

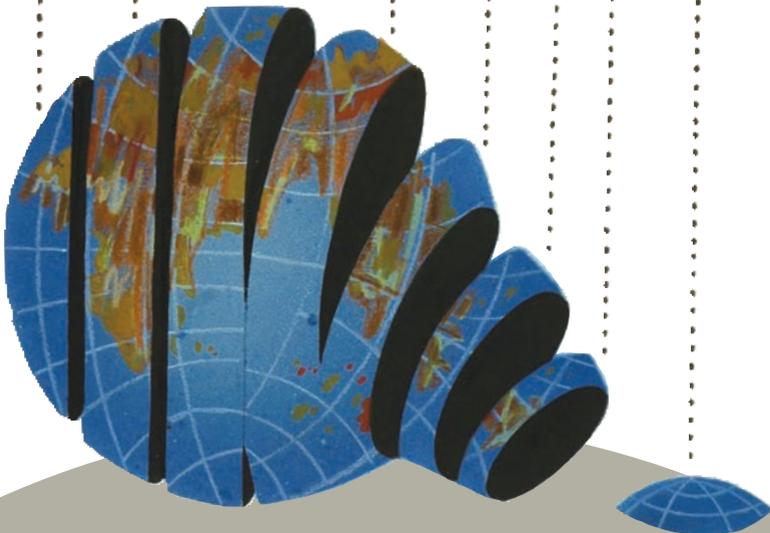


PAVOL JOZEF ŠAFÁRIK UNIVERSITY IN KOŠICE  
FACULTY OF LAW

# REGIONALISM AND ITS CONTRIBUTION TO GENERAL INTERNATIONAL LAW

Ján Klučka Ludmila Elbert

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KOŠICE 2015

PAVOL JOZEF ŠAFÁRIK UNIVERSITY IN KOŠICE  
Faculty of Law  
Institute of European Law and Department of International Law

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Košice 2015

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## **Regionalism and Its Contribution to General International Law** **Scientific monograph**

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## PREFACE

The present monograph "Regionalism and its Contribution to General International Law" was written at the Institute of European Law and Department of International Law, Faculty of Law, Pavol Jozef Šafárik University in Košice, as a part of the project (APVV-0823-11) carried out in 2011-2015, representing one of its final publication outputs.

The main reason for choosing the topic was to evaluate regionalism in its various relationships and forms with respect to international law, and also to evaluate the place, importance and duties of international law in respect to the establishment and functioning of various forms of regional groups.

It is a fact that even though a lot of attention has been paid to regionalism, a more complex evaluation of the impact it has had on international law, and vice versa, is still lacking. The efforts of the present monograph are to partially eliminate this gap.

After giving a brief insight into how regionalism has developed, its content and terminology, the monograph studies in more details individual types of regionalism in the form of old and new regionalism, as well as treaty and institutional regionalism; its specifications and contributions to the international law.

Attention is paid also to a specific phenomenon of current regionalism; the impact the European Union has on making it stable and developed by means of both the factual measures and a system of measures regulated by international treaties. This concerns the treaties concluded between the European Union and the international organizations, groups of states or states themselves.

In this respect the issue of interregionalism, or the interregionalism treaty is being analysed from the point of its specifications and contributions to general international law.

A special chapter in this monograph deals with the rule of law and its impact on current regionalism while also

considering its specifications in respect to various models of regional groups in different parts of the world.

The final chapters concern the codification of international law because of the need to unify the legal regulation of relationships which the regional organizations currently enter into, and the evaluation of the possible impact of initial activities and the application of international law rules through regional organizations within the context of the so-called international law fragmentation.

The authors assume that they have managed to identify the main areas of current regionalism and international law, their mutual impact and the contribution of various forms of regionalism in respect to general international law.

As regionalism represents a dynamically developing segment within current global international relationships and international law, this monograph depicts not only current relationships in respect to international law but also, importantly, analyses their mutual relationships *de lege ferenda*.

The monograph does not cover all aspects of relationships in respect to current regionalism and international law. However, the object of further publication outputs regarding the project is to specify individual types of regionalism and interregionalism in specific areas of international law; in particular the international protection of human rights, international security and peace as well as in the area of economic and commercial cooperation.

Košice, september 2015

Prof. JUDr. Ján Klučka, CSc.

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## Abbreviations of the regional organizations and interregional groupings

|                 |  |
|-----------------|--|
| <b>ALBA</b>     | Allianza Bolivariana para los Pueblos de Nuestra América |
| <b>AP</b>       | Andean Pact  |
| <b>APEC</b>     | Asian Pacific Economic Cooperation                       |
| <b>AU</b>       | African Union  |
| <b>ASEAN</b>    | Association of South East Asia Nations                   |
| <b>CELAC</b>    | Comunidad de Estados Latinoamericanos y Caribeños        |
| <b>CER</b>      | Australia-New Zealand Closer Economic Relations          |
| <b>COMECON</b>  | Council of Mutual Economic Cooperation                   |
| <b>COMESA</b>   | Common Market for Eastern and Southern Africa            |
| <b>EAC</b>      | East African Community                                   |
| <b>EALAF</b>    | East Asia-Latin America Forum                            |
| <b>ECCAS</b>    | Economic Community of Central African States             |
| <b>ECOWAS</b>   | Economic Community of West African States                |
| <b>EC</b>       | European Communities                                     |
| <b>EU</b>       | European Union   |
| <b>GCC</b>      | Gulf Cooperation Council                                 |
| <b>IGAD</b>     | Intergovernmental Authority on Development (East Africa) |
| <b>IOR-ARC</b>  | The Indian Ocean Rim Association                         |
| <b>MERCOSUR</b> | Mercado Común del Sur                                    |
| <b>NAFTA</b>    | North American Free Trade Agreement                      |
| <b>OAU</b>      | Organisation of African Unity                            |
| <b>SAARC</b>    | South Asia Association for Regional Cooperation          |
| <b>SADC</b>     | Southern African Development Community                   |
| <b>UNASUR</b>   | Unión de Naciones Suramericanas                          |



## **1. INTERNATIONAL ORGANIZATIONS AS NEW SUBJECTS OF INTERNATIONAL LAW AND ITS INSTITUTIONALIZATION**

States, as basic subjects of international law, have played an important role regarding the regulation of international relations for a long time; forming international customs and creating bilateral or multilateral treaties. But with the Industrial revolution in the 19th century came a significant challenge to the system. Over a relatively short period of time, new types of human activity crossing the borders of individual states started in the areas of industry (steel, coal metal and mining), transport (international sea, railway and air) and telecommunication (telephone and telegraph). The needs of economic development, and related technical advances, started to put pressure both on new domestic and international regulations in respect to a whole set of specific and so far unknown areas of human activities that crossed the borders of individual states and urgently required international cooperation.

The customs and treaties legal regulation was no longer satisfactory for managing such developments and the states started to enter into multilateral treaties; which gradually contributed to the establishment of the first international intergovernmental organizations, known *as international administrative unions* and were established in the second half of the 19th century. These were the first international organizations of a non-political nature whose existence was based on the needs of huge cross-border economic growth. It included, the International Telegraph Union (1865), Universal Post Union (1874), International Metric Union (1875), International Union for the Protection of Industrial Property (1883), International Union for the Protection of Submarine Cables (1884), International Union for the Publication of Customs Tariffs (1890), International Union of Railways

(1886), Union of Geodesy (1886), and the Radiotelegraph Union (1906).

International administrative unions were regulatory and they introduced unified, internationally-agreed standards of a technical nature and, hence, made it easier for international trade and communication to develop. Their establishment was highly significant from the point of international law because the states for the first time applied a "constitutive" feature of their sovereignty; the application of which gave a rise to the establishment of new entities of international law in the form of international intergovernmental agencies.<sup>1</sup>

The same rules applied to the establishment of those agencies (hereinafter referred to as international agencies) are also applied today when establishing modern international organizations. In particular, it concerns the derived and restricted international subjectivity, which gave rise to the principle of speciality under which each international organization has a determined object and purpose for its activities.<sup>2</sup> This is achieved on a legal basis of international law, internal legal order of organization or a combination of both through an organization's organs and within their competence. Similarly to current international law, traditional international law dealt neither with horizontal relations among such organizations nor with their superiority and subordination. Although, as today, the process of their establishment was not planned or otherwise coordinated

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<sup>1</sup> For more details see HOBZA, A.: Úvod do mezinárodního práva mírového, Part II. Prague, 1935, p. 454 – 467.

<sup>2</sup> As given by the Advisory Opinion of the ICJ concerning Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt: "International organizations are governed by the principle of speciality that is to say they are invested by the states create them with powers, the limits of which are a function of the common interest whose promotion those states entrust to them." ICJ, Reports, 1980, p. 78, para. 25.

In this historical context, the nascent institutionalism of international law provided the international community with answers to the challenges of the era by means of permanent international institutions being established since it was not possible to deal with them by way of non-institutionalised instruments of international law.<sup>3</sup> These are the grounds, which are still used today, for the establishment of international organizations either of a regional or universal nature.

Hence, the establishment of an international organization is always a unique combination of economic, political and historical factors on the basis of which the states in a particular region, or on wider geographical basis, are positive about the need to create a stable cooperative international grouping. It is, however, difficult to find regularity or a plan in the process of their establishment, since it is a response by the international community to a specific and particular need within a given historical era.

The growing need for permanent and coordinated cooperation regarding new relations between states gave rise to the first permanent international institutions; and despite structural and other changes made during the 20th century, some international administrative unions (in their initial or amended institutionalised form)<sup>4</sup> have survived until the current time; which proves their practical use and worthiness to the current international community. This development

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<sup>3</sup> For its current characteristics see KLABBERS, J.: *An Introduction to International Institutional Law*. Cambridge: Cambridge University Press, 2009, p. 396.

<sup>4</sup> While the Universal Postal Union (UPU) and the International Labour Organisation (ILO) did not undergo significant institutionalised changes in the 20th century, the International Telegraph Union (together with the International Radiotelegraph Union) was replaced by the International Telecommunication Union in 1932. The international administrative unions tend to be called international organisations approximately from the second half of the last century.

continued throughout the 20th century and saw a growing number of international organizations as well as the extension of their activities followed by specialisation.

These circumstances gradually had an impact on general international law, which was reflected in the need for new rules of a general nature that would regulate the specific aspects of their activities.<sup>5</sup> The growing vastness, as well as complexity of international relations meant that more and more areas, previously managed by the states, were now entrusted to international organizations being regarded as not only useful, but an irreplaceable part of the current architecture of international community and international law.<sup>6</sup>

To complete the picture, we can state that the institutionalisation of international law in the second half of the 20th century tended also to be significant in the areas of peaceful settlements of international disputes through a growing number of international judicial bodies ;international law judicialisation. This trend, too, was reflected in general international law within the framework of its possible fragmentation.<sup>7</sup>

Finally, international non-governmental organisations, NGOs, represented a specific category of institutionalisation.

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<sup>5</sup> Growing number of international intergovernmental organizations as a new "segment" of international relations and international law gave rise to many questions of international legal nature, beyond their scope, requiring rules of general international law (rules regulating their treaty making power, issues of responsibility for international wrongful acts, issues referring to their privilege and immunity, representation of member states and non-member states in international organizations and their immunity). Many of them became the subject of the International Law Commission's codification in the 1970s and 1980s.

<sup>6</sup> Currently there are more than 900 intergovernmental regional and universal organizations.

<sup>7</sup> Regarding the institutionalisation of international law, see at least: RUFFERT, M., WALTER, Ch.: Institutionalised International Law. London: Hart Publishing, 2014.

They were not subject to international law, yet they had a permanent and growing impact on some of its areas.

## **2. PLACE AND POSITION OF INTERNATIONAL ORGANIZATIONS WITHIN INTERNATIONAL LAW SYSTEM**

Although the beginning of the first international agencies at the turn of the 20th century was rather spontaneous and there was limited cooperation, there were certain attempts by the first international political organisations to control and/or supervise them.

The first such attempt took place after the League of Nations was established in 1919 even though its constituent instrument (the Covenant of the League of Nations) did not include any specific competence regarding the economic and social area. The League of Nations, however, wanted to carry out, at least indirectly, the coordination of activities and supervision of international administrative unions in economic and social areas.

Article 24 of the Covenant of the League of Nations stated that all international bureaux already established by previous collective treaties should be placed under the direction of the League of Nations if the parties to such treaties consented, and so should be placed any such bureaux to be established in the future.

A practical reason for such a competence was mainly to cover the supervision over funding issues. This provision of the Covenant, however, failed to be met in practice, and international administrative unions carried out their activities independently the whole time the League of Nations existed, until 1946.<sup>8</sup>

We can assume that this provision of the Covenant was the first, although not the most favourable, attempt by an

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<sup>8</sup> Full wording of the Covenant of the League of Nations, In: Dokumenty ke studiu mezinárodního práva a politiky, Prague, 1957, SNPL, p. 22-34. Literature in this connection states that: "Article 24 has built a luxurious hotel but the guests have not yet arrived". In: The Spectator Archives, May 17 1929 (The League of Nations), p. 14.

international organization of a political nature to supervise the activities of specialized international organizations of a non-political nature.

Further opportunities to supervise or coordinate activities of international organizations occurred after the second world war, after the United Nations (hereinafter referred to as the UN) was established in 1945; when the trend regarding new international organizations gained a wide scope.<sup>9</sup>

Unlike the League of Nations, the UN was charged not only to protect the international peace and security by means of collective measures, but also to deal with issues related to economic and social areas. The founding fathers of the Charter explicitly admit the connection between the maintenance of international peace on the one side and the stability of economy, and economic development of states on the other.

Article 1 of the UN Charter (Purposes and Principles) states that the purposes of the United Nations are to maintain international peace and security by means of effective collective measures, to achieve international cooperation by means of solving international problems of an economic, social, cultural or humanitarian character, as well as to be a centre for harmonizing the actions of nations in the achievement of these common ends.<sup>10</sup> Such an approach by the UN ensures that international peace and security is maintained by international sanctions, as well as by enhancing such economic, social and other relations between its member states which would not give causes for breach of international peace and security. This approach reflected the historical experience of the international community confirming that wars broke out not only because of military or

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<sup>9</sup> In 1945-1949 existed 962 organizations (100 governmental and 862 non-governmental).

<sup>10</sup> Slovak translation of the United Nations Charter In: KLUČKA, J: *Medzinárodné právo verejné (Všeobecná a osobitná časť)*. Bratislava: IURA Edition, 2011, p. 559 – 599.

strategic reasons, but also because of economic and social ones.

Article 55 of the UN Charter states that the UN shall promote solutions of economic, social, health, and other related problems, as well as international culture and educational cooperation, and all its members pledge themselves to take action, jointly or separately, to cooperate with the Organization for the achievement of these purposes. The purposes may, according to the Charter, be achieved in two ways.

The first is based on the creation of their own authorities, or the UN institutions that fulfil duties directly with respect to economic and social areas. The Economic and Social Council as one of the main organs of the UN (hereinafter referred to as the Council) plays a significant role in this approach, since it makes or initiates studies and reports with respect to international economic, social, cultural, health, and related matters and makes recommendations with respect to any such matters to the General Assembly of the UN, or to the members of the UN (Article 62 of the UN Charter). The Council may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence and it may call international conference on such matters. The General Assembly of the UN also initiates studies and makes recommendations for promotion of international cooperation in the economic, social, cultural and health areas. The Council is also authorized to create other organs or institutions that may help fulfil the duties of the UN in the economic and social area, which is part of this process.<sup>11</sup>

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<sup>11</sup> For the purposes of fulfilling its task, the Economic and Social Council of the UN created five regional economic commissions: for Europe, Asia and the Far East, Latin America, Africa and Western Asia. Upon the UN General Assembly Resolution No. 2205 of 1966, the UN Commission on International Trade Law (UNCITRAL) was recognized, the UN Conference on Trade and Development (UNCTAD) was established in 1964, the UN Development Programme in 1966, and others.

The second method for fulfilment of the UN duties in the economic and social field is through its cooperation with specific international agencies; where the UN is represented by the Council. According to the article 57 of the UN Charter, the various specialized agencies established by intergovernmental agreements for the purposes of fulfilling extensive international tasks in the economic, social, cultural and educational area, in the area of public health, and related areas shall be brought into relationship with the UN on the basis of the agreements concluded with the Council. Each such agreement lay down conditions under which the international agency shall be brought into relationship with the UN and is subject to the approval of the General Assembly of the United Nations. Such agencies thus brought into relationship with the UN are referred to as the UN specialized agencies.

Not every international agency able to conclude an international agreement may become a UN specialized agency. A basic condition is that it must be able to participate in carrying out the obligations of the UN as defined in Article 55 of the Charter,<sup>12</sup> and even if such condition is met, a significant position and power in economic and social area is required. Article 57 of the Charter says that the international agency aspiring to the post of a specialized agency of the UN must be defined for the purposes of carrying out extensive international tasks in economic, social, and other areas.

Taking into account this condition, the economic and social agencies of regional, or local nature, are excluded from the cooperation with the UN. Provided that the international agency meets these conditions, the agreement may be signed with the Council and it is entitled to coordinate specialized agencies by means of consultations and recommendations. To be informed, the Council shall take appropriate steps to obtain

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<sup>12</sup> Because of this criterion, intergovernmental organizations of, for example, a military or defence character, might not have the option to apply for a post of a specialized agency of the UN.

regular reports from the agencies, as well as reports on the steps taken to give effect to its recommendations. The Council may also make arrangements for the specialized agencies to participate, without vote, in its deliberations and for their representatives to participate in deliberations of the specialized agencies. Both states' parties agree to enter into close financial relations including concluding the relevant financial agreements.

Post-war practice confirms that some administrative unions are still participating within this system; as well as new international agencies established after the Second World War. Initially, administrative unions transformed into international specialized agencies; including the World Postal Union (since 1948) and the International Telecommunication Union (since 1949), and the International Labour Organization (established in 1919). In 1946, the latter one became the first specialized agency of the UN.

The first new specialized agency of the UN established after the Second World War was the Food and Agriculture Organization of the United Nations; established in 1945 and became the first post-war specialized agency in 1946.

Among other specialized agencies established after the second world war, it is worth mentioning the International Monetary Fund established in 1945 (it has been a specialized agency since 1947), the International Bank for Reconstruction and Development (IBRD) established in 1945 (it has been a specialized agency since 1947), the International Civil Aviation Organization (ICAO) established in 1947 (it has been a the specialized agency since 1948), the World Health Organization (WHO) established in 1946 (it has been a specialized agency since 1948), the World Meteorological Organization (WMO) established in 1947 (it has been a specialized agency since 1948), the Inter-governmental

Maritime Consultative Organization established in 1948 (it has been a specialized agency since 1959), and others.<sup>13</sup>

Even though the specialized agencies are not formally part of the UN, they enjoy certain advantages offered by its system; as in the right to request advisory opinions of the International Court of Justice on legal questions arising within the scope of their activities in accordance with Article 86 UN Charter. Unlike the League of Nations, the UN created a treaty's system through its Economic and Social Council within which the specific international intergovernmental agencies contribute to achieve its goals in economic and social cooperation.<sup>14</sup>

In addition to the international specialized agencies of the UN, there are also international organizations which are related to the UN (the UN related organizations) and more independent than specialized agencies; for example the World Trade Organization (WTO), where its constituent instrument enables to conclude international agreements with other international organizations without any privilege of the UN. Even though the WTO is not connected with the Economic and Social Council of the UN, it coordinates its activities through annual sessions of older representatives of the Bretton Wood institutions.<sup>15</sup>

Another example is the International Atomic Energy Agency (IAEA) established upon the resolution of the General Assembly of the UN of 1955 and by approval of its Statute at a special conference in New York in 1956. In 1957, the IAEA signed an agreement on cooperation with the UN according to

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<sup>13</sup> Currently there are 17 specialized agencies, where the UN World Tourism Organization (UNWTO), established in 1974, gained the post of the specialized agency as the last one.

<sup>14</sup> For more information see: DAVID, J., MALENOVSKÝ, J., JÍLEK, D.: Organizace spojených národů, Evropská společenství, Rada Evropy. Spisy Právnické fakulty MU v Brně, 1992, p. 65 – 75.

<sup>15</sup> Moreover, the WTO has also a specific agreement on cooperation with the UN: "Arrangements for Effective Cooperation with Other Intergovernmental Organizations-Relations between the WTO and United Nations."

which it acts under the auspices of two organs; the United Nations General Assembly and the United Nations Security Council. Even though it cannot be regarded as a UN specialized agency, it cooperates closely with the UN.

With the exception of the above outlined UN system, the post-war development of regionalism failed to provide more extensive cooperation among regional organizations and universal organizations of a political nature. The only exception includes those regional organizations which the United Nations Security Council counts on when carrying out its functions under Chapter VII of the UN Charter (see further). As a result, a prevailing form of cooperation is carried out at the level and between regional organizations through the so called interregional relations, or interregionalism (see further p. 42).

### 3. REGIONALISM AND INTERNATIONAL LAW

#### 3.1. Regional Organizations and the Institutionalization of International Law

The regional organizations, or more free groupings of states having a more or less institutional nature, represent a significant part of institutionalism in international law. Such developments in the 19th century can be seen in the international river commissions or the martial alliances of states.

Various regional groupings continued to develop also at the beginning of the 20th century. This period was at first typical for the cooperation between the states by means of bilateral trade agreements with various institutional structures,<sup>16</sup> e. g. in the form of customs unions.<sup>17</sup>

Even though this system was interrupted by the First World War, various trade blocks and bilateral trade agreements continued also in the post-war period; though having a more protectionist character due to the post-war economic crisis and political rivalry between the countries.

The period after the Second World War brought stronger treaties and an institutional understanding of regionalism (becoming more distinctive in the second half of the 20th century) together with the development of general international law. This could especially be seen in economic and trade organizations such as the European Economic Community, the European Free Trade Association and the

---

<sup>16</sup> Literature states that the Great Britain concluded such trade agreements with 64 countries, Germany with 30 countries and France with 22 countries. DOUGLAS, I.: *Multilateral and Bilateral Trade Policies in the World Trading System: An Historical Perspective*. In: *New Dimension in Regional Integration*. New York: Cambridge University Press, 1993, p. 97.

<sup>17</sup> The first Customs Unions include those established by Austria in 1850, Switzerland in 1848, Denmark in 1853 and Italy in 1860. For more information: MANSFIELD, E. D., MILNER, H. V.: *The New Wave of Regionalism*. In: *International Organizations*, Vol. 53, No. 3/1999, p. 596.

Council for Mutual Economic Assistance, which developed under the multilateral trade systems of the GATT, and later the WTO. These influenced the development of the trade-oriented regional cooperation; but in the context of the cold war, were mainly within regional organizations.

An important area being discussed after the second world concerned the role of regionalism within the area of *international peace and security* which was meant to be guaranteed by the collective sanction system of the UN Charter. The debates over the post-war international system of peace and security and its priorities at the conference held in San Francisco included views on the importance and task of universalism and regionalism, mainly with respect to competences the United Nations Security Council and cooperation between the countries in the economic area.

Even if it was acknowledged that the universal system of collective reaction is necessary (as the best guarantee for maintaining international peace and security), at the same time the member states agreed that they should be able to regulate issues regarding security, economy and politics also at regional level; as proved by the previous experience of the American continent.

After comprehensive discussions, the founders of UN Charter accepted regionalism; even if the institutional and legal system of the UN Charter gives preference to a universal mechanism in matters regarding maintenance of international peace and security. The UN Charter entrusted the regional organs with functions to maintain international peace and security, to achieve a pacific settlement of local disputes (Article 51 – 54 of the UN Charter) and to ensure cooperation in the economic field through five regional economic commissions.

However, relations between universalism and regionalism regulated by the UN Charter failed to develop due to the Cold War and bipolar world, and the military regional alliance systems. Because of this, revitalisation and the

development of regionalism took place only after the Cold War at the end of the 1980s and beginning of the 1990s.<sup>18</sup>

With respect to its nature and scope of competence, the regional organizations did not become a part of the UN system in the form of its specialized agencies having an autonomous position within the international community.

Another feature typical of post-war development at the beginning of the 1960s was the formation of regional organizations within and among developing countries as a reaction to decolonization. The next wave came after the Cold War and represented a reaction to the transitory times and the need for globalization. Regionalism and regional organization in the second half of the 20th century thus became geographically more spread, their number rose, and despite some drawbacks they represented a significant and irreplaceable segment within international relations having a specific impact on general international law and international relations.<sup>19</sup>

With regards to the dramatic entry of regionalism into the international and legal community in the second half of the 20th century, there were debates over the impact it had on the Westphalian system of the international community; a system which counted on the exclusive position of states. According to the Westphalian principle of absolute sovereignty of states, dominant at the beginning of the 20th century, the international community was strongly convinced

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<sup>18</sup> As given by the Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change from 2004: "A more secure world: Our Shared Responsibility". "Recent experience has demonstrated that regional organizations can be a vital part of the multilateral system. Their efforts need not contradict UN efforts nor do they absolve the UN its primary responsibilities for peace and security." In: Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change from 2004: "A more secure world: Our Shared Responsibility", United Nations, 2004, p. 85.

<sup>19</sup> See: FAWCET, L., HURRELL, A.: *Regionalism in World Politics: Regional Organizations and International Order*. Oxford: Oxford University Press, 1995, p. 342.

that: "autonomous decision-making authority of sovereign states should not be weakened because of activities carried out by international institutions",<sup>20</sup> fully respecting: "...the primacy of the territorial states as political player at a global level, their autonomy in managing their matters within recognized international borders... and absence of strong regional and global institutions".<sup>21</sup>

This system of the exclusive position of states started to emerge during the 20th century as a result of universal and regional intergovernmental organizations having their own international legal subjectivity which was different to the subjectivity of the member states, and creating their own system of legal rules. This reflected not just the exclusive will of the states but their own interests and purposes of the international organizations. Similarly to sovereign states, many international organizations kept close relations with the states and other international organizations (including those that governed the rules of international law), had their own constitution in the form of constituent statutes and own system for peaceful settlements of disputes, including judicial bodies.<sup>22</sup>

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<sup>20</sup> OSIANDER, A.: *The States System of Europe 1640-1990, Peacemaking and the Conditions of International Stability*, 1994, p. 3.

<sup>21</sup> FALK, R.: *The Post-Westphalia Enigma*. In: HETTNE, B., ODÉN, B. (Eds.): *Global Governance in the 21st Century: Alternative Perspective on World Order*, N. Trickery, AB, 2002, p. 154. Available online: [http://www.academia.edu/1638977/Global\\_Governance\\_in\\_the\\_21st\\_Century\\_Alternative\\_Perspectives\\_on\\_World\\_Order](http://www.academia.edu/1638977/Global_Governance_in_the_21st_Century_Alternative_Perspectives_on_World_Order).

<sup>22</sup> As stated by A. Acharya: "Regionalism is becoming and facing the pressure to become more "intrusive" and less sovereignty-bound in the sense of going against the norms of non-interference and non-intervention that had underpinned the Westphalian international system". In: ACHARYA, A.: *Regionalism and Emerging (Intrusive) World Order: Sovereignty, Autonomy, Identity*. Paper for Conference on "After the Global Crisis: What Next for Regionalism?" Toronto: University of Warwick, 1999, p.1. Available online: [http://www2.warwick.ac.uk/fac/soc/csgr/events/conferences/1999\\_conferences/3rdannualconference/papers/acharya.pdf](http://www2.warwick.ac.uk/fac/soc/csgr/events/conferences/1999_conferences/3rdannualconference/papers/acharya.pdf).

As a result, the current international order may not be regarded as a continuation of the traditional Westphalian system of the international community because it consists of different subjects and various legal branches; environmental protection, trade law and humanitarian law. These recognize the rights and obligations of non-governmental entities on the international scene and within which the legal acts and decisions of international organizations do not require the consent of the states.

## 4. OLD AND NEW REGIONALISM

### 4.1. Old Regionalism

When assessing regionalism in the second half of the last century, a prevailing opinion in literature was that there are two main types; the post-war old regionalism followed by the wave of new regionalism after the Cold War ended.<sup>23</sup> The two regionalisms can be characterized by the old regionalism; which started at the time of bipolar division of the world, i.e. from the end of the second world war until 1980s, and a new regionalism; which started as a consequence of its demise at the beginning of the 1990s and the needs of a changing and globalizing multi polar world.<sup>24</sup>

A concept of old regionalism contained features of a bipolar world imitating the position of the two leading powers, as well as basic characteristics of the cold war policy. Consequently, it is referred to as hegemony regionalism; where the initiators, or "external" (supra regional) hegemonic leaders of regional groups were the USA and the USSR - NATO, CENTO, SEATO, Warsaw Treaty Organization - whose aim was to ensure regional security against external attacks (security regionalism) through military systems of collective defence.

Old regionalism was not of an open nature, it was internally oriented, designed for its members only, and it was

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<sup>23</sup> Imperial regionalism is also mentioned in connection with the first wave of regionalism in the 20th century during the interwar period, which was based on aggressive nationalism of fascist states. The aim was to make Germany and Japan regional leaders.

<sup>24</sup> As stated by F. Söderbaum and A. Sbragia: "Whereas old regionalism in the 1950s and 1960s has been dominated by the bipolar cold war structure with nation states as the uncontested primary actors, new regionalism since the end of the 1980s needs to be related by the current transformation of the world, especially globalisation." In: SÖDERBAUM, F., SBRAGIA, A.: EU Studies and the New Regionalism. What can be gained from dialogue? European Integration, Vol. 32, no. 6, 2010, p. 571.

oriented towards the military and economic areas; in the case of the latter, it usually had a protectionist character. Its members were only the states, while the scope of their activities within the regional organization was affected by the bipolar world and policy of the cold war. As a result, the regional organizations of this era were understood as territorial, military and economic structures controlled by the states representing a sphere of influence of their founding superpowers.

Even though the old regionalism was generally not successful because the Cold War ended, with the CENTO, SEATO, Warsaw Treaty Organization, COMECON ceasing to exist, some regional organizations continued to exist and were able to adapt to the regional and global challenges resulting from globalization.

The nature of the Cold War meant that the spread of old regionalism was restricted because it was aimed at the political, military and security needs of the superpowers of that time. Therefore, from this point it cannot be regarded as an autonomous and independent segment of international relations of that time. This illustrates the fact that along with the end of superpowers and the bipolar world, the regional organizations of old regionalism steadily ceased to exist, too.

## **4.2. New Regionalism**

The end of the Cold War at the turn of the 1990s marked the chance for a new and modern concept of regionalism. The structures of new regionalism, established after the Cold War, and without the decisive influence of former superpowers, were built from the bottom up; meaning from the level of participating states, where also non-governmental entities function as potential initiators and participants.<sup>25</sup> From this point new regionalism may be

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<sup>25</sup> HETTNE, B.: Globalization and New Regionalism: The Second Great Transformation. In: HETTNE, B., INOTAI, A., SUNKEL, O. (Eds.):

regarded as a multilateral and multidimensional process of regional integration, including economic, political, social and cultural aspects not only among the states themselves, but also among states and other non-governmental entities. Unlike old regionalism, new regionalism emerges at the time of intensive economic contact between the states and the existence of multilateral organizational structures (GATT/WTO) aimed at helping the states organize their business relationships.

Unlike old regionalism, new regionalism is open to the global needs of the international community with the aim to strengthen mutual cooperation between countries and to remove any obstructions in economic and other areas, too.

Due to economic globalization introducing new challenges, the states more often create regional organizations because global problems cross the borders of states and need international cooperation. The uneven development of global trends is, however, reflected in the different level of development of regionalism with respect to economic, political and social fields in different parts of the world.

