# The Legal System of the Russian Federation Amid International Integration

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## Abstract

*International integration affects many sides of societal life, including the development of national legal systems. This article analyzes the regularities and algorithms of the mutual effect of national legal systems, which lead to the formation of unique compositions of various legal traditions. Special attention is paid to the influence of international law on the development of the legislative systems of individual countries. The author proposes ways of overcoming contradictions and gaps in the legal regulation of the multidimensional system of integration associations with the participation of the Russian Federation and substantiates conceptual approaches to the formation of the legal framework of the Eurasian Economic Union and subsidiary support for the union's development within the legislations of the member states.*

Russian and foreign legal science has long noted the influence of international integration on legal development. However, its regularities have not been studied in detail thus far. Complex studies are necessary to determine the general trends in the development of legal systems, to identify new intersystem components that bring together different levels and spheres of legal regulation, and to correct the scientific apparatus for conceptualizing the phenomenon of legal integration.

## The interaction of national legal systems under modern conditions

International integration affects legal development in diverse forms of interaction between national legal systems, including the borrowing of legal constructions and decisions, the incorporation of normative acts, the coordination of legislative policies, the elab oration of uniform and model legislative acts, the creation of single judicial and quasi-judicial dispute-settlement organs, and so on. This phenomenon is universal. Any legal system contains elements that reflect the impact of foreign law.

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Many Asian states preserve elements of customary law, as well as legal traditions and norms that were effective prior to the beginning of their modern national development (in particular, India preserves elements of British law; Uzbekistan, those of Soviet law). At present, they are actively introducing legal institutions of modern Western countries. In the states of North Africa, the effects of Muslim, British, and French law are interwoven. The majority of tropical African states practice customary law with elements of previous colonial British, French, Spanish, or Portuguese law and the increasingly actively developing legislation.

The mutual influence of national legal systems embraces not only legislation but also law enforcement practices. Modern states admit the enforcement of foreign courts' decisions according to the procedures established by international agreements and internal legislations. Judicial practice is often enhanced by borrowings of the samples of court decisions of more developed legal orders, which is obvious by the example of common law courts of Canada, Australia, New Zealand, and India [1, 2]. Law enforcement is corrected by the development of civil law relations, which, as foreign economic relations deepen, widely incorporate good business practices from other national legal systems.

The consequences of wide migration, which, in the globalizing world, form various ethnically isolated communities with legal traditions and customs distinct from the universally recognized ones, have become increasingly more evident. This allowed a number of scientists to single out the phenomenon of "nomadic legal systems," their carriers being migrant communities [3, pp. 139, 140].

As a result, there arise original and often unique compositions of different legal traditions, which further complicate the historically formed structural heterogeneity of national legal systems. For example, the United States, Canada, and India have territorial formations with specific legal systems, which, in turn, include enclaves of other legal formations[1].

1. For example, in the United States, which has developed in line with common law traditions, Louisiana preserves elements of the continental (Romano-Germanic) law system. Effective in it are the Civil Code and other unified law acts that enjoy more significance than case law. At the same time, Louisiana has enclaves where other legal subsystems are in effect, including those of Native American Indian tribes with their own self-government bodies and local tribal courts that use norms of customary law. Similar structural peculiarities are typical of Canada's legal system that includes the law of Quebec, which has

Finland, Sweden, Brazil, and a number of other states preserve the legal traditions and customs of native ethnic communities.

The combinations of elements of various legal systems do not remain rigid. They are constantly changing under the influence of many factors, including the growing competition between legal communities. In modern history, we can find examples of coercing weaker states into changing their legislations (particularly, tax and customs legislations) to ensure the economic interests of large powers or to harmonize them with their ideological attitudes, as was the case with the states of the socialist camp. The extension of the jurisdiction of US courts to other states, foreigners, and legal entities rests on forcible action (economic, political, ideological, and informational).

