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Impact of International Law Fragmentation on the Development of Integration Processes

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ABSTRACT

This article analyzes the relationship between the phenomenon of fragmentation of international law and integration processes aimed the modern global transformations. Various approaches to understanding the fragmentation of international law are considered, including its causes, forms, and consequences. The article examines how fragmentation impacts the functioning of international integration entities, the development of interstate relations, and the effectiveness of international legal regulation. Particular emphasis is placed on the role of fragmentation as a conducive factor for the advancement of international integration and the establishment of specialized legal regimes within integration associations. Consequently, the degree of fragmentation in international law within established regions correlates with the level and depth of integration. In the current context, the fragmentation serves as a favorable element for participating states in fostering their integration interactions. In addition, international law functions as a crucial instrument for regulating these integration processes. The methodological foundation of this article comprises well-established general and specific methods of scientific research. The article's purpose and objectives are to investigate the degree of influence and the nature of the interaction between the fragmentation of international law and modern international integration processes.

Keywords: fragmentation of international law; regional integration; regionalization; approximation; unification; harmonization.

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К вопросу о влиянии фрагментации международного права на развитие интеграционных процессов

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АННОТАЦИЯ

Статья посвящена анализу взаимосвязи между феноменом фрагментации международного права и процессами интеграции в современных условиях мирового переустройства. В статье рассматриваются различные подходы к пониманию фрагментации международного права, включая ее причины, формы и последствия. Автор анализирует, как фрагментация влияет на функционирование международных интеграционных объединений, развитие межгосударственных отношений и эффективность международно-правового регулирования. Особое внимание уделяется роли фрагментации как благоприятного фактора для развития международной интеграции, формированию особых правовых режимов интеграционных объединений. Автором статьи делается вывод, что фрагментация международного права в рамках устоявшихся регионов зависит от уровня и глубины интеграции, что в современных условиях является для участвующих государств благоприятным фактором развития их интеграционного взаимодействия, в свою очередь, международное право обеспечивает интеграционные процессы в качестве необходимого инструмента их регулирования. Методологической основой работы стали известные общие и частные методы научного исследования. Целью и задачами статьи являются исследование степени влияния и характера взаимодействия фрагментации международного права и современных международных интеграционных процессов.

Ключевые слова: фрагментация международного права; региональная интеграция; регионализация; сближение; унификация; гармонизация.

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INTRODUCTION

Modern international relations are characterized by instability, nonlinearity, and unevenness, which leads to the fragmentation of phenomena such as international law. International law is one example which "becomes much more fragmented in various fields and regions where special principles and norms create autonomous legal regimes" [1]. The study of this process should focus on its key characteristics, its implications for the international legal system, and the reasons for its extension in current times. However, the impact of fragmentation on the international legal order and the restructuring of the modern world, in particular on international integration processes, is not sufficiently covered in current studies. The ability of science to analyze complex international legal processes and determine the factors that shape their development and functioning is a key element of the modern international agenda. Understanding the main features of international integration and recognizing fragmentation as one of the key factors in its development will create a theoretical basis for assessing the current situation and predicting future consequences based on the trends identified.

MAIN PART

Some researchers believe that regionalism as a legal and political concept is primarily rooted in the political, economic, historical, and cultural ties between neighboring peoples and countries and in their common interests and goals [2]. Regionalism has long been an essential aspect of international relations and is now considered inevitable in the international legal consciousness because of the historical development of international law in various regions and subregions. It is recognized that the emergence and evolution of international law took place in various regions and subregions of the ancient world, highlighting their unique characteristics. This recognition is clearly reflected in the Charter of the United Nations (hereinafter referred to as the UN Charter), which recognizes regional agreements in Chapter VIII and allows for the existence of regional agreements or institutions related to international peace and security at the regional level. However, regional agreements are recognized only if they comply with the purposes and principles of the United Nations (hereinafter the UN) [3]. The International Court of Justice has also dealt with regionalism, as shown in the Asylum Case, where it examined state practice in relation to asylum. The Court concluded that there is no universal practice on this issue, emphasizing the different approaches of states to issues related to asylum.[1]

Given the aforementioned processes, the significant regulatory expansion of international law, the growing number of international judicial institutions and their active application of international law, the observed marked growth of international organizations and regional integration associations at both the universal and regional levels, within which active processes of lawmaking and law enforcement began to take place, active discussions emerged in the doctrine of international law regarding the fragmentation of international law [4]. These discussions focus mainly on the division of norms of international law and determining which norms, universal or regional, should take precedence in the law enforcement process [5].[2]

Some decisions of the Court of Justice of the European Union (hereinafter referred to as the Court of Justice of the EU) can be cited as examples of such controversial regional law enforcement. In the decision in the case of *Portuguese Republic v Council of the European Union* in 1999, it was noted that the rules of the World Trade Organization (hereinafter referred to as the WTO) do not have a direct effect within the framework of the Union's rule of law.[3] As for the relationship between the norms developed within the framework of the United Nations and the rule of law of the European Union (hereinafter, EU), the EU Court in the *Cadi* case also recognized that considering the legality of certain decisions of the UN Security Council lies outside the competence of the EU Court. This is true especially of decisions adopted in accordance with Chapter VII of the UN Charter. However, the Court may examine the legality of EU acts adopted on the basis of such decisions. At the same time, the EU Court of Justice stated that the norms of the primary law of the Union, in addition to the basic principles of EU law, prevail over other norms of international law.[4] It seems that with such maxims, the EU Court of Justice was trying to emphasize the self-sufficiency of the norms created within the EU in relation to the norms of universal international law.