Because there were no world hegemonic leaders with specific needs, the object of new regionalism gradually extends and includes not only traditional security and economic fields, but also the environmental, social policy and financial areas, migration, etc. While the old regionalism dealt exclusively with relations between the states, new regionalism, (regarded as an inherent part of globalization, structural transformation and overall economic liberalization) involves the non-governmental entities on various levels working completely or partially beyond the formal institutional structures governed by the state.<sup>26</sup> From the

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Globalism and the New Regionalism. New York: St. Martin Press, 1999, p. 2.

<sup>26</sup> For more information: HETTNE, B.: The New Regionalism Revisited. In: SÖDERBAUM, F., SHAW, T. M. (Eds.): Theories of new regionalism (A Palgrave Reader), 2003, p. 24. MANFELD, E. D., MILNER, H. V.: The new

point of new regionalism, their cooperation might have various informal forms, e.g. micro regions, or cross-border regions having different effects on the traditional structures.<sup>27</sup>

New regionalism in its overall context might be therefore understood as a continual process of changes that started after the end of Cold War on different levels; at the level of states (the macro regions), at the interregional level (between and/or among regional structures established by the states) and at the sub-regional, or micro-regional level of non-governmental entities.<sup>28</sup>

The reasons for establishing such regional groupings represent not only military, security, economic or other interests connected traditionally with the states and their foreign policy (even though they continue to exist also in new regionalism), but also areas in which different non-governmental entities - such as supranational corporations, non-governmental organizations, professional groups and social groups involved or local communities - play an increasingly more important role. Their areas of interests include mainly international trade and finance, the protection of the environment, and the humanitarian and social field in

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wave of regionalism. In: *International Organization*, 1999, vol. 53, p. 589 – 672.

<sup>27</sup> As stated by P. De Lombaerde, F. Söderbaum, L. Van Langenhove and F. Baert: "The tendency to see a pluralism of regional scales and regional actors has lead to an increasing pluralism of definitions, scales and spaces-mega-,macro-meso-,sub-and microregions-all of which are intertwined with globalisation, interregionalism and national spaces". In: LOMBAERDE, P. DE, SÖDERBAUM, F., LANGENHOVE, L. VAN, BAERT, F.: *The Problems of Comparison in Comparative Regionalism*. Jean Monet/Robert Schuman Paper Series, Vol.9, No.7 (April 2009), p. 10.

<sup>28</sup> As stated by R. Väyrynen: "...since the late 1980s sub-regional and micro-regional organizations have become more common, for example the Baltic Council of Ministers, the Visegrad Group, the Shanghai Group and Mercosur. This trend is in part a response to the fragmentation of the great power blocs, especially in Eastern Europe and Central Asia but it also reflects the need to react to the pressures created by economic globalization through local means." In: VÄYRYNEN, R.: *Regionalism: Old and New*. In: *International Studies Review*, No. 5, 2003, p. 26.

states which slowly lose their exclusive and monopoly position.<sup>29</sup>

Regional trends in these areas can be seen through the establishment of specific sub-regional and micro-regional groups (regions) that border the states and thus create cross-border regional groups. Within this new regionalism, macro-regional and sub-regional processes develop with their own dynamics of growth, as well as with mutual dialogues and cooperation which their entities may become involved in.<sup>30</sup> On the other hand, traditional regional organizations created by the states enter into relations of mutual cooperation within inter-regionalism.

External global challenges and problems are obviously not the only reasons for the establishment of the regional groups within new regionalism. The reasons for establishing regional groups differ in different parts of world. For the member states they might have economic, environmental, cultural or other reasons; including the protection of their own economic or development models, cultural identity against pressure from the outside, or to be an instrument for solving long-term problems between neighbouring states. The new regionalism represented an instrument for eliminating isolation that the developing countries found themselves in after the bipolar world ceased to exist as well as an instrument against the marginalization of their economies, the possibilities to participate in international integration processes or to gain international financial aid for the purposes of domestic economy development. The states under the former USSR sphere of influence regarded the new

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<sup>29</sup> As stated by M. Teló: "New Regionalism can be seen as an attempt by states to react by strengthening regional control when traditional centralized national sovereignty no longer functions and to bargain collectively with extra regional partners." In: TELÓ, M.: *Globalization, New Regionalism and the role of the EU*, 2007 (Introduction), p. 7

<sup>30</sup> See at least: P. DE LOMBAERDE: How to "connect" micro-regions with macro-regions. A Note. In: LOMBAERDE, P. DE: *Perspectives on Federalism*, no. 3, 2010, p. 29 – 37.

regionalism as a way to overcome the economic and security vacuum they found themselves in after the Comecon stopped to exist and the Warsaw Treaty was terminated.

Even though its beginnings are traced back to Europe, new regionalism currently has a worldwide character as it covers both developing and developed countries across almost all the continents, and many non-governmental entities within a worldwide scale.<sup>31</sup> Regarding its scope and dynamics of development, new regionalism represents a significant factor of influence on international relations and international law, and in specific areas a prevailing form of cooperation between the states.<sup>32</sup>

Another significant feature also includes the democratic character it has, since the regional organizations require their member states, prior to joining them, to carry out democratic reforms respecting rule of law, the political plurality of one's domestic political system, the protection of human rights and minorities, together with market economy reforms.

Relations between regional groups (inter-regionalism) also requires the compliance with the basic principles of democracy and international law. From this view, the regional groups of new regionalism make a contribution to the democratization of international law and compliance with the rule of law principle. Their legal system go beyond the framework of a particular regional organization, creating, in its totality, not only a democratic, legal environment of a regional organization suitable for future fruitful cooperation of member states, but enhance the trend of making the current international law democratic and the rule of law

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<sup>31</sup> A former UN Secretary B. B. Gháli in it characteristics pointed out that it no longer represents: "...resurgent spheres of influence but a healthy complement to internationalism." B.B.GHALI: *An Agenda for Democratisation* (UN, New York, 1996), p. 33.

<sup>32</sup> As stated by L. Fawcett: "...the post-Cold War expansion of regionalism across different regions and issue arenas had a powerful impact on its status in international relations and international law." In: FAWCETT, L.: *The History and Concept of Regionalism*, UNU-CRIS Working Paper, 2013/5, p. 9.

respected. Upon application of the regional sanction mechanism in case of failure to comply with them during the period of membership in a regional organization, the guarantees in regional contexts become both enforceable and real.

Although the development of new regionalism demonstrates the growing trend and a stronger mutual cooperation between various entities at different levels, it also proves that there is no worldwide single model of new regionalism. There are currently various models of new regionalism applied in different regions depending on their historical development, local democratic conditions or other political specificities of future members, attitudes toward state sovereignty, the needs to respect social and cultural particularities or other relevant circumstances.<sup>33</sup> From the above we can infer that new regionalism is not a direct and uniform process, but it operates differently within various parts of the world; being constantly influenced by a number of external, global and regional factors as well as being subject to internal factors.

The irreplaceable role of international law was common for both types of regionalism because the states upon applying its rules formed regional organizations and they followed them when carrying out their activities. This basic constitutive international legal framework is, however, within the legislative competences of regional organizations completed with their own legal orders with differing rigidity.

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<sup>33</sup> As stated by S. Fabrini: "Regionalism is considered one, if non predominant, form of inter-governmental cooperation pursued in different area of the world. Such regionalism is based on important differences between the nature, scope, decision making style, compliance mechanism, structures and international status of the different regional organizations." FABRINI, S.: *European Regionalism in comparative perspective: Features and limits of the new medievals approach to world order*. Paper Submitted at the 3rd Pan Hellenic Conference on International Political Economy, University of Athens, May 16 – 18, 2008, p. 5.

The task and importance of latter for development of regional cooperation depending on specifications of regional organizations in various parts of the world.

The largest regional group currently consists of regional organizations of economic character. Their rising occurrence is due to the fact that regional cooperation usually took place among states with similar political systems, the same basic economic rules and comparable development priorities. As confirmed in practise, having complied with the defined conditions this type of regional organizations is more homogeneous than universal organizations, thus the member states may empower them with more competences in order to carry out their tasks.

Depending on how compatible the political and economic systems of member states are, a situation might occur in which the regional economic organization goes beyond the traditional international intergovernmental organization and becomes the "supranational" international entity whose decisions are binding directly for member states. To make the picture complete, the member states protect the nature of these organizations by regulating the conditions for third states to join them; where joining depends on specific political and economic conditions that should be complied with.

As we mentioned earlier, new regionalism affects general international law in many ways, where further development in this area is not possible to avoid. It's worth mentioning that regional and other organizations during the post-war period gave grounds for setting the international law rules which the Commission of International Law (hereinafter as ILC) codified in the last quarter of the 20th century.<sup>34</sup> These reduce the number of states in specific areas of international law-making by substituting them with their own organs, make entering into international agreements easier and bring their

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<sup>34</sup> See: KLUČKA, J.: Miesto medzinárodných organizácií v kodifikácii medzinárodného práva. In: Právny obzor, Bratislava, 2013, no. 4, p. 373 – 385.

own instruments for settlements of international disputes. It is worth noting that regional values, standards and principles or behaviour, governed by international agreements and concluded between various regional groups become subject within the interregional cooperation.

Regional groups of a non-governmental nature established within new regionalism are not governed internationally, and it is either the legal order of the regional organization – the EU and its Europe of regions – the regulations of domestic law of the member states or the "soft" regulations that are the basis for such regional groups.

## 5. TREATY AND INSTITUTIONAL REGIONALISM

### 5.1. Treaty Regionalism

From the point of international law, we can speak about treaty (non-institutional) regionalism represented by an international treaties concluded among the states in concrete regions. An analysis of these treaties confirms that the decisive reason for their conclusion may differ from region to region. A traditional reason related to a certain group of states and their interest in a certain region is the specific geographical element.

The main impulse for regional regulation is the degree to which the involved states used it, connected with the need to regulate certain aspects of such use by international law. Regional treaties of this type obviously regulate a common legal regime of this geographical element as well as the rights and obligations of states' parties. Examples of this type include the treaties on regional rivers and lakes, or on geographically restricted parts of environment (Convention on the Navigation Regime on the Danube, protection of environment in the Baltic Sea, Black Sea, Arctic, in the Amazon pool, regional environment biotope, transboundary lakes etc.). The frequency of this type of legal regulation is not usually very high because it depends on an existing commonly shared geographical element and on the willingness of the states to regulate their activities related to this element by international treaty. Regarding the specification and geographic extent of a certain natural (geographical) element, the states might want to conclude international treaties crossing the regional frame. As an example one can mention the protection of air<sup>35</sup> or the ozone layer.<sup>36</sup>

Another aspect typical of treaty regionalism includes the geographical proximity (neighbourhood) of the states

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<sup>35</sup> The Kyoto Protocol to the frame Convention on Climate Change of 1997.

<sup>36</sup> The Vienna Convention on the Protection of the Ozone Layer of 1985.

within a particular region. Regional treaty-making is in this case enhanced by their common historical roots, cultural, religious or other similarities, or the level of economic and political, homogeneity of states that has been reached. As examples we can mention the regional treaties on free trade zones, customs unions, regional treaty on the free movement of goods and persons, regional agreements on human rights protection, on common defence, etc. The practise proves that this geographical element can also represent a significant impulse for the establishment of the regional organization within the system of institutional regionalism.

In addition to the already mentioned geographic elements in the period of new regionalism, the strong interests of the states constitute also a significant impulse for establishment of the regional groups. Regional treaties and structures of such character cross the traditional frame of the old "protectionist" model of regionalism, since they represent a reaction of the involved entities for the purposes of globalizing the international community. As mentioned earlier, such entities are not only the states; there are also the supranational economic groups (corporations), non-governmental organization, various interest groups, etc.

The International Law Commission in its Report on the fragmentation of international law, 2003, states: "while previously the geographical regions acting "behind" the international law represented the driving power, now there are specific interests that are globally diverse: business interests, global groups (lobbies), associations of the environment or human rights protection, and such trend has recently become intensive."<sup>37</sup> Such regional trends and

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<sup>37</sup> An essential fact is: "convergence of interests values and political objectives of states" resulting in the so called functional differentiation of international law. As a result: "Regionalism (today) loses its specificity as a problem and should be rather dealt with in connection of the functional diversification of the international society in general..." In: Report of the Study Group of ILC: Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of

structures tend to be called functional, where the basis for them might include a substantial economic segment (production systems, oil drilling and transportation, coordination related to oil trading, air services), elements in the area of environment (e. g. acid rain, Amazon rainforest, ozone layer), culture (cultural identity of certain communities), language identity of members of a region (France and its former Western Africa territories) when reducing and/or suppressing the geographical element.<sup>38</sup> The treaties of this nature are based on the cooperation of the involved entities in order to achieve a common objective regardless of the intensity of geographical element.

However, it should be pointed out that no matter what the common interests are or what the geographical closeness is, in reality if there are serious disagreements in political, religious, cultural or other areas among the states, the establishment of close, regional cooperation or grouping is not possible. (Iran – Iraq, Israel – Palestine, India – Pakistan, People’s Republic of China – Japan, etc.).

## 5.2. Institutional Regionalism

Institutional regionalism is traditionally represented through international intergovernmental organizations of regional character established explicitly on the basis of international treaties for the purposes of fulfilling the tasks within the agreed field. As already mentioned, organizations of this type are usually established by the states having close geographical relations (neighbouring states), where their common elements regarding history, economy, religion, etc., help them make decisions to establish their organization. The

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International Law (A/CN.4/L.682), p. 204, 209. Available online: [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_l682.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_l682.pdf).

<sup>38</sup> As stated by R. Väyrynen: "...functional conceptualizations of region emanate from the interplay of subnational and transnational economic, environmental and cultural processes that the states are only partially able to control." In: VÄYRYNEN, R.: note no. 28, p. 27.

definition of this kind of regionalism underlines that it is about "restricted number of states mutually connected with geographical relations and certain level of dependence on each other",<sup>39</sup> the result of which is the "establishment of international intergovernmental groups on the regional basis."<sup>40</sup>

A trend prevailing in the second half of the 20th century suggests that regionalism is presented through its various institutional forms which is reflected in a growing number of international organizations of regional character and in extending the scope of their activities.

As a result, they play a more and more important role, starting cooperation with other regional organizations within the system of interregionalism<sup>41</sup> as well as with the organizations of universal character, and non-member states, too. It is generally recognized that both international universal organizations and international regional organizations have their own legal subjectivity different to the legal subjectivity of member states expressly regulated in their constituent instruments.<sup>42</sup>

In this respect it is worth noting that the traditional model of institutional regionalism in which the regional objectives are satisfied according to a specific legal basis, within the agreed institutional frame and within fixed competences of regional organization's bodies, begin to be subject to certain challenges and changes.

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<sup>39</sup> NYE, J. S.: *International Regionalism*, Boston: Little, Brown and Co., 1968, p. xii.

<sup>40</sup> ARCHER, C.: *International Organizations*. Routledge: London, 1992, p.12.

<sup>41</sup> It might be the bilateral inter-regionalism which is typical for various forms of cooperation between two regional groups. A typical example from the beginning of 1970s includes the relations between the EU and ASEAN. Depending on orientation and subject of activities regarding regional organizations, the interregional cooperation among more regional organizations or other entities might not be excluded (multi-regionalism, or trans-regionalism).

<sup>42</sup> International legal subjectivity of the EU was finally confirmed by the Lisbon Treaty of 2009, and in 2007 in respect of ASEAN.

More complicated problems that the regional organizations face in a globalized world require a more complete reaction also by means of various non-formal, flexible and open systems of regional cooperation (*the open, or networked regionalism*) between the regional organization and non-governmental entities; such as supranational economic groups and corporations, non-governmental organizations, representatives of civil community, and the interest and professional groups. Such mixed traditional and non-traditional regional groups are currently typical of some regional structures in Asia and Africa and it might have *pro futuro* impact on European integration groups as well.

An expression of this more open trend is the membership diversification within traditional inter-governmental organizations resulting in the creation of the hybrid institutional regionalism, which the ASEAN is also heading towards.<sup>43</sup> It exists because there is a strong belief that such mixed membership of regional organization might help to impact more effectively on the problems of a concrete region by enabling various non-governmental entities to actively participate within the process of their solutions. Further development undoubtedly shows to what extent globalized international relations and various regional models can modify traditional institutional structures of new regionalism; as well as the role international law will play in the process of its establishment and proper functioning.

This is the main reason why regional organizations as significant representatives of current institutional regionalism will be the subject to further more detailed study.

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<sup>43</sup> See at least: Conference on Networked Regionalism versus Institutional Regionalism (Singapore 6-8/12, 2009), p. 13. Available online: <http://www.eucentre.sg/wp-content/uploads/2013/06/RegionalismConf-Dec2009.pdf>.

### **5.2.1. Territorial Scope of the Competences of Regional Organizations**

A legal regime that the member states of regional organization created tends to be geographically determined by the state territories of its members because it is there that the organization is entitled to carry out its competencies. In regards to the international treaties concluded between the international organization and the states, or other international organizations this is expressly stipulated in Article 29 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986.<sup>44</sup>

However, regional legislation shows that various "elements" of a legal regime of an international organization, as well as its treaties sometimes (and under specific conditions) may cross the scope of its geographical dimension. According to its constituent instrument, the member states of a concrete regional organization may extend the application of a regional standard to the third (external) territory with whom they have specific relations.<sup>45</sup>

In addition to outside the geographical scope that the legal regime of a regional organization may have, some of them might use their capacities outside the defined geographical dimension. It is especially the case of regional organizations carrying out their activities in the maintenance of international peace and security. Chapter VIII. of the UN

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<sup>44</sup> Not yet in validity. In: WATTS, A. (Ed.): The International Law Commission 1949 - 1998, Vol. II. Oxford: Oxford University Press, 2007, p. 874.

<sup>45</sup> Article 56 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 states that any State Party may extend its applicability to "all or any of the territories for whose international relations it is responsible". This method of extending the geographical scope of application of regional treaty beyond the territories of its member states is however, on the decline, since the number of territories for which the member states are responsible is still decreasing.

Charter expressly counts on regional organs being used for the purposes of international sanctions under the authorization of the UN Security Council. Their growing involvement can be marked from the beginning of 1990s within the UN Peacekeeping missions (so called "Blue Helmets") and also the system of "Responsibility to Protect"<sup>46</sup>

There are two main reasons for the increasing participation of regional bodies in the area of international peace and security; the first represents a failure of traditional enforcement actions of member states carried out under Chapter VII of UN Charter, and the second the considerable financial costs of such actions. The regional organizations (or their armed forces) currently carrying out their activities outside the geographical dimension of its "maternal" organization are typically being engaged in regional conflicts in which the states with a weak or disintegrated state structure are involved.<sup>47</sup> Recent figures also show that there are more peace keeping operations that the UN is engaged in together with the armed forces of regional organizations.<sup>48</sup> Regional organizations herewith cross their purely regional scope, since they engage in the protection of values generally accepted by the international community as a whole, i.e. protection of international peace and security.

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<sup>46</sup> Basic principles of the "Responsibility to protect" have been included in Article 4 h) of the Constitutive Act of the African Union yet before their approval and publication in the Outcome Document of the UN World Summit in 2005.

<sup>47</sup> For example, engagement of NATO in Afghanistan and in the waters of Somalia coast, engagement of the EU forces in the Southern Europe and Congo, etc.

<sup>48</sup> The Centre for International Cooperation states that armed forces of the regional organizations were engaged in almost half out of 40 peace keeping missions taking place in 2010. Cited: FAWCETT, L.: The History and Concept of Regionalism, UNU-CRIS Working Paper, W2013/5, UN, p. 13.

### 5.2.2. The "Term" of Regional Organizations

In practise, the states intend to establish international organizations of a permanent character, so it is rather exceptional to have a limited term of validity for a constituent instrument of regional organization.<sup>49</sup> If international organizations properly fulfil their duties and are useful for their member states, there is obviously no relevant reason to consider their termination, or dissolution. On the contrary, the organizations that are viewed as successful attract the attention of other states which, in turn, try to join them with a view to benefiting from membership, or eventually copying their institutional structure in the process of new organizations establishment. The reasons for dissolution of international organizations may represent the occurring changes in (and unfavourable) external, or internal relations considerable different from those that existed at the time of their establishment, as well as to their unsuccessful activities. When such circumstances are taken into account, the member states of the organization usually regulate the methods and voting conditions regarding dissolution of organizations in their constituent act.<sup>50</sup>

A specific reason connected to the increasing number of international organizations is that they become dissolved

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<sup>49</sup> The European Coal and Steel Treaty (18 April 1951), Article 97: "The Treaty is concluded for the period of 50 years after entering into force." The Belgium-Luxembourg Economic Union Treaty was initially concluded for the period of 50 years, but its validity has been repeatedly extended (last time in 2002).

<sup>50</sup> The South-East Asia Treaty Organization (SEATO) whose constituent Pact was concluded without any time restriction was dissolved in 1977, the Organisation for Economic Cooperation and Development (OECD) replaced the Organisation for European Economic Cooperation (OEEC) established in 1948, the Council for Mutual Economic Assistance established in 1949 was dissolved upon a special Protocol in 1991, and others. The constituent acts of International Bank for Reconstruction and Development, International Monetary Fund, European Bank for Reconstruction and Development include provisions regulating conditions and voting concerning their dissolution.

because the subject matter of their activities is replaced with a new, or more modern, international organization which is expected to better fulfil its original tasks. In such a case the rights, as well as moveable and immovable assets, are transferred to a new organization within the scope of succession of international organizations.<sup>51</sup> The growing number of regional organizations, however, currently proves the fact how useful, and irreplaceable, they are in some areas.

### **5.2.3. The Regional Organizations' Scope of Activities**

Similarly to other subjects of international law, regional organizations are not established in a legal and factual vacuum and their establishment depends not only on the will of member states and their needs, but also external circumstances have an influence on this process.

In different periods they can revive organizations of a regional character which might be temporarily out of operation or their programme might be subject to change or amendments.<sup>52</sup> Therefore, different periods might show regional organizations that are being replaced, or amended by a new, and different wave with a different purpose. As was already mentioned, at the time of the bipolar world, the

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<sup>51</sup> A special resolution of the League of Nations adopted by its Assembly on 18. 4. 1946 where a decision was made on its dissolution because the UN was established for the same purpose. On the same day, the Permanent Court of International Justice was also dissolved. Practical questions regarding the UN succession in relation to the former League of Nations' moveable and immovable property, including bibliotheca and archive, were dealt with resolutions of the UN General Assembly during its first meeting in 1946, The European Space Agency established in 1973 replaced the European Space Research Organisation and the European Launcher Development Organisation (ELDO), etc.

<sup>52</sup> As we mentioned earlier, the time of bipolar and ideologically different world (from around beginning of the 1990s) was, in addition to economic organizations (OECD, European Communities), typical for regional organizations of security and defence nature (NATO, Warsaw Treaty, CENTO, SEATO, ANZUS). The organizations established in a certain period might be revitalized after some time provided that circumstances that enhanced their establishment become renewed.

regional organizations were typical for having a protectionist character economically and/or militarily, while new regionalism has brought an extension to their scope of activities; reflecting the needs of globalization.

The current period also brings various challenges to regional organizations scope of activities. Such challenges might include the peace and security threats through international terrorism.<sup>53</sup> Because such threats after the Cold War have rather a local or regional character, it is obvious that the relevant reaction itself is of regional character, too. This trend is visible mainly across the African continent where various regional groups, initially having a purely economic character, gradually completed their organizational structures and capacities so that they were able to respond to a local (regional) threat of international peace and security, as well as to react effectively to the call of the UN Security Council.<sup>54</sup> The extension of regional competences in such a sense may be also identified on the European continent in the shape of the EU.

Because of the increasingly globalised world, new challenges and problems of global nature have to be confronted. One can share the view that: "in the modern world no organization can serve the people it represents unless it reforms itself to cope with new global challenges."<sup>55</sup> These challenges obviously require the formulation of a long-term policy for regional organizations reflecting external factual

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<sup>53</sup> As stated by L. Fawcett: "Reflecting the presence of newer security threats, strategies to combat terrorism has been added to the existing convention in the EU (has its own antiterrorist capacity) and OAS as well as other groupings." In: FAWCETT, L.: Exploring regional domains: a comparative history of regionalism. In: *International Affairs*, 80, no. 3 2004, p. 440.

<sup>54</sup> Among the best equipped African regional organizations are ECOWAS and SADC, but such structures can be found also in IGAD, ECCAS, (CEN-SAD), COMESA, Arab Maghreb Union (AMU), East African Community (EAC), etc.

<sup>55</sup> Remarks by Sir Roland Sanders-Member of Commonwealth Eminent Persons Group to Caribbean Regional Civil Society Consultation, Guyana June 28, 2011, p. 1.

and political changes. They need as well to determine the priorities for organizations and procedures of their practical implementation, an analysis of their impact on the institutional structure of an organization, the financial and material aspects etc.

The practice of both universal and regional organizations shows that international organizations regularly set up so called groups of eminent persons or group of wise men (GEP) to address these challenges.<sup>56</sup> This results in reports with relevant analysis and/or recommendations for the regional organizations.

Taking into account the frequency of their occurrence during recent times, the still increasing geographic scope of their contemporary activities (relevant regional organizations nearly around all the world), the high level and complexity of their reports, and the attention and practical application of their conclusions by the organs of the organizations, it seems appropriate to analyse the role and contribution of GEP to contemporary institutional regionalism in a more detailed manner.<sup>57</sup>

Considering the significant external factors to the establishment of regional organizations, we can say that current institutional regionalism is typical in not only its uneven geographical spread and changing importance in different periods but also for its importance in various areas of international law.

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<sup>56</sup> There is no generally recognized definition of the GEP. One of the simplest states that: "It is a group of prominent individuals appointed by an organization to investigate a particular issue." Available online: [https://en.wikipedia.org/wiki/Eminent\\_Persons\\_Group](https://en.wikipedia.org/wiki/Eminent_Persons_Group), while other refers to GEP as "An unofficial or quasi official advisory group consisting of influential figures from varied backgrounds. Such a group may be employed to advise a state or international organization on a particular problem and disband when its task is completed." The Palgrave Mac Millan Dictionary of Diplomacy, 2012, p. 135 – 136.

<sup>57</sup> A more detailed evaluation of their role and contribution into development of institutional regionalism however exceeds the scope of this monograph.

There are some areas of international law where institutional regionalism thrives through various regional structures (international protection of human rights, international trade law, and protection of environment) and areas where institutional regionalism is still lacking. The development in the second half of the 20th century also proves that there are areas where institutional regionalism flourishes and forms its stable and vital role. It includes mainly international peace and security, international protection of human rights, international trade and economy and regional systems for settlements of international disputes. As regards to the latter one, it is worth mentioning that regional systems for settlements of disputes do not represent autonomous procedural regionalism, since they are usually "attached" to the regional organizations as one of their organs for peaceful settlements of disputes.

Finally, it should be pointed out that institutional regionalism fails to be evenly spread because of its geographical aspect and because the regional groups in individual geographical areas differ in their institutional structure, legal regulation (their own legal order), sanction system and system of peaceful settlement of disputes - as well as in respect to conditions for third states to join the regional organization, opportunities for non-governmental entities to join the regional group, etc.

Practical application confirms that some regional organizations established outside Europe picked the European Union as a certain referential model for their institutional and legal arrangements; attractive not just for its results in the field of economy, but also because it is an effective instrument for eliminating historical discrepancies among the member states (France, Germany) and for creating a common regional space of security, stability and welfare for all people living in the member states.<sup>58</sup> Such efforts are

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<sup>58</sup> As stated by B. Hettne: "European regionalism is the trigger of global regionalisation at least in two different ways: one positive (promoting

however confronted with the fact that legal standards, principles or institutional structures, of the European model are not automatically transposable into a different political and economic environment in which they are confronted with bigger or smaller problems.<sup>59</sup>

Finally, the most crucial issue of this effort is whether the regional organisation wants to remain at the level of traditional intergovernmental model or it prefers a supranational model of cooperation which has an impact on the sovereignty of the member states (as in the EU).

#### **5.2.4. Membership in the Regional Organizations**

The history of universal and regional organizations shows that they had been for a long time established exclusively by the states and only the states could become one of their members. Such a "monopoly" regarding the membership of international organizations lasted until the 1980s. We can assume that such homogeneity of membership

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regionalism), the other negative (provoking regionalism)." In: HETTNE, B.: *New Regionalism: Implications for development and peace*. In: UN University: *The Research for Action - The new regionalism*. UN, 1994, p. 10. Available online: [http://www.wider.unu.edu/publications/working-papers/previous/en\\_GB/rfa-14/\\_files/82530840768812487/default/FA14.pdf](http://www.wider.unu.edu/publications/working-papers/previous/en_GB/rfa-14/_files/82530840768812487/default/FA14.pdf).

<sup>59</sup> For example, the external tariffs as part of the European common market have been confronted with an unwillingness to put it into practice in other economic areas. The political field faced the problems of accepting the principle of the so called divided sovereignty of the member states, the unanimous consent of the member states when deciding on regional sanctions, the exclusive competence of the organization's bodies in proposing regional legislation, etc. Considering the institutional area, seemingly the simplest is the situation where the basic organs of the EU institutional system, having considered the regional specifications can be accepted within other regional groupings. Inspired by the EU Court of Justice, there are currently 11 regional organizations that established judicial authorities of similar kind. See, for example: LENZ, T.: *External Influences on Regionalism: Studying EU Diffusion and its Limits*. Available online: <http://www.eir.info/2013/07/17/external-influences-on-regionalism-studying-eu-diffusion-and-its-limits/>.

was natural, because only states became the basic and exclusive subjects of international Law. Along with the rising number of international organisations in the second half of the 20th century and the impact new regionalism had, this approach started gradually to change because the membership in regional organizations is of interest not only to the states, but also for the other differing international organisations and entities.

One of the first reaction of international law regarding this trend is the draft of the International Law Commission on Responsibility of International Organizations. A draft of articles on Responsibility of International Organizations (hereinafter as Draft) of 2011 pursuant to Article 2 (a) refers to the international organisation which shall mean: "the organisation established upon a treaty or other document that is governed by international law and has its own international personality." In addition to the states, also the other entities might become members.<sup>60</sup>

Unlike previous drafts made by the ILC regarding the international organisations, this definition refers not only to the international organizations with exclusive membership of states but also to those whose membership is, in addition to the states, available also to other international organization or non-governmental entities.<sup>61</sup> Diversification of the

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<sup>60</sup> Responsibility of international organizations (Doc.A/66/10). Available online: <http://untreaty.un.org/ilc/reports/2011/2011report.htm>.

<sup>61</sup> The European Community, for example, became the member of the International Food and Agriculture Organization (FAO) whose constituent act was in 1991 amended in order to enable membership to other regional economic organizations. The World Tourism Organization has, in addition to the states as a full members, also "groups of territories" as extraordinary members, and international intergovernmental and non-governmental organizations as affiliated members. The Arab States Broadcasting Union (ASBU) has, in addition to the states as full members, also "broadcasting unions" of member states. The Arctic Council established upon the Ottawa Declaration in 1996 has six states that are permanent members, six international organizations representing the people of Arctic as permanent members,

international organisations membership might be regarded as one of the new regionalism specifications.