However, competition mainly takes less noticeable forms, including the creation of more effective legal solutions to ensure efficient measures of the legal protection of legal rights and interests, supply additional benefits and privileges, and preserve the stability of legal systems. In Russia, these are the factors that determine why participants in civil law relations choose foreign rather than Russian law as applicable law for concluding agreements.

The interaction of national legal systems embraces not only legislation and law enforcement practices but also legal ideology and legal consciousness. Sometimes, this has dramatic consequences, as was the case at the turn of the 1980s—1990s, when the ideas of the legal state, the rule of law, and the protection of human rights and freedoms, adopted from the constitutional practice of developed capitalist states, prevailed over the values of socialist legality, which became one of the main causes of the collapse of the world socialist system.

In the new century, the struggle between legal ideologies is mainly developing between the Islamic and Western laws and, within the latter, between the common law (Anglo-Saxon) and continental law (Roman/German); in particular, it is expressed in the struggle between two key ideas—the rule of law and the legal state [3; 5, pp. 96-107].

Studies have made it possible to identify the following regularities in the interaction of national legal systems, which are developing in different forms and with different degrees of convergence.

- The mutual influence of national legal systems is becoming increasingly larger in scale, which is confirmed by the ever-increasing

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developed in line with continental law.

borrowing of legal constructions and norms. This phenomenon is caused by the acceleration of the globalization process, which unites the world by increasingly stronger economic, political, and spiritual relations.

• Practice shows that a high degree of convergence is mainly possible within uniform national legal systems. The harmonization of the legal systems of states different in their socioeconomic essence (for example, France and China) can only be limited.

• The legal convergence of states is different in the time dimension. It develops more dynamically between states with similar, rather than different, socioeconomic formations. However, a characteristic trend of recent decades has been the gradual adoption of state-planning and state-property institutions, which emerged under totalitarian socialism, by Western countries (Italy, Spain, Brazil, and others). The legal systems of Western countries continue to incorporate provisions on social justice and on the role of labor and the universal duty to work, which was mainly typical of socialist law.

At the same time, the law of former socialist states is gradually adopting the institutions of capitalist law, which they used to reject altogether. For example, the Constitution of China of 1982 was amended with regard to the admissibility of private property, "socialist market economy," natural human rights, and the legal state.

• The algorithms of harmonizing legal institutions are different. In particular, the institution of the juristic person, previously unknown to Anglo-Saxon law, was relatively easily, although somewhat resentfully, introduced in Britain [6]. On the other hand, the habeas corpus institution, generated in the depth of Anglo-Saxon law, was rapidly incorporated by the legislations of continental Europe and Latin America [7].

• The interaction of national legal systems accelerates the development of their structural and functional characteristics, filling them with a new content, widening their regulatory opportunities, and creating new combinations of elements of different legal traditions.

• The interaction of national legal systems can have negative consequences. Any forcible entry or ill-advised reception of legal solutions creates the danger of destroying internal relations that ensure the sustainability of a legal system, which is confirmed by the events developing in Ukraine after the February coup of 2014.

• Competition between legal communities and families is growing, which is proved not only by the gradual displacement of individual national legal institutions and decisions but also by the basic values of law.

• The deepening impact of the dominant legal systems of the countries of Western democracy sometimes leads to the revival of historically closed legal institutions, which is clearly evident from the example of the Islamic State movement, which has embraced a number of Asian countries.

## International law and national legal systems

Integration processes manifest themselves not only relative to national legal systems nut also in the international legal context. In the modern world, it is difficult to find states that are isolated from the influence of the international community, which is united "in search of integrity and the convergence of positions" in universal, regional, and local international organizations [8, p. 16]. International organizations are different in terms of the depth and intensity of integration processes, the development of which is determined by different socioeconomic and political factors. The cumulative result of their action is reaching a certain state that, somewhat conditionally, can be designated as the level of integration.