The same position regarding the self-sufficiency of the EU legal regime and the priority of its norms and principles for the EU Court of Justice can be found in its decision on the dispute over the nuclear fuel production plant in

[1] Asylum Case (Colombia v. Peru). URL: https://icj-cij.org/case/7 (access date: 01.07.2024).

[2] Iskevich I.S., Suchkova E.A. Classification of International legal norms. URL: https://www.tstu.ru/en/science/st/pdf/2015/iskevich.pdf (access date: 01.07.2024). DOI: 10.17277/voprosy.2015.02.pp.109-112

[3] Judgment of the Court of 23 November 1999. Portuguese Republic v Council of the European Union. Case C-149/96. European Court Reports 1999 I-08395. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61996CJ0149 (access date: 01.07.2024).

[4] Judgment of the Court (Grand Chamber) of 3 September 2008. Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities. Joined cases C-402/05 P and C-415/05 P. European Court Reports 2008 I-06351. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62005CJ0402 (access date: 01.07.2024).

the UK, the *MOX Plant case*. In its 2006 judgment, the ECJ found Ireland in breach of its obligations under Articles 10 and 292 of the Treaty establishing the EU and Articles 192 and 193 of the Treaty establishing Euratom, namely, the obligation to refrain from settling disputes which arise from the interpretation or application of the said treaties in a manner other than that provided for in those treaties. After that, in 2007, Ireland withdrew its claim against the United Kingdom, and in 2008, the arbitration proceedings that initiated in accordance with Articles 287 and 1 of Annex VII of the 1982 United Nations Convention on the Law of the Sea were terminated.[5] Although the International Tribunal for the Law of the Sea noted that in "the dispute settlement procedure in accordance with the OSPAR Convention, the Treaties establishing the EU and Euratom concern only disputes related to the interpretation and application of these treaties and not the UN Convention on the Law of the Sea. If these treaties define rights and obligations that are similar or identical to the rights and obligations defined in the UN Convention on the Law of the Sea, then such rights and obligations still exist separately from the rights and obligations provided for in the Convention. Therefore, only the procedure provided for in the Convention may be used to resolve a dispute arising with respect to the interpretation or application of the Convention on the Law of the Sea, and not any other treaty."[6]

Regional lawmaking and law enforcement processes are determined through the activities of regional bodies and institutions that prioritize regional international legal principles and norms. Some researchers argue that the fragmentation of international law and the increase in the number of international institutions pose a threat to universal and interdisciplinary principles and norms. Such a conflict between international institutions creates uncertainty and challenges the idea of international law as a whole [6].Moreover, specialists are increasingly focusing on local rather than global tasks, which exacerbates the problem [7].

Because of its diverse and disordered components, which have different structures and connections, international law is not practiced according to a unified system. The system includes universal, regional, and even bilateral systems, subsystems, and sub-subsystems with different levels of legal integration. Despite the fragmentation, the distinction between general and special regulations is crucial to maintaining the unity of the system of international law [8]. To a certain extent, international law has become a complex structure with informal hierarchies and deformalized elements that play significant roles [9]. The concept of general international law, within which special legal norms are developed, is a key hierarchical link in this system [10]. Recognizing the importance of general international law in the system of international law is important for the operation of the *lex specialis* principle.

As noted at the time, the increasing complexity of the global system and the growing importance of regional interests determine the inevitability of integration at the regional level. On this basis, regional legal regulation systems that have more or less specificity in both lawmaking and law enforcement are being created. In both lawmaking and law enforcement, they go further than general international law. Their experience is therefore of undoubted value to international law. However, this does not mean that general international law will follow the same path as the legal regulation of integration processes. The differences between global and regional integration are very great [11]. Nonetheless, regionalism can be useful as a way to implement common law (as, for example, in the case of the UN Convention on the Law of the Sea).[7]

Another modern trend is the emergence and growth of supranational associations that demonstrate the characteristics of integration processes. The formation of regional international organizations and integration associations contributes to the regionalization of international law and its fragmentation. This is evident in discussions about the legal nature of associations such as the EU that have developed as a result of long-term integration between countries of the same region, which also distinguishes their special legal order [12]. The specific orientation of the integration agreements is no longer relevant. What is important is that the states of a certain region realize the unity of their interests and, as a consequence, the willingness to integrate. Thus, international practice is constantly filled with examples of the creation of integration associations based on both the need to solve various common problems and economic and strategic interests. By creating special legal regimes within the framework of regional integration entities, states can effectively respond to modern international challenges [13].