A Comment made by the ILC regarding Article 2 of the Draft about the definition underlines that inclusion of non-governmental entities within the international organization members reflects the significant trend which prefer mixed membership in order to achieve more efficient cooperation in certain areas. The international law doctrine refers to it as the functional trend which believes that not only the states, but also other entities (entities of domestic law, non-governmental organizations, supranational communities, or other international organization), different from the states, can successfully carry out their functions.<sup>62</sup>

At the same time, practice confirms that depending on the nature of a non-governmental entity, the type of membership of an international organization might differ (e.g. affiliated member, extraordinary member, etc.). Problems related to legal and practical application of this trend, however, might occur on the part of the "receiving" international organization when its constituent instrument do not allow membership to entities different from that of the states. A similar problem might apply to parties interested in membership provided that their constituent instruments (international treaty on establishment of international organization) do not consider such an option. In the context of international law, such a trend might be regarded as one of the aspects for the increasing importance that the non-governmental entities have on the international legal order; its impact is restricted not only to issues and institutes of

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plus 12 states, 9 intergovernmental and 11 non-governmental organizations acting as observers.

<sup>62</sup> As stated by L. B. De Chazournes: "Non state actors including inter alia individuals, non-governmental organizations, foundations, scientific associations and the private sectors play an increasingly important role in the life of international organizations." DE CHAZOURNES, L. B.: Changing roles of international organizations: Global Administrative Law and Inter play of Legitimacies. In: International Organizations Law Review, No. 6, 2009, p. 656.

general international law, but it penetrates into the areas that form the subject of activities carried out by universal and regional international organisations.

The above mentioned element of functionality can be identified also when the international organisation enters into agreement with another organization in order to fulfil its tasks without becoming its member. As an example of such a "treaty's functionality" one can mention the specialized agencies of the UN referred to in Article 57 and 63 of the UN Charter.<sup>63</sup>

Another issue connected with membership in a regional organization is what the optimal number of members is. We have already mentioned the geographical criteria under which the establishment of a regional organization consisting of subjects from a certain geographical area is possible.

Another question is whether the purposes of a regional group can be fulfilled by such states regardless of their economic development, mutual complementarity of their economies, etc.

The experience of integration groups across developing areas shows that differing levels of economies within their member states or differences in their orientation (e.g. economies aimed at export versus those aimed at import), tend to impede good functionality. This contrasts to the more favourable outcome whereby a small or smaller number of founding members comply to a full extent with the economical or other terms of membership, and where their number may increase in the future as new applicants gradually comply with the said conditions (seen in the permanent practice of the EEC and the EU).

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<sup>63</sup> Similar problems can be observed in the case the international organization wants to become a contracting party to the international convention in which its states parties anticipate only the participation of the states (efforts of the EU to join the Convention for the Protection of Human Rights and Fundamental Freedoms).

### **5.2.5. Democracy and Rule of Law as Conditions of Membership in Regional Organizations**

Constituent instruments of international organizations regularly laid down conditions with which the states concerned are obliged to comply in order to become members. A traditional and lasting condition is that applicants for membership in the international intergovernmental organization are naturally the states, and for a long time attention was paid especially to their financial, or material eligibility, to fulfil obligations arising from the membership, regardless of their political regime and legal order character.

From around the second half of the last century, these conditions start to involve also the character of a governing political regime and the democratic principles of the legal order related to the future member state, which is gradually reflected, even when having different formulations and details, in constituent instruments of various regional organizations.<sup>64</sup> In this respect we can say that regionalism thrives better in a democratic environment, even though it may not be regarded as the sole guarantee of democracy of the member states within the regional organization.

In a wider context, the respect for democratic principles of the governing political regime and legal order, being the conditions for the member state to join the regional organization, can be viewed as a specific contribution of the

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<sup>64</sup> Article 3 of the Statute of the Council of Europe of 1949 states that: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms..." Article 2 of the North Atlantic Treaty of 1949: "The Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions..." Article 2 of the Lisbon Treaty states that: "The Union is founded on the values of respect for human dignity, freedom, democracy, and respect for human rights, including pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men, and the rights of persons belonging to minorities. These values are common to the Member States in a society in which..."

regional organizations to respect the rule of law in current international law.

In the situation when the principle of democracy and rule is violated from and within the member state, the international organization is entitled to impose sanctions anticipated by the constituent instrument. In this case the violation of democratic principles inside the member state becomes the subject to sanctions imposed by the regional organisation even though there are no, or not necessarily any, grounds for sanctions being imposed by the general international law. In this context, the presence of sanctions of the regional organization represent one of the guarantees for the purposes of compliance with the principles of a rule of law within its member state, as well as of the democratic legal environment within the regional organization itself. The absence of such sanctions may cause problems and unexpected tension within the regional organization.<sup>65</sup>

### **5.2.6. Guarantees for the Due Performance of Regional Organizations**

The states aiming to establish a regional organization naturally wish that it is able to perform duties laid down in its constituent instrument which are beneficial and helpful for the member states and also help to promote their international cooperation. From the time the first international organizations were established in the course of the 19th century (international administrative unions), their member states believed that relevant factual and legal conditions were necessary for their proper functioning. The legal area was to ensure the international organization and its representatives were independent from the bodies of the host

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<sup>65</sup> A situation in the EC in 2000, when R. Haider was in power after the election in Austria, in 2012-2013 the European Commission appealing to Hungary to redress non-democratic amendments to the Constitution, especially legal position of the Constitutional Court, minority laws, position of the Central Bank, etc.

state and member states through the system of immunities and privileges.

Until the end of the Second World War, their founders used a model of the diplomatic immunities and privileges granted to diplomatic representatives of states within the bilateral relationship. This period was typical for two specifications; the diplomatic immunities and privileges granted within the international organization had a treaty and not customary character, and until the second half of the 1940s they were granted by virtue of bilateral agreements between the host state and the international organization (the *headquarters agreements*). In such a way, the international organizations were inspired mainly by the League of Nations and the International Labour Organization.

Another feature was that diplomatic immunities and privileges were granted in a more or less unified way, regardless of the character and scope of the international organization activities.<sup>66</sup>

The situation in this area changed after the Second World War. Even though the international organizations and their representatives were entitled to enjoy privileges and immunities, a unified diplomatic level for the provision (of the said) has been eliminated, and there is a new approach under which their scope is individual and depends on specific needs of the international organizations necessary for the proper accomplishment of their tasks (the principle of functional need).<sup>67</sup>

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<sup>66</sup> Diplomatic immunities and privileges were granted to the International Commission of Congo (1888), the Central Commission for Navigation on the Rhine and to the Permanent Court of Arbitration (1907), the International Prize Court (1907), the Permanent Court of International Justice (1921), the League of Nations (1921), etc. For more information at least: KUNZ, J. L.: Privileges and immunities of international organizations. In: American Journal of International Law, Vol. 41, no. 4, 1947, p. 828 – 862.

<sup>67</sup> "The organizations have been granted such legal capacity as will permit them to accomplish their purposes and functions as to permit them to remain as free as possible from national interference or control."

Another legal condition necessary for the proper functioning of the regional organizations is that their legal orders are to be regulated with respect to the internal legal orders of member states. This means, fundamentally, that there should be no option for the member states of an international organization to avoid the fulfilment of their obligations arising out of their membership by referring to their legal orders and thus complicating or paralysing the activities of the organization.

It should be pointed out that with respect to obligations of the member states under the constituent acts, we can apply Article 27 of the Vienna Convention on the Law of Treaties of 1969 under which the states' parties may not invoke the provisions of its internal law as justification for its failure to perform the treaty obligation. Pursuant to Article 5 of the Vienna Convention, this rule applies to any treaty which is either the constituent instrument of an international organization or to any other treaty adopted within the framework of the international organization.

Some regional organizations have their own legal orders which are, however, not uniform, but differ in the nature of legal rules and level of details. The regional legal regulations confirm that the legal orders usually consist of two parts; the organization internal order – composed of procedural, administrative and financial rules which ensure the "service" function necessary for proper functioning of the organization, and the substantial rules which regulate the behaviour of the member states and organs of the organization in the area forming the scope of their activities. The regulative rules can have the character of either an international treaty or of their own rules created within the organization by their organs for the performance of its functions. Such legal orders are individual and "fit" each international organization, therefore

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FEDDER, E. H.: The functional basis of international privileges and immunities: a new concept in international law and organizations. In: *American University Law Review*, 60, 1960, p. 63.

they are not transferable automatically from one organization to the other. This, however, has no impact on various features that they have in common; for example from the point of their institutional arrangement.<sup>68</sup>

If the international organization has its own legal order (e.g. the EU) there might arise a need to resolve its relationship towards the internal legal orders of the member states. It happens in situations when the content of the rule of legal order applicable within the international organization is either the same or similar to the rule of the domestic legal order of the member states; while they themselves might differ from each other. Because the Vienna Convention of 1969 may not be applied to their relationships (it is not the relationship between the international treaty and the internal law), it is necessary to apply either the relevant rule of the legal order of the organization reflecting the principles of efficiency and functionality of the international organization or on the stable practice of their organs. In any case, the basic idea of this relationship is that no member state of organization is entitled to refer to its domestic legal order in order to avoid complying with their obligations arising from the legal order of the international organization.<sup>69</sup>

### **5.3. Prevention, Dispute and Sanction Mechanism of the International Organizations**

No matter how perfect the legal order of the regional organization might be, its efficiency will not be sufficient unless monitored and supervised by their organs.

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<sup>68</sup> A traditional institutional "triad" of the international organizations organs consists of the Assembly having general powers and joining all the member states, the Council as an executive body of the organization and the Secretariat dealing with administrative tasks and functioning of the organization.

<sup>69</sup> Regulation of this kind of relationship can be expressed by virtue of obligations that the EU member states have towards EU regulations and/or directive and their effects in their domestic legal orders.

International organizations, having their own systems for monitoring and supervising the fulfilment of obligations from their member states, show their differences from each other from the point of procedural, administrative, quality and strictness of outputs adopted after completing the supervision. Financial organizations possess one of the best systems of supervision because it is in their interest to provide the member states with financial debts strictly in accordance with agreements and exclusively for the goals agreed in these agreements. The International Bank for Reconstruction and Development (IBRD), or the International Monetary Fund (IMF) may serve as examples of international organizations having effective supervising mechanisms. The regional economic organizations have also a system of monitoring and supervision that is well elaborated and effective, since the efficiency of their activities depends on the efficiency of these mechanisms. A leading role among them is given to the European Union, even though other international organizations have acquired their own experience in this area, too. The EU (and some African economic organizations following the EU model) mechanism for supervision, consists of two phases; namely an administrative, including preliminary investigations, reconciliation and adoption of reasonable opinion, and the judicial, including proceedings before the regional international court. The administrative part of proceedings is usually concentrated in the hands of an executive body of an organization (the European Commission within the EU), or of a executive body, as in the case of the African Economic Community (AEC) and the Economic Community of Central African States (ECCAS), and in the executive and administrative body in case of the Economic Community of West African States (ECOWAS). The parliamentary organs can also be in charge of specific supervising functions, for example the European Parliament.

The benefits of the administrative systems of supervision lie in the fact that many offences committed by

the states are not intentional, but they are caused by an insufficient understanding of their obligations as a result of a wrong interpretation, or mistake made in communication at the national level, or within the organization. As a result, many mistakes, omissions or vague interpretations can be explained already at the first, preliminary discussions with no need to take any court action.<sup>70</sup>

### **5.3.1. Settlement of Disputes in International Organizations**

Not even the existence of a supervising and monitoring system can prevent disputes arising between the member states and an organization, between the member states themselves or between the organs of an organization. The reason for, and the object of, disputes can be a different interpretation or application of the organization's legal order or constituent treaty, its practical activities, including financial matters, application of sanctions, and many other problems. The number of disputes in international organizations varies; though we can say that it is rather higher in active organizations with a wider scope of competences. Experience within the international organizations in this area confirms that the parties of a dispute in the first stage try to avoid more formal administrative and judicial means and seek less formal procedures, such as meetings, investigations and consultation. This is also the main reason why international organizations devote special attention to consultations and meetings in their constituent instruments; for example the Organisation for Economic Co-operation and Development (OECD), the General Agreement on Tariffs and Trade (GATT), the Association of South-east Asian Nation (ASEAN), etc.

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<sup>70</sup> For more detailed information concerning settlements of disputes and sanction regime of economic organizations see: VOITOVICH, S. I.: *International Economic Organizations in the International Legal Process*. Hague: Martinus Nijhoff Publishers, 1995, p. 114 and subsequent.

Similarly to international law, the international organizations consider meetings and consultations of disputing parties as the most natural and accessible forum, and are therefore the most frequent instrument for the settlement of mutual disputes because, unlike formalized administrative, arbitration and judicial instruments, these means are more discreet and the parties keep more control without the existence of a third party.

Another way to deal with disputes is through the highest executive organs of the organization which adopts a binding and final decision without the option to ask another organ to participate in the dispute. The advantage here lies in their promptness, as well as the procedural and administrative concentration of the proceeding in front of just one organ.

However, there might be a problem with the qualified evaluation of the dispute, followed by the credibility of the decision that has been adopted. Some organizations may for the purposes of dealing with disputes set up quasi arbitration organs the use of which brings various advantages. Regarding its qualification, such organs provide a qualified analysis of the dispute by means of which the preparation stage is shorter, and the flexible procedure might bring compromise without having the executive organ of the organization to make a final decision. Experience proves that the quasi arbitration organs are successful as they are able to enjoy the confidence of the parties and allow them to participate in order to agree to a compromise.

Its establishment is anticipated in the constituent instruments of the International Monetary Fund (IMF), the Multilateral Investment Guarantee Agency (MIGA), the Organisation of the Petroleum Exporting Countries (OPEC), etc. An important contribution as for the settlement of disputes arising within the international organizations provides also international courts the existence of which is presumed in constituent instruments of many of them. The

best known include the Court of Justice of the European Union, European Court of Human Rights of the Council of Europe, the Court of Justice of the Andean Community, the Court of Justice of the African Economic Community, the Tribunal of the Economic Community of West African States (ECOWAS), the Court of Justice of the Economic Community of Central African States (ECCAS), the Economic Court of the Commonwealth of Independent States (CIS) – former members of the USSR, and others.

Similarly in the settlement of disputes before the international judicial organs of general competences, the parties in a dispute can turn to the specialized courts of the international organizations after having used all the moderate and less painful methods of settlement. It is understandable because having to refer the case to the judicial organs, the parties lose their control over the dispute. Consequently, the member states of international organizations do not seek the services of international courts very often; the European Court of Justice and the Court of Justice of the Andean Community being the exceptions.<sup>71</sup>

From this brief overview one can infer that the regional organizations have their own judicial and non-judicial systems of proceedings for settlement of disputes which might arise among their member states, or the member states and the organization itself. As we mentioned earlier, such proceedings fully respect the principle of specialization of international organizations, since their bodies deal with disputes concerning only the activities of the organization and its member states laid down in its constituent instrument.

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<sup>71</sup> As stated by Y. Shany: "...international courts such as the ECJ and WTO promote the goals of their overreaching regimes, but at the same time help to maintain, under changing circumstances, the political economic and legal equilibrium that states reasonably expected to hold among them when joining a specific co-operative regime." SHANY, Y: No Longer a Weak Department of Power? Reflections of the Emergence of a New International Judiciary. In: European Journal of International Law, No. 1, 2009, p. 82.

### **5.3.2. Sanction Regimes of International Organizations**

As with states, the international organizations also have their own sanction regimes which are applicable to the member states for failure to carry out obligations arising from their membership. Even though they differ from the sanctions of the states, they have some features in common.

Firstly the organizations are entitled to apply them as a last possible remedy after having applied a softer coercive approach in order to make them comply with their obligations of membership. Similarly to sanctions applied among states, when applying sanctions to international organizations a principle of proportionality and temporariness must be respected as well. Unlike individual sanctions applied by the states, the sanctions of international organizations have a centralized form with a greater political and moral importance, thus creating more pressure on the subject. Because they are adopted on the decision of the organization's body, they must be well reasoned and applied only if the unlawful behaviour or acts of the member state is duly confirmed. In this respect they differ from the individual countermeasures of the states in general international law, because the conditions for their application are subject to the individual assessment of a concerned state. On the other hand, it is possible to identify some common features through the system of collective sanctions of the UN (the decision of the Security Council, collective assessment of the conditions for application of the international sanctions).

The application of regional sanctions may, however, be prevented due to the existence of specific circumstances of factual character even if the legal conditions to apply them have been met. There might occur a situation in which the sanctions are to be imposed on the organization's member state who makes significant contributions to the budget and, therefore, the sanctions would cause even more harm to the organization than to the member state itself. Another

circumstance is that the relevant organ of the organizations might not be willing to adopt a collective decision on sanctions for political reasons.

Provided that the conditions for imposing the sanctions are met and the organizations are set to adopt them, a method (details) and scope of their legal regulation laid down in their constituent instruments are of high importance. Some of organizations did not explicitly regulate their sanction system therefore no such provisions referring to sanctions are included in the constituent instruments (e.g. the Statute of the Organization of the Petroleum Exporting Countries). In this case it is possible to either refer to the implied powers of an organization or to explicitly complete the provisions of the statute regarding the sanctions. It is generally recognized that the second option should have preference in practice because any such intervention into the membership rights of member states should be expressly laid down in the constituent instruments. Even though some international organizations lack regulations with respect to their sanctions, there are others that have it and regulate different kinds of sanctions. They are, however, not used very frequently, since simply the existence and threat of sanctions has a preventive function against a state who is intending not to comply with obligations arising from its membership within the international organization. Experience shows that international organizations prefer those means of dealing with disputes arising between the organizations and its member state that exclude sanctions. In the wider context, it is a reflection of a general trend under which these enforcement measures are not currently used for settlement with disputes.

To suspend the member state's voting rights is a relatively "soft" sanction used within organs of organization and its regulation can be found in the constituent instruments of both the universal and regional organizations. Regarding the first group, we can mention the United Nations Organization (UN), the International Food and Agriculture

Organization (FAO), the United Nations Industrial Development Organization (UNIDO).<sup>72</sup> This sanction is also stipulated in the constituent instruments of regional organizations.<sup>73</sup> It is usually used when the international organization reacts to a member state failing to pay contributions into the organization's budget, and it is actually applied when the constituent act of an organization either determines the due date for making contributions, or other conditions related to the payment thereof.

In addition to the suspension of voting rights, the member states can be subject to other administrative sanctions that restrict their further rights arising from membership. Among them one can mention the denial of access of states to meetings held by the organs of an organization, disallowing proposals for their own candidates for vacant positions, disallowing their participation in the representative bodies of an organization, etc.

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<sup>72</sup> In 1989, the voting rights for Cambodia in FAO were suspended for failure to pay its membership fees.

<sup>73</sup> Art. 7 Section 3 of the Treaty of European Union stipulates that the Council may suspend certain rights deriving from the application of the Treaties to the member state in question, including the voting rights of its representatives in the Council). Art. 19 A of the Statute of the IAEA, a member of the Agency shall have no vote (if a member is late in the payment of its membership contributions), or privileges and membership rights might be suspended (Art. 19 B in case of persistent violation of the provision of the Statute). Art. 15 of the Pact of the League of Arab states that the state which is not fulfilling the obligations resulting from the Pact may be excluded by a decision taken by a unanimous vote of all the states (except the state referred to). The League of Arab States decided in September 2012 on suspension of membership of Syria and on economic sanctions. Art. 9 of the Statute of the Council of Europe regulates the suspension of the right of representation of a member state in the Committee of Ministers and on the Consultative Assembly (failure to fulfil its financial obligations), Art. 8 – the suspension of the right of representation on the Committee of Ministers (serious violation of the Statute) with a possible option of membership to be ceased.

To impose sanctions on the member state is just one side of a coin. Other member states complying with their obligations, might acquire special entitlements against the member state which is under the regional "sanction regime". The organs of an international organization might authorize them to suspend their obligations towards the state in question, the result of which is that the effect of administrative sanctions is "multiplied" and, at the same time, the economic impact of sanctions is greater (for example the GATT and EFTA).

The most substantial sanctions of an administrative nature is to suspend the membership or to exclude the member state from the international organization. In both cases these sanctions of an extraordinary nature are taken only in cases of apparent, long term and serious breaches of obligations following from their membership. In this circumstance, such a member state is no longer acceptable to the organization since it represents a permanent problem and does not contribute effectively to fulfilling their obligations. Because of their extraordinary nature, such sanctions are usually not regulated by constituent instruments of international organizations.<sup>74</sup> Whatever their scope and nature is, it is notable that international organizations, both universal and regional, have their own sanction systems in order to guarantee the proper fulfilment of obligations of their member states.

#### **5.4. Impact of the European Union on Current Regionalism**

Even though the regional organizations establish their member states freely and they are independent of each other and without any subordination, it does not mean that they do

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<sup>74</sup> As the exception which proves the rule, we can mention the constituent instrument of the International Coffee Agreement of 1983 (Article 66), or the International Agreement on Olive Oil of 1986 (Article 58).

not cooperate mutually (including cooperation regulated by the rules of international law) and that they in certain cases do not try to copy the successful and long-existing functioning regional models. While a perfect model might be lacking, a lot of the regional organizations in the developing world consider the EU model as an exceptionally suitable *point of reference*, and also as an alternative to the economic integration model promoted by the USA. The advantages and impact of EU model on regionalism in developing countries have become relatively often the subject of literature analysis.<sup>75</sup>

The founders of regional organizations across the developing world sometimes think that copying and applying certain segments of the EU model might help them achieve their own integration projects faster, easier and better.<sup>76</sup>

Another inspiring aspect of the EU model of economic integration lies in its perceived beneficial impact on the larger areas of international peace and security, connected to the long-term political and economic stability within the integration organization.<sup>77</sup> The EU model of integration, first

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<sup>75</sup> REVAUGER, J. P.: Regional integration in the Commonwealth Caribbean and the Impact of the European Union. In: The Round Table: The Commonwealth Journal of International Affairs, vol. 97, 399, 2008, p. 857- 869; BERKOFSKI, A.: Comparing EU and Asian Integration Processes-The EU a role model for Asia? EPC, 2002; LENZ, T.: External Influences on Regionalism: Studying EU Diffusion and its Limits, p. 5.; JETSCHKE, A., MURRAY, P.: Diffusing Regional Integration: The EU and Southeast Asia. In: West European Politics, 2012, p. 174 - 191. BORZEL, T. A., RISSE, T.: Diffusing (Inter) Regionalism - The EU as a Model of Regional Integration. In: KFG Working Papers Series (The Transformative Power of Europe), No.7/2009, p. 23.

<sup>76</sup> The only exception is the Asian integration experience which, with respect to having different philosophy and specifications, regards the European integration model not suitable.

<sup>77</sup> As stated by M. Teló: "...the success story of the manner in which the European Union copes with both traditional internal conflicts and national diversities by transforming states's functions and structures plays an important role as a reference (neither as a model nor as a counter- model) for new regionalism elsewhere." For more details: TELÓ, M.: Globalization, New Regionalism, and the Role of the European

seen in the EEC and originally of a purely economic character, was able to effectively overcome the historical post-war animosity between the member states (France and Germany) and for its members to gradually build in areas of peace, security, political and economic stability, promoting democracy, rule of law and human rights protection.<sup>78</sup> In this respect, European integration, despite having some weak periods, represents a thriving example of regional integration worth following.<sup>79</sup>

Some principles on which the EU model is founded can be, under certain circumstances, applied also by regional organizations outside Europe, as they imply a well-functioning regional system verified by long term practice. The main problems are, however, that the real legal and factual conditions and circumstances under which the regional organizations outside Europe are established, the political and economic differences among their future member states and the different approaches to the main goals of organizations, all limit the real application of such EU principles.

In this context it is worth noting that the establishment of each regional organization is always a unique, political, legal and economical process the results of which are that

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Union. In: TELÓ, M.: *European Union and New Regionalism: Regional Actors and Global Governance in a Post-hegemonic Era*. Aldershot: Ashgate Publishing, Ltd., 2007, (Introduction), p. 7.

<sup>78</sup> As stated by F. R. Junquera: "The experience has shown how economic integration has been used as a direct means to achieve economic objectives and as an indirect means to deal with non-economic objectives of great significance in the European Construction such as the pacification after the second World War and the gradual political integration overcoming destructive nationalism." In: JUNQUERA, F. R.: *European Integration Model: Lessons for the Central American Common Market*. Jean Monnet/Robert Schuman Paper Series, Vol. 6, no. 4 (2006), p. 12. Available online: <http://www6.miami.edu/eucenter/ruedafinal.pdf>.

<sup>79</sup> The European Union was awarded the Nobel Prize in 2012: "For more than 60 years it has been contributing to peace, reconciliation, democracy, and human rights in Europe."

there are various types of regional groups with different levels of integration. Such different types are a logical consequence of varying economic, political, historical or other conditions in different parts of the world. They therefore differ in their membership, institutional and legal nature, structure, content and aims, and also in how successful they are in applying the experiences and principles of the EU model to their own conditions.

In this regard, the EU serves as an institutional model with a specific program which the regional organizations in the developing world more or less take into account, depending on their specifications and real possibilities.

Experience, however, does not exclude the assumption that current regionalism should have different forms, without the influence of the European integration model. The EU in practice, however, does not restrict itself to a passive role, but within its external and mainly interregional relationships, uses various active means and methods. In such a sense the EU today actively affects the development of regionalism across the world through the promotion of its integration approach, acquired experiences, standards, norms, institutional structures and legal principles and values on which it is based. Such means include financial and technical aid, conclusion of agreements for purposes of promoting business relations (FTA – Free Trade Agreements), exchange of experiences, standardization of procedures in areas of banking and business, etc. From the acquired experiences of the European model it is possible to deduce various conditions necessary to be met if the regional organizations want to succeed.

The basic condition to establish regional organization supposes the common interest of the future members that is strong enough for such establishment and proper functioning. As mentioned earlier, such interest might depend on geographical proximity (neighbouring), a common geographical element (international river, cross border lake,

inland sea, desert, rainforest, cross border biotope, etc.), or other such serious interests that require permanent institutional cooperation between the states. The existence of these conditions should not be either underestimated or overestimated. As current experience confirms, some suitable conditions are not sufficient enough for the purposes of a common integration project, providing there are long-lasting problems of a political, religious, cultural, or of another character among future member states. The European experience shows that a critical element necessary for obtaining political willingness crucial for the establishment and development of the EC was the historical reconciliation between France and Germany, built over the years through mutual political cooperation among the leading representatives of those countries,<sup>80</sup> together with favourable circumstances developed during the post-war arrangement of Europe.<sup>81</sup> It should be therefore pointed out that the integration project requires, in addition to intensive and specific integration interest, a certain level of politically-accepted standards of relationships with no conflicts among

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<sup>80</sup> As stated by L. Kurhnhardt: "The rationale for European integration was the idea of reconciliation based on a gradually emerging common rule of law." In: KURHNHARDT, L.: African Regional Integration and the Role of the European Union, p. 21. Available online: [http://mercury.ethz.ch/serviceengine/Files/ISN/55859/ipublicationdocument\\_singledocument/a52cc8e4-2fcd-4d23-9322-7027aa1e666b/en/Africa\\_Reg\\_Integration.pdf](http://mercury.ethz.ch/serviceengine/Files/ISN/55859/ipublicationdocument_singledocument/a52cc8e4-2fcd-4d23-9322-7027aa1e666b/en/Africa_Reg_Integration.pdf).

<sup>81</sup> As stated by S. Fabbrini: "European Integration in the second half of the century was a response to the trauma of the first half. Its success was dependent on the security side, by the military protection of NATO and on the economic side by the formation and enlargement of a common market aimed to generate and diffuse economic growth. It would be wrong to see the origins and extension of the European regionalism simply as a result of economic pressures." In: FABBRINI, S.: European Regionalism in comparative perspective: Features and limits of the new medieval approach to world order. Paper Submitted at the 3rd Pan-Hellenic Conference on International Political Economy, University of Athens, say 16 - 18, 2008, p. 9. Available online: <http://aei.pitt.edu/14996/1/EurReg.pdf>.

future members in order to be successful; a so-called "clear table" of mutual relationships.

Geographic areas where efforts made by states to settle long-term conflicts were insufficient (despite attempts to establish regional integration groups) have the opposite outcome. For instance in Asia, it is in the near future hard to expect extensive regional development without reconciliation between Japan and Korea, India and Pakistan, Israel and Palestine, Iran and Iraq, Japan and China, etc.

Every regional project requires not only strong, but the persistent will of its founders, who are able to confront temporary, unfavourable conditions, and, depending on an integration model, also to transfer a part of sovereignty in favour of a regional organization. Initial enthusiasm is not sufficient for its establishment, as it loses momentum after a certain time as a consequence of the failure to reach the anticipated results.

In the case of European integration, it is an integration process which has taken more than 60 years during which the political willingness has lasted, despite various problems and difficulties, no matter what the governments were. Even though we can observe various periods of stagnation in the integration process of Europe, they were replaced by shorter, yet more intensive reformative stages resulting in the conclusion of international treaties which moved the integration development forward (the Single European Act of 1986, the Maastricht Treaty of 1992, the Treaty of Amsterdam of 1997, the Treaty of Lisbon of 2007).

The absence of a lasting political will is apparent within African regional organizations which were established in great numbers after the former colonies became independent at the beginning of 1960s. Their efficiency is, however, weak and their lifetime, in some cases, is short. In the majority of cases they represent only a rhetorical integration, especially in the case of ambitious political leaders' projects, resulting in their termination or inactivity.

The African continent is currently a "cacophony" of various organizations and initiatives in pursuit of the same or similar aims, but making no efforts to cooperate and coordinate activities mutually. Another typical attribute of African integration groupings is the overlapping membership among the states, in various regional groups, resulting in efficiency being reduced and chaos increased, and the non-transparency of the African continent integration map.<sup>82</sup> This results in duplication, non-productive competition between the members and the organs of various regional organizations, poor use of time and energy, and the imposition of increasing financial obligations and higher bureaucracy, on its members.

Such competing regionalism is reflected not only in relationships among various regional groups, but also in their internal structures, and it relates to efforts to get, for example, external financial aid (e.g. from the EU), extension of political influence, as well as other forms of regional cooperation and policy, etc. Literature states that out of 53 African countries, 26 of them are members of two regional organizations, 19 are members of three, two countries (the Democratic Republic of Congo and Swaziland) are members of four organizations and only six countries are members of just one regional group.<sup>83</sup> Institutional "pell-mell" is increasing also due to the relationships between regional organizations and the African Union which seeks a certain coordination of regional activities

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<sup>82</sup> As stated by L. Kuhnhardt: "Africa has to move from efforts to understand the chaotic world of overlapping memberships in regional groupings, to an analytical frame that is trying to make sense of region building in Africa through the prism of concentric circles. Africa has to re-design its region building map along the notion of concentric circles." In: KUHNHARDT, L.: African Regional Integration and the Role of European Union, Center for European Integration Studies, p. 17. Available online: [http://www.zei.uni-bonn.de/dateien/discussion-paper/dp\\_c184\\_kuehnhardt.pdf](http://www.zei.uni-bonn.de/dateien/discussion-paper/dp_c184_kuehnhardt.pdf).

<sup>83</sup> FRANKE, B. K.: Competing Regionalism in Africa and the Continent's Emerging Security Architecture. In: FRANKE, B. K.: African Studies Quarterly, No 3, 2009, p. 5.

on the African continent. But it is confronted with various institutional structures, different financial sponsors and interests, and also with a reluctance, great and small, to join a common institutional structure covering the African continent.

Nevertheless, the African Union has succeeded in having various regional groups participating in activities ensuring international peace and security in Africa (ECOWAS, SADC, ECCAS, COMESA, EAC).