This notion, which appeared in economic science, is used by jurisprudence mainly with respect to forms of integration [9, p. 53]. Obviously, it is necessary to harmonize the use of this term with regard to the mastering of higher categories, which reflect the most substantial and universal properties of legal reality and its dynamics. From our point of view, this category should unite two interconnected aspects – economic and juridical. The economic aspect will be the measure of the degree of interpenetration of the economies of the member states of an association, from free trade to a single market or an economic union. The juridical aspect should testify to the degree of legal integration or legal convergence of states, from its first stages, limited to concluding individual international agreements that would harmonize regulation within a narrow circle of social relations, to the formation of international integration associations of states with common organs, endued with quasi-public functions, and a developed legal system.

It is also necessary to overcome the prevailing restrictive approach to the understanding of integration. More often than not, it is reduced to the uniting process in the economic sphere, while in the studies of political integrative phenomena, the dichotomy of the national and international does not go beyond identifying two forms of state integration – unitary and federative – and two forms of international integration – intergovernmental and supranational. Intermediate forms, such as

unions, groups, and so on, are as a rule left without consideration. The presence of complex forms embracing different spheres and trends of inte gration – political, economic, foreign policy, military, and others – is not taken into account either.

If we consider the notion integration with account for all these forms, we will be able to state that there are several levels of integration development, the highest having been reached by the European Union. The same goal is posed before the forming Eurasian Economic Union, the Common Market of the Southern Cone (MERCOSUR), and a number of other integration associations. It is even proposed to single out a specific type of international organizations, international integration organizations [10, pp. 202—207].

A sufficiently high level of integration processes is characteristic of individual local international legal systems, including the Union State of Russia and Belarus[1], as well as of certain international organizations of specialized competence, for example, the Organization for Economic Cooperation and Development (OECD).

The forms of the influence of international integration associations on national legal systems are not always static and are often different because states are different in their essence, level of socioeconomic development, and political regime. Nevertheless, even the most substantial differences do not hinder the creation and action of common international legal acts that meet the interests of all the states (in international universal legal systems) or some of them (in international regional and local legal systems).

One of the examples of the influence of international law on the legislation of states is the provisions about the protection of national and religious minorities, which are to an extent adopted by the constitutional law of practically all states of the world [12, pp. 42-65; 13, pp. 149-162]. On the other hand, international law has also adopted much from the practice of constitutional and legislative regulation, including in issues of the protection of human rights and freedoms and counteraction to corruption and terrorism [14, 15].

Since the second half of the 20th century, international law has been developing rapidly, involving in its orbit an increasingly wider scope of

1. The Union State of Russia and Belarus is considered by the majority of legal scholars as a local international organization because it mainly acts within the framework established by international legal agreements. Some authors, however, interpret the Union State of Russia and Belarus as a transitional form to a confederative union of the two states [11].

new relations; however, the channels of its impact on national legal systems in the new century have not changed conceptually. These are classical mechanisms of the implementation of international legal norms. At the same time, recent decades have seen the extension of legal means of introducing these norms, which is associated with the strengthening of tendencies toward integration.

The classical implementation model, when the state preserves control over making and implementing decisions, is characteristic of the United Nations and the majority of its specialized establishments. No decision, with very few exceptions, can be made against the will of interested states. All international agreements adopted within these organizations are to be included in national legal systems in strict accordance with the procedures established in the constitutions and legislations of participant states.

Such a mechanism originally implies that the states will adopt international legal norms differently; hence, the problem of ensuring their universality remains topical. In attempts to solve it, many international organizations modernize implementation mechanisms. For example, the WTO has formed a dispute resolving organ that uses the doctrine of the judicial (in this case, quasi-judicial) precedent, which testifies to the formation of a new implementation-interpretation mechanism [16, p. 102]. The same mechanism, the European Court of Human Rights, works in the Council of Europe to implement the European Convention for the Protection of Human Rights and Fundamental Freedoms of1950. Moreover, within the Council of Europe, the following additional implementation mechanisms are used: political and administrative control of the organs of the Council of Europe (the Committee of Ministers, the Secretary General, and the Parliamentary Assembly), monitoring control by the Group of States against Corruption, and expert control by the European Commission for Democracy through Law (the Venice Commission). Analogous mechanisms of implementing interna tional legal norms function in the European Union as well; however, as opposed to the Council of Europe, they form a single system whose integrity is ensured by binding acts of the European Union.

