of the Statute of the CIS includes such principles as respect for the sovereignty of Member States, the inviolability of State borders, the supremacy of international law in inter-State relations, etc.

The own principles of international regional law, as a branch of international law, can be grouped by special branch principles and special institutional principles.

Special branch principles of international regional law include principles that reflect the specificity of the international regional law as a branch of international law. These principles are: the principle of appropriateness and reasonableness of the creation of a new regional association; ensuring the mutual interest of the parties to the regional association; voluntary occurrence of a subject of international law in regional structure; the principle of multi-level and multi-speed integration, etc.

Special institutional principles of international regional law constitute the common origin, which is at the heart of a regional entity. For example, on the basis of art. 4 of the Constitutive Act of the African Union we can distinguish the following special institutional principles: interdependence among Member States of the Union; the participation of African peoples in the activities of the Union; the establishment of a common defense policy for the African continent; the right of the Union to intervene in the affairs of States by a decision of the Assembly in committing war crimes and crimes against humanity; gender equality.

#### *Systematization and structuring of international regional law*

The systematization and structuring of international regional law is an internal structure of law as a huge complex that causes certain difficulties in the formation of its elements.

Problems of structuring is mediated by different levels of integration within the cooperating States or other regional formations, varied internal structure of each regional organization, significant

differences in the manner of decision-making and the legal effect of such decisions, as well as many other factors.

In addition, despite more than a century history of some regional organizations, we can say that today such entities are in the process of active development also.

Concerning the formation of international regional law in the system of international law, we should also take into account that, like any other system, its internal components must be consistent and be in constant relationship. That is why at this stage of its formation we can talk exclusively about the formation and development of the desired criteria systematization and structuring.

In accordance with the structuring of international law as well as by analogy with the structuring of national law, within the framework of the regional law should allocate subindustry and institutions.

In order to efficiently (universal) systematization and structuring of international regional law on the subindustry as the defining criterion, it is advisable to use a regional feature. Practice shows, that States unite in regional groups by territorial and social and also functional principle (the common goals, the cross-border nature). Such States usually have similar problems whose solution requires the joint efforts. Classic examples of such regional organizations are the European Union, the African Union, etc.

The another argument in favor of the selected criterion is that States of one conditional region usually are participants (members) of other subregional organizations, which, in turn, for the most part, operate within the same region, that has an impact on their system of law.

In addition, in already established regions has the specific system of law in most cases. In Europe and North America function in parallel way continental and Anglo-Saxon law systems. The unification of legal systems in Latin America was carried out on the basis of Indian and continental law. At the African continent, the basis of the law of every African State form local customs, as well as the legal norms of the dominant country-colonizer. Considerable specificity also has Muslim and Hindu Law.

Taking into account the regional groupings harmonization and standardization of national systems of law, exactly the regional feature from a position of institution building international regional law appears to be the most successful. In addition, usage of regional feature as a criterion for the allocation of institutions in

international regional law would thereafter identify certain regularities in the integration processes at major regions. Based on this approach to the division of the international regional law on the subindustry, we can evolve: *Eurasian regional law*; *European regional law*; *regional law in Asia and Oceania*; *African regional law*; *American regional law*. The sixth subindustry of international regional law can be distinguish so-called *interregional law* governing trans-regional relations of countries and regional organizations that do not have a common foreign economic or foreign policy doctrines. This Subgroup constituted interregional associations representing a neutral grounds: Summit of Africa-South America, IBSA (India, Brazil, South Africa) Summit, United States-Africa Summit, etc.

Since the criterion of dividing the international regional law on the subindustry distinguishes sufficiently general and conditional sign of regional division, we should take into account that within each continent operates a certain number of specific subregional organizations with their own goals, organizational structure and size of their participants and other features. Each subregional association has its own legal framework, on the basis of which solved all organizational and other matters. Thus, as a criterion for dividing the international regional law institutions is suggested to use the criterion of a "*sub-region*", in other words institutes of international regional law systems are law systems of each individual regional association.

For example, at the European regional law we can note such institutions as the Council of Europe law, EU law, the law of the Nordic Council, etc. At the regional law of Africa it should be allocated such institutions like the African Union's law, the law of the South African Development Community (SADC), the law of the Organization of the common market for Eastern and Southern Africa (COMESA), etc.

The structure of the institutions of the Eurasian Law may include the law of such organizations as the Commonwealth of Independent States (CIS); Union State of Belarus and Russia (US); Eurasian Economic Union (EAEU); Collective Security Treaty Organization (CSTO); Shanghai Cooperation Organization (SCO), etc.

Every legal commonality should be systematized. Therefore, the question deserves a systematization of international regional law is not only a scientific direction, but also an academic discipline. It seems that the modern approach, when the legal regulation in the sphere of regional integration is being studied within the framework of existing disciplines in passing, is obsolete. In this regard, the opposite approach is required - introduction in educational process of the discipline of integrated nature, which specifically studied the international regional law.

Since the legal science aims to study, analyze and correlate the relationship “public relations – legislation – law” the system of international regional law as a science should be based on a system of international regional law as a branch of international law. However, the international regional law as scientific discipline has its own characteristics, based on the theoretical aspects of cognition.

In this connection, international regional law as scientific discipline should include the complex of theoretical issues such as the notion of regional integration and its types, basic theories of integration, concept, scope and principles of international regional law, methods of legal regulation and sources of international regional law, as well as the historical aspects of the regional integration processes. Special attention should be paid to theoretical issues involved in the formation and development of international regional law, as a scientific discipline.

The system of international regional law as a discipline compared with international regional law as legal science shall also have certain features associated with training of personnel in various areas of public life. The specifics of international regional law as an academic discipline should primarily be focused on usability (completeness, consistency) presentation, which would facilitate proper training of personnel. The scientific aspects of the international regional law should be also fully taken into account in the process of teaching.

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