Respecting the rule of law and democracy among its members, the EU model reflects this principle as a necessity for granting stability and irreversibility of the integration process. Such a condition is within the context of regional groupings needed to ensure proper functioning of regional organs and institutions, and from the economical point, enhance the atmosphere of trust essential for long-term and extensive investments. The benefits that EU membership offers to their members thus depend on creating basic democratic institutes and principles with respect to their political systems and domestic legal orders. Consequently, regionalism and democracy are processes depending on and strengthening each other. The aforesaid is confirmed also with respect to Central and Eastern European states which, prior to joining the EU, were obliged to comply with the need to be and to state they were functioning democracies based on the rule of law and market economy; as was earlier the case with Greece, Spain and Portugal.

This condition is, however, hard to accept across the developing world because of the nature of the political regimes and different orientation of domestic and foreign policies of states. The majority of states were established during the post-war process of decolonization; their political developments took different directions and they remained at different levels of economic development. It is then not feasible to expect them to join the integration groupings with their market economies functioning well, and pluralistic

political systems respecting the human rights and rule of law. The ASEAN, for instance, the democratic state (Indonesia) together with Breunei as autocratic state, which have a different degree of economic development and different expectations from the integration group. Even if the democratic legal system is not a condition to become a member of a regional group in the developing world, it is, however, true that regionalism thrives in states which respect principles of the rule of law and human rights, but not in those which are politically unstable, with no representation organs and autocratic regimes.

### **5.5. Supranational and Intergovernmental Model of Regional Organizations**

Depending on the will to respect said conditions, the establishment of regional organizations is currently marked by two basic approaches; the intergovernmental and the supranational approach. In the intergovernmental approach it is typical that the member states continue with full sovereignty, while established regional organs (usually in the form of a Secretariat) serve only to prepare and carry out their common projects. In contrast, the supranational approach means the member states have decided to transfer some parts of their sovereignty through, and within, the organs of regional organization. The EU example confirms that specific legal rules and principles are created within the supranational integration grouping; having priority over the internal legal orders of the member states. In this respect, the EU significantly differs from regional organizations of intergovernmental nature. Not only own legal order is typical for the EU, but also common institutions (organs) are entitled to propose and adopt supranational legal rules; where such institutions themselves represent the leading power in order to deepen and promote the integration process.

The majority of regional organizations within the developing world remain still at the intergovernmental level,

since their member states are not willing to share some of their sovereignty with a regional groups despite the often proclaimed efforts for deeper integration. Many states in Asia and Africa still consider membership in regional organizations as an instrument to reinforce their sovereignty (*the sovereignty reinforced regionalism*), which sharply contradicts with the obligation to transfer part of their sovereignty for the benefit of regional group. The usual argument for this approach is that they have been fighting heavily for their sovereignty and independence and this is why it is without logic to transfer part of their sovereignty to regional groups. From their point it seems impossible not to reinforce but, on the contrary, to restrict their sovereignty which is a feature characteristic to supranational regional organizations. Even though the original reasons for the establishment of integration groups have been in the meantime changed, the reluctance of countries in the developing world to create supranational models for integration is long-lasting (ASEAN, APEC, MERCOSUR, NAFTA). As a consequence, current regional organizations in Asia and Africa deal only with issues reflecting the more or less common will of their member states, without having any own "positive" agenda for the regional group itself. Such purpose of integration within the developing world obviously puts no pressure on building an effective regional institutional structure.

Another reason for the lack of such structures is that weaker states within the integration groups worry that through them only the economic or political interests of the stronger states would be promoted. Any kind of "leadership" by a strong country within a regional group can undermine the consensus, as a basic principle which is regarded as an essential condition for its effective functioning. For instance the ASEAN, a successful Asian regional group, illustrates that despite efforts being made to institutionally improve the integration mechanism and to build a more stable

institutional structure (the ASEAN Charter of 2008), its intergovernmental character, and absence of a supranational organ, are still present. This approach reflects the basic principle it is based on; namely not to intervene in the internal affairs of the member states and to make decisions based on consensus reached upon previous diplomatic consultations; thus reinforcing the principles of pragmatism, flexibility and non-formality within the relationships among the members.

Literature refers to the "ASEAN way", or the "Asian way" of integration.<sup>84</sup> In reality it is based on agreements between the member states formulated generally at the level of political elites and diplomatic representatives, on the preference of personal ties, the absence of enforcement measures etc. As a result, the ASEAN represents a model of regional groupings enhancing the sovereignty of their member states. It serves the member states as a means to dealing with territorial or other disputes which are a heritage of their colonial history.

Another characteristic is the huge difference in economy between the richest and poorest member states, which prevents their closer economic cooperation and creation of common regional agenda, as well as deeper institutional structure.<sup>85</sup>

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<sup>84</sup> "...the European Union is often showcased as a successful model of institutional regionalism where integration is more formal and legalistic and achieved through endowing specific institutions with decision-making power to shape the behaviour of member states. In contrast region building in Asia seems to operate on a different logic with an emphasis on open-ended networked regionalism where cooperation is achieved through informal networks and with less emphasis on institutionalisation." In: Conference on Networked Regionalism versus Institutional Regionalism: Managing Complexities in Regional Cooperation and Global Governance, Singapore 6-8th December 2009, p. 2. Available online: [https://www.uni-due.de/~hy0387/fileadmin/resource/Singapore\\_Conf\\_2009-12.pdf](https://www.uni-due.de/~hy0387/fileadmin/resource/Singapore_Conf_2009-12.pdf).

<sup>85</sup> As stated by E. D. Mansfield and H. V. Milner: "...network character of Asian states their emphasis on consensus building and the convergence between public and private spheres in domestic politics differentiate them from European countries and render them less likely to develop

Within the Asian way of integration, the founders do not consider the absence of a stable, legal and institutional structure of regional institutions as its weakness, but as part of an effort to promote the flexibility of integration processes and protection of their legally unbinding character. In a wider context the ASEAN might be considered as an Asian version of "open" regionalism; rejecting the European "strict" model of regionalism that is based on free and pragmatic integration without legally binding decisions made by the integration organs. For these reasons, the European integration model is currently not considered as an example to be followed by Asian integration groups.

African regionalism was formed at the beginning on the anti-imperialistic orientation of its members, and was grounded in the ideology of Pan-Africanism, with the aim of protecting the sovereignty of new states having been established on the ruins of the old colonial world. It was based on non-intervention in the internal affairs of member states, and such a trend has lasted till the present time.

In the main, the national interests of the most influential states are promoted in already existing regional structures, and in many cases regionalism has become for heads of states a "hostage" for influence.

African regionalism is usually characterized as without common values because the differences in colonial heritage (and related problems), uneven economic and political development in member states and in various regional groupings, nationalism and incompatibility between the economic and political priorities, prevent it from being fully developed. Both the small range of domestic markets and economies and the low volume of official trade contracts stunt the development of African regionalism.

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regional institution." See: MANSFIELD, E. D., MILNER, H. V.: *The New Wave of regionalism*. In: *International Organizations*, vol. 53, no. 3, 1999, p. 618.

The aforesaid implies also the absence of real political will to act for the benefit of integration; which is proved by the fact that regional rhetoric lacks practical implementation measures (COMESA, ECOWAS, SADC) defined in their constituent instruments to be the necessary conditions for proper functioning of such groups.

As we already mentioned, a common feature of both the supranational and the intergovernmental approach towards regional integration is the irreplaceable role of international law; whose importance and purpose differ in both cases. The only exception is the approach of the African continent in individual parts where international trade cooperation grows dynamically within the informal cross-border trade (ICBT) as an inherent part of the black and/or second economy and without the relevant domestic or regional regulation and effective control of state bodies.<sup>86</sup> It is based on illegal cross-border trade with various commodities and goods (different in various parts of Africa), carried out outside the official border checkpoints and not subject to the usual trade, customs, bank, sanitary or other legal regulations. It has its own history across Africa, rooted in colonial times. Furthermore, literature implies that with respect to its extent and dynamics, the ICBT actually represents the real African economy.<sup>87</sup> Such a process is sometimes called regionalization; without having to establish any formal

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<sup>86</sup> See at least: AFRIKA, J. G. K., AJUMBO, G.: Informal Cross Border Trade in Africa: Implications and Policy Recommendations. In: AFRIKA, J. G. K., AJUMBO, G.: Africa Economic Brief, vol. 3, no. 10, 2012. Available online: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Economic%20Brief%20-%20Informal%20Cross%20Border%20Trade%20in%20Africa%20Implications%20and%20Policy%20Recommendations%20-%20Volume%203.pdf>.

<sup>87</sup> T. Ndiaye states: "There is often suggestion in the literature that the informal/parallel economy including ICBT is Africa's "Real" Economy." In: NDIAYE, T.: Case Story on Gender Dimension of aid for Trade, ITC, UNIFEM, New York, p. 2. Available online: [http://www.intracen.org/uploadedFiles/intracenorg/Content/About\\_ITC/Where\\_are\\_we\\_working/Multi-country\\_programmes/Women\\_and\\_trade/Women%20Informal%20Traders%20Transcending%20African%20Borders.pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/About_ITC/Where_are_we_working/Multi-country_programmes/Women_and_trade/Women%20Informal%20Traders%20Transcending%20African%20Borders.pdf).

bureaucratic and institutional regional structures (regionalization without regionalism).

The ICBT in essence represents a *sui generis* transfer of one of the principles of new regionalism; which is the creation of regional structures from below within specific African conditions. There are various reasons why it still growing; for instance the inability of official regional structures to reflect economic changes connected with globalization, insufficient transport and logistic infrastructure, a tenuous network of bank and financial institutions and problems with getting loans, attempts to evade high taxes and different fees, growing corruption and bureaucracy at state bodies and at the borders, and finally failures of official domestic economies. It seems that existing regional organizations live in their own abstract world, more or less separated from economic reality, not counting on the informal second economy because of their grandiose plans and aims for better African economy.<sup>88</sup>

A current issue is how to deal with the problem of second economy and how to involve legislative and other measures in order to draw the second economy into efforts to enhance and promote African regionalism. This problem is very urgent because of the negative impact it has on regional structures; it prevents them from functioning well, disrupts economic stability and the financial and administrative capability of the concerned states. Consequently, the national economies start to be fragmented along local ethnic, religious and communal lines and the possibility of the conflicts inside or among, the states are more probable.

Some regional projects have been inspired by the experience that the EU model acquired in the area of

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<sup>88</sup> As stated by M. Boas: "If regional organisation is to play a real role in African economies it has to be embedded into the African Context and this is the context of second economy." See: BOAS, M.: *Regions and regionalisation: A heretic's view*. In: *Regionalism and Regional Integration in Africa*. Uppsala: Nordiska Afrikainstitutet, 2001, Discussion Paper 11, p. 35.

institutional structure. The following main organs copying the EU model are characteristic for regional organizations within the institutional area, i.e. the Commission or Secretariat (administrative and legal questions and internal life of organization), the Council (executive nature, consisting of heads of states or Ministers), regional Parliamentary Assembly (elected deputies, legislative issues) regional Court of Justice (nominated judges, judicial settlement of disputes) and eventually other organs depending on scope and complexity of regional agenda; for example, economic and social issues, regional central or development bank, etc.

However, in reality such organs do not strictly copy the European model because the need to respect the sovereignty of member states is always taken into account. For instance, the establishment of regional Commissions (after the European Commission model) makes it impossible to propose regional legislation or regional sanctions imposed due to breach of regional rules are subject to unanimous consent of the member states, etc.

In this respect, there were also more ambitious integration projects *à la Europe* in developing countries, not corresponding to the economic and political reality of their member states. In such cases there is an essential lesson to be learnt from European integration saying that the selection of different institutional levels and structural system depends fully on specific economic characteristics and real political ambitions of each region. We can encounter such an overestimation of the European integration model in areas of Africa and Latin America<sup>89</sup> (Andean Community). Ambitious projects like these usually assume that if some regional institutes were working well within European integration, naturally they would work well under different conditions and in different parts of the world.

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<sup>89</sup> As stated by Ch. Clapham: "Any set of prescriptions for integration which does not start from an appraisal of the political and economic structure of African states is built on sand." CLAPHAM, Ch.: Africa's International Relations. In: African Affairs, October 1987, p. 578 – 579.

To say that the European integration is reminiscent of "skeet shooting" is thus a just description, since the current situation within the European integration is the result of previous long development within the economic, political, institutional, or other areas; and still continues to the present day.

Therefore, the rules having been applied within the European model in the 1960s and 1970s, might be still applicable for purposes of regional integration development in the developing world, but the current rules reflecting actual higher level of economic integration and institutional complexity are not so.

A brief analysis of the EU model implies that conditions necessary for a regional project being successful vary and represent a complex of political, economic and legal factors specific to a particular region and depending on each other, based on mutual dynamics. Even though (for this reason) they cannot be applied automatically outside a particular region, the regional groupings in various parts of the world and at various stages/phases of their integration process aspire to it as a model proven in practice.

A main obstacle preventing the developing regional groups from coming closer to the European model is the difference in understanding the importance of sovereignty of member states within the integration process as well as the role of regional organs in making the integration process more developed and deepened. Due to historical, political and different economic conditions, the regional groupings within the developing world are not willing to assign a more important role to the regional groups and their organs in furthering the development and deepening of the integration process. They specifically worry about their sovereignty becoming weaker by transferring part of it to organs of a regional group, as well as having their own agenda separate to the other member states. For these reasons, the prevailing model of regional integration groups within the developing

world is still a model of intergovernmental character, with an agenda at such a level and scope accepted by all member states.

Unlike the European model, governed and institutionalized in every detail by law, Asian and African regionalism currently prefer more liberal and informal models reflecting some principles of new regionalism. They include informal international networks and regimes of trade and cooperation between various types and groups of regional subjects; without the states having a dominant position. In Asia it is a consequence of a different philosophy of the so called Asian way of "open" regionalism; while in Africa structures of informal cross-border trade do not form an accepted or proper part of the official regionalism. The regional African organizations show no real interest in making such informal groups integrated and cooperative with their activities and, on the contrary, some of their member states profit from trade and economic activities of the ICBT.

## 6. INTERREGIONALISM

### 6.1. Old and New Interregionalism

As we already mentioned, regional organizations are not being established in a vacuum and despite not having stronger relation towards the international universal organizations (except for the UN Security Council under the UN Charter), this fact has never limited relations and cooperation between them.

Along with them, there are also relationships being established among the subjects in various regions that differ from regional organizations, or relationships in which the regional organization forms just one of its subjects. Their intensity and form varies in different periods of development of regionalism, and in entirety is called interregionalism. This is not a completely new phenomenon, since it emerged already with the first regional organizations in the second half of the 20th century as their associate element, and it has been growing into a general phenomenon within the global international relations. There is no generally accepted definition of interregionalism in literature, and different writers have different definitions. The simplest definition says that interregionalism includes "regions mutually affecting each other",<sup>90</sup> while another says: "interregionalism relates to agreements made between two regionalisms..."<sup>91</sup>

The relations of interregionalism are carried out and developed within specific international forums (APEC, ASEM) which represent a certain novelty within international

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<sup>90</sup> GILSON, J.: New Interregionalism? The EU and East Asia. In: GILSON, J.: European Integration, No.3/2005, Vol.27, p. 309.

<sup>91</sup> REITERER, M.: Inter Regionalism: A new Diplomatic Tool, The European Experience with East Asia. Paper presented at the 3rd Conference of the European Union Studies Association (EUSA- AP), Tokyo, December 2005, p. 1.

relations, since they are called for the purposes of interregional cooperation and in case of some of them we can already identify the features of a starting institutionalism (e.g. in the form of permanent secretariats).

Both old interregionalism and new interregionalism have clearly differing features. Old interregionalism was typical for having a dominant position in the European Community (EC) which entered into relations of dialogue and cooperation both with the regional organizations and with the groups of states, or with individual states while maintaining its leading position of the most developed regional organization (the hub and spokes model). There were many characteristic features regarding the EC within the interregional relations at that time. The EC in its external relations took advantage of mainly interregional cooperation mechanisms as a means to make the integration relations stronger and advanced within other regional groups, to strengthen its own international position and, finally, to ensure international regional security, stability and prosperity outside their own borders. As an example, the relations between the EC and ASEAN began in 1978; resulting, after two years of meetings, with the signing by ministers of foreign affairs of the Cooperation Agreement in 1980; – and, similarly, with the SAARC in 1985 – though such cooperation was focussed on trade and technical matters and without a political focus.

During the old regionalism period, interregional relations had seen developments between the regional groups only of a trade and economic nature. The development of interregional relations between political and security regional groupings was slowed down by being oriented internally as well as by the Cold War atmosphere.

After the Cold War ended and new regionalism started, the new interregionalism had more favourable conditions for its development; i.e. the removal of obstacles that had been created by the hegemonic policy of superpowers and enclosed

blocks, a strict division of spheres of their influence, the closed character of regional organizations, etc.

The new interregionalism is typical for extending the geographical scope of its application, since new regional organizations start entering the interregional relation in other parts of the world. Even though the EU<sup>92</sup> still plays an important role, the development of interregional relations with other regional organizations is enhanced also by the ASEAN in South-East Asia, MERCOSUR in Latin America, the Andean Community in Central America, GCC in the Persian Gulf and CER in Oceania; although their contact and cooperation are sometimes of an *ad hoc* nature, with no serious efforts to make them regular and institutional and they have often a rather general agenda.

As it has been noted above, the current experience confirms that new regionalism produces new types and forms of relationships; not only within the regional organizations but among the regional subjects, whose number and types grow, and that these relationships (not on the same level though) are becoming gradually institutionalized; a new phenomenon within international relations and international law.<sup>93</sup>

Because regional organizations from different parts of the world enter into interregional relationships, there is a trend to reflect the basic rules and principles that are typical for them. For this reason, the regional organizations in the developing world promote the rather flexible and informal character of their interregional relationships; with no detailed institutional structure and preferring informal consultations

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<sup>92</sup> See at least TELÓ, M.: *European Union and New Regionalism: Regional Actors and Global Governance in a Post-Hegemonic Era*. Aldershot: Ashgate Publishing 2007, p. 407. LACK, W., ROBINSOK, N., ROSAMOND, B.: *New Regionalism and European Union*, UN University, 2011, p. 297.

<sup>93</sup> The more or less institutional relations arising within the new interregionalism are sometimes called the transregionalism. VALLE, V.: *Interregionalism: A case study of the European Union and Mercosur*. In: Garnet Working Paper No.51/08, p. 6.

and exchanges of opinions. Such a trend can be identified in the South-East Asia countries which applied them to the interregional relations within the APEC and ASEM. The EU approach is, however, typified by its attempts to formalize and institutionalize the interregional relations in reflecting their growing intensity and complexity. Regardless of the more or less flexible, or institutional form of interregional relations, the influential participants (especially the EU) use them to promote basic principles and values that they were built on in other regions (such as, the rule of law, human rights, democracy and market economy). Such attempts can be observed in the treaty's interregionalism.

There are basically two reasons for new interregionalism starting so swiftly; the development of a new regionalism after the Cold War ended and the globalization of international relations and economy. From the beginning of the 1990s, literature has studied the new interregionalism both as a new phenomenon of international relations and as a new theoretical approach to the new regionalism. One of the basic issues of the research is the qualification of relations falling within new interregionalism, its purpose and peculiarities. In summary, these relations can be divided into those that twin regional organizations in different regions, relations of regional organizations towards third states or a group of states in other regions. As well as regional organizations participating directly or indirectly in other interregional structure.

As for a more detailed qualification of relations falling within the new interregionalism, the most quoted one is by H.Hänggi<sup>94</sup> who divides it typologically into five groups according to participating subjects. The first group considers relations between a regional organization and a state from a different region (the quasi interregional relations, or

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<sup>94</sup> H. HÄNGGI: Interregionalism as a multifaceted phenomenon (In search of a typology). In: HÄNGGI, H., ROLOFF, R., RULAND, J. (Eds.): Interregionalism and International Relations. New York: Routledge, 2006, p. 31-61.

regionalism in a wider sense). The second group includes relations between regional organizations from different regions (the interregionalism in a narrow sense). The third group deals with relations between a regional organization from one region with a regional group of states from the other (interregionalism in a narrow sense).<sup>95</sup> The fourth group includes relations between a regional group of states from one region and a regional group of states from the other region (interregionalism in a wider sense)<sup>96</sup> and finally group five concerns relations between groups of states from two or more regions (the megaregional relations, or interregionalism in a larger sense).<sup>97</sup> A common feature of these groups is that they reflect an uneven level of development of the institutional regionalism in individual geographical areas; either in the form of a regional organization, regional group of states, or a state from a different region; resulting in various possibilities or a combination of interregional relations.

In this respect we can talk of multi-faceted regionalism, since the interregional relations are not restricted only to regional organizations and mutual relations between them (typical of the old interregionalism), yet there are more

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<sup>95</sup> For instance with respect of ASEM, there is the EU on the one side, while the "Asian side" includes a group consisting of the ASEAN and also the ASEAN+3, that means the other states (China, Japan and South Korea), as well as other three members of the SAARC (India, Pakistan, Mongolia). As a consequence, the ASEM includes in total two regional organizations (EU, ASEAN), plus the Asian regional group (the ASEAN+3+3).

<sup>96</sup> For instance the FEALAC (Forum for East Asia-Latin America Cooperation-FEALAC)

<sup>97</sup> An example of such megaregion is the "transpacific" APEC consisting of almost all the member states of the NAFTA, states parties to the Australia - New Zealand Closer Economic Relations Trade Agreement (CER), ASEAN and "ASIA-10" group and two South America states (Chile and Peru). In practice, there is interregional connection being established between the South America, Eastern Asia and Pacific space. Unlike other interregional mechanisms, the APEC has a small secretariat based in Singapore.

opportunities for the interregional relations to be established and developed also with other subjects and with different agendas. Such an interregional approach might in practice represent an effective alternative to a bilateral system of relations among the states from different regions while not excluding its existence outside the scope of the agreed interregional agenda.

Regarding the first group, it reflects a situation in which a regional organization or a regional group of states exists in one region and is willing to enter into interregional relations with the interested state in the other region. Relations between such subjects cross the territorial scope of one region and are oriented to another region in the form of the quasi interregional relation.<sup>98</sup> Their importance increases provided that the individual interested party is the state which has a dominant position in its region (e.g. the USA in South America, India in South Asia).<sup>99</sup> Throughout the 1990s the relations among regional organizations and the third states in different regions increased significantly, becoming a significant part of new regionalism; with the EU and ASEAN, with long experience in this area at the head of international organizations within this group.

New interregionalism, in a narrow sense, consists of relations among governmental regional organizations.<sup>100</sup> This second group of relations, typical for the old regionalism, represents also an important part of new interregionalism. It is worth noting that the EU and ASEAN play an important role also in this type of interregional relations, especially with

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<sup>98</sup> As an example of this type of interregionalism we can give the relations between the EU and Mexico, Chile, China, Japan, India, USA, Canada. The ASEAN has such relations with China, Japan, South Korea, USA, Canada, Australia and New Zealand.

<sup>99</sup> Since 2013 the official negotiations between EU and USA have started in order to prepare the Transatlantic Trade and Investment Partnership (TTIP).

<sup>100</sup> For example, the EU-MERCOSUR, EU-ASEAN, EU-Andean Community, EU-SADC, ASEAN-SARC, ASEAN-MERCOSUR, ASEAN-CER. ASEAN-Rio Group, CER-MERCOSUR i..

respect to the relations of Western and Central Europe and East Asia.<sup>101</sup> Such relations are generally carried out through the meetings held more or less regularly at the level of ministers, where common programmes and projects are drawn up and discussions are aimed at an exchange of information and cooperation within the agreed areas (mainly in economic areas including trade and investments). The EU is an exception in this respect, since it regularly requires a wider political agenda in the area of human rights and democracy. When regional organizations become involved in an interregional dialogue, there is a need for prior regional consultations and coordination of attitudes in order to work out common opinions so that the interregional dialogue is more transparent and there is closer cooperation.

The third group of the new interregionalism includes the interregional relations represented by various subjects. While it is the regional organization in one region, the other region is usually represented by a more or less coordinated group of states which want to enter into relations with a regional organization from another region. The establishment of such relations dates back to the beginning of the 1990s and is predominantly influenced by the EU in this group.

As an example of this group one can mention the EU-ASEM<sup>102</sup> relationship which, however, offers no substitution for traditional bilateral relations between the European and Asian countries. Regular European-Asian summits in the form of multilateral conferences have been held every two years since 1996 by the heads of states; with discussion at the level of ministers, working groups of experts, etc. The basic principles that the meetings follow include: equal partnership,

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<sup>101</sup> The first summit of the EU-ASEAN was held in 1978.

<sup>102</sup> Literature concerns: "...Asia-Europe Meeting... as one of the most advanced and original examples of inter-regionalism." In: M. MOLS: Cooperation with ASEAN: A success Story. In: EDWARDS, G., REGELSBERGER, E. (Eds.): Europe's Global Links: The European Community and Inter-Regional Cooperation. London: Pinter Publishers, 1990, p. 143 – 160.

a multidimensional process of meeting, non-formality and promotion of mutual understanding. Experience proves that this type of interregionalism creates conditions suitable for fruitful dialogues between regions, concerning current, global issues and regardless of the fact that interregional partners are not identical. The ASEM provides the Asian side with real "regional" space in which the Asian states discuss and show interest in formulating common attitudes. They are based on informal discussions about specific issues (the *informal dialogue based process*),<sup>103</sup> usually without having any formal or otherwise structured agenda.

Practice confirms that participating states regularly use such summits to also promote their bilateral relations; where the intensity and content might differ from the official programme of the summit (e.g. states might give preference to current political and economic issues in their bilateral relations over the issues that are important globally). As a practical result, an interregional mechanism of this type might contribute informally to the development of bilateral relations among its members.<sup>104</sup> It should be added that two groups of non-governmental entities today form important parts of the EU-ASEM structure; the first group is the Asia-Europe Business Forum (AEBF),<sup>105</sup> a meeting of business leaders who met for the first time in 1996, and have acquired a strong position in the process of the ASEM interregional relations. The second group consists of non-governmental organizations from both regions which initiate and develop a mutual exchange of opinions among students, academics, journalists

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<sup>103</sup> The object of discussion held up to now was, for example, the UN reform, ban on weapons of mass destruction, international terrorism, illegal migration, problems related to the World Trade Organization, etc.

<sup>104</sup> ASEM has neither its own secretariat nor seat, and summits alternate between Asia and Europe. Ministers of foreign affairs are in charge of summits assisted by informal coordination group composed of two Asian and two European representatives.

<sup>105</sup> Asia-Europe Business Forum.

and young politicians. However, they have no official position in the ASEM process.

As a consequence, the first Common Asia-Europe meeting of non-governmental organizations<sup>106</sup> took place in 1996 along with the first ASEM summit. The ASEM shows that the interregional mechanism of this group is directly confronting the new global challenges and changing the international context. It is able to effectively connect the local, regional and international political and economic agenda and at the same time to absorb the groups of subjects of a non-governmental nature concerned in both regions.<sup>107</sup> With respect to interregional relations between the EU-ASEAN, the ASEM represents a wider forum, enabling further development of their dialogue and creating space for a differential approach towards the European and Asian region, as well as to third states. Most of the original agenda with respect to the EU-ASEAN relations has been currently absorbed by the interregional process of the ASEM.

The fourth group of new interregionalism, relates to regional groups of states from different regions. Unlike regional organizations, they are specific for being established for the purposes of participating actively within the interregional relations only.<sup>108</sup>

For example, the Europe-Latin America Rio Summit (1999) composed of 33 Latin American and Caribbean states

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<sup>106</sup> Joint-Asia.Europe NGO Conference 1996.

<sup>107</sup> As stated by H. W. Maull and N. Okfen: "ASEM has developed into a complex process of cooperation involving governments (at the level of leaders, ministers and senior officials) business and societies in the broad variety of activities, from summit meeting to seminars and workshops." In: MAULL, H. W., OKFEN, N.: Comparing interregionalism: The Asia-Pacific Economic Cooperation (APEC) and the Asia-Europe Meeting (ASEM), p. 221.

<sup>108</sup> For example, the group of African states consists of member states of the former Organization of African unity + Morocco and Cairo summit, the Asia group of states consists of the ASEAN member states + three partner states of North-East Asia dialogue, the member states of the Rio group and Caribbean community in case of Latin America states, etc.

on the one side, and on the other the EU member states, then the Africa-Europe Cairo summit (2000), composed of 52 African states on the one side and the EU member states on the other, the East Asia-Latin America forum composed of 13 East Asia states, Australia and New Zealand, as well as 12 Latin American countries. Their participation in interregional relations strengthens their regional identity based on common interest with no need to make formal institutionalization through regional organizations.

Finally, group five, consists of relations between the states, group of states and regional organizations from two or more regions is also a reflection of a new interregionalism (megaregionalism).

Similarly to the new regionalism, the new interregionalism is not located evenly from the geographical point of view and it is concentrated in the Triad composed of Northern America, Western Europe and Eastern Asia.<sup>109</sup> Each type of interregional relations we have mentioned is applied within this area (although not evenly regarding the scope and intensity), from the quasi interregionalism to megaregionalism. In addition, there are interregional relations outside the Triad which have been developed (especially through the EU and ASEAN) mainly in Latin America and Africa.

From the above we can imply that the new interregionalism as the *sui generis* phenomenon currently includes not only traditional relations between the regional organizations, but also other subjects of governmental and non-governmental character that are interested in interregional cooperation. It is at the same time a dynamic process depending on the changes occurring to the interregional relations (a group of states is replaced by the regional organization, or *vice versa*), and it currently forms a

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<sup>109</sup> Three quarters of trade are produced in areas within these regions and around 90% of direct foreign investments are concentrated there.

permanent part of international relations with prospects for future development.<sup>110</sup>

There is neither a uniform definition of interregionalism, nor uniform opinions regarding its functions. Interregionalism is referred to as an instrument to maintain balance among participants. Practice shows that the most powerful participants of the Triad use the interregional forums to maintain mutual balance and balance with the states outside the Triad; provided that these states are able to compete with the dynamics of its development in the field of economy. It concerns mainly institutional (not power) balance; the need of which depends on activities carried out by other interregional participants.

Examples suggest that NAFTA was established as a reaction to the establishment of the European common market. The relation developed between the EU-MERCOSUR represented a European reaction to the Free Trade Areas of the Americas (FTAA). Reinforcing the relations between the MERCOSUR member states and Europe represented efforts to restrict the influence that America had within the southern hemisphere, etc. The system FEALAC represents efforts that Asian and Latin America members made to diversify their economic and political relations for purposes of catching up with the strong American and, partially, European influence. Australia joined the IOR-ARC because it failed to be accepted by the ASEM and India because it was excluded from the ASEM and APEC, etc.

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<sup>110</sup> As stated by H. Hänggi: "...interregionalism appears to have become a lasting feature of the international system. It may be expected that a wide array of forms and types of interregionalism will continue to coexist thereby further enriching (and complicating) the emerging multi-layered system of global governance." In: HÄNGGI, H.: Interregionalism: empirical and theoretical perspectives. Paper prepared for the workshop: „Dollars, Democracy and Trade: External Influence on Economic Integration in Americas, Los Angeles, May 18, 2000, p. 13.

Another segment of interregionalism includes a certain institutional element of interregional relations, since their existence requires more intensive cooperation among participants which is not possible (at a certain level) to provide *ad hoc*. However, current results within this area are not very distinctive. As was already mentioned, the idea of a stronger institutional structure of interregional relations is not generally accepted since the approach of the EU and regional groups in developing countries in this respect differ. In a wider context we can, however, infer that if such organs or institutions become established they contribute to the gradual institutional diversification of the international law.