The regionalization of international legal regulation has been a controversial issue in the development of modern international law. In recent decades, as international associations with a high degree of integration have emerged, regionalization has become particularly

[5] Order № 6 «Termination of Proceedings» (6 June 2008 // MOX Plant Case (Ireland v. United Kingdom). URL: https://jusmundi.com/en/document/other/en-mox-plant-case-ireland-v-united-kingdom-order-no-6-friday-6th-june-2008 (access date: 01.07.2024).

[6] The MOX Plant Case (Ireland v. United Kingdom), Provisional Measures. URL: https://itlos.org/en/main/cases/list-of-cases/case-no-10/ (access date: 01.07.2024).

[7] Report of the International Law Commission Fifty-seventh session (2 May-3 June and 11 July-5 August 2005). URL: https://legal.un.org/ilc/documentation/english/reports/a_60_10.pdf (access date: 01.07.2024).

important, potentially leading to the institutionalization of state entities of a confederate or even federal nature. This trend has highlighted the need to unify the international legal system and legal regulation mechanisms, especially within the framework of supranational integration associations, where unique doctrines of regional legal development are being formed. An example of this trend is the creation of new regional and sectoral international courts and arbitrations. Their numbers have increased substantially in recent decades [14], which reflects the growing importance of regionalization in international legal regulation [15].

Strong interstate associations play a fundamental role in the fragmentation of international law, which lacks sufficient international legal mechanisms to maintain the integrity of its system. Various internal and external factors provoke the fragmentation of international law, which is influenced by the peculiarities of state cooperation, integration, and the role of interstate associations and non-state actors. Individual actions by states and integration associations deepen fragmentation, which can potentially weaken internal links in the system of international law and create new opportunities for subjects of international law to use fragmentation strategies. At the same time, the current situation does not imply the destruction of the existing international legal system but rather its adaptation to the changes in international legal interactions [16].

The fragmentation of international law is caused by the interaction of factors at both the international and national levels. The contractual, coordinating nature of international law implies interaction with political and legal instruments, which creates conditions for fragmentation. To solve modern problems, specific regulatory mechanisms that cannot be universal in international law are required. Such mechanisms cannot be limited only to the regulatory component; they must be complemented by an institutional element, specialized practices, and other appropriate means. The autonomous international legal regimes that arise in this regard require specific forms of international legal convergence, unification, and harmonization to achieve their own integrity and consistency with the national level of international law in integrating states [17].

The development of modern international law is characterized by regionalization and fragmentation, which is caused by the emergence of regional international legal environments and their influence on national legislation. Regional integration is a significant modern trend that results in the creation of international intergovernmental associations that are committed to integration processes and international legal mechanisms that accommodate regional needs. The international constituent agreements of interstate integration associations not only address political and economic issues but also influence the legal trends of their development. The fragmentation of international law in different regions is the result of the integration of states and actions taken to bring international legal norms in line with the requirements of integration, taking into account regional dynamics and specifics. As a result, regional legal trends toward the convergence of legal regulation, its unification, and harmonization are much more effective and efficient than such processes at the universal level [18].

The spread of international norms and the strengthening of integration processes as a result of political fragmentation have led to the fragmentation of international law. That is, fragmentation includes political and legal aspects. Political fragmentation in the implementation of the state's domestic and foreign policy is categorized into appropriate types of policies : economic, trade, financial, etc. From a legal point of view, this complex reality underscores the need to expand invariant relations that provide for changes in the modern international legal order, the core of which is general international law [17]. Fragmentation is a natural part of the evolution of international law. It allows for the creation of special rules to meet the needs and interests of modern states, thereby facilitating interstate integration.

At the same time, the specifics of international legal regulation within regional integration do not entail the creation of regional systems of international law. We can talk only about regional subsystems of general international law or regional subsystems of international legal regulation. A different trend would lead to the destruction of universal international law [11]. In addition, regional organizations cannot oppose universally binding international legal norms enshrined in both contractual and general international law. In such situations, the hierarchically higher norm always prevails, be it *jus cogens, erga omnes*, or obligations under an article of the UN Charter. The fragmentation of international law, along with the so-called "regionalization" of international law, occurs exclusively in the plane of universal international law and in accordance with generally accepted and binding universal international legal principles and norms. Thus, fragmentation is a subprocess of the evolution of all international law [19].

CONCLUSION

In conclusion, the development of international law within the framework of regional international integration often leads to fragmentation, which is the result of adapting norms of general international law to specific regional needs. At the same time, the regionalization of international law does not imply its destruction by dividing it into separate independent from each other or contradictory parts. On

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the contrary, regional international legal complexes of norms, the mechanisms for applying them, and the creation of legal orders of integration are a continuation and a more specific expression of the principles defined at the level of the universal international legal system. To date, the emerging legal orders of integration are components of the universal legal order that was established in the 20th century. Thus, the fragmentation of international law within established regions depends on the level and depth of integration, which, in current times, aids participating states in their integration. In turn, international law provides integration processes as a necessary tool for their regulation.

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