Integration Association Law and International Law: The Correlation and Priority Issues

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Abstract
Background/Objectives: The article substantiates the position that integration associations act as a special kind of international organizations with specific traits that characterize their legal status. Methods: The methodological basis of the research is formed by the method of comparative legal analysis, in which an attempt was made to identify issues of relations in different legal systems, based on a deep and comprehensive system analysis. Moreover, method of a systematic approach, synthesis method and predictive method have been applied. Findings: Integration association law is an independent type of legal system, which is formed by its qualitative parameters and legal characteristics based on the universally recognized principles and norms of international law and capable to influence the course of events and the evolution of the law. Within the framework of the proposed system, an international treaty is the foundation, the fundamental principle for the further development of new legal provisions governing inter-state cooperation. Research of essential characteristics which determine the mutual influence crossing the systems of international integration right is of key importance in this study. International law is a priority in the issue of establishing the relationship of integration association law and international law. Applications/Improvements: The main outcome of a reasonable combination both of international law and integration law standards should be the formation of special international structures capable of bringing participating states to a new level of economic and social interaction by coordinating efforts in the contemporary context of globalization.

Keywords: Correlation of the Integration Law and the International Law, Essence of Integration Law, Integration Associations, Integration Law, International Law, International Treaty

1. Introduction
Undoubtedly, the problem of scientific understanding of the relation of integration association and international law is one of the most urgent and complex issues of theory and practice in modern jurisprudence. Interaction, mutual influence, as well as differentiation of terms of reference for the international and integration law under the influence of modern globalization processes, act as a multidisciplinary scientific problem, which has important theoretical and, most significantly, practical value. That is why, exploring ways of mutual penetration of the rules of one legal system to another, as well as to what extent the norms of integration law may come into conflict with obligations of states under international law and how integration associations should act in these cases is the key issue. All this testifies to the absolute relevance of the chosen research topic.

In domestic and foreign scientific and legal literature there are an impressive number of publications on issues of international economic integration, the legal status of integration associations. At the same time, a significant amount of the available scientific papers on international law does not refute the fact that fundamental issues of the legal nature of integration association law, its place in international law system, relations with national legal systems have not been studied to a full extent so far. In works of many researchers, analysis of legal systems of
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Integration associations has been presented only in certain integration legal systems, primarily the EU and the WTO, ASEAN, MERCOSUR, NAFTA and others.

Meanwhile, the question of the relationship of the integration law with the provisions of international law is controversial and requires careful study and scientific apprehension.

As practice of the activities of some integration organizations, in particular, the Court of Justice of the EU shows the issue of priority of integration and international rules is provided.

Furthermore, experts in international law offer different prioritization criteria.

In foreign legal doctrine, the absolute priority of integration (supranational) law norms to international law is justified and the practice of the European Union activities is an absolute argument.

The attitude of the most leading international lawyers of the Russian Federation, the Republic of Kazakhstan to the supremacy of law systems of integration associations related to the international law is exactly converse. On the issue of establishing a relationship of integration law association and the international law, an idea of the priority of international law over the integration association law prevails.

However, doctrinal schemes occur among the Russian scientists, in which attempts are made to determine self-sufficiency and the supremacy of law legal systems of the integration law over the international legal system. Researchers come up with arguments of the European Union activities, the Southern Common Market (MERCOSUR), West African Economic and Monetary Union (UEMOA) in African countries. But this statement is of non categorical nature, because “the question of the relationship between the integration law and international law currently has no clear-cut solution; it depends on the integration system of justice”.

However, analysis of the various scientific points of view in question of correlation of integration law and international law ensures the value of each of the proposed approaches; all considered scientific approaches have important theoretical and practical significance.

A theoretical problem of justification of the concept of independent form of the legal system (integration association law) is developed in this article. This particular system of justice has a number of characteristics, different from other systems of law.

Based on the goal, the following problems have been determined:

- Explore and analyze the formation of an independent legal system, integration association law;
- To consider the question of the relationship of the system of integration law and the international legal system.