Another function of interregionalism is to build and reinforce regional identity of its participants (ASEM, APEC). Practice confirms that such identity is formed mainly through different kinds of interregional dialogues on different levels which give grounds to common concepts as to how the regional groups should work and develop relations among them; as well as to form common attitudes towards global problems.

In this context interregionalism can be regarded as a useful process through which the regions represented by different subjects acknowledge and define or determine themselves as regional entities with respect to other region or regions.

Possibly the final function of interregionalism is the rational function. It is based on the fact that in the current multipolar world the interests of states within the global institutions (forums) currently differ, while the number of issues of technical character in their agenda is increasing. Such circumstances slow down the decision-making process, make it difficult for institutions to carry out their activities and, moreover, possibly decrease their legitimacy.

Interregional dialogue can enhance members' common attitudes with respect to global issues and thus negotiations at a global forum might be more efficient and easier.

## 6.2. Interregionalism and International Law

In connection with development of interregional relations, there is quite naturally a question arising about the role of international law with respect to the potential regulation of such relations. Further analysis of interregional relations will show that these relations are today regulated by international treaties (bilateral and multi-lateral) which the states and regional organizations conclude with respect to these issues. There have been no doubts<sup>111</sup> as to the treaty making powers of the states, however, the treaty making power of international organizations is neither automatic, nor general and there are expressly regulated in their constituent instruments. For a rather long period of time there had been no rules of general international law that would govern the different aspects of the process of international treaties concluded by international organizations. It was not until the latter half of the 1980s that the International Law Commission prepared the draft of the Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986<sup>112</sup> codifying the rules of existing practice of international organizations in this area.

Considering the qualification of interregional relations, the international treaty regulation can be observed in the first "quasi-interregional group" in the form of treaties concluded between the international organization on the one side and the third state from another region on the other. International treaties are also found within the second and the third group, which means within the interregional relations between two

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<sup>111</sup> Article 1 Section 1 of the Vienna Convention on the Law of Treaties of 1969 states that: "Each state is capable to conclude treaties." In: Decree of the Federal Ministry of Foreign Affairs No. 15/1988 Coll.

<sup>112</sup> Article 6 of the Convention of 1986 states that the capacity of international organizations to conclude treaties is governed by the rules of that organization.

regional organizations and between the regional organization and the states (group of states) from a different region. Because of the significant position of the EEC-EC-EU which has been for a long time a leading player and initiator of interregional relations governed by international law, due attention shall be paid to the analysis and the benefits it brings for the international law.

### **6.3. The EC-EU Interregional Treaties**

The Treaty on the Functioning of the European Union as amended by the Treaty of Lisbon (hereinafter as the TFEU) Article 216 stipulates that the EU may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter the areas of their competences. Competence of the EU to conclude treaties is not unlimited, though, and the Union has competence when respecting the division of powers and its member state under the Article 3 et seq. TFEU.

The TFEU Article 317 thereof also states that the EU may conclude with one or more countries or international organizations association agreements establishing an association involving reciprocal rights and obligations, common actions and special procedure. Their common aim is to create a legal and economic regime for cooperation between the third (non-member) states or international organization and the EU.

The EU interprets the third states in two ways. The first interpretation relates to the states "with a chance" to become the EU members which have already applied for membership, but they still fail to comply with conditions as required. The association agreements in such a sense anticipate their future

membership.<sup>113</sup> In accordance with Article 49 TEU such association agreements may be concluded with only a limited number of states because only European states may apply for membership in the Union.

The second group includes the association agreements with third states whose objective is not the membership of the EU, but they serve other purposes. They create a legal framework for cooperation of the EU with third countries within a specific area of mutual relations<sup>114</sup> or they serve to promote political and economic cooperation with the aim of creating a free trade zone; as well as ensuring conditions necessary for free trade with industrial goods, in the agricultural area and services, to enhance cooperation with respect to political, social, economic and cultural matters, and in the justice area.<sup>115</sup>

It should be pointed out that the EU's efforts to conclude these association agreements reflect, in virtue of Article 21 Section 1 TEU, general principles that the EU complies with when carrying out its external policies and which it seeks to advance in the wider world. This concerns democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principle of equality and solidarity, and respect for the principles of the UN Charter and international law. Under this Article, the Union seeks to have these values respected in the process of developing relations and building partnerships

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<sup>113</sup> For instance, the Association agreement with Greece in 1961, the Association agreement with Turkey in 1963, or the European agreements on association concluded with 10 countries in the 1990s. The Preamble of the Association agreement with Slovakia of 1993 states that: "...a final aim of the Slovak Republic is its accession to the Community and this accession... shall help the Slovak Republic achieve this objective."

<sup>114</sup> For instance the Sector Agreement on Cooperation with Switzerland.

<sup>115</sup> For example the Association Agreements with Tunisia (1998) Algeria (2005) Morocco (2000), Egypt (2004), Israel (2000), Syria (1977), Jordan (2002), Chile (2002 a 2005), Lebanon (2003).

with third countries, and international organizations, as a necessary condition in order to strengthen regionalism and regional cooperation and as one of the guarantees of international peace and security.

Another group of international treaties is envisaged by Article 198 of the TFEU which determines the association of the overseas countries and territories having special relations with Denmark, France, the Netherlands and the United Kingdom. The purpose of their association with the EU is to promote their economic and social development and to establish close economic relations between them and the EU as a whole. Article 212 TFEU envisages the treaties related to economic, financial and technical cooperation with third countries other than the developing countries (the partnership agreements).<sup>116</sup> Additionally, Article 214 of the TFEU entitles the EU to conclude other treaties with third countries and international organizations in order to regulate the humanitarian needs, technical assistance, etc.

The EU treaty practice also confirms the existence of various "combination" agreements, including the stabilization and association agreements with former Yugoslavian Republic of Macedonia (of 2004), with Albania (2007, 2009), Bosnia and Herzegovina (2008, 2010), as well as more concrete specialized treaties, i.e. on free trade with Norway, Ireland, Switzerland (all in 1973), on customs union with Andorra (in 1991), Turkey (in 1995) and San Marino (1992), etc.<sup>117</sup>

A brief excursion through EU treaty practice shows its diversification and orientation by means of which it

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<sup>116</sup> Agreements of such character that have recently been concluded include the ones with the CARIFORUM countries (Antigua, Granada, Haiti, Jamaica, Dominican Republic, Barbados, Bahamas (2009), Ivory Coast (2009), Cameroon (2009).

<sup>117</sup> To make a picture complete it should be pointed out that the formalized interregional relations between the EC-EU existed not only in the form of international treaties. For example, the Joint Declaration on the establishment of official relations between the European Economic Community and the Council for the Mutual Economic Assistance on June 25, 1988.

establishes relations with third countries taking into account their specificities, but without prejudice to the fundamental principles that the EU and its external policy is governed by. Their application goes beyond the scope of trade or economic cooperation because the indivisible treaty condition determines to respect the rule of law, human rights and market economy; whereby the democracy of the legal environment is enhanced within third countries and which is the condition necessary not only to develop and stabilize economy, but also to strengthen the rule of law in a wider context of current international law.

Variation can also be observed in the case of the interregional treaties of the EU that belong to the second and the third group; which are the treaties concluded with other regional organization or its member states or a group of states. They differ in terminology and the content of objectives in which they pursue. The name of the states' parties suggests what entities (or to what extent) their constituent instruments are entitled to conclude such treaties. We can infer that the interregional treaties, where at least one of the parties is the regional organization, are essential for the purposes of developing external relations and confirm its capability to be a representative of its own rights within the international relations.

***Cooperation Agreement between Member Countries of ASEAN and European Community- Kuala Lumpur of 1980***<sup>118</sup>

The ASEAN was for the EC the first treaty partner in the area of interregional cooperation and their initial contact took place in the 1970s, with the Treaty on Cooperation concluded in 1980. The treaty reflects the beginning of cooperation and in its four brief articles specifies the cooperation between the states parties in the area of trade, economy and development together with the granting of the most-favoured-nation clause.

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<sup>118</sup> Cooperation Agreement between Member Countries of ASEAN and European Community- Kuala Lumpur, March 7, 1980.

According to its Preamble, the purpose of the Treaty is to develop international cooperation between the states' parties on the basis of freedom, equality and justice. Unlike further treaties, however, it includes neither the obligation to respect democracy and human rights nor political dialogue between the states' parties. Similarly to other treaties, the Treaty does, however, contain an institutional segment represented by the Joint-Cooperation Committee (Article 8.) Its main aim is to supervise the compliance with the Treaty and make its fulfilment easier by states parties.

***Cooperation Agreement between the European Economic Community on the one part and the Cartagena Agreement and the member countries thereof-Bolivia, Colombia, Ecuador, Peru and Venezuela on the other part of 1983***<sup>119</sup>

Even though the European Community in this treaty recognizes the Andean group of states as a developing region, the Cartagena Agreement (the Andean Pact) involves both the less developed and more developed countries (Article 2). This is, however, without prejudice to the development of mutual cooperation in the field of economy, trade, and in the developing field in granting the most-favoured-nation clause and respecting the principles of equality, justice and advancement. Such cooperation strengthens regional organizations and increases economic growth, social and cultural development and according to states' parties represents a balancing factor in international relations. Specific cooperation is exercised by various means; mutual exchange of information, technical and financial aid, cooperation of developing programmes and projects, promotion of operators in individual areas, by establishing the expert organs, etc. This Treaty also contains the institutional

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<sup>119</sup> Cooperation Agreement between the European Economic Community of the one part and the Cartagena Agreement and the member countries thereof- Bolivia, Colombia, Ecuador, Peru and Venezuela-of the other part on December 17, 1983. In: Official Journal of EC, L 157, June 24, 1988.

element represented by the Joint Cooperation Committee (Article 5) composing of the representatives of the European Economic Community <sup>120</sup> and the Cartagena Agreement. The Joint Cooperation Committee takes measures to ensure the efficiency of various forms of cooperation within agreed areas, and thus its fulfilment is easier. It can make recommendations (including settlements of disputes) and, when needed, establish specific sub-committees.

***Framework Agreement between the European Economic Community and the Cartagena Agreement and its member countries, namely Bolivia, Colombia, Ecuador, Peru and Venezuela on April 23, 1992***<sup>121</sup>

Because the cooperation between the EEC and other states' parties to the Cartagena Agreement was successful during the 1980s, its participants decided to prepare the next treaty on cooperation which would reflect the level achieved and provide conditions suitable for further development - the 1992 Framework Agreement between the EEC and the Cartagena Agreement and its member countries.

According to the Preamble, its principal purpose is to consolidate, deepen and diversify relations between the parties in various areas; in particular economy, trade and development. Unlike the Treaty of 1983, the scope of cooperation between the parties is now more comprehensive and structural as it covers industrial cooperation, investment

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<sup>120</sup> The Community is within the common committee represented by the European Commission with representatives from the member states – Article 3 Council Regulation (EEC) No. 1591/84 of June 4, 1984 concerning the conclusion Cooperation Agreement between the European Economic Community of the one part and the Cartagena Agreement and the member countries thereof Bolivia, Colombia, Ecuador, Peru and Venezuela of the other part on December 17, 1983.

<sup>121</sup> Framework Agreement on Cooperation between the European Economic Community and the Cartagena Agreement and its member countries, namely the Republic of Bolivia, the Republic of Colombia, the Republic of Ecuador, the Republic of Peru and the Republic of Venezuela on April 23, 1992.

cooperation, financial cooperation, science and technology cooperation, cooperation in the area of copyright and industrial property, the mining area, transport and telecommunication, tourism, environment (and others); while mutual granting the most-favoured-nation clause. The democratic basis of cooperation between the parties is extended (Article 1), based on respect for democratic principles and human rights which guide the domestic and international policies of both the EEC and the Andean Pact. Within the Framework Treaty, these principles constitute its essential component. In addition to more general areas and forms of cooperation, the Treaty also concerns practical measures; such as establishment of joint ventures, conclusion of licence agreements, technological and technical know-how transfer, technical and investment aid, and others. This Treaty additionally contains a institutional element represented by the Joint Cooperation Committee set up in accordance with a previous agreement of 1983 with its specialized three sub-committees (Sub-committee on science and technology, Sub-committee on industrial cooperation and Sub-committee on trade cooperation).

***Political Dialogue and Cooperation Agreement between the European Community and its Member States of the one part, and the Andean Community and its member countries, (Bolivia, Colombia, Ecuador, Peru and Venezuela) of other part of 2003***<sup>122</sup>

This agreement goes beyond the traditional orientation of cooperation agreements as it is concentrated mainly on political cooperation between parties. The Treaty expressly confirms (Article 2) that its purpose is to govern the political dialogue and cooperation between the parties and it contains the necessary institutional arrangement for its

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<sup>122</sup> Political Dialogue and Cooperation Agreement between the European Community and its Member States of the one part, and the Andean Community and its member countries (Bolivia, Colombia, Ecuador, Peru and Venezuela ) of other part on December 15, 2003.

application. Upon developing the political dialogue and strengthening the cooperation, the parties seek to achieve a common objective of strengthening and deepening their relations in all fields constituting the subject matter, as well as other issues relating to their common interest (international security, regional development, human rights, corruption, illegal migration, combating terrorism and drug trade, money laundering), and others. The parties mutually believe that the aim of the political dialogue is also a broad exchange of information and provide the basis for common initiatives at an international level. Such political dialogue will be carried out at various levels; from the top level, to the head of states or prime ministers, ministerial level and to the cooperation at a level of working groups through diplomatic channels. This political dialogue between the parties shall be based on respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights which governs domestic and international policy of the parties and within the treaty constitute its essential component. The Political dialogue and cooperation agreement also contains an institutional element, referring to previous agreements of 1983 and 1993 which established (and later approved) the existence of the Joint Committee. The subject matter shall be agreed by the parties and in accordance with the agreement (Article 52) it shall be responsible for its proper application. A Joint Consultative Committee shall assist to promote dialogue with economic and social organizations of civil society of states parties. The parties encourage the European Parliament and the Andean Parliament to establish an Inter-parliamentary Committee.

***Interregional Framework Cooperation Agreement between the European Community and its Member States, of the one part and the Southern Common Market and its Party States of the other Part***<sup>123</sup>

The next agreement is the 1995 Interregional Framework Cooperation Agreement between the European Community and its Member States on the one side, and the Southern Common Market and its Party States, of the other Part. Whereas the European party is identified easily, the Latin American party comprises of states which signed the Agreement on common market, known generally as the MERCOSUR,<sup>124</sup> in Asunción in 1991. A specific article of the Framework agreement (Article 2 – Definition of the Parties) defines that the Parties shall mean the Community or its Member states or the Community and its Member States (subject to competences referred to in the treaty on establishment of the European Community) on one side and the MERCOSUR, or its states parties in accordance with the Treaty on establishment of the MERCOSUR on the other. Unlike the above mentioned agreements on cooperation, the Framework agreement is more ambitious as the objectives defined therein are not only to strengthen relations between the parties, but also to prepare conditions enabling the creation of an interregional association between the parties (Article 2 Section 1). The Preamble of the Framework agreement and Article 2 further define that it should cover political and economic interregional association based on political cooperation and diversification of common trade in order to prepare its gradual and reciprocal liberalization, taking account of the sensitivity of certain goods. The cooperation between the parties in the field of trade and

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<sup>123</sup> Interregional Framework Cooperation Agreement between the European Community and its member states, of the one part and the Southern Common Market and its Party States of the other Part on December 15, 1995.

<sup>124</sup> It includes Argentina, Brazil, Paraguay, Uruguay.

economy, integration matters and other common areas of interest, shall ensure the achievement of this objective.

A specific element of the Framework agreement is the system of political dialogue between the parties that would progress towards the conditions necessary for an interregional association. In accordance with Article 3 of the Framework agreement, the dialogue should be regular and its particulars are defined in the Joint Declaration on Political Dialogue between the EU and Mercosur, constituting the Annex thereto.<sup>125</sup> It specifies that the political dialogue shall concern both regional and multilateral matters, where the latter might result in the coordination of the parties' approaches within the multilateral international organizations. The political dialogue shall also include mutual contacts between the representatives of the parties (at various levels), exchange of information, etc. Regular meetings shall be held either between the heads of states, MERCOSUR parties and EU high representatives. Annual meetings of the ministers for foreign affairs or of other ministers shall be held as deemed necessary by the parties. A significant part of the Framework agreement consists of provisions governing cooperation in the field of trade and economy, e.g. agriculture and industry, customs matters, intellectual property, entrepreneurship, investment, transport, energetics, science and technology, telecommunication, information technology, environment protection, and others.

Article 1 of the Framework agreement provides for the respect for the democratic principles and fundamental human rights laid down in the Universal Declaration of Human Rights which inspires the domestic and external policies of the parties and within the agreement constitutes its essential element.

Similarly to previous agreements, the Framework agreement between the EC and MERCOSUR also contains an

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<sup>125</sup> Joint Declaration on Political Dialogue between the European Union and Mercosur.

institutional element represented by the Cooperation Council creating a forum for political dialogue and responsible for its proper application. The agenda of its meeting might be any issue relating to the Agreement or bilateral or multilateral issues that the parties are interested in. The Cooperation Council is composed of members of the European Union and of members of the European Commission, on the one hand, and members of the MERCOSUR Council and members of the MERCOSUR Market Group, on the other. In addition, the Framework agreement sets up the Joint Cooperation Committee that assists the Cooperation Council in the execution of its tasks and deals with the agenda agreed in advance either in Brussels or in any other MERCOSUR state party. Its activities are aimed at consultations and preparation of measures to liberalize trade, including future programmes for cooperation, exchange of views on such matter and preparation of proposals and recommendations. The parties shall also set up a Joint Subcommittee on Trade to ensure implementation of measures related to trade.<sup>126</sup>

In addition, the EC signed the Cooperation Agreement with the states of the Gulf,<sup>127</sup> the Free Trade Agreement (FTA) with the Overseas Countries and Territories, etc.<sup>128</sup>

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<sup>126</sup> The heretofore negotiations however confirms that the preparation of interregional association is not an easy process. Even though the Cooperation Council started negotiations in 1999, the negotiations were suspended in 2004 without any preliminary agreement and although "revitalized" in 2010, so far without reaching any significant result.

<sup>127</sup> Cooperation Agreement between the European Community and its Members States and the States of the Gulf 1988.

<sup>128</sup> Free Trade Agreement between the European Community and the Overseas Countries and Territories.

***Partnership Agreement between the members of the African, Caribbean and Pacific Group of States on the one part and the European Community and its member states on the other (The Cotonou Agreement)***<sup>129</sup>

This Partnership agreement geographically covers the widest scope, with the biggest number of states parties. It regulates partnerships relations between the European Community and its member states and the group of states from three different geographical areas which includes almost 80 states. According to the Preamble, its purpose is to strengthen partnerships between the parties based on political dialogue, development of cooperation and economic and trade relations. Article 1 stipulates that its conclusion aims at making economic, cultural and social development within African, Caribbean and Pacific groups of states (ACP countries) deeper and faster, with a view to contributing to peace and security and a stable and democratic environment. In accordance with the Agreement, the partnership assumes the creation and exercising of agreed cooperation programmes not only through official representatives of parties, but also through parliaments in ACP countries, regional organizations, the African Union, local and decentralized organs at a national and regional level, representatives from the private sector, economic and social partners, non-governmental organizations, or other representatives from civil society. Such cooperation shall be exercised on the principles of equality between the partners, availability to parliaments and local authorities of CPA countries, while the agreed cooperation programmes shall adapt to a level of development achieved in a particular area, with special reference to regional integration (Article 2).

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<sup>129</sup> Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the One Part and the European Community and its member states on the other part on 23 June 2000 (Cotonou Agreement), Revised in Luxembourg on June 25, 1995 and Ouagadougou on June 22, 2010.

The objective of political dialogue between the parties (Article 8) is to foster mutual understanding and cooperation through exchange of information and consultations. Political dialogue is aimed not only at treaty priorities and programmes, but also at any other matters of general or regional interest; including the issues of regional integration. Through dialogue, the parties shall contribute to peace, security and stability and promote a democratic political environment. In addition to general matters, the Agreement assumes that objectives of political dialogue shall include also specific issues of international policy such as traffic in arms, organized crime, combating drugs, children's rights, discrimination of any nature etc. As regards to its institutional structure, the process of dialogue assumes the participation not only of official representatives of the parties, but also regional organizations, civil society representatives and the ACP countries' parliaments. The cooperation between the parties in the field covered by political dialogue, and the development, trade and economic cooperation shall be based on the respect for human rights, democratic principles and the rule of law which promote partnership between the parties and are a part of their internal and foreign policy, while constituting an essential element of the Framework Agreement.

The institutional structure of the Partnership Agreement (part two of the Agreement) comprises the Council of Ministers, Committee of Ambassadors and Joint Parliamentary Assembly. In addition to these bodies having more or less general competences, the Joint Ministerial Trade Committee of the specialized nature has been established, too. When necessary, the parties can meet at a level of the heads of states. The Council of Ministers arranges political dialogues and meets regularly once a year, while the representatives of economic and social partners, and other civil society representatives may attend it, too. For such purpose, their negotiations shall take place parallel to the official political dialogue of states' parties. The Council of Ministers shall

notify the Joint Parliamentary Assembly of any decisions, recommendations and views they have adopted in its report.

The Committee of Ambassadors comprises permanent representatives of the EU states and the head of missions of ACP states to the EU. Its main aim is to assist the Council of Ministers in the fulfilment of its tasks, including a monitoring of implementing the agreement and progress achieved in the process of exercising the agreement.

The Joint Parliamentary Assembly is a consultative body, composed of equal number of members of the European Parliament, on the one hand, and members of parliaments designated by the ACP states on the other. Its main objective is to promote democratic processes through dialogue and consultation, facilitate understanding between the peoples of the EU and those of the ACP states, discuss annual reports of the Committee of Ministers on implementation of the Agreement and adopt resolutions and make recommendations to the Committee of Ministers with a view to achieving the objectives of the Agreement. The Joint Parliamentary Assembly shall meet twice a year in plenary sessions, alternatively in the EU and in an ACP state.

***Agreement establishing an Association between Central America on the one hand and the EU and its member states on the other***<sup>130</sup>

So far the highest level of interregional legislation is represented, undoubtedly, by the Agreement establishing an Association between Central America, on the one hand, and the EU and its Member states on the other laid down the strongest institutional and substantial tie between the EU and Central American partners. A number of other agreements, however, preceded the conclusion of the Association agreement in order to prepare suitable political and

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<sup>130</sup> Agreement establishing an Association between Central America on the one hand and the EU and its member states on the other on June 29, 2012.

administrative conditions necessary for the conclusion thereof.<sup>131</sup>

Similarly to previous agreements, a specific provision (Article 352) defines the parties; with in the case of Central America: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, on the one hand, and on the other, the EU or its member states, within their respective areas of competence determined by the EU primary law. The objectives of the Agreement are to strengthen and consolidate the relations between the parties through a bi-regional association based on a mutual and common principles; namely political dialogue, development and trade, mutual respect, reciprocity and common interests.

The objective of political dialogue is to create a privileged political partnership based on the respect for democracy, peace, human rights, rule of law and sustainability of development under current protection of common values and objectives embodied in the UN Charter.

The means of political dialogue are based on exchange of views and information leading to joint initiatives of the parties at international level; with the subject matter of dialogue including any issues of common interest either at regional or international level; in particular, disarmament, ban on weapons of mass destruction, fight against terrorism and other crimes breaching international law. Priority of political dialogue is to strengthen international peace and security, promote and stabilize democratic institutions, respect human rights and fundamental freedoms and the rule of law, promote sustainable economic development, deepen the process of regional integration in Central America and its economic and social development.

Regarding trade relations, the parties establish a free trade area in accordance with the GATT rules of 1994. Other

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<sup>131</sup> In particular it includes the Cooperation Agreement of 1985, the Framework Cooperation Agreement of 1993, the Political Dialogue and Cooperation Agreement of 2003. The last one was however replaced by the Association Agreement of 2012.

objectives in the field of trade include the expansion and diversification of trade in goods through the reduction or the elimination of tariff or non-tariff barriers to trade, liberalization of trade in services, facilitation of trade in goods through the agreed customs rules and tariffs, technical standards and measures, as well as sanitary and phytosanitary provisions, effective protection of intellectual property, establishment of an effective and predictable dispute settlement mechanism, etc. According to states' parties, these general provisions shall be further specified in the agreement and in XXI technical annexes.

Pursuant to Article 1 of the Agreement, the cooperation within the agreed areas shall be based on the respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, guiding the internal and international policies of the parties and constituting an essential element of the Agreement.

The structure of the institutional segment corresponds to the level and complexity of the Agreement. It comprises the Association Council charged with the control of the fulfilment of the Agreement objectives and supervising their practical implementation. This body meets at ministerial level at regular intervals, not exceeding a period of two years, and extraordinarily whenever circumstances so require (Article 4). Upon agreement by parties, the Association Council may take decisions and recommendations. The Association Committee shall assist the Association Council and shall be responsible for the general implementation of the Agreement, where for this purpose it can set up special sub-committees.

The Association Parliamentary Committee is an organ composed of members of the European Parliament, on the one side and of the Central America Parliament (PARLACEN) on the other. Its main task is to be a common forum for exchanging views regarding the implementation of the Agreement or any other current issues. The outcomes of its

negotiations are recommendations, submitted to the Association Council.

There is also a Joint Consultative Committee which is a consultative body of the Association Council. Its main role is to submit opinions and positions of civil society representatives to the Association Council regarding the implementation of the Agreement and to promote dialogue and cooperation between the organizations of civil society in the EU and those in Central America.

#### **6.4. Contribution of the Treaty Interregionalism to International Law**

Although there is limited analysis of interregional EC-EU agreements with other regional groupings, as well as their member states and/or states parties, some partial conclusions can be drawn.

First of all it should be pointed out the different scope and level of these agreements, the institutional variety and uneven complexity of the subject matter of regulation; as they differ in areas with respect to relations with individual regional groups and reflect the acquired level of relationships and willingness of the parties to regulate such relationships by means of international treaties. In this respect one can speak about a certain individualization forming an inherent feature of the current treaty interregionalism. Depending on development, the interregional agreements reflect various stages of cooperation between their states parties (EC-Cartagena Agreements). Another common feature these agreements have is the institutional aspect, where those having a more complex character (association agreements, partnership agreements) have obviously a more complex institutional structure comprising of a combination of bodies with general competence (various Joint Committees) along with the specialized bodies of expert nature. More or less developed and specialized interregional institutional

structures of general and specialized nature allow one to describe the current interregionalism as the institutional one.

Although the international agreements EC-EU concluded within the framework of its interregional relations regulate especially various types and forms of trade, economic and development cooperation, their contribution to general international law is apparent and undoubted. It is based especially on the fact that the essential element of such treaties represents the obligation of their states' parties to respect the democratic principles of general international law and fundamental human rights and freedoms (with reference to the Universal Declaration of Human Rights), as well as the rule of law, and that the internal and external policies of the parties should be based on the latter.<sup>132</sup> Taking into account the significant and sometimes dominant position of the EU within such relations, it seeks to ensure that the general values and principles of international law will be observed also within its interregional relations with third countries, their groups, as well as with international regional organizations in various parts of the world. In the context of the treaty interregionalism, the respect for these principles and values of international law forms the basis and essential assumption for purposes of successful cooperation between the parties in their interregional relations.<sup>133</sup> Monitoring and

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<sup>132</sup> The specification in this area is the Association Agreement between the EU and Central America which, for purposes of the regulation of interregional relations, brings (Article 1 Section 3) its own definition of the "rule of law": "entailing in particular the primacy of law, the separation of powers, the independence of judiciary, clear decision making procedure at the level of public authorities, transparent and accountable institutions, the good and transparent management of public affairs at local, regional and national levels and the implementation of measures aiming, preventing and combating corruption."

<sup>133</sup> Another specific impact of treaty interregionalism concerns the institutional structure of regional organizations. It should be pointed out that the regional organizations in the developing world more or less complete their institutional structure and adapt it to the certain extent

ensuring that the interregional agreements are complied with in the process of their practical application is enhanced by the institutional structure of treaties, political dialogue between the parties and the agreed consultations regime. Unlike the sanction systems of regional organizations they are, however, lacking within the structure of interregional agreements.

Another contribution of interregional agreements to general international law is represented by the system of the political dialogue of their states' parties where its scope regularly exceeds interregional trade and economic framework of cooperation between the states parties. Treaty provisions dealing with its various aspects today form an inherent part of the external treaties of the EU. Its importance is underlined by specific agreements concerning only political dialogue (i.e. agreements with the Andean Community and Central America).<sup>134</sup> Successful political dialogue might result in the coordination of positions eventually formulating joint proposals of the state parties of interregional agreements at global summits or important international conferences, within the UN, the World Trade Organization, or any other international organization.

As a result, the treaty interregionalism, through its political dialogue system, is able to make proposals or recommendation in order to deal with global issues of the contemporary world within international conferences or the universal international organizations.

With regards to the contribution of interregionalism to the democratization of general international law, it should be

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to the EU structure, also for the purposes of their active participation in the process of exercising of the interregional agreements. For example the MERCOSUR set up a Commission of permanent representatives and the MERCOSUR Parliament, Andean Community elected directly, the Andean Parliament, Andean Council of Ministers, Court of Justice of the Andean Community, ASEAN establishes Council, Permanent Representatives Committee, Secretariat, Secretary General etc.

<sup>134</sup> Political dialogue is dominant also within relations of the EU with other sub regional organizations, such as the Caribbean Community (CARICOM), and the Rio Group (since 1990).

pointed out that the entities aimed to exercise different interregional relations are not restricted to representative bodies of regional organizations or to the official organs of states. They tend to involve other structures and entities; such as associations of civil society representatives, business and entrepreneurs associations, social and trade union partners, non-governmental organizations, in the interregional and politic dialogue where their own views, positions or recommendations can be formulated. The aforesaid is relevant not only with respect to the development of interregional relations itself, but that the developing countries apply those provisions to strengthen the legitimacy and importance of these entities within their civil society and in a wider context, their democratic (multidimensional) environment, too.

Finally, the existing agreements mapping various levels of interregional relations and establishing various forms of cooperation between their states parties play two roles. The first is their real regulative function with respects to the agreed subject matters of their cooperation. The second of these agreements represent a certain "pattern" for those regional groups or other regional subjects wishing to build their interregional relations on the basis of international law.

## 7. REGIONALISM AND THE RULE OF LAW

The aim of this part is to analyse in more detail the relation between the international organizations and the Rule of Law, which is still regarded as the key principle in current international law. Its individual aspects have been analysed above.

The Rule of Law is a term developed under the condition of national law and the ideas how to apply the Rule of Law at the level of international law developed later on.<sup>135</sup> The Rule of Law within the national law has developed as a concept to fight against the police state, against the hegemony of a ruler (his will) over the law,<sup>136</sup> which is the Rule of Men vs. Rule of Law fight.<sup>137</sup> The Rule of Law within the national law is affected especially by this legal system being based on the relation of a superior state and subordinate man (an individual), and on the idea of balanced legislative, executive and judicial powers. Therefore, the essential principles of the Rule of Law at the level of national law are those that respect the fundamental human rights and freedoms, legality and legitimacy, sovereignty of people, separation of powers and the system of mutual checks and balances, independent courts, and legal security.<sup>138</sup> The Rule of Law principles, however, are not possible to define finally due to the constant development of law.