Therefore, the system approach to solving the problem of the universality of international legal norms has become a mighty factor of converging national laws of individual states.

International legal integration processes often raise fears that they can threaten state sovereignty or lead to economic, social, and spiritual

losses[1]. Individual decisions of the European Court of Human Rights that contradict the norms of the main laws and positions of the constitutional courts of the member states of the Council of Europe meet with a mixed reception [17].

Nevertheless, the processes of international legal integration are to all appearances irreversible. Yet it remains unclear what the potential limits of the unification of national legal systems are and which model of international legal interaction will prevail. Traditionally, science proposes only one option: "the world state" within "world law." However, its appearance, reverently celebrated by many thinkers of the past, is hardly possible, at least in the near future. More realistic is another scenario of the development of events, the formation of a new multipolar international legal environment including several competing global interstate formations. The respective prerequisites are developing in the depth of regional integration international legal systems, such as the European Union.

Assessing international integration, we can identify the following regularities of its development.

- The intensity and depth of the influence of international law on national legal systems are determined by the level of integration, ensured within respective international organizations.
- The classical model of interaction between international law and national legal systems, based on the recognition of the sovereignty of each state with regard to the choice of methods of implementing international legal norms, preserves its significance.
- At the same time, since the end of the 20th century, modernized mechanisms of implementing international legal norms have been forming, strengthening, compared to the classical model, the processes of the convergence of national legal systems.

1. For example, at the plenary session of the Venice Commission of the Council of Europe in October 2014, the representatives of the Republic of Kazakhstan pointed to the possibility of applying to the Venice Commission with the request to provide a legal evaluation of the threats to state sovereignty that can arise in executing the Treaty on the Eurasian Economic Union. The Venice Commission has often considered the legislation of the states that reject same-sex marriages as being against the extended interpretation of the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms on prohibiting discrimination on any grounds. For example, in June 2013, it considered amendments to the Constitution of Hungary and in October 2014, draft amendments to the Constitution of Macedonia, aimed at protecting traditional family values.

• Regional international organs (the Council of Europe and others) use the symbiosis of the classical implementation model (under its evident prevalence) with the modernized model that uses international quasi-judicial jurisdiction and additional implementation means, including "soft" instruments of legal convergence (recommendations, opinions, and so on), the potential of which awaits evaluation.

• In recent years, the European Union has gradually been forming a system model of interaction between regional integration international legal formations and the national legislation of the states. A substantial role in this model is played not only by international agreements but also by binding acts of the organs of interstate integration associations. Such acts form new intersystem components that consolidate the law of the European Union and its member states.

• In the international legal space, the role of regional integration associations, such as the European Union, the North American Free Trade Agreement, the Association of Southeast Asian Nations, Asia-Pacific Economic Cooperation, and others, is growing.

Cognition of the above regularities is important not only from the point of view of understanding the present realities but also for the legislative support of the development of the Russian Federation and Eurasian integration associations.

## The legal development of Russia and Eurasian integration associations

The conclusions characterizing the mutual influence of national legal systems (horizontally) and the impact of international law on them (vertically) are fully applicable to the modern legal system of the Russian Federation. At the same time, it is necessary to study the characteristic features of its integrative development, which are determined by numerous historical, socioeconomic, and political factors. Scientific analysis of the problems of the formation of the Eurasian Economic Union seems most topical.

By now, a multidimensional system of integration associations with the participation of Russia has developed, the associations being different in their goals, coverage, and implementation forms[1]. Starting from January 1,

1. In addition to the Commonwealth of Independent States, it includes the Collective Security Treaty Organization (CSTO), the Eurasian Economic Community (EurAsEC), the Customs Union, the Common Economic Space (CES), the Shanghai Cooperation Organization (SCO), and the Union State of Russia and Belarus.