This study allows us to conclude about our own vision of a theoretical problem, namely, the issue of the formation of an independent and separate legal system different from other systems of law and the correlation with international law.

Herewith, the integration law system is originally based on an international treaty, but later it is released and transformed into an independent unit with its own legal characteristics.

But, under the influence of intensified integration structures, understanding of the issue of the coordination rules of the integration law with international law principles is necessary, not only on the theoretical but also practical level. Moreover, member states of integration associations already face similar problems.

2. Method

The methodological basis of the research is method of comparative legal analysis, in which an attempt was made to identify issues of relations in different legal systems, based on a deep and comprehensive system analysis. Thanks to its application, it is possible to identify the general, special and unique in legal systems of integration associations. Moreover, method of a systematic approach, synthesis method and predictive method have been applied.

3. Results and Discussion

In this work, questions of formation of special legal structures and the correlation of the integration law and the international legal system have been thoroughly analyzed in new theoretical aspects.

The complexity of the conceptual understanding of the presented approach is due to the fact that in legal science the fundamental problem of the relationship of international and national law still has not been solved definitely. Naturally, the undertaken analysis of the problem of correlation of the integration law and international law
requires consideration of the given fundamental problem. But in the aspect of the abovementioned problem, without delving into the essence of the scientific debate on the concepts of the relationship between international and national law, we will find out what the integration legal system is and how the integration law rules correlate with international standards.

In general, scientific interest in the law of integration formations in Kazakh, Russian, foreign doctrine is caused not only by the desire to find out the causes pushing states to create this kind of associations but also in understanding the general laws governing the formation and functioning of law, which they set. Moreover, in the doctrinal constructions two major conceptual approaches are traced.

According to the first approach, researchers determine the fact that integration law is part of international law and its member integration associations act as a type of international organization. Advantageously, this position is shared by the majority of Russian and Kazakhstani international lawyers. Thus, according to Russian scientist they “only two legal systems exist in the world: The international and national ones. Meanwhile, the so-called “integration law” is devoid of its own material basis – such social relations, which would possess the unity of characteristics in all integration institutions and would be governed by the same principles. Each integration association is founded and operated on the basis of rules of conduct established only by it, included in its contracts, subject to acts of bodies adopted only by this association and develops only in accordance with the goals, objectives and principles, which are formulated by states – members of this formation. In addition, hardly anyone will challenge even the fact that the legal foundation of integration structures, including the European Communities, is presented by international treaties, therefore, the denial of the presence of international legal characteristics of the analyzed phenomenon is unjustified at least”.

In contrast to the presented attitude about the existence of law of integration associations as part of international law and international economic law are the legal frameworks of foreign, Russian and Kazakh researchers on distinguishing and endowment of an independent legal system, different from international and national legal systems. In particular, an attempt to single out integration association law in a separate independent legal system independent from the international and national law is represented by a number of Russian researchers and Kazakhstan researchers.

But more thorough provisions on distinguishing integration associations in a separate legal category, distinct from the international and national legal systems are represented in. The argument of S. V. Bakhin in favor of distinguishing integration associations in the independent category was the logical conclusion of attempts being made in the doctrine of international law to single out specific legal formations at the crossroads of international and national (domestic) law. Thus, according to integration formations are not merely independent, but isolated legal systems that differ from the systems of international and national law, being legal entities sui generis.

Perhaps, a good estimate of the place of the integration (regional) law in the jurisdictions is represented in the scientific position of Doctor of Law according to which, “regional law or the law of regional groupings of states is a rapidly growing phenomenon, which, on the one hand, is actually under international law, on the other hand, becomes the new legal system, the regional association law, possessing a priority over national law in a number of cases specified in regional association treaties. As we can see, E. M. Abaydeldinov suggested the idea of singling out regional (integration) law into a separate legal system with the definition of priority rules over the national legal system.