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<sup>135</sup> Regarding the Rule of Law at international level, see: TAMANAHA, B. Z.: *On the Rule of Law: History, Politics, Theory*. Cambridge: Cambridge University Press, 2004. CHESTERMAN, S.: *An International Rule of Law?* Available online: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1081738](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1081738); NOLLKAEMPER, A.: *National Courts and International Rule of Law*. Oxford: Oxford University Press, 2011, 384 p.; BEAULAC, S.: *The Rule of Law in International Law Today*. Available online: <https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3093/1/International-Rule-Law-Final.pdf>.

<sup>136</sup> BRÖSTL, A.: *The Rule of Law*. Košice: Medes s.r.o., 1995, p. 11 – 19.

<sup>137</sup> CLARK, D.: *The many meanings of the Rule of Law*. Available online: [http://lfip.uscschooloflaw.org/lawe506/documents/lawe506davidclark\\_e.pdf](http://lfip.uscschooloflaw.org/lawe506/documents/lawe506davidclark_e.pdf)

<sup>138</sup> BRÖSTL, A.: *The Rule of Law* Košice: Medes s.r.o., 1995, p. 16.

On the other side, the Rule of Law within international law is needs to be considered from a different point. Differences are caused especially because international law considers the Rule of Law in relation to the legal system, where the states are the main subjects and with relations based on legal equality. The Rule of Law within international law, and thus within the international regional organizations, is affected by three aspects in particular; the specifications of international norms, its creation and application, and the international responsibility and enforcement of international normativity.<sup>139</sup>

Because international law is based on the willingness of states, the Rule of Law itself depends to what extent the states allow it to work and develop at an international level. A better development of the Rule of Law at international level is promoted by the cooperation between the states within international organizations. The regional organization of a supranational character, such as the European Union, has a specific significance; affecting not only the Rule of Law at the level of international law but also at the level of national law.

The regional organizations have been influenced by the Rule of Law from the time they originated. It is because the founding states determine its existence and functioning in the constituent agreement that they increase legal security within the regional relations. When the constituent agreement determines a specific institutional basis within which, for purposes of achieving the objectives set by the organization, it is desired to achieve independence of the bodies, then other principles of the Rule of Law, such as the legality or legitimacy of powers or separation of powers, are fulfilled. Naturally, such principles are fulfilled if there is a judicial body established within the organization; examining the actions of the organization's organs, whether they comply with law and obligations applicable to member states or people. Thus the

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<sup>139</sup> CHESTERMAN, S.: An International Rule of Law? Available online: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1081738](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1081738)

treaty regionalism and the institutional regionalism is a significant reinforcement of the Rule of Law.

The Rule of Law within international regional law depends on the cooperation between the states, as well as from the will to fulfil adopted rules. Along with this consensual assumption, for purposes of applying the Rule of Law at the level of international law, it is necessary to consider also specifications of the sources of international law, its subjects and methods to enforce compliance with obligations arising from international cooperation.<sup>140</sup> All this affects the Rule of Law principles. Normativity at international level, its content and creation is conducted through written and non-written sources of international law. The self-supporting and decentralized system for its creation can affect clarity and definiteness of sources' content, and predictability and stability as essential parts of the Rule of Law. From the point of the Rule of Law, the regional normativity might in this way affect the legal security and restrict the discretion competence of those who have power within the regional organization. As the chapter on Interregionalism and international law implies, the regional normativity is based on mainly two-sided or multi-sided agreements for the conclusion of which the international organizations must have competence arising out of their constituent acts.

The regional cooperation between the states is significantly affected by the Rule of Law, in concrete form by the principle of equality between the states when creating and applying the rules of international normativity, as well as the principle of the states' sovereignty.<sup>141</sup> Such features affect the universal application of regional law with regard to all

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<sup>140</sup> Classification of the Rule of Law features is inspired by the classification according to Stéphane Beaulac, see, e.g.: BEAULAC, S.: *The Rule of Law in International Law Today*. Available online: <https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3093/1/International-Rule-Law-Final.pdf>

<sup>141</sup> SCHWARZENBERGER, G.: *The Frontiers of International Law*. London: Stevens&Sons Limited, 1962, p. 58.

member states within the regional organization which are supposed to be legally equal.<sup>142</sup> Equality, however, should be maintained not only when applying the legal norms, but also when creating regional normativity.<sup>143</sup>

A final significant feature includes the responsibility exercised especially within the legal enforcement of normativity as a consequence of breaching the rules concerning a specific regional normativity and enforcement of such rules by means of regional law. Even though there are some specialized judicial bodies in the regional law, the judicial body with an obligatory jurisdiction which requires no consent of the parties to a dispute would be a great contribution to the Rule of Law.<sup>144</sup> The Rule of Law is considered by some authors<sup>145</sup> as the principle *pacta sunt servanda* which also underlines the importance of compliance with obligations governed by the norms of regional law or as a basic norm of international law.

To sum up, we need to say that the states do not always carry out their activities in compliance with regional obligations, resulting in the elimination of a well-functioning legal system of a regional organization within the institutional regionalism. The reason for non-compliance with the obligation might be, for example, an unwillingness to apply

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<sup>142</sup> General Assembly Resolution 2625 (XXV) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (A/8082). Available online: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>.

<sup>143</sup> BEAULAC, S.: The Rule of Law in International Law Today. Available online: <https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3093/1/International-Rule-Law-Final.pdf>.

<sup>144</sup> KLUČKA, J.: Vláda práva (Rule of Law) v medzinárodnom práve. In: Právny obzor, Bratislava, 95, 2012, no. 2, p. 127.

<sup>145</sup> KLEINLEIN, T.: Alfred Verdross as a Founding Father of International Constitutionalism? In: Goettingen Journal of International Law 4, 2012, 2, p. 385 – 416. BERNSTORFF, J., DUNLAP, T.: The Public International Law Theory of Hans Kelsen: Believing in Universal Law. Cambridge: Cambridge University Press, 2010, p. 160 – 163.

the rules that contradict national interests, despite being in the group's interest. In this case it is wise to state that regional cooperation assumes a higher standard of compliance with obligations that the states have undertaken, since the regionalism addresses the needs of states within a particular region more flexibly. That the interests of the states within a region are more related than those of the states within universal international organization is the basic assumption for not complying with the obligations that are not in their interest. In carrying out obligations, they are also subjected to more detailed supervisions of other states within the region. Making the Rule of Law weaker within regionalism, however, means the states are not only the law creators, but also the law addressees. It is, therefore, up to the state having been affected by the unlawful conduct of another state to claim compensation at the level of international (regional) law.

### **7.1. International Regional Organizations and the Rule of Law**

The regional organizations play an increasingly important role in strengthening and promoting the Rule of Law. Subject to their respective mandates and regional specification, the role relates to various areas, in particular the area of human rights and constitutionalism. Through the development of regulatory frameworks that refuse and sanction unconstitutional transfers or unconstitutional attempts to seize the power, the regional organizations also seek to strengthen constitutional government in its member states.

The importance of the regional organizations with respect to the Rule of Law, and the attempts to establish interregional relations are proven by activities conducted by the Inter-Regional Democracy Resource Center (IR)<sup>146</sup> which

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<sup>146</sup> Inter-Regional Democracy Resource Centre which is the secretariat of the Inter-

held the interregional workshop on "Regional Organizations, Rule of Law and Constitutional Governance". The aim was to assess mandates and activities carried out by regional organizations in the field of constitutional governance and the Rule of Law, facilitate exchange of information and experience in protection of the human rights through judicial and quasi-judicial organs, discuss new possibilities regarding the legal cooperation or the role of regional organizations within the internal constitutional process and their role in promoting the constitutional culture.<sup>147</sup>

The Rule of Law is a term currently used very frequently in connection with human rights protection, international security and peace, efficiency of judicial power and economic development around the world. It is the basic element for cooperation among the states and international (regional or universal) organizations, while the regional organizations play a significant role in promoting the Rule of Law not only within its member states, but also outside the region.

The Rule of Law is essential also in respect to cooperation between the regional organizations and the United Nations, as well as cooperation between the regional organizations themselves (interregionalism, treaty regionalism.) For this reason they met in May 2015 under the patronage of the UN Secretary-General.<sup>148</sup> Its objectives covered three principal areas; mediation, peace-building and peace operations. At a security meeting of regional organizations with the UN, the ASEAN Secretary-General, Minh, proposed that cooperation between regional

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Regional Dialogue on Democracy. Available online: <http://www.idea.int/democracydialog/>.

<sup>147</sup> Inter-Regional Workshop on Regional Organizations, Rule of Law and Constitutional Governance. Available online: <http://www.idea.int/democracydialog/inter-regional-workshop-on-regional-organizations-rule-of-law-and-constitutional-governance.cfm>.

<sup>148</sup> Secretary-General's opening remarks at high-level retreat with heads of regional and other organizations. Available online: <http://www.un.org/s/g/statements/index.asp?nid=8605>.

organizations and the UN, as a universal international organization, should concentrate on three principal areas; the compliance with the Rule of Law, strengthening the mandate and capacities of the regional organization and exchanging experiences. Ban Ki-moon, the Secretary-General, emphasized that sustainable peace was a matter of national, regional and global interest that requires an integrated and multidimensional approach to security, social, economic and human rights.<sup>149</sup>

The Rule of Law is one of the values the regional organizations are founded on, together with maintenance of human dignity, freedom, democracy, equality, and human rights. Democracy and the Rule of Law are strong elements for achieving and sustaining the peace and security at national and international level. According to Chapter VIII of the UN Charter, the regional organizations play an important role in promoting the Rule of Law. Activities aimed at strengthening the Rule of Law are essential for fulfilling the UN objectives. Regional organizations' representatives and the UN in a discussion on "Upholding and strengthening the Rule of Law in our regions"<sup>150</sup> recognized that the Rule of Law implies that all persons, institutions and entities, public and private, including the state itself, are accountable to just and equitable laws and are entitled without any discrimination to equal protection of the law. The regional organizations devote their activities to promote the Rule of Law within the national law as well; this broad conception of the Rule of Law incorporates elements such as a legitimate constitution with constitutive limits on power, protection and promotion of human rights in all its aspects, an effective electoral system that promotes and

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<sup>149</sup> Regional Organisations and UN Join Hands for Peace and Mediation. Available online: <http://www.asean.org/news/asean-secretariat-news/item/regional-organisations-and-un-join-hands-for-peace-and-mediation>.

<sup>150</sup> Third High Level Meeting of the Inter-Regional Dialogue on Democracy. Available online: [http://europa.eu/rapid/press-release\\_MEMO-13-461\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-461_en.htm).

protects electoral integrity, a commitment to gender equality, laws for the protection of minorities and vulnerable groups, and a strong civil society. The Rule of Law is fundamental for any functioning democracy. The regional organizations thus play a role in promoting the Rule of Law and constitutionalism, as proven by various norms and standards determined in the field of human rights, democracy and constitution building.

Regional organizations have set up different mechanisms and bodies to promote the Rule of Law, including legal cooperation (interregionalism or treaty regionalism), technical support, exchange of information and best practices, as well as initiatives to ensure accountability (institutional regionalism). Regional organizations and their member states expressed their commitment to democracy, Rule of Law and human rights in their constitutive instruments.<sup>151</sup> Moreover, some have adopted democracy or human rights charters,<sup>152</sup> and have or are in the process of setting up judicial or quasi-judicial bodies, which act as key instruments in achieving and maintaining democracy and in implementing the human rights commitments of their respective member states. Each regional organization has a different mandate, operates in different contexts, with different resources, which means that their role in the promotion of Rule of Law is not the same, and has regional variations. This, however, promotes the development of interregionalism within which the states have the space for dialogue and exchange of experiences.<sup>153</sup>

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<sup>151</sup> European Union, ASEAN, OAS, African Union, Council of Europe.

<sup>152</sup> An example might be the African Charter on Democracy, Elections and Governance, which rejects unconstitutional change of government resulting in excluding the state from the African Union, or Inter-American Democratic Charter, or SAARC Charter on Democracy. From the field of human rights we can mention the ASEAN Human Rights Declaration.

<sup>153</sup> Third High Level Meeting of the Inter-Regional Dialogue on Democracy. Available online: [http://europa.eu/rapid/press-release\\_MEMO-13-461\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-461_en.htm).

## **7.2. The Rule of Law and European Regionalism**

The above analysed circumstances relating to old and new regionalism, as well as the impact of the European Union on regionalism, imply that European regionalism is typical for having the most developed institutional basis for regional cooperation. The European Union has the strongest position within the European region; developing the institutional regionalism, treaty regionalism, as well as interregional cooperation among the states and other regions, or regional organizations themselves. The Rule of Law affects European regionalism mostly through judicial systems protecting rights and obligations of states and individuals. This is, however, not the only area within which the European region allows the Rule of Law to develop. The Rule of Law is strengthened also through democracy, human rights, peace and security or cooperation in the field of economy; creating suitable conditions for development of the member states. Failure to strengthen these areas might result in the Rule of law becoming weaker within the regional relations and even more in member states.

### **7.2.1. The Rule of Law and Institutional Regionalism in Europe**

Even though the European Union is from the point of the Rule of Law and institutional regionalism, one of the most developed organisations and it plays one of the most important roles in this field, institutional regionalism, affected by Rule of Law, works also outside this organisation. The Council of Europe<sup>154</sup> has a significant position, which is

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<sup>154</sup> The Council of Europe - an organization of European states based on intergovernmental principle was meant to be the basis for further European integration, however, Great Britain restricted its competence to an advisory organ only, the Slovak Republic has been its member since 30th June 1993. For more details: Council of Europe. Available online: <http://hub.coe.int/en/>.

affected by the Rule of Law especially in the field of human rights and democracy, for the protection of which it was established.

To strengthen democracy as a main instrument in order to achieve the Rule of Law, the Venice Commission of the Council of Europe (the "Venice Commission")<sup>155</sup> was set up as an advisory body for purposes of constitutional matters. It provides legal assistance to the states seeking European standard in the field of economy, human rights and Rule of Law, and extends and assesses common constitutional heritage. The Venice Commission, as a sign of new institutional regionalism, enhances the achievement of the Rule of Law standards within its member states. A significant institutional advantage of the Council of Europe in the field of Rule of Law is the judicial body itself, the European Court of Human Rights (the "ECHR")<sup>156</sup> having jurisdiction over the protection of human rights as laid down in the Convention on Protection of Human Rights and Fundamental Freedoms.<sup>157</sup> The Rule of Law within the framework of this institution enhances enforcement of judgments issued by a court which is in the hands of the Committee of Ministers of the Council of Europe.<sup>158</sup>

The existence of two courts in a European region having jurisdiction to settle disputes regarding human rights and fundamental freedoms (the Court of Justice of the European Union and the European Court of Human Rights) might,

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<sup>155</sup> For democracy through law – The Venice Commission of the Council of Europe. Available online: [http://www.venice.coe.int/WebForms/pages/?p=01\\_Presentation](http://www.venice.coe.int/WebForms/pages/?p=01_Presentation).

<sup>156</sup> European Court of Human Rights. Available online: <http://www.echr.coe.int/Pages/home.aspx?p=home>.

<sup>157</sup> A notice of the Federal Ministry of Foreign Affairs of conclusion of the Convention on Protection of Human Rights and Fundamental Freedoms and Protocols relating to this Convention, following No. 209/1992 Coll.

<sup>158</sup> Supervision of the execution of judgments and decisions of the European Court of Human Rights. Available online: [http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres\\_Exec\\_en.asp](http://www.coe.int/t/dghl/monitoring/execution/Presentation/Pres_Exec_en.asp).

however, result in the Rule of Law becoming weaker from the point of legal security.

European law, as a legal system founded on the supranational character of the European Union, is the area where the Rule of Law functions in between the national and international law. The European Union's institutional framework and the competence of its bodies represent suitable conditions to develop the Rule of Law within the European region. The European Union law forms an integral part of the legal systems applicable to its member states and the courts are bound by them. This supranational legal order is based on the advantage and direct effect of the European Union law.<sup>159</sup> The European Union through its primary and secondary law acknowledges the law and imposes obligations on both the states and individuals and, similarly, through the European Union legal system provides also legal protection in case of breach of their rights.

The possibility to protect both the state and the individual makes European law a legal system with conditions that are more suitable for the Rule of Law to develop and strengthen than in general international law. Similar to other legal systems, the European Union system pays attention to the role of Rule of Law, especially in the field of protecting the human rights of people living inside, and outside the European Union, economic development, freedom of movement and internal-external cohesion in accordance with the idea that - "whatever happens in the third countries will happen, or will affect the development in the European Union."<sup>160</sup>

A summary overview of the Rule of Law and its position, or role within the European Union was provided by the Court

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<sup>159</sup> Observing the Rule of Law in the European union. Available online: [http://www.erasmuslawreview.nl/files/ELR\\_issue6\\_001.pdf](http://www.erasmuslawreview.nl/files/ELR_issue6_001.pdf).

<sup>160</sup> Promoting the Rule of Law in the European Union. FRA Symposium report, 4th Annual FRA Symposium, Vienna, 2013. Available online <http://fra.europa.eu/sites/default/files/fra-2013-4th-annual-symposium-report.pdf>.

of Justice of the European Union (the "EU Court of Justice") in one of the decisions (C-303/05 – *Advocaten voor de Wereld* (Section 45)) which highlights that the European Union is founded on the *Rule of Law* and the respect for human rights, as they result from the constitutional provisions common to the member states, as general principle of the Union law.

The bodies of the European Union in connection with the Rule of Law currently refer to Article 2 and 7 of the Treaty on European Union (the "TEU"); its Preamble and the Preamble to the Charter of Fundamental Rights of the EU which is part of the Treaty of Lisbon, as well as Article 49 of TEU, stipulating the respect for the Rule of Law as a condition for membership in the European Union.

Whereas Article 2 of TEU governs principles of the Union respecting human dignity, freedom, democracy, equality and Rule of Law, Article 7 provides for how to proceed if the state seriously breaches Article 2 of TEU. A possible sanction for such a breach (including the Rule of Law) is the suspension of certain rights deriving from the application of the treaties to the member state; including the voting rights in the Council, where such a sanction might be applied not only in areas governed by the Union law, but also in those falling within the exclusive competence of the member states.<sup>161</sup>

With regard to the system of the European Union differing to national law, similarly the principle characteristic for the Rule of Law also differ. Even though the principles of the Rule of Law are typical for national law, including in particular; guarantees concerning fundamental rights and freedoms, legitimacy and legality, sovereignty of people, separation of powers and the system of mutual checks and balances, sovereignty of constitution and legal security, it is not possible to clearly define them because the law and areas governed by

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<sup>161</sup> CEPS policy brief: CARRERA, S., GUILD, E., HERNANZ, N.: Rule of Law or rule of thumb? A New Copenhagen Mechanism for the EU, p. 18. Available online: [http://www.ceps.eu/system/files/No%20303%20Copenhagen%20Mechanism%20for%20Fundamental%20Rights\\_0.pdf](http://www.ceps.eu/system/files/No%20303%20Copenhagen%20Mechanism%20for%20Fundamental%20Rights_0.pdf).

the national law keep developing constantly. An examination of the Rule of Law principles within the European Union is even more complicated because such principles keep changing due to the constitutional systems in the European Union member states.

According to Tridimas,<sup>162</sup> categories of the European Union principles arising from Rule of Law include the protection of human rights, equality, proportionality, legal certainty, protection of legitimate expectations and the right to defence. The Court of Justice of the EU based those principles on the premise that the legal order of the European Union (of the Community at that time) is based on Rule of Law. Initially they were derived from the legal orders of the member states and applied to complement and specify constituent agreements, especially to fill the gaps in written law. They can be included in the category preceding the written law in those provisions of the constituent agreements which are regarded as their specific expression. Their importance, as the source of Union law, is reflected in positive law, representing a significant restriction of political powers that the institutions of the Union and the member states have. As legally developed rules they prove a creative function of the Court of Justice of the EU, as well as a contribution to the development of the European Union from the supranational organization to the "constitution order of the states". They are the principles of public law, developed in order to ensure that the Union's institutions and national bodies act exclusively within the Rule of Law.

Calculations of the Rule of Law principles under the conditions of the European Union can be demonstrated by means of decisions made by the Court of Justice of the EU<sup>163</sup>

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<sup>162</sup> TRIDIMAS, T.: *The General Principles of EU Law* (Second edition). Oxford: Oxford University Press, 2006, p. 4 – 6.

<sup>163</sup> C-496/99 P – Commission/ CAS Succhi di Frutta, Section 63; Joint cases 212-217/80 – Amministrazione delle finanze dello stato/Srl Meridionale Industria Salumi and others, Section 10; Joint cases 46/87 a 227/88 – Hoechst AG/Commission, Section 19; C-50/00 P – Unión de

which define the content and importance of Rule of Law as a common value of the European Union in accordance with Article 2 of TEU.<sup>164</sup> The Rule of law within the European Union relates not only to the process of law application, but also to the creation of the Union law. We can refer to this aspect as the principle of constitutional legality (legitimacy) of the Union's acts. The constitutional legality might be regarded as both negative and positive. Negative legality is typical for the constituent agreements having priority, which means that every act attributed to the Union must comply with the standards of a higher legal power. Each act of secondary law must comply with every provision laid down in constituent agreements and general legally binding principles; it thus sets a strict internal hierarchy of the Union legal order.<sup>165</sup> The European Union, inter alia, bears public authority, since it has unilateral competence to bind. This power is basically founded on the principle of positive legality, also known as the *principle of conferral or principle of limited or attributed competences*. It means that each act of secondary law must have its legal basis possible to trace in constituent agreements.<sup>166</sup>

From this aspect we can see how specific the regional normativity is affected by institutional regionalism of the European Union, while its relation with the Rule of Law and its form within the regional law is significant in comparison to

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Pequeños Agricultores/Council, Section 39; Joint cases C-174/98 P and C-189/98 P – the Netherlands and Van der Wal/Commission, Section 17; C-279/09 DEB, Section 58; C-550/07 P – Akzo Nobel Chemicals and Akros Chemicals/Commission, Section 54.

<sup>164</sup> Communication from the Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law (Strasbourg, 11.3.2014, COM (2014)). Available online: [http://ec.europa.eu/justice/effective-justice/files/com\\_2014\\_158\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/com_2014_158_en.pdf).

<sup>165</sup> VON BOGDANDY, A., BAST, J.: Principles of European Constitutional Law (Second Revised Edition). Oxford: Hard Publishing Ltd, 2010, p. 33 – 35.

<sup>166</sup> Ibid., p. 35.

other regional groups or organization, and it encourages the Rule of Law markedly.

The Rule of Law is thus the basic principle stemming from the common institutional traditions of the member states of the European Union and one of the fundamental values upon which the European Union is based. The confidence of the European citizens and authorities in the functioning of the Rule of Law is particularly vital for the further development of the European Union into "an area of freedom, security and justice without internal frontiers", as recalled by Article 3 Section 2 TEU, or Article 67 of the Treaty on the Functioning of the European Union (the "TFEU"). The Rule of Law is not only a precondition for protection of all fundamental values referred to in Article 2 TEU, yet also important for the fulfilment of all rights and obligations arising out of the constituent treaties and international law.<sup>167</sup>

### **7.2.2. The Institutional Regionalism in the European Union strengthening the Rule of Law**

In order to promote and enhance the values related to the Rule of Law in the European Union there are instruments which are not applied directly with reference to Article 2 TEU. However, according to Bogdandy and Ioannidis, they are effective because they reflect the problems concerning the values of democracy or Rule of Law.<sup>168</sup> It is the mechanism of "cooperation and verification" for Bulgarian and Romanian institutions,<sup>169</sup> the programmes for economic adaptation of the member states receiving financial aid, and of a concept of the "systematic breach" created by the Court of Justice of the

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<sup>167</sup> Communication from the Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law (Strasbourg, 11.3.2014, COM (2014)). Available online: [http://ec.europa.eu/justice/effective-justice/files/com\\_2014\\_158\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/com_2014_158_en.pdf).

<sup>168</sup> VON BOGDANDY, A., IOANNIDIS, M.: Systemic deficiency in the Rule of Law: What it is, what has been done, what can be done. In: *Common Market Law Review*, 51, 2014, p. 84 – 93.

<sup>169</sup> The reports on progress in Bulgaria and Romania. Available online: [http://ec.europa.eu/cvm/index\\_sk.htm](http://ec.europa.eu/cvm/index_sk.htm)

EU in order to determine responsibility for applicants seeking asylum. After accession of Bulgaria and Romania to the European Union in 2007, these two countries continued to show deficiencies in the area of judicial reform, corruption and organized crime. With a view to assisting in the creation of an effective administrative and legal system, as a precondition for membership, and enable people to enjoy the rights of the European Union citizens, the Cooperation and Verification Mechanism (CVM) was therefore established.<sup>170</sup>; and when the conditions are breached, the Commission may adopt protective measures pursuant to Article 37 and 38 of the Treaty on the accession.<sup>171</sup>

Another example is financial aid to the member states of the European Union provided by other member states or newly established European mechanisms, as well as the European Financial Stability Facility<sup>172</sup> and the European Stability Mechanism.<sup>173</sup> It is paid only upon the confirmation made by three officials appointed by the Commission, ECB and IMF stating that conditions for provision thereof have been met. Such conditions are defined in the "programmes for economic adaptation",<sup>174</sup> the aim of which is to renew a payment balance of domestic economies and to promote international competition.

In addition to conditions putting pressure on national governments to adopt reforms in order to strengthen the Rule of Law, another example might be the special mechanism aimed at active promotion to build capacities in Greece, the

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<sup>170</sup> Ibid.

<sup>171</sup> For more details: Commission Decision, C (2006)6570, Commission Decision, C (2006)6569.

<sup>172</sup> About European Financial Stability Facility. Available online: <http://www.efs.europa.eu/about/index.htm>.

<sup>173</sup> About the European Stability Mechanism. Available online: <http://www.esm.europa.eu/>.

<sup>174</sup> An example is a financial aid for Portugal. Programme for Portugal. Available online: [http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/portugal/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/portugal/index_en.htm).

Task Force for Greece (TFGR),<sup>175</sup> as a subdivision of the European Commission established in Brussels by authorities in Athens. Its objective is to coordinate technical support that Greece needs in order to achieve structural reforms, through cooperation with other member states of the European Union, European Commission, IMF and other organizations.

The aforesaid implies that the institutional regionalism of the European Union affects the Rule of Law within the Union member states significantly. A place and position of institutional regionalism depends on activities conducted by the Court of Justice of the EU which is the judicial authority entitled to issue decisions that are binding upon the member states, and the execution of such decision is subject to economic sanctions or other mechanisms for enforcement, which makes the Rule of Law stronger.

Even though Article 7 TEU enables applying a sanction mechanism in the case of breaching values set out in Article 2 TEU, they have not been applied yet. Therefore, the bodies of the European Union feel the need to create other mechanisms to promote and enhance the Rule of Law within the European Union. One example includes the EU Justice Scoreboard, an assessment table in the form of an information tool providing comparable data of justice systems in member states of the European Union aiming to promote dialogue on efficiency of national justice systems and of the Rule of Law itself.<sup>176</sup>

Efforts to extend the mandate for institutional regionalism under the conditions of the European Union within the new regionalism, concern also the member states of the European Union; the decisions of which were subject to criticism from the point of Rule of Law (e.g. the decision of the French government on expulsion of Romani people coming from Romania and Bulgaria, the new constitution of Hungary

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<sup>175</sup> The Commission's Task Force for Greece (TFGR). Available online: <http://ec.europa.eu/avservices/photo/photoByMediaGroup.cfm?sitelan g=en&mgid=635>

<sup>176</sup> EU Justice Scoreboard. Available online: [http://ec.europa.eu/justice/effective-justice/scoreboard/index\\_en.htm](http://ec.europa.eu/justice/effective-justice/scoreboard/index_en.htm).

of 2011, the constitutional crisis in Romania in 2012). It inspired the new legal framework to protect the Rule of Law inside the European Union. Its aim is the protection of the Rule of Law in order to prevent common values applicable to the union from being violated by national governments. It is supposed to fill the gap between the action regarding failure to fulfil obligation under Article 258 TFEU and process under Article 7 TEU, which is difficult to manage.<sup>177</sup>

The European Commission came up with an idea to create a new legal framework to protect the Rule of Law because as a protector of constituent instruments it should intervene in a case of a serious breach and systematic violation of the Rule of Law within the member state,<sup>178</sup> - as once the country becomes a member state of the Union, the Union has no instrument to check whether the Rule of Law and independent courts still enjoy general respect within the state in question.<sup>179</sup>

According to the Commission, a new legal framework to protect the Rule of Law of the European Union is meant to complement the process set out in Article 7 TEU in case of serious violation of, or the threat to values that the European Union is founded on. It should function as a timely warning instrument, allowing the Commission to engage in dialogue with the member state in order to prevent the Rule of Law from being systematically violated.<sup>180</sup> The process of timely

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<sup>177</sup> CORNIDES, J.: The European Union: Rule of Law or Rule of Judges? Available online <http://www.ejiltalk.org/the-european-union-rule-of-law-or-rule-of-judges/>.

<sup>178</sup> Remarks by President Barroso on the future of Justice and Home affairs and the Rule of Law initiative. Available online: [http://europa.eu/rapid/press-release\\_SPEECH-14-204\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-14-204_en.htm).

<sup>179</sup> Plenary Session of the European Parliament, 11 September 2012: Council and Commission statements- Political situation in Romania, Annex III. Available online [http://www.parlament.gv.at/PAKT/EU/XXIV/EU/09/10/EU\\_91069/imfname\\_10374651.pdf](http://www.parlament.gv.at/PAKT/EU/XXIV/EU/09/10/EU_91069/imfname_10374651.pdf).

<sup>180</sup> European Commission presents a framework to safeguard the Rule of Law in the European Union. Available online: [http://europa.eu/rapid/press-release\\_IP-14-237\\_en.htm](http://europa.eu/rapid/press-release_IP-14-237_en.htm).

warning should take place at three levels.<sup>181</sup> The first level would involve the European Commission which would collect and examine any relevant data to evaluate the situation. The Commission would then evaluate such data and if an opinion that the Rule of Law is seriously violated by the member state is reached, it would submit an opinion regarding the conditions of the Rule of Law in a particular state as a warning, stating the grounds for such worries. It would be followed by a member state explaining its views.

Where the member state fails to resolve the situation satisfactory, the Commission would approach the second level where it issues a public recommendation to solve the matter giving a deadline within which the member state would be obliged to notify the Commission of measures adopted to solve the situation.

At the third level, the Commission would monitor how the member state complies with the recommendations and should it fail to fulfil such recommendations duly and on time, the Commission would approach the mechanism defined in Article 7 TEU. The whole process is based on dialogue between the Commission and the member state and is directed to the restoration of the Rule of Law in a member state through regional organizations.

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<sup>181</sup> See a scheme: Annexes to the Communication from the Commission to the European Parliament and the Council, Annex II. Available online [http://ec.europa.eu/justice/effective-justice/files/com\\_2014\\_158\\_annexes\\_en.pdf](http://ec.europa.eu/justice/effective-justice/files/com_2014_158_annexes_en.pdf).

### 7.3. The Rule of Law and American Regionalism

American regionalism has been for a long time affected by the separate development of the developed north and the developing south. The basic differences go back historically to times of colonialism and the political instability of the regions of Central and South America. From the Rule of Law point, the Organization of American States (OAS)<sup>182</sup> and the Southern Common Market (the "MERCOSUR" )<sup>183</sup> have a significant position within the American region. Even though the OAS is an organization aimed rather at development of democracy, human rights, security and development, the purpose of MERCOSUR is to promote economic cooperation. Both aspects, however, concern the Rule of Law within the American continent.

The OAS is the organization that joins the states of North and South America, as well as the Latin America states. It is the oldest regional organization which was founded by the First international organization of American states (1889-1890). The OAS's constituent instrument is the Charter of the Organization of American States,<sup>184</sup> adopted in 1948.<sup>185</sup> It is interesting that in addition to the member states, the observant countries as well can participate in the political

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<sup>182</sup> It was established in 1948 by reorganizing the International Union of American Republics, established in 1890. For more details: Organization of American States (OAS). Available online: <http://www.oas.org/en/default.asp>.

<sup>183</sup> MERCOSUR. Available online: <http://www.mercosur.int/msweb/portal%20intermediario/>.

<sup>184</sup> Charter of the Organization of American States. Available online: [http://www.oas.org/dil/treaties\\_A-41\\_Charter\\_of\\_the\\_Organization\\_of\\_American\\_States.htm](http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm).

<sup>185</sup> At the Ninth International Conference of American States on April 30, 1948.

meetings of the OAS bodies, such as the European Union, which is undoubtedly a sign of interregionalism.<sup>186</sup>

Regionalism in the Americas, where the OAS represents the old regionalism, is in Latin America complemented by one of the representatives of the new regionalism, the MERCOSUR. It is an economic and political group established upon an international treaty<sup>187</sup> between Argentina, Brazil, Paraguay and Uruguay to promote free movement of goods, services and people across the member states. However, the activities of the regional organization have been recently restricted because the member states differ in their opinions whether to aim only at regional trade within the customs union or a mandate to deal with political matters should be granted. The doubts<sup>188</sup> about the unity of this group raises the establishment of the regional Union of South American Nations (the "UNASUR")<sup>189</sup>, regarded rather as the alliance of South American states grouped within the MERCOSUR and Andean community.

The suspension of Paraguay's membership over President Lugo's removal in 2012 is interesting from the point of Rule of Law and MERCOSUR. Other member states of the MERCOSUR explained that Paraguay was suspended due to the removal of the president as a result of a non-democratic coup and would remain so until a democratic situation was restored again. The suspension was based on a "democratic clause", known as the Ushuaia Protocol, enabling suspending economic cooperation with the state that acts in a non-

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<sup>186</sup> Permanent Observer Status with the OAS. Available online: [http://www.oas.org/en/ser/dia/perm\\_observers/resolutions.asp](http://www.oas.org/en/ser/dia/perm_observers/resolutions.asp).

<sup>187</sup> Treaty of Asunción. Available online: [http://www.mercosur.int/innovaportal/v/4054/4/innova.front/textos\\_fundacionales](http://www.mercosur.int/innovaportal/v/4054/4/innova.front/textos_fundacionales).

<sup>188</sup> Mercosur: South America's Fractious Trade Block. Available online: <http://www.cfr.org/trade/mercosur-south-americas-fractious-trade-bloc/p12762>.

<sup>189</sup> UNASUR. Available online: <http://www.unasursg.org/es/quienes-somos>

democratic way.<sup>190</sup> The suspension of membership of Paraguay until 2013 gave Venezuela a chance to join MERCOSUR because it was Paraguay who refused to accept Venezuela into the MERCOSUR arguing that it lacks democracy.

### **7.3.1. The Rule of Law and Institutional Regionalism in American Region**

Institutional regionalism within the American region relates, from the point of Rule of Law, in particular to regional judicial and quasi-judicial bodies which ensure that regional normativity is met and which are reflected mostly within the OAS and MERCOSUR. The OAS has its own institutional mechanism to promote the Rule of Law through legal instruments. It includes especially the Inter-American Juridical Committee (the "Committee") established in accordance with Article 53 of the Charter of the OAS, with its composition, competence and function defined in Chapter XIV of the OAS Charter. From the Rule of Law point it is important especially because it serves the OAS as an advisory body in legal affairs, to promote compliance with regional law and the progressive development and the codification of international law. Besides the Committee, the Administrative Tribunal established through resolution adopted by the OAS General Assembly<sup>191</sup> is also active with a view to dealing with employment and social disputes of the Secretariat and members of its staff.

The protection of human rights across the American region is also important from the point of institutional regionalism. With possibilities of judicial or quasi-judicial protection of an individual, the American region offers

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<sup>190</sup> Protocolo de Ushuaia Sobre Compromiso Democrático en el MERCOSUR, La Republica de Bolivia y la Republica de Chile. Available online: [http://www.mercosur.int/msweb/portal%20intermediario/es/archivos/destacado4\\_es.doc](http://www.mercosur.int/msweb/portal%20intermediario/es/archivos/destacado4_es.doc).

<sup>191</sup> Resolution AG/RES. 35 (I-O/71).

suitable conditions. The legal basis is, *inter alia*, the American Declaration on the Rights and Duties of Man,<sup>192</sup> the first international document concerning human rights. The Inter-American Court of Human Rights,<sup>193</sup> or Inter-American Commission on Human Rights,<sup>194</sup> is also given a significant role within North and South America.

The OAS judicial system, however, is restricted only to the protection of human rights with competence of the Court and the Commission bound to the subject matter geographically. Both institutions are competent to interpret and apply the provisions of the OAS agreements on human rights. The Commission is entitled to receive individual complaints about the breach of the American Convention on Human Rights<sup>195</sup> or of any other OAS convention or protocol brought to the attention by other Convention member state, and also complaints about the breach of the American Declaration brought by the state which had not ratified the Convention.<sup>196</sup> Jurisdiction of the Court relates only to those states that had acknowledged its competence.

A drawback which affects the efficiency of the American system to protect rights and weakens the Rule of Law is the fact that two members of the OAS, the most influential ones, the USA and Canada, have not ratified the Convention, nor acknowledged the Court's competence. It is well known that

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<sup>192</sup> American Declaration on the Rights and Duties of Man. Available online: <http://www.oas.org/dil/1948%20American%20Declaration%20of%20the%20Rights%20and%20Duties%20of%20Man.pdf>.

<sup>193</sup> Inter-American Court of Human Rights. Available online: <http://www.corteidh.or.cr/index.php/en>.

<sup>194</sup> Inter-American Commission on Human Rights. Available online: [http://www.oas.org/en/about/commission\\_human\\_rights.asp](http://www.oas.org/en/about/commission_human_rights.asp).

<sup>195</sup> American Convention on Human Rights. Available online [http://www.oas.org/dil/treaties\\_B-32\\_American\\_Convention\\_on\\_Human\\_Rights.htm](http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm).

<sup>196</sup> Article 44 and 45 of the American Convention Human Rights.

the USA has several times ignored the violation of human rights for the benefit of their political purposes.<sup>197</sup>

The court has, however, further competences through which the Rule of Law is enhanced. Within the framework of the human rights protection, it is entitled upon the Commission's request to order preventive preliminary measures<sup>198</sup> to prevent damage that might occur in serious and emergency cases. By means of advisory opinions, it can also interpret human-legal obligations of the states in accordance with the American Convention on Human Rights or other agreement that protects human rights upon the member state's request, or upon any other OAS body, including the Commission. The states can request an advisory opinion that would view how their legal orders harmonize with applicable human rights legal instruments. The Court usually renders an advisory opinion upon the member states' request.<sup>199</sup>

Advisory opinions are useful not only for purposes of legal security, but also for unification of legal orders regarding the contractual parties with obligations that they assumed after having acceded to the Convention or any other agreement that protects human rights.

Regarding the Rule of Law and MERCOSUR relation, the special Centre of the Promotion of Rule of Law (MCPRL),<sup>200</sup>

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<sup>197</sup> FORSYTHE, D.: Human Rights, the United States and the Organization of American States. Available online: <http://www.jstor.org/discover/10.2307/762458?uid=3739024&uid=2&uid=4&sid=21102666990767>

<sup>198</sup> Precautionary measures. Available online: <http://www.oas.org/en/iachr/decisions/precautionary.asp>.

<sup>199</sup> SHAVER, L.: The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection? Available online <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1059&context=globalstudies>.

<sup>200</sup> Decision 24/04 of the Common Market Council. Available online <http://www.mercosur.int/msweb/portal%20intermediario/es/index.htm>.

the Administrative Labour Court (ALC)<sup>201</sup> and the Permanent Review Court (PRC) have been established besides other organs.<sup>202</sup> The Centre of the Promotion of Rule of Law has been established with a view to examining and strengthening the development of member states, democratic government and all aspects of the regional integration process. Strengthening the Rule of Law within the group is carried out by the Administrative Labour Court which examines, just like in the case of the OAS, employment-related complaints filed by employees of the MERCOSUR Secretariat or other organs of the MERCOSUR institutional structure. The Permanent Review Court is the highest instance to settle disputes between the member states.<sup>203</sup>

We can therefore assume that even though regional organizations within the American continent were not established with a view to promoting the Rule of Law in their member states, they promote the Rule of Law through practical activities and independent institutions created within the mutual regional cooperation between the member states, and inside the member states, too. A specific area includes the functioning of the independent courts that enhance legality and legitimacy regarding the activities carried out by regional organizations or the action of the member states itself.

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<sup>201</sup> Resolution 54/03 of the Common Market Group. Available online <http://www.mercosur.int/msweb/portal%20intermediario/ES/index.htm>.

<sup>202</sup> Olivos Protocol. Available online: [http://www.mercosur.int/innovaportal/v/4054/4/innova.front/textos\\_fundacionales](http://www.mercosur.int/innovaportal/v/4054/4/innova.front/textos_fundacionales).

<sup>203</sup> CUNHA, M. V. DE A.: The Judicial System of Mercosur: Is there Administrative Justice? Available online: <http://www.iilj.org/gal/documents/cunha.pdf>.

#### 7.4. The Rule of Law and South-East Asia

South-East Asia is for the purposes of regional cooperation more complex than the regions in Europe or America because the states differ from one another in their constitutional grounds, level of democratic development as well as in the compatibility of their economic, social or cultural systems.

The most significant representative of regionalism in South-East Asia is the Association of Southeast Asian Nations (the ASEAN).<sup>204</sup> It is a regional organization comprising of ten South-East Asian countries: The Philippines, Malaysia, Brunei, Singapore, Indonesia, Thailand, Myanmar, Cambodia, Laos and Vietnam. This organization was established in 1967 upon the Bangkok Declaration,<sup>205</sup> and initially signed by five countries: Indonesia, The Philippines, Malaysia, Singapore and Thailand. The founding states declared that the aim was, *inter alia*, to promote regional peace and stability through abiding respect for justice and the Rule of Law in the relationship among countries of the region, and adherence to the principles of the UN Charter. Regarding the quality of normativity of this organization, it is interesting that many documents adopted on its own ground do not require formal ratification; this reflects the consensual and informal nature of this organization and the subsequent specifications of adopted agreements or declarations.<sup>206</sup>

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<sup>204</sup> ASEAN. Available online <http://www.asean.org/asean/about-asean>

<sup>205</sup> The ASEAN Declaration (Bangkok Declaration). Available online: <http://www.asean.org/news/item/the-asean-declaration-bangkok-declaration>.

<sup>206</sup> Out of agreements adopted within the ASEAN, e.g. the ASEAN Agreement on Disaster was ratified. Management and Emergency Response (AADMER), Agreement on the Establishment of the ASEAN Centre for Biodiversity, ASEAN Agreement on the Conservation of Nature and Natural Resources. Available online: <http://www.asean.org/archive/documents/ASCC-ASEAN-Agreements-and-treaties-090930.pdf>.

After the Cold War, the next five countries joined the original member states, which resulted in exposing the greater differences between their economies. One of the efforts to eliminate these differences was the establishment of the ASEAN Free Trade Area (AFTA)<sup>207</sup> in 1992. Like the European Union, which was founded by the European Economic Community,<sup>208</sup> the ASEAN also commenced active regional cooperation between the member states in the field of trade.

The organization gained its legal subjectivity upon adoption of the ASEAN Charter<sup>209</sup> that came into force in 2008. The ASEAN Charter represents a new legal framework and determines several new organs (institutional regionalism)<sup>210</sup> to strengthen processes for building community.<sup>211</sup>

Even though the establishment and functioning of the ASEAN belongs to the new regionalism era, unlike the European Union which has a supranational character, the ASEAN is an example of intergovernmental regional organization, since its member states maintain their full sovereignty in spite of being members. As for the Rule of Law, it attracted more attention after the financial crisis in 1997-1998 which, in a sense, was attributed to the lack of Rule of Law and good governance. As a result, the ASEAN countries sought to gain the confidence of investors and international

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<sup>207</sup> ASEAN Free Trade Area. Available online:

<http://www.asean.org/communities/asean-economic-community/category/asean-free-trade-area-afta-council>.

<sup>208</sup> European Economic Community. Available online:

[http://europa.eu/legislation\\_summaries/institutional\\_affairs/treaties/treaties\\_eec\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm).

<sup>209</sup> Charter of the Association of Southeast Asian Nations. Available online: <http://www.asean.org/asean/asean-charter/asean-charter>.

<sup>210</sup> For the ASEAN organs see Chapter IV and Chapter X of the ASEAN Charter.

<sup>211</sup> SCHMITZ, T.: The ASEAN Economic Community and the rule of law. Available online [http://home.lu.lv/~tschmit1/Downloads/BDHK-Workshop\\_15-12-2014\\_Schmitz.pdf](http://home.lu.lv/~tschmit1/Downloads/BDHK-Workshop_15-12-2014_Schmitz.pdf).

confidence through the adoption of various reforms. The Bali Concord II (2003)<sup>212</sup> and the ASEAN Charter (2008) are milestones under which the Rule of Law is to guarantee economic growth and development because it is impossible to achieve it without legal security and certainty which is granted by the Rule of Law, especially at the time of international economic openness and cooperation. This is reflected in the ASEAN Charter whose purposes include strengthening the Rule of Law through not only the organization itself, but the member states, too (Article 2 Section 2h).

As a result, some member states included this commitment in their constitutions.<sup>213</sup> The Rule of Law thus becomes the basis for cooperation between the ASEAN member states, and the ASEAN and the "rest of the world", as proven by discussions (The Bangkok Dialogue on the Rule of Law)<sup>214</sup> held on the purposes of just and impartial court systems in the promotion of permanent economic growth to the benefit of all.

The ASEAN Charter is, however, founded on an approach different to the constituent treaties of the European Union. The ASEAN fundamental principles stress respect for the independence and sovereignty of states and non-interference in the internal affairs. The ASEAN is an inter-

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<sup>212</sup> Declaration of ASEAN Concord II (Bali Concord II). Available online <http://www.asean.org/news/asean-statement-communicues/item/declaration-of-asean-concord-ii-bali-concord-ii-3>.

<sup>213</sup> E.g.: Article 1 Section 3 of the Constitution of the Republic of Indonesia of 1945. Available online: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/--ilo\\_aids/documents/legaldocument/wcms\\_174556.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--ilo_aids/documents/legaldocument/wcms_174556.pdf); or Article 78 Section 6 of the Constitution of the Kingdom of Thailand of 2007. Available online: <http://www.asianlii.org/th/legis/const/2007/1.html>.

<sup>214</sup> The Bangkok Dialogue on the Rule of Law. Available online <http://www.bangkokdialogue.org/>; compare with, e.g.: The German-Vietnamese Rule of Law Dialogue. Available online: [http://www.bmjv.de/SharedDocs/Sprachvarianten/EN/EU\\_Internationale\\_Zusammenarbeit/The\\_German\\_Vietnamese\\_Rule\\_of\\_Law\\_Dialogue.html?nn=6107460](http://www.bmjv.de/SharedDocs/Sprachvarianten/EN/EU_Internationale_Zusammenarbeit/The_German_Vietnamese_Rule_of_Law_Dialogue.html?nn=6107460).

governmental organization (Article 3 the ASEAN Charter) with a concept reflected in weak, government-controlled institutions. The ASEAN Summit, comprising the heads of states or governments, is featured as a supreme making political organ (Article 7). The decision-making process within the ASEAN is based on consultation and consensus (Article 20). The common way to conduct policies is to adopt ASEAN Summit declarations. This Summit has also adopted numerous agreements, which have the legal nature of an international treaty and usually need to be ratified in the member states. An important role is played also by the *soft law* in the form of a memoranda of understanding.<sup>215</sup>

From the above we can infer that the South-East Asian region is affected by states not willing to give up part of their sovereignty in order to achieve common objectives of the region. This weakens both the regional cooperation and application of the Rule of Law because the lack of willingness makes it impossible for the states to adopt legally binding rules or create regional organs promoting the idea of democracy or Rule of Law.

#### **7.4.1. The Rule of Law and Institutional Regionalism in South-East Asia**

With regard to a different and "softer" approach of the South-East Asia states to regionalism, this region represents a specific area for the functioning of the Rule of Law. Even though the ASEAN Secretariat is established there with several repeated meetings (ASEAN Defence Ministers Meeting, ASEAN Ministers on Energy Meeting, ASEAN Ministerial Meeting on Disaster Management, etc.), these are more significant from the point of the institutional regionalism or the Rule of Law; especially because these organs lack independence from the member states. For example, the

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<sup>215</sup> SCHMITZ, T.: The ASEAN Economic Community and the rule of law. Available online: [http://home.lu.lv/~tschmit1/Downloads/BDHK-Workshop\\_15-12-2014\\_Schmitz.pdf](http://home.lu.lv/~tschmit1/Downloads/BDHK-Workshop_15-12-2014_Schmitz.pdf).

ASEAN Intergovernmental Commission on Human Rights<sup>216</sup> having its seat in the South-East Asia region is not competent to make decisions on individual complaints.<sup>217</sup>

From the point of institutional regionalism, the ASEAN regional court would be useful for the purposes of strengthening the Rule of Law concept, providing, for example, an authoritative interpretation of the ASEAN Charter or of other agreements and a declaration adopted within the ASEAN, as well as acting on individual complaints.

As for the states, the Charter commits them to resolve all disputes peacefully, through dialogues, consultations and negotiations (Article 22 Section 1). Instead of the ASEAN court of justice, the Charter has established dispute settlement mechanisms (Article 22 Section 2). As a result, should consultations, good offices or mediation fail, the states may in the case of an economic dispute<sup>218</sup> request a panel which submits its findings and recommendations in writing, but, obviously, that panel cannot replace an independent and qualified judicial body.<sup>219</sup> In the case of economic disputes, the ASEAN member states refer them instead to the WTO.<sup>220</sup> When a dispute remains unresolved, this dispute shall be

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<sup>216</sup> ASEAN Intergovernmental Commission on Human Rights. Available online: [http://aichr.org/about/?doing\\_wp\\_cron=1432371457.8902280330657958984375](http://aichr.org/about/?doing_wp_cron=1432371457.8902280330657958984375); Pozri aj POŠIVÁKOVÁ, Ľ.: Úloha regionalizmu v oblasti ochrany ľudských práv. In: GIERTL, A.: Regionalizmus: Stav, Výhodiská, Perspektívy. Košice: The Pavol Jozef Šafárik University in Košice, 2013, p. 113 - 128. Available online: [http://www.upjs.sk/public/media/1084/Zbornik\\_37.pdf](http://www.upjs.sk/public/media/1084/Zbornik_37.pdf).

<sup>217</sup> Regional systems. Available online <http://www.ijrcenter.org/ihr-reading-room/regional/#sthash.YlIuPo9L.dpbs>.

<sup>218</sup> ASEAN Protocol on Enhanced Dispute Settlement Mechanism (2004). Available online <http://www.asean.org/news/item/asean-protocol-on-enhanced-dispute-settlement-mechanism>.

<sup>219</sup> SCHMITZ, T.: The ASEAN Economic Community and the rule of law. Available online [http://home.lu.lv/~tschmit1/Downloads/BDHK-Workshop\\_15-12-2014\\_Schmitz.pdf](http://home.lu.lv/~tschmit1/Downloads/BDHK-Workshop_15-12-2014_Schmitz.pdf).

<sup>220</sup> Understanding the WTO: Settling disputes. Available online [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm)

referred to the ASEAN Summit for its decision, as provided for in Article 26 of the ASEAN Charter.

## 7.5. The Rule of Law and Treaty Regionalism

As a representative of a treaty regionalism strengthening the Rule of Law in the field of human rights, the Convention on Protection of Human Rights and Fundamental Freedoms,<sup>221</sup> adopted by the Council of Europe member states, can be seen as such.<sup>222</sup> Because the Convention laid the foundations of a legal body to protect human rights set out in the Convention,<sup>223</sup> it has grown into institutional regionalism. The institutional basis initially comprised of the European Commission of Human Rights created in 1954 and the European Court of Human Rights in 1959; both set up in accordance with Article 19 of the Convention, with the Commission terminating its activities in 1998.<sup>224</sup> All members of the Council of Europe are currently contract parties to the Convention and either individuals or the states may submit a complaint to the ECHR; showing that the Rule of Law within the European region in the field of human rights is being promoted.

Another area where the Rule of Law is enhanced by the treaty regionalism is the area of democracy. Within the OAS,

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<sup>221</sup> A notice of the Federal Ministry of Foreign Affairs of conclusion of the Convention on Protection of Human Rights and Fundamental Freedoms and Protocols relating to this Convention, following No. 209/1992 Zb.

<sup>222</sup> Council of Europe. Available online <http://www.coe.int/en/>.

<sup>223</sup> European Court of Human Rights. Available online: <http://www.echr.coe.int/Pages/home.aspx?p=home>

<sup>224</sup> Merger took place as a consequence of dissolution of the Commission of Human Rights, as a certain "filtration organ", in accordance with the Protocol 11 to the Convention on Protection of Human Rights and Fundamental Freedoms For Slovak version see, e.g. The Protocol 11 to the Convention on Protection of Human Rights and Fundamental Freedoms amending the control system set up by the Convention. Available online <http://wayback.archive-it.org/2172/20101103194842/http://www.radaeuropy.sk/?958>.

the Declaration of Quebec City<sup>225</sup> contained a clause on the protection of democracy and human rights and was adopted at the Third Summit of the Americas in 2001. It stipulates that any unconstitutional alteration or interruption of the democratic order in an American state constitutes an insurmountable obstacle to the participation of that state in the Summit of the Americas.

The Cotonou Agreement (Porto Nuovo),<sup>226</sup> has a different nature, replacing the Lomé Convention<sup>227</sup> of 1975 and framing cooperation between the European Union and the African, Caribbean and Pacific Group of States (ACP).<sup>228</sup> The Cotonou Agreement for the first time includes the clause concerning democracy and human rights as fundamental elements of the treaty with the European Union. Under Article 9 of the Agreement, the clause on democracy and human rights signals that the respect for human rights and democratic principles, which are stipulated in the Universal Declaration of Human Rights, is the basis for domestic and international policies and constitutes the essential element of the Agreement.<sup>229</sup> The Agreement has been reviewed twice; the last revision taking place in 2010.<sup>230</sup> Upon this revision, the ACP-EU Joint Parliamentary Assembly was created as a

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<sup>225</sup> Declaration of Quebec City. Available online [http://www.summit-americas.org/iii\\_summit/iii\\_summit\\_dec\\_en.pdf](http://www.summit-americas.org/iii_summit/iii_summit_dec_en.pdf).

<sup>226</sup> Partnership Agreement ACP-EC. Available online: [http://www.europarl.europa.eu/intcoop/acp/03\\_01/pdf/cotonou\\_2006\\_en.pdf](http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/cotonou_2006_en.pdf).

<sup>227</sup> The Lomé Convention (1975). Available online: [http://www.eurostudium.uniroma1.it/documenti/cooperazione/Lome\\_convention.pdf](http://www.eurostudium.uniroma1.it/documenti/cooperazione/Lome_convention.pdf).

<sup>228</sup> African, Caribbean, and Pacific Group of States. Available online <http://www.acp.int/>.

<sup>229</sup> European Parliament: Resolution on Human Rights and Democracy Clause in European Union Agreements. Available online <http://merlin.obs.coe.int/iris/2006/4/article9.en.html> -See above.

<sup>230</sup> Revised Cotonou Agreement (2010). Available online: [http://www.europarl.europa.eu/intcoop/acp/03\\_01/pdf/mn3012634\\_en.pdf](http://www.europarl.europa.eu/intcoop/acp/03_01/pdf/mn3012634_en.pdf).

specific institutional base, with the Council of Ministers at the top of the organizational structure.<sup>231</sup> In this way treaty regionalism slowly turns into institutional regionalism.

## 7.6. The Rule of Law and Institutional Regionalism

Institutional regionalism occurs in places where international organizations, organs or other informal groups of a regional nature are being established. From the point of Rule of Law, the most significant include the judicial and quasi-judicial bodies which enforce fulfilment of obligations arising out of their constituent instruments. Another activity they perform is to examine decisions made by the regional organs and protect the human rights of people living in the member states.

As we already mentioned, the European region and the European Union contribute significantly to strengthen the regional Rule of Law. Specific conditions of the European Union judicial system allow or even place a duty on it to make use of proceedings before its judicial bodies. Should the member state fail to fulfil an obligation pursuant to Article 258-260 TFEU, it is possible to apply a legal mechanism in case of such an infringement; which is a big step forward in comparison to the state having a status within the international law where the judicial organs have just optional competence. The Court of Justice of the European Union<sup>232</sup> stated that the European Union (Community) is founded on the Rule of Law; therefore the member states and institutions cannot avoid examining whether their act accord with those of the TEU. It also created a unified system of remedies and processes to allow the EU Court of Justice to examine the legality of the Union institutions' acts.

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<sup>231</sup> The ACP/AKT countries. Available online:  
<http://www.europskaunia.sk/acpakt>

<sup>232</sup> Joint cases C-402/05 P a C-415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation/Council and Commission, Section 281.

The judicial system of the European Free Trade Association (EFTA)<sup>233</sup> and the Caribbean Court of Justice are also important for purposes of the Rule of Law within the regional relations.<sup>234</sup> EFTA, together with the European Union countries, created the European Economic Area (the EEA)<sup>235</sup> which made the Rule of Law stronger simply because the legal system within this group is a precondition of compliance and enforcement of law. Its successful functioning depends on unified performance and application of common rules applicable to the EEA states. Supervision over the European Union member states is conducted by the European Commission and over the EFTA member states by the EFTA Surveillance Authority and the EFTA Court of Justice<sup>236</sup> which operates along with the EU Court of Justice. The court has jurisdiction to make decisions concerning actions filed by the EFTA Surveillance Authority against the EFTA member state in matters relating to application or interpretation of the EEA laws. It also has jurisdiction to render advisory opinions concerning the EFTA rules as well as the jurisdiction to act as a body of appeal with respect to decisions made by the EFTA Surveillance Authority.

Institutional regionalism has its representative also in the Caribbean area where the Caribbean Court of Justice<sup>237</sup> has its seat as a regional judicial tribunal. Its founding agreement<sup>238</sup> was signed in 2001 by representatives of the CARICOM countries.<sup>239</sup> It settles disputes between the

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<sup>233</sup> European Free Trade Association. Available online <http://www.efta.int/>

<sup>234</sup> About the CCJ. Available online: <http://www.caribbeancourtofjustice.org/about-the-ccj>.

<sup>235</sup> European Economic Area. Available online: <http://www.efta.int/eea>.

<sup>236</sup> EFTA Court. Available online: <http://www.eftacourt.int/the-court/jurisdiction-organisation/introduction/>.

<sup>237</sup> About the CCJ. Available online: <http://www.caribbeancourtofjustice.org/about-the-ccj>.

<sup>238</sup> Agreement Establishing the Caribbean Court of Justice. Available online: [http://www.caribbeancourtofjustice.org/wp-content/uploads/2011/09/ccj\\_agreement.pdf](http://www.caribbeancourtofjustice.org/wp-content/uploads/2011/09/ccj_agreement.pdf).

<sup>239</sup> CARICOM. Available online: <http://www.caricom.org/>.

CARICOM members and, similarly to the European region, the jurisdiction of the Caribbean Court relates to the right of free movement of persons across the CARICOM countries, free movement of capital or business activities that form the basis of the CARICOM Single Market Economy (CSME).<sup>240</sup> It, however, has no jurisdiction to deal with complaints concerning violation of human rights filed by an individual, except for cases when it serves as a supreme court of appeal in civil and criminal matters for the purposes of domestic courts in Barbados, Belize and Guyana. It is considered the "itinerant" court because it can conduct its activities in any contractual country. A great advantage of this system is that in addition to the appeal proceedings it also has the obligatory jurisdiction.<sup>241</sup>

Regarding the Rule of Law, the institutional basis of regional organizations enhances the fulfilment of the Rule of Law principles, especially in the area of separation of powers and the system of mutual checks and balances of powers under the conditions applicable to regional cooperation. Its greatest advantage includes activities conducted by the regional judicial or the quasi-judicial bodies which constitute a prerequisite to fulfil another significant principle of the Rule of Law; the independence of courts.

An ideal model is when the judicial or quasi-judicial body is independent from the states of a regional group, either financially or in another way. Independence, however, must be achieved also with respect to other organs within the regional group, since we cannot speak about independence when the functions within the law-making, executive or judicial organs

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<sup>240</sup> CARICOM Single Market and Economy (CSME). Available online: [http://www.caricom.org/jsp/single\\_market/free\\_movement.jsp?menu=csme](http://www.caricom.org/jsp/single_market/free_movement.jsp?menu=csme).

<sup>241</sup> MAHARAJH, A. N.: The Caribbean Court of Justice: A horizontally and Vertically Comparative Study of the Caribbean's First Independent and Interdependent Court. Available online: <http://www.lawschool.cornell.edu/research/ILJ/upload/Maharajh-final.pdf>

of the regional group are performed by the same representatives of the states

## **8. RELATION OF REGIONALISM AND REGIONAL ORGANIZATIONS WITH RESPECT TO GENERAL INTERNATIONAL LAW**

### **8.1. Regional Rules as confirmation and development of rules of general international law and inspiration to create new rules**

Historically, regional organizations were not established inside the international-legal vacuum, but in the background of general international law which in the course of the 20th century was expanding and specializing as a consequence of the changing needs of the international community. During such development, the regional organizations came across certain relations and contacts with general international law, despite having a different scope and intensity in individual areas and periods. The aforementioned applies mainly to regional treaty-making because their legal rules might have a larger or smaller impact on general international law, too; this was because general international law has no rule restricting the scope and content of regional law-making to matters related only to the regional organization and the subject of its activities. Similarly, the process and the law-making of general rules of international law does not exclude that the regional rule might be at the beginning of the process of the rise of rule of general international law provided that wider international community of states regards it useful. As a result, the regional international treaties adopted might not only confirm or develop the rules of general international law<sup>242</sup> but they

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<sup>242</sup> The Resolution adopted by the Institute of International Law in Lisbon in 1995 (Problems Arising from a Succession of Codification Conventions on a Particular Subject) Section I (c) states that: "Regional codification convention means a codification convention concluded at the regional level which may reserve participation to the states belonging to the regional group concerned. Such a regional codification

might act as initiators to start the process of general international law rules. If the originally regional norms and institutes of regional law overlap into general international law, they lose their regional character and can be regarded as a regional contribution for the purposes of development of general international law. It is, therefore, possible that regional rules might gain the character of general rules in the future, provided that their content reflects not only the particularity and specification of regional relations but also that the scope and application within the international group is wider.<sup>243</sup> A non-regional members can "become familiar" with them through a customary or treaty way.

The treaty-making activities of the regional organization might therefore result in making international treaties available also to third states and these treaties might become (with regard to its purpose and content) the ground for a multilateral treaty instrument.<sup>244</sup> The aforesaid proves that today there are no strict dividing lines between the regional treaty systems and general international law.