2015, this system will be supplemented by a new link, the Eurasian Economic Union (EAEU), owing to which the number of integration associations with the participation of the Russian Federation will decrease: the Eurasian Economic Community as an international organization will cease its existence, while the Customs Union and the Common Economic Space will enter the Eurasian Economic Union as its components.

No doubt, the development of the Eurasian Economic Union is one of Russia's main geopolitical tasks, but it does not exclude the participation of our country in other integration associations meeting its national interests. The advantages of participation in such associations are obvious. At the same time, this leads to certain expenses because the status of the Russian Federation as a member varies in different inte gration associations. The situation is aggravated by the imbalanced, sometimes intricate, and even contradictory character of the legal framework of such unions. In a number of cases, their competences overlap one another, which does not favor the implementation of the interests of the member states.

A means of overcoming this quite common problem is mutual correlation and prioritizing of the overlapping international obligations. However, its solution is hindered by a constitutional lacuna, the absence of criteria for identifying incompatible international norms. According to the Russian Constitution, all of them become part to Russia's legal system and have priority with regard to federal laws and the laws of the constituent members (Article 15). Within such constitutional-legal coordinates, it is necessary to strengthen the system basics in the legal coverage of integration processes.

To all appearances, it is necessary to distinguish between the two sides of the concept of Eurasian integration, implemented in the form of the Treaty on the Eurasian Economic Union and, in a wider context, Eurasian integration law. The implementation of the project of interstate integration, embodied in the treaty, will soon begin. It is a result of the evolution of the uniting processes begun by the creation of the Commonwealth of Independent States (CIS) and developed by the formation of other Eurasian integration unions. Under these conditions, science should solve a fundamentally significant task—to investigate, with account for previous experience, into promising legal forms of Eurasian integration and to formulate a scientific concept of its legal coverage, which can conditionally be designated as Eurasian integration law. One of

the primary goals of this concept should be strengthening the system basics of integration processes, which requires harmonizing the agreements effective in this sphere to exclude the existing contradictions[1].

A necessary element is also systematizing the solutions of organs of interstate integration associations (in particular, the Council and the Board of the Eurasian Economic Commission). These bodies themselves can do this by constantly upgrading collections of acts grouped by certain fields of concern, as is the case in foreign countries[2].

The system approach to maintaining integration processes will also require harmonizing implementation mechanisms. One of the methods can be the adoption of a respective international protocol that would envisage clear algorithms of agreeing intrastate procedures of putting into effect international treaties within the Eurasian Economic Union. As a positive practice, we can consider the nonbinding act adopted by the Eurasian Economic Community [18]. It is possible to prepare a special international treaty on coordinating the introduction of changes into the national legislation, which are necessary to fulfill international obligations within the agreed periods and using coordinated law-enforcement means [19, p. 32]. Such measures will make it possible to ensure a more dynamic development of the new law community – integration law with a dual international and intrastate nature – in which the implementation-legal complex, limited in its possibilities, will be transformed into a full-fledged legal system that will gradually oust internal law from the regulation spheres, handed over to integration associations.

The Treaty on the Eurasian Economic Union creates prerequisites for this by allowing for the adoption of binding acts of the union's bodies. The positive practice of using such intersystem components that harmonize national legal systems within a single legal space can develop with account for the experience of the Customs Union and the Common Economic Space.

To develop the legal system of the Eurasian Economic Union, of importance is the creation of standing interstate bodies, including the Parliamentary Assembly [20]. However, its formation has been postponed

1. In particular, it is necessary to correlate the norms of the Agreement of the Member States of the Customs Union of December 17, 2012, on the Removal of Technical Barriers to Mutual Trade with the CIS Member Countries Other Than the Member States of the Customs Union with other acts that remain effective after the Treaty on the Eurasian Economic Union has come into effect.
2. In the United States, such collections of normative regulatory acts are called Rules and Regulations.

indefinitely because of the concerns of the leadership of Kazakhstan and Belarus that this will infringe upon the state sovereignty of their countries. The practice of regional integration associations shows, however, that the presence of parliamentary structures is a necessary condition for the successful functioning of such associations. Parliamentary structures are present in the MERCOSUR, the Andean Community of Nations, and other integration associations oriented, just like the Eurasian Economic Union, to solving tasks of economic development.