The idea of independent legal integration systems was introduced in Western legal science. In the works of foreign scientists, integration issues were viewed through the prism of European Union law, where its legal system was granted a special status, not similar to any international law nor national law.

Meanwhile, the question of the relationship of the integration law provisions with the provisions of international law takes a very peculiar interpretation.

In foreign legal doctrine an absolute priority of the law principles of integration formations over general international law is justified, at the same time the practice of EU activity is as an unqualified argument. Thus points out: “It is generally accepted that Community law is an independent legal system, which, although having many features in common, differs from both the international law and legal systems of the member states”. To confirm his words, he gives an example of the proceedings against Van Gend en Loos, where it was stated that “the treaties establishing the Community are more than just international treaties".
In⁴ argues that integration law systems should take precedence over international law, and therefore, the obligations of states under international treaties will cede their responsibilities within the framework of integration associations. This statement leads to the assertion of the priority of European law in respect for international law.

The approach of foreign scientists to the supremacy of the EU legal system over international law does not seem to be acceptable unconditionally. In addition, to position the EU integration association model, EU law as a “sample” or “standard” on the issue of priority of integration legal norms over international law is inappropriate, because other integration legal systems are also actively developing.

These facts are confirmed by the assessment of Belarusian researcher⁵, according to whom, “it became obvious that the European Union which was seemingly immutable and a kind of a model for post-Soviet countries requires a deep reform of the long time and it is not necessary that the reformation will take place under the centrifugal rather than centripetal scenario”.

As⁶ aptly noted, this approach has led “to the formation of a certain euro-centric vision of the special role and the peculiar position of the European institutions and, in particular, the EU law in the contemporary world order”.

Meanwhile, this unintentionally raises the question: “If provisions of European law will have priority over the provisions of international law for the states – members of the EU, in which way the EU member states will fulfill their obligations under international treaties when they conflict with the EU treaties? The pacta sunt servanda principle (every treaty in force is binding on its members and must be performed by them in good faith; agreements must be kept) turns out to be violated”⁷.

Article 27 of the Vienna Convention on the Law of Treaties reads⁸: “A party may not invoke the provisions of its internal law as justification for failure to perform a treaty”. This provision makes it clear that the state domestic law cannot release itself from earlier commitments under international law by its domestic law; it means that national law cannot take precedence over the rules of international law.

There is a contradiction, in which member states of the EU are obliged to fulfill the obligations of the integration association in violation of international law.

Scientists’ arguments about this conflict are different. In⁹ writes: “The problem arises .... only if the representation of prior agreement is in conflict with the provisions of the Communities law”.

To resolve the contradictions that arose in establishing the priority of international law over the EU law¹⁰ offered to accept binding decisions of the EU Court of Justice. A detailed analysis of judgments about the priority of international law and integration law within the EU is described by¹¹ in the article paragraph “The Dangers of Eurocentrism”. According to him, the international community needs to (should) recognize as an indisputable fact that the EU law takes precedence over the Convention under the unification of law. Do supporters of this approach realize that they are opening a Pandora’s Box? On the basis of the above scientific opinions on the special status of the EU law, the whole concept in the scientific doctrine is built on the priority of the integration association law over the international law.

It is characteristic that the scientific position of the rule of integration law norms with respect for international law is not supported by Russia’s leading international lawyers studying the legal nature of the phenomenon of the European law.

According to¹² the correlation of the Communities (EC) law and the international law is built on the same basis as the correlation of domestic law and the international law. Accordingly, the primacy of international law over Communities law (EC) dominates, expressed in two main ways.

Firstly, the Communities (EU) law is based on the universally recognized principles and norms of international law. They not only have an impact on the content of the European Communities (EU) law, but are also recognized to be leading in case of conflict. In its decisions, the Court of Justice of Communities (EC) has been consistently guided by the fact that these principles and rules are binding.

Secondly, provisions of international treaties are binding.

According to¹³, “the basic principles of international law should occupy a priority place in the constituent instruments of interstate associations in preambles or in the first articles, as the basic principles of contemporary international law are reliable benchmarks of international legal regulation of integration processes of states, being attentive to the preservation of their sovereignty and
independence”. It seems that this is true not only for the integration associations, but also for the states in which the domestic legal system, the system of the relevant bodies and their competence are defined by constitutions and the generally recognized norms and principles of international law.

In\(^\text{20}\) notes the refusal to recognize the priority of integration association law over international law. She argues that the integration law, being the unconditional part of international law, as a series of “microsystems” of international law, cannot compete with international law and cannot be a priori above the international law. But the priority can be provided only in exceptional cases and then the general legal principle lex specialis derogat generali can be applied. As stated in\(^\text{20}\), the EU activities as an argument in the recognition of an independent “third” legal system is not convincing, because the EU, as well as other integration associations is functional, a solution of only a number of issues is provided within its competence.

We can add that the unconditional recognition of the integration law priority, even using the example of EU, over international law not only violates an imperative principle of international law (treaties must be enforced), but gives grounds to believe that all of the obligations of the member states of the integration associations should be considered as foremost as compared to obligations under international agreements in case of conflict.

Such an attempt to build the hierarchy of norms is very vulnerable and can lead to negative consequences.

Thus, in the issue of the relation of integration law rules with international law, we proceed from the stance that all generally recognized principles and norms of international law will be legal foundation, the basis of regulation of relations among all subjects of international law. Any new trends or practices of integration associations cannot and should not lead to the destruction of the concept of the international law priority.

But, under the intensified influence of integration structures, there is a need in a thorough understanding of the issue of the integration law rules coordination with the international law principles, not only at the theoretical but also practical level. Moreover, member states of integration associations have already faced similar problems.

4. Conclusions

The above approaches suggest the following conclusions:

- Integration law or integration association law is a comprehensive system of public legal and private legal relations pertaining to various sectors and legal institutions. It is an independent kind of legal system, which is formed on its qualifying characteristics and its own laws, based on the foundation of universally recognized principles and international law norms. The integration association law has a number of features that allow relating it to an independent legal system different from other systems of law:

  - Subject of legal regulation in the framework of integration association is presented by inter-state relations based on the universally recognized principles and norms of international law, aimed at the implementation of a unified economic and social policy of the emerging regional associations;
  - Methods of legal regulation are specified by the specific of relations of sovereign member states;
  - Own principles of construction, not contrary to the universally recognized principles of international law, are being developed. In the formation of integration association the general principles of international law have originally been laid down in its founding documents;
  - They represent a particular system of justice and are governed by the internal law inherent to them. Primary and secondary source, which have a clearly defined hierarchy, coherence, are available;
  - There is a hierarchy of main and auxiliary bodies in the framework of integration association, decision-making mechanism in the framework of integration association bodies;
  - A particular role is played by special judicial bodies ensuring the uniform interpretation of the integration law rules for the member states.

- On the issue of the correlation of integration law rules with international law, we deem that the relationship of integration association law and international law is obvious and undeniable. Moreover, the system of integration law is originally based on an international treaty. As part of the integration structure, an international treaty is the foundation for the formation of the legal provisions of the integration law system and has a priority.

But we do not rule out the possibility that in the process of active formation and activities of integration associations, complexities and contradictions on the issue of legal nature of the law systems of integration associa-
tions and their relations with international and domestic law will arise.

In this connection, there is a problem of a thorough analysis of the issue in front of the scientific legal doctrine. The question of the limits of interaction of integration law and international legal system should not be limited by percentage ratio. The main outcome of a reasonable combination both of international law principles and integration law standards should be the formation of special international structures capable of bringing participating states to a new level of economic and social interaction by coordinating efforts in the contemporary context of globalization.

Conceptual provisions and recommendations contained in the study can be used for further development of scientific research, as well as in the process of solving a number of theoretical and methodological problems in the science of international law, integration law and comparative law.

The recommendations contained in the article can be used in the education process, educational and methodical literature, the practice of teaching general course of international law and integration law.

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6. References