Summing up, through their law-making regional organizations are able to contribute to the confirmation of the general international rules, to the development among the parties of the regional treaty or serve as a trigger to create a new general rule of international law. They, however, do not substitute the system of general international law and each

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convention may contain provisions which may codify or progressively develop rules of general public international law or rules of public international law applicable only as between states within the region."

<sup>243</sup> For example, the originally Spanish-American rule *uti possidetis iuris*, is currently regarded the general principle of the international law". (ICJ Reports, 1986, paras. 20 – 21).

<sup>244</sup> One can mention some conventions of the Council of Europe, e.g. the Framework Convention for the Protection of National Minorities of 1995, the European Convention on Nationality of 1997, or the Convention on Cybercrime of 2001 (with amending protocol of 2003), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007, and others.

regional treaty system has to be interpreted fully in accordance with the principles of general international law.<sup>245</sup>

It should, however, be added that regional treaties adopted within regional organizations have no specific regime and are regarded as the "regular" treaty sources of international law. The Vienna Convention does not pay special attention to them, since it governs generally multilateral treaties (Article 40-41), and bilateral treaties (Article 60). Consequently, the rules of *lex posteriori derogat legi priori*, *lex specialis derogat legi generalis* shall apply to the regional treaties and the general international law applicable to the relations between the regional states parties.

Finally, the aforesaid is not to the detriment of the "soft law" rules which are accepted and applied more and more frequently within the regional organizations (recommendations, resolutions, opinions, codes of conduct, etc.) which, despite having a legally unbinding character, may have a real impact on the conduct of the member states of the regional organization. This impact is apparent when these rules have been adopted in a transparent and democratic way and when their content is useful and practical. Such soft rules of the organization are currently recognized not only as useful for the organizations itself, but they can play a role in the process of formation of regional treaties and customary rules. It is useful to add that international organizations are to a limited extent subject also to internal legal orders of their "host" states to such a scope and manner as compatible with their privileges and immunities.

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<sup>245</sup> As stated by R. Jennings: "Universality does not mean uniformity. It does mean however that such regional international law, however variant is part of the system as a whole and not a separate system and ultimately derives its validity from the system as a whole." In: JENNINGS, R. Y.: Collected writings of Sir Robert Jennings. The Hague: Kluwer Law International, 1998, p. 341.

## 8.2. The Rules of General International Law governing Activities of Regional Organizations

The dynamic growth of international organizations, followed by the extension and specialization of their competences in the post-war period, made the rules of regional character cease to be sufficient enough to regulate all aspects of their activities. As a result, they started to be completed within the rules of general international law in the second half of the last century. Therefore, the complex legal basis of regional organizations currently consists of not only their constituent acts, own legal orders, but also of the rules of general international law.<sup>246</sup>

The International Law Commission (the "Commission") was charged with the task of elaborating the drafts of the codification conventions in the 1970s and 1980s and regulating the activities of the international organizations. These did not concern specific issues of individual international organizations, but activities common to international organizations regardless of their different orientation and number of member states (universal, regional). Including the codification matters related to international organizations in the working programme of the Commission, did not represent a problem since the aim, according to its Statute, is to promote the progressive development of international law and its codification, and the Commission is entitled to carry out this function both in the

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<sup>246</sup> The analysis of legal orders of international organizations confirms that these are usually composed of two parts, the internal order consisting the procedural, administrative, budgetary or other rules of similar character, ensuring due functioning of the organization's organs, and the substantial (regulative) rules regulating the competences and activities of organization's bodies and its member states in the area constituting the main subject matter of its activities. The second group of rules can be found either in international treaties or in own (and specific) rules issued by the organization, or in both of these forms (e.g. the European Union).

field of public international law and private international law. (Article 1 Section 1 and 2 of the Statute of the International Law Commission).<sup>247</sup>

Because the codification and the progressive development of international law is not only confined to specific entities of international law (e.g. only states versus states), the subject matter of the Commission's activities might include also the specific rules applied among international organizations for purposes of their codification and/or progressive development. Analysing various codification outputs of the Commission implies that various types of international organizations' activities were not carried out to the same extent, because in some of them they constitute only a smaller part of legal regulation (with the states still playing the significant role) while in others it concerns the outputs that deal mainly with international organizations.

As with the codification topics related to the states, the international organizations also comprise the element of international law codification and its progressive development to a different degree. Although some codification drafts could have been based on the long and more or less stable practice of international organizations, emphasizing their codification aspect (representation of states in international organizations, conclusion of international treaties between the international organizations and the states, or the international organizations themselves), the regulation of a further topic was based on relatively weak practice (the responsibility of international organizations for international unlawful conduct). The codification outputs carried out by the Commission up to now include four

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<sup>247</sup> The Statute of the International Law Commission was adopted: UN GA Res. 174 (II) (21 November 1947): Establishment of an International Law Commission. Available online: <http://www.worldlii.org/int/other/UNGARsn/1947/75.pdf>.

international conventions, one draft of articles and one Guide to Practice on Reservations to Treaties. These are: the Vienna Convention on the Law of Treaties of 1969, the Vienna Convention on the Representation of States with the international organizations of universal character of 1975, the Vienna Convention on Succession of States in respect of Treaties of 1978, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986, the Draft of Articles on the responsibility of international organizations of 2011 and the Guide to Practice on Reservations to Treaties of 2011.

The fact that the codification of topics related to international organizations took place after similar topics had been completed in relations between states was relevant for the orientation of the Commission's work relating to international organizations. The results of the Commission's work prove that preparation of some codification drafts was more or less inspired by its previous works in the interstate topic e.g. within the preparation of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986, or the Draft of Articles on the responsibility of international organizations of 2011.

The outcome of the Commission's work was the unified rules of international law; despite the diversity and different nature of international organizations. As a result, the organizations own rules apply only to a limited extent, and in cases expressly set forth in the codification convention and, unless provided otherwise, all other issues are regulated by the codified rules. To be more concrete, the privileged position of the organization's own rules has been recognized in the Vienna Convention on the Law of Treaties of 1969 (Article 5), the Vienna Convention on Succession of States in respect of Treaties of 1978 (Article 4), the Vienna Convention on the Law of Treaties between States and International

Organizations or between International Organizations of 1986 (Article 6), as well as in the Draft of Articles on the responsibility of international organizations of 2011 (Article 64).

In preparation of the Convention on the Representation of States with the international organizations of universal character of 1975, the Commission's draft concentrated on multilateral diplomacy and organizations of universal character. The member states of regional organizations remain free to choose the most suitable form of their representation following also their model from organizations of universal character.

The first international convention that concerned international organizations partially, was the Vienna Convention on the Law of Treaties of 1969<sup>248</sup> which governs traditional interstate treaties but does not exclude those having the nature of the constituent instrument of the international organization (either regional or universal).

Regarding its terminology, the Vienna Convention in Article 2 (Use of Terms) states that "international organization" means intergovernmental organization. The scope within which the rules of the Vienna Convention apply to the constituent instrument of an international organization, as well as to other treaties adopted within the organization, is governed by Article 5 of the Convention (Treaties constituting international organizations and treaties adopted within an international organization) which affirms that the Convention applies to any treaty which is the constituent instrument of an organization and to treaties adopted within an international organization, without prejudice to any relevant rules of the organization.

In such cases the provisions of the Convention fall under a possible derogation in favour of the international

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<sup>248</sup> Published in Collection of Laws of the Slovak Republic under the No. 15/1988 Coll.

organization's own rules.<sup>249</sup> Taking into account the diversity and importance of issues that can be regulated by legal order of an international organization, the Convention did not attempt to define them. Subject to different legal regulations in the legal order of an international organization, other treaty rules under the Vienna Convention apply within the international organization without restrictions. The Vienna Convention, however, excludes from the scope of its application international organisations founded by instruments other than treaties,<sup>250</sup> and those whose legislative outcomes have a *soft law* nature.

Next codification topic concerning international organizations represents Draft of the Convention on the Representation of States with the international organizations of universal character. Even though the Commission's members during the preparation work recognized that the representation of states within international organizations of universal character in principle should not differ from the representation within the organizations of regional character, they took into account that the regional organizations are so diverse that it would be difficult to formulate unified rules, since their peculiarities require specific rules.<sup>251</sup> These were the main reasons why the Vienna Convention on Representation of States with the international organizations of universal character of 1975<sup>252</sup> concentrated on multilateral

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<sup>249</sup> The UN Charter in Articles 108 -109 shall determine its own (specific) methods of amendments.

<sup>250</sup> For instance, the Organization for Security and Co-operation in Europe (OSCE) has been established upon the Helsinki Final Act of 1975 which is not a treaty.

<sup>251</sup> Draft Articles on the Representation of States in their Relations with international organizations (With Commentaries) Yearbook of ILC, 1971, p. 284. Available online: [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/5\\_1\\_1971.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/5_1_1971.pdf)

<sup>252</sup> For more details, Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975 - A/Conf.67/16. Available online: <http://treaties.un.org>

diplomacy between the states and the UN and its specialized agencies, as well as among other international organizations of universal character.<sup>253</sup> The Vienna Convention offers the only example when its regime applies to the representation of states within the international organizations subject to the number of member states.

In addition to types of representations of member states in international organization (permanent missions) and of non-member states (permanent missions of observers), the Convention brings also guarantees for the proper performance of their competences through the system of immunities and privileges in respect to their premises and accommodation (Article 19 – 27), and specific immunities and privileges guaranteed to heads of missions and of their members (Article 28 – 41). In accordance with the Preamble to the Convention, their existence is a functional necessity because "the purpose of privileges and immunities contained in the Convention is not to benefit individuals but to ensure the efficient performance of their functions." Analysis of the Convention, and the Explanatory report thereto, proves that the Commission has been inspired by and inclined towards the Vienna Convention on Diplomatic Relations of 1961, and the Convention on Special Missions of 1969. Article 2 Section 2 of the Convention states that the fact that it applies only to universal organizations is without prejudice to the application of their provisions to the representation of states in their relations with other organizations, if they are applicable

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[g/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-11&chapter=3&lang=en](http://g/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-11&chapter=3&lang=en).

<sup>253</sup> As regards to the nature of international organization Commission regarding the Article 1 of a final draft of articles suggests that: "The question whether an international organization is of universal character depends not only on the actual character of membership but also on the potential scope of its membership and responsibilities."

under international law independently of the Convention.<sup>254</sup> Consequently, the member states, or the non-member states, may use the Vienna Convention of 1975 as a model in setting up their representations within the regional organizations. The Convention, however, does not govern privileges and immunities of international organizations that fall under special legal regulations.

The legal position of the constituent instruments of international organizations as well as treaties adopted within their framework within the succession to treaties is laid down in the Vienna Convention on Succession of States in respect of Treaties of 1978.<sup>255</sup> Article 1 defines the scope of its application to the effects of succession of states into treaties concluded between states. Such determination excludes treaties where the parties are entities other than states (international organizations). Regarding, however, the treaties between states, the Convention relates also to those which are the constituent instruments of international organizations regardless of their universal or regional nature and also to treaties concluded within the international organizations.

An essential question the Convention had been seeking an answer to in relation to the categories of treaties, was whether the notification of succession<sup>256</sup> should be applied in relation to a multilateral treaty constituting international organizations and treaties adopted within such organizations in the same way that it is in the case of other multilateral

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<sup>254</sup> For the Vienna Convention see: Official Records of the UN Conference on the Representation of States in their Relations with International organizations, Vol. II, UN Publication. Available online: [http://untreaty.un.org/cod/diplomaticconferences/repofstates\\_intlorgs-1975/docs/english/vol2/a\\_conf\\_67\\_index.pdf](http://untreaty.un.org/cod/diplomaticconferences/repofstates_intlorgs-1975/docs/english/vol2/a_conf_67_index.pdf).

<sup>255</sup> Published in: WATTS, A.: *The International Law Commission 1949-1989*, Vol.II. Oxford: Oxford University Press, 2007, p. 1186 – 1208.

<sup>256</sup> The notification of succession in relation to a multilateral treaty shall under the Convention mean: "any notification, however phrased or named, made by a successor state expressing its consent to be considered as bound by the treaty." (Article 2 Section 1 (g) of the Convention). See Footnote above, p. 1187.

treaties. The Convention deals with this issue specifically in relation to both categories of treaties. With respect to the effects of a succession of states in respect to the treaty which is the constituent instrument of an international organization, its application has to be without prejudice to the rules concerning acquisition of membership in an organization and without prejudice to any other relevant rules of the organization (Article 4 (a) of the Convention). This provision therefore excludes automatic succession of third (non-member) states of organization in respect to the treaties constituting international organizations since according to them their succession might be subjected to the membership in an organization.

The application of this rule has a practical meaning because it enables the member states to evaluate whether the third state complies with the membership in an organization. In this situation the third state, therefore, cannot take advantage of the notification of succession to a treaty constituting an international organization without, firstly, applying for membership. The other approach is weaker because some international organizations (for instance, the unions) do not expressly require membership as a precondition for the notification of succession in their constituent instruments. As a result, the third states may notify the succession in the constituent instruments of such international organization without previously acquiring their membership.

The second category includes treaties adopted within an international organization that can be succeeded under the Convention "without prejudice to any relevant rules of the organization" (Article 4 (b) Convention). In relation to such treaties, the membership within an organization might play a significant role if the succession is subject to the

membership.<sup>257</sup> Regarding both categories of treaties, the same rule applies and notification of succession to such treaties has to be without prejudice to any "relevant rules of the organization" which, relate either to membership in an organization or to others conditions laid down by the rules of the organization. Provided that the third state is interested in becoming a member of an international organization, the application of succession to their treaties is limited to the scope and manner as determined by the legal order of the organization.<sup>258</sup>

Another topic related to the treaties of international organizations is regulated in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986.<sup>259</sup> Without going into too much detail, the treaty-making capacity of international organizations represents one of the most significant attributes of their international legal

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<sup>257</sup> It should be noted that the International Law Commission have attempted twice (in 1963 and 1993) to include in its working programme the topic concerning the succession into membership of an international organizations, without success.

<sup>258</sup> Consequences of a growing number of international organizations is, *inter alia*, that organizations with the same or similar subject matter of their activities are established in different periods. Even though this fact itself does not impede their activities and eventual cooperation, there is a question related to succession arising in some cases (the League of Nations succeeded by the UN in 1946, the International Institute of Agriculture (IIA) succeeded by the UN Food and Agriculture Organization (FAO) in 1946, the Organisation of African Unity succeeded by the African Union in 2002. A basic difference between the traditional succession of states in respect of treaties and succession of states in respect of international organizations is that while the former relates to the state territory, the latter has a functional character. The reason for succession of international organizations is the common interest of member states to ensure functional continuity of a new organization either to a full, or limited extent.

<sup>259</sup> Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of March 1986 (A/Conf.129/15). Available online: <http://untreaty.un.org/cod/avl/pdf/ha/vcltsio/vcltsio-e.pdf>.

personality, and the Convention applies only to international organizations (Article 2) capable of concluding treaties with other subjects of international law. For the criterion of legislative activity of an international organization, it is not important whether it is a universal or regional organization, nor is the real scope of their legislative competence important.<sup>260</sup> The commentary of the Commission to the Draft underlines that the provisions of the Convention should be applied in relation to treaties to which international organizations are parties, regardless of their universal or regional character eventually their openness or closeness. It concerns all international organizations.<sup>261</sup> With regard to the particularity of international organizations, their law-making capacity is usually restricted to treaties necessary for the proper performance of their competences; where the capacity to conclude treaties is "governed by the rules of that organization" (Article 6 Convention). The aforesaid is, however, without prejudice to regional treaties of an "open nature" regulating the issues exceeding the regional framework (see below) and accessible for non-member states of international organizations.

The topic of treaties concluded between states and between international organizations and states or between international organizations was addressed by the Commission again in 2011; concentrating on the reservations and interpretative declarations of these treaties. Unlike the previous approach on this matter, when the Commission dealt with the treaties between states and with the treaties of international organizations separately, the reservations and

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<sup>260</sup> As stated by the International Law Commission in its commentaries to the Final Draft (in particular Article 6): "Either an international organization has the capacity to conclude at least one treaty in which case the rules in the draft articles will be applicable to it..." Yearbook of ILC, 1981, vol. II (Part Two), p. 124.

<sup>261</sup> See: WATTS, A.: *The International Law Commission (1949-1998)*, II (Treaties). Oxford: Oxford University Press, 1999, p. 835.

interpretative declarations of states and of international organizations with respect to treaties are governed jointly in one document. This is seen in the Guide to Practice on Reservations to Treaties of 2011.<sup>262</sup> Under the reservation, the Guide understands a unilateral statement anyhow phrased or names, made by a state or an international organization, when signing, ratifying, accepting, approving or acceding to a treaty, whereby the state or the international organization purports to exclude or to vary the legal effect of certain provision of the treaty in their application to that state or international organization.<sup>263</sup> The interpretative declaration means a unilateral statement, anyhow phrased or names, made by a state or an international organization, whereby these entities purport to explain or interpret the purpose or scope of the treaty or provisions thereof.<sup>264</sup>

The Guide specifically and comprehensibly deals with all aspects of the reservations and interpretative declaration; including: the terms of their application (in relation to the treaty text), opportunities to apply them in respect of bilateral treaties, forms and methods of their notification to the parties, the period of time when it is possible to make such declarations, the entities entitled to make a declaration, the appeal and alternation of reservations and interpretative declarations, the reservations towards them and their legal effects, the interpretation of reservations and interpretative declarations, etc. One of the Guide's basic conclusion is that no matter what difference between the state and international organizations there is, many procedural aspects related to reservations and interpretative declarations are applied in the same, or a similar way - although some particularities of both the entities are sometimes reflected.

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<sup>262</sup> Guide to Practice on Reservations to Treaties, Report of the ILC, GA, Official Records, Doc.A/66/10, Supplement No.10.

<sup>263</sup> Guide to Practice-Article 1 Section 1 (Definitions of reservations).

<sup>264</sup> See reservation no.160 -Article.1.2. (Definitions of Interpretative Declarations).

Without going into details, one can mention that the reservations related to the territorial scope of treaties can be made only by the states, while the reservations and interpretative declarations on behalf of the organization are made by the head of the international organization and not the representative of a member state etc. In the Annex to the Guide the Commission formulated its conclusions on the reservations dialogue stating that the purpose of reservations is to achieve a satisfactory balance between the purpose and objectives of international treaty and guarantees protecting the integrity of multilateral treaties on the one hand, and to ensure the participation of their states parties as much as possible on the other hand.

Another codification outcome of the Commission's work is the Draft Articles on the Responsibility of International Organizations of 2011.<sup>265</sup> A principal argument for including this topic in the Commission's working programme was that if the international organizations have their own personality, and they are independent from the member states in exercising their own competences, they must be internationally responsible for breaching the rules of international law binding them. However, the timing for including this topic in the Commission's programme raised several doubts; mainly due to lack of proper fulfilment of elements required for the entry of a suitable topic into the codification process. Critics (including some members of the Commission too) refer mainly to the absence of practical examples of international organizations in regards to their responsibility for wrongful acts.

Consequently, the Commission had to rely on more or less detailed academic and doctrinal analyses of that matter or to copy the relevant provisions of the Draft Articles on the

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<sup>265</sup> Responsibility of international organizations (Doc.A/66/10). Available online <http://untreaty.un.org/ilc/reports/2011/2011report.htm>

Responsibility of States for Wrongful Acts.<sup>266</sup> In fact, the Commission, in its General Commentary to the Draft Articles, expressly recognized that one of the principal problems concerning the responsibility of international organizations was caused due to their limited practice, which started to emerge not long ago.<sup>267</sup>

Despite criticism, the Commission continued in its work and prepared Draft Articles on the Responsibility of International Organizations. With respect to the criterion *ratione personae*, the Draft (Article 2(a)) relates to any international organization which is "an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. In addition to the states, also the international organisations and other entities might become members."<sup>268</sup>

With respect of the regulation of the rules of responsibility, the Commission was mainly inspired by the responsibility of states,<sup>269</sup> which is the concept viewed critically by number of international organizations which gave their views on the draft during preparatory works<sup>270</sup> as well

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<sup>266</sup> Annex of the UN GA Resolution No. 56/83 on January 2002.

<sup>267</sup> Draft Articles on the Responsibility of International Organizations with Commentaries, (DARIO), doc. A/66/10, 2011, General Commentary, p. 3, para. 4.

<sup>268</sup> See above Footnote No. 268, para. 87.

<sup>269</sup> "The topic of responsibility of international organizations was viewed as being "necessary counterpart" and it would logically flow on from its work on state responsibility." Report of ILC on the work of 52nd session (2000). Supplement No. 10, UN Doc. A/55/10, p. 135. Available online [http://untreaty.un.org/ilc/reports/english/a\\_55\\_10.pdf](http://untreaty.un.org/ilc/reports/english/a_55_10.pdf) (despite the General commentaries on the draft articles made by the Commission, stating that „they represent and autonomous text“).

<sup>270</sup> The European Commission on behalf of the EU expressed doubts: "...as to feasibility of subsuming all international organizations under the terms of this one draft in the light of the highly diverse nature of international organization of which the European Community is itself an example." ILC, 60 Session (2007), Responsibility of international organizations and observations received from international

as by the authors of international law.<sup>271</sup> The international organizations pointed to their peculiarities and differences of the states<sup>272</sup> and to the fact that the Commission failed to consider their diversity as a factor to be reflected in the formulation of special rules of responsibility.<sup>273</sup> The unified concept of responsibility was viewed critically by the International Monetary Fund, the World Health Organization, the International Labour Organization, NATO, the Organisation for Economic Co-operation and Development;

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organizations, p. 4. Available online: <http://daccess-ny.un.org/doc/UND/OC/GEN/N04/406/10/PDF/N0440610.pdf?OpenElement>.

<sup>271</sup> WOUTERS, J., ODERMATT, J.: Are all international organizations created equal? Reflections on the ILC's Draft Articles of Responsibility of International Organizations. Global Governance Opinions, 2012. Available online: <http://ghum.kuleuven.be/ggs/publications/opinions/opinions13-wouters-odermatt.pdf>. The Czech doctrine of international law pointed out that: "the simple transposition of rules on state responsibility for the responsibility of international organizations should have certain limits. This concerns in particular the nature of rules of the organization which are different from the internal law of states or the issue of conduct ultra vires of the organization." ŠTURMA, P.: Drawing a line between the responsibility of an international organization and its member states under international law. In: Czech Yearbook of Public & Private International Law, vol.2, Praha, 2011, p. 4.

<sup>272</sup> The European Commission on behalf of the EU also pointed out that: "EC ...is differing from the classical model of an international organizations in a number of way. The EC is not only the forum for its member states to settle or organize their mutual relations but also an actor in its own right on the international scene." Because of its specifications, the European Commission pointed out that "...regional economic integration organization" reflected in modern treaty practice may require special consideration..." (doc.A/CN.4/545) Available online: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/406/10/PDF/N0440610.pdf?OpenElement>.

<sup>273</sup> During the preparatory works there were many opinions supporting this trend. "...with regard to responsibility it may be unreasonable to look for general rules applying for all intergovernmental organizations... It may be necessary to devise specific rules for different categories of international organizations." Report of ILC, 54th session (2002), par. 470. Available online: <http://untreaty.un.org/ilc/reports/2002/2002report.htm>.

while the Council of Europe and the International Maritime Organizations were in favour of such a concept.

It should be pointed out, however, that the Commission in its Draft did not neglect to consider peculiarities of international organizations completely. The special Article 64 (*Lex specialis*) of the Draft specifies that their articles do not apply where, and to an extent when, the conditions of an internationally wrongful act or the content of the international responsibility of an international organization are governed by special rules of international law. Such special rules may be included in the legal order of an international organization if it applies to the relations between an organization and its member states. Special rules may either supplement general rules of international responsibility or may replace them, and they concern a certain category of an international organization or one specific organization in its (their) relations with some or all member states.

The next outcome of the Commission was the Draft Articles on the Effects of Armed Conflicts on Treaties of 2011.<sup>274</sup> The Draft does not necessarily relate to states nor to international organizations. It regulates the effects of armed conflicts on international treaties. Since the current international treaty law comprises not only treaties between states, but also between the states and international organizations, or between the international organizations themselves, the Commission has to determine the subject matter of this topic more precisely. Article 1 of the Draft therefore states that the effects of armed conflict relate to relations between states under an international treaty, while the Commentary specifies that the Draft does not apply to treaties between states and international organizations, nor to treaties between international organizations. The reasoning

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<sup>274</sup> Yearbook of the International Law Commission 2011, Vol. II, Part Two. Available online: <http://untreaty.un.org/ilc/reports/2011/2011report.htm>.

being both in the complexity of this matter and the improbability that the international organizations would engage in an armed conflict to the extent that their treaty relations may be affected negatively.<sup>275</sup>

The Draft, however, covers the treaties between states to which international organizations are parties. Article 2 (Definitions) confirms that articles apply to treaties between states to which international organizations are also parties. A general rule contained in Article 3 applies to them stating that an armed conflict does not *per se* terminate or suspend the operation of treaties between states' parties in a conflict, or between a state party in a conflict with a state that is not.

### **8.3. Problems arising as a consequence of treaty making competences of international organizations and the general international law**

A growing number of international organizations in the second half of the last century called the international community to attend to not only the rules of general international law related to their specific activities (see above) but to the problems that their treaty-making power may cause to general international law. Therefore, in 2002 the Commission included in its working programme analyses of this problem within the context of expansion and diversification of international law relating to the

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<sup>275</sup> A comment made by the Commission regarding Article 1 Section 4 states that: „the Commission decided not to include within the scope of the draft articles relations arising under treaties between international organizations or between states and international organizations owing to the complexity of giving such an additional dimension to the draft articles.“ and „since international organizations rarely if ever engage in armed conflict to the extent that their treaty relations may be affected.“ In: Draft Articles on the Effect of armed conflicts on Treaties with Commentaries, UN 2011, p. 2, Section 4. Available online: [http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1\\_10\\_2011.pdf](http://untreaty.un.org/ilc/texts/instruments/english/commentaries/1_10_2011.pdf).

fragmentation of international law. The Commission's outcome is the Report of its Study Group relating to the development and diversification of international law as causes of its fragmentation.<sup>276</sup>

According to the Study Group, the fragmentation of international law is the consequence of its growing development and diversification associated with various sets of specialized and relatively autonomous groups of legal rules (commercial law, human rights law, environmental law) with their own institutional structures and principles. These rules, principles and structures are autonomous to each other and they are autonomous to general international law as well.<sup>277</sup> These sets of rules (including regional character) do not necessarily comply with the general rules of international law, and in the case that the deviations from them became more significant and occurrence more frequent, it would affect the unity of general international law.<sup>278</sup>

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<sup>276</sup> ILC: Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International law: Report of the Study Group of the ILC (M. Koskenniemi), Geneva, 2006. (Doc. A/CN.4/L.702), p. 1 - 25. Available online: <http://daccess-dds-ny.un.org/doc/UNDOC/LT/D/G06/628/63/PDF/G0662863.pdf?OpenElement>.

<sup>277</sup> A report of the Commission expert group refers to such sets of rules as the "boxes" comprising "self- contained regimes", where the latter can be "geographically or functionally limited treaty systems...". An international law writer in this respect states that: "Faced with the contemporary explosion of legal norms, increasing normative specificity, the proliferation of international organizations and the multiplication of international tribunals some have highlighted the risk of "fragmentation" of International law into a more or less coherent set of "normative islands constituted by partial, autonomous and perhaps even "self- contained" legal sub-systems." For more details: PROST, M., CLARK, P. K.: Unity, diversity and the Fragmentation of International Law: How much does the multiplication of international organizations really matter? In: Chinese Journal of International Law, 2006, vol. 5, no. 2, p. 342.

<sup>278</sup> A report by the Study Group of the Commission in this respect states that: "Very often new rules or regimes develop precisely in order to deviate from what was earlier provided by the general law. When such

When analysing this aspect of fragmentation, the Study Group of the Commission concluded that the Vienna Convention on the Law of Treaties of 1969 is suitable in dealing with such issues upon application of the principles *lex specialis derogat legi generali*, the systemic interpretation of international treaties in accordance with Article 31 Section 3 (c) of the Vienna Convention, the *lex posterior derogat legi priori* principle and according to Article 103 of the UN Charter.<sup>279</sup>

Another aspect of fragmentation is represented in a situation when international organizations apply rules of general international law resulting in different interpretations, without access to international judicial bodies. Under such a circumstance it is not possible to exclude the view that such an "loose" interpretation by regional or universal international organizations might after a certain time have a negative impact on the stability and unity of interpretation and later the application of rules of general international law.<sup>280</sup>

In this respect, doctrinal opinions have arisen enhancing the position of the International Court of Justice which would be able to play a more significant role in ensuring the unified interpretation and stability of general international law through and within its advisory competence. This option would, however, assume the extension of a group

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deviation become general and frequent the unity of law suffers." In: A Report of the Study Group, Commentary No. 181, p. 6

<sup>279</sup> "...although fragmentation is inevitable it is desirable to have a framework through which it may be assessed and managed in a legal and professional way. That framework is provided by the Vienna Convention on the Law of treaties... that already provides a unifying frame for these developments."

<sup>280</sup> The Report on the fragmentation of international law states that: „the emergence of conflicting rules and overlapping legal regimes will undoubtedly create problems of coordination at the international level. But...no homogeneous, hierarchical meta-system is realistically available to do away with such problems“. See above, Note no. 277, item 249.

of subjects entitled to request the advisory opinions. It has been suggested, that other subjects are to have access to the advisory competence of the ICJ; in particular the Secretary General and other entities different to the states<sup>281</sup> or the international or national courts who apply the rules of general international law. An international law doctrine dealing with this matter, however, does not support the creation of a new international judicial body vested with the competence to give a binding interpretation of the general rules of international law.

The Study Group at the same time pointed also to the institutional scope of fragmentation based on the parallel existence of two or more international judicial bodies having competing jurisdiction and the problems related to this procedural aspect of fragmentation.

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<sup>281</sup> Authors Vicuña and Pinto suggest: „broadening access to the Court by international organizations, eventually including NGOs, corporations and individuals” in order „to strengthen the Court’s functions in respect of its role as the central judicial body of the international community.” In: VICUÑA, F. O., PINTO, CH.: *The Peaceful Settlement of Disputes: Prospect for the Twenty-first century*, Preliminary Report prepared for the 1999 Centennial of the First International Peace Conference. C. E. Doc. Cahdi, 1998, paras 136-137. In his speech at the UN GA in 1994, M. Bedjaoui, a former Chairman of the International Court of Justice, pointed out that: "Access to the Court’s advisory jurisdiction may henceforth appear unduly restricted if one thinks of the enormous potential of the advisory function and of the demand that exists. One might envisage the possibility that not only other organs of the Organization... might be able to request the advisory opinions of the Court but also that „that option might be extended to third organizations not belonging to UN system but which make an eminent contribution to the maintenance of peace at regional level, for instance." In: ICJ - *Statement of the President of Court: Address by Judge Mohammed Bedjaoui, President of the ICJ delivered to plenary meeting of the General Assembly at its 49 session, on 13 October 1994.*

It was, however, decided to put this issue aside as the international courts themselves are best equipped to deal with these problems using their own procedural codes.<sup>282</sup>

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<sup>282</sup> "The issue of institutional competencies is best dealt with by institutions themselves." See above note 276, p. 58.

## SUMMARY

The phenomenon of regionalism is especially characteristic of the second half of the 20<sup>th</sup> century. A summary analysis of its various aspects and conclusions regarding its relations and benefits to current international law can be divided into several areas.

When assessing the phenