Journal of Eurasian Studies 5 (2014) 116–121

Contents lists available at ScienceDirect

Journal of Eurasian Studies

journal homepage: www.elsevier.com/locate/euras

Theory and practice of regional integration based on the EurAsEC model (Russian point of view)

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ARTICLE INFO

Article history:
Received 10 December 2013
Accepted 10 April 2014

Keywords:
Customs Union and Common Economic Space (CUCES)
Eurasian Economic Community (EurAsEC)
Eurasian Economic Union
Eurasian Economic Space

ABSTRACT

This article shows Russian point of view on the evolution of Eurasian integration as related to plans to create a Eurasian economic entity based on the EurAsEC model that began with the creation of the Customs Union and Common Economic Space. The article analyzes the legal theory of Russian authors of EurAsEC, based on a review of this integration and the legal documents of this process. The article details the institutional mechanism of the functioning of Eurasian integration and its legal characteristics, and gives a short legal history. The article shows that integration of post-Soviet countries based on EurAsEC is more successful than integration based on the CIS model despite the lack of supranational power of the institutions of EurAsEC.

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1. Globalization and regionalization in Russian Legal Doctrine

The current stage of integration in the world shows us two dialectically, jointly conditioned but internally antagonistic processes: globalization and regionalization.

Globalization is a universal phenomenon that reflects the growing interdependence of states in addressing common problems and also the close relationship between international and national law (Coleman & Underhill, 2012; Lukashuk, 2002; Marchenko, 2010; Tolstyh, 2009).

Sustainable regional integration systems using the goodwill of the participants take on a coordinating function. This allows the different countries to present themselves at the global level as a united structure to protect their common interests (Farhutdinov, 2005).

Immanuel Kant said that the Supra-state is a transitional stage on the way to world peace. He upheld the standpoint of a cosmopolitan ideal of norms operating independently of the State that limits (but does not destroy) the sovereignty of the State (Malfliet, Timiriasov, Zdunov, & Sultanov, 2004).

The legal sphere shows us strong integration processes and harmonization of the legal systems of different countries, where uniform regulation is established. The most interesting experience of integration is the law of the European Union. The union of states on the principle of voluntarism is not just a political union, but the integration of economies. It is fair to say that the economy, through the integration of business entities, involves other spheres of public life (Kashkin, 2008). Nowadays, Russian doctrine of regional integration more concentrates on the economic aspects of regional integration.

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Peer review under responsibility of Asia-Pacific Research Center, Hanyang University

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http://dx.doi.org/10.1016/j.euras.2014.05.004
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The essence of the integration processes at the international level suggests that, historically, the evolution of integration has occurred as part of basic steps, each of which shows a certain degree of "economic maturity" – the free trade area, customs union, common market, and economic union (Franca Filho, Lixinski, & Olmos Giupponi, 2010; Nikolaeva, 2010). Within each stage two dialectical tendencies co-exist – the desire of states not to lose their sovereign identity and at the same time the desire to use the supranational mechanisms for their own purposes.

The ultimate goal of all the steps on the way to integration is the harmonization of domestic legal systems as a means of ensuring the free movement of the factors of production: goods and services, labor, investment, and finance.

This result can be achieved only if the state transfers much of its competence to the organs of the economic integration system. In the final analysis, harmonization and unification strengthen the methods of supranational regulation and, therefore, make it easier to control the whole process of integration. In the course of regional integration, we can observe certain processes causing and revealing the essence of integration. First of all, the development of two or more third-party relations between states through treaties. After that the expansion of direct economic relations follows, both between states and between transnational or regional companies.

Supranational law is formed through the interaction of international and domestic law of the states, forming the legal superstructure that different authors define as either transnational law or supranational law (Vel'iaminov, 2004).

We need to notice that the integration processes in the laws of the states as agents of integration formation show us the convergence process of unification, the introduction of common technical and legal standards. Supranational unification of law is qualitatively different from international law. The basis of the supranational unification of private law is the activity of authorized bodies of supranational organizations which creates acts that come from integrated authorities such as European Union directives, decisions, and recommendations adopted by the executive, legislative and judicial branches of the integrated community whose nature must be understood as supranational standardized acts (Rafaliuk, 2010).

Regional integration can be achieved by using a special legal regime that can function in the framework of international regimes. In this article we speak about a regional regime that concentrates on economic and political integration. According to some experts, member states do not transfer to the union the right to exercise power in their place, but provide limited authority to perform certain activities instead (Ryzhov, 2006).

The process of integration acquires its institutional form through the mechanism of harmonization of national legislation, which can take many forms. All these measures are related to the control of the implementation of and compliance with the harmonized legislative and other normative legal acts of the member states. For example, the Agreement on the Customs Union and Common Economic Space (signed in Moscow on 26 February 1999) states that "for the purposes of this Agreement the following terms and expressions shall have the following meaning: the single economic space – the space, of the Parties' territories, where the same type of mechanisms to regulate the economy based on market principles and application of harmonized legal rules operate, there is a single infrastructure and coordinated fiscal, monetary, foreign exchange, financial, trade and customs policies are implemented to ensure the free movement of goods, services, capital and the labor force ".[1] As was rightly observed by N.G. Doronina, who carried out detailed research on the effect of harmonization of law and unification of the economy, the unification of law should be defined "as targeting the harmonious interaction of different legal systems and the interaction of the national legal systems that have already achieved a degree of harmony" (Doronina, 1997).

Membership in the regional integration systems provides different benefits to the members. Organizations which function as the institutional basis of integration are composed of different institutions with supranational power (and competence of subordinate order). This is the main purpose for establishing the international courts, which have a legal personality to form, interpret, and use the law. By applying this integration law they guarantee the functioning of the unification law area. For example, in Latin America international courts are established in the framework of integration associations. The decisions of these courts provide a uniform formation, interpretation, and application of the law on the basis of their competence. The decisions of "integration courts" make unifying features through the formation of a legal space within the integrated union (Rafaliuk, 2010).

The "law of integration" has elements which are manifested in the framework of integration formations; it can be attributed to the area of international law by defining its location in the general part of international law (Vorontsova, 2004).

As a result, on this background, we can see the development of the "law of economic integration" as a part of international economic law (Efremova, 2008).

The example of failed regional integration based on CIS – model shows that that successful integration cannot be obtained only by the political will of members. Integration as a legal phenomenon without an adequate level of economic development is impractical, both in general and in particular for its participants.

An important issue is how to regulate the functioning of the right of interstate association. In the first phase, the main defining tool for this is the constitution of each state that is a party to such an association and international law, but in the second phase it is the acts of interstate organizations.

Under the generic term "international organization" we use the term "interstate association" although in Russian legal thought it is alleged that a separate group could be singled out by demarcating the following characteristics: interstate unions express a greater degree of integration of

[1] "Dogovor o Tamozhennom sojuze i Edinom jekonomicheskom prostranstve" (26 February 1999), Sobranie Zakonodatel'stva RF. 2001. No. 42. Art. 3983.

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