It is also necessary to apprehend the mission of the judicial organ of the Eurasian Economic Union. It should perhaps be discussed after having completed the systematization of the legal array of the Customs Union and the Common Economic Space. However, it is already clear that the court of the Eurasian Economic Union should play the leading role not only in settling disputes between the states and other participants in the integration process but also in forming the new integration legal order, which is unattainable without authorizing the court with the right to control norms.

A positive practice of its implementation was accumulated by the court of the Eurasian Economic Community. This experience can be used in designing the legal construction of the court of the Eurasian Economic Union [21, p. 153]. However, Appendix 2 to the Treaty on the Eurasian Economic Union restricts the court's opportunities. Upon the application of a member state or a body of the union, it can explain the provisions of the treaty and other international agreements, as well as those of the decisions of the union's bodies. However, such explanations are not binding, are considered as advisory opinions, and do not deprive the union's member states of the right to interpret the union's documents as they like. Under such limited legal frameworks of the court's activity, of increased significance are other mechanisms, such as agreeing the positions of and reconciling the parties, the settlement of disputes by arbitration, and strengthening human rights—related functions of the union's institutions; however, they can hardly compensate to the full for the insufficient authorities of the court of the Eurasian Economic Union.

It is also necessary to solve the problem of the subsidiary support of the development of the union within the legislations of its member states. Thus far, the national legislations of Russia, Kazakhstan, and Belarus do not meet this task. For example, in Russia, from the total number of legislative initiatives of the deputies of the 6th State Duma, 44% are devoted to issues of state building and constitutional civil rights and only 23%, to economic policy; 17% are dedicated to social policy, and 10%, to the budgetary, tax,

and financial legislation[1]. The same imbalance is characteristic of the legislative initiatives of the Federation Council and legislative (representative) bodies of state power of the Russian constituent members.

Taking into consideration that 50% of all legislative initiatives of the Russian president and the largest share (25%) of those of the Russian government deal with the sphere of state building and constitutional civil rights, we can state the absolute prevalence of this subject matter of legislation. The approximately same relation of legislative initiatives is characteristic of Kazakhstan and Belarus, which is in contrast to the legislative practice of many developed states that mainly pay attention to the regulation of social, economic, environmental, and budgetary-financial relations[2].

This phenomenon cannot be assessed categorically, because it is positive and testifies to the constantly developing process of the constitutionalization of the legislations of Russia, Kazakhstan, and Belarus [22]. At the same time, correcting the legislative policy of the member states of the Eurasian Economic Union towards overcoming the imbalance of the legislation branches will no doubt become an important factor of fulfilling the union's single economic potential.

In forecasting the legal development of Russia and the European Economic Union, we can suppose that the vertical of the legal interaction of the union and its member states will strengthen through the extension of intersystem components that ensure the harmonization of the Eurasian legal space. It is also obvious that the dynamics of the mutual influence of the national legal systems will grow horizontally across the Eurasian legal space, which will be favored by the common sources of legal culture, the same legal values and traditions, the close connections between scientific legal schools, and the coincidence of the legislative content in many spheres of legal regulation. The agreement of the programs of the legal development of the member states of the Eurasian Economic Union to strengthen their positions under constantly growing competition with other states and integration associations seeking to increase their influence in Eurasia will also become more consistent.

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1. Based on the data of the materials of the Analytical Department of the State Duma of the Federal Assembly of the Russian Federation "Analysis of the Passage of Laws and Draft Laws at the 'Equator' of the Sixth Duma."
2. For example, out of the 165 laws adopted by the 113th US Congress from 2013 through September 2014, only 10% regulate the organization of state power and human rights and freedoms. Approximately the same number of acts (without accounting for international treaties) is devoted to foreign policy. Many more legislative acts are adopted in the spheres of environmental protection (about 15%) and budgetary-financial regulation (about 20%).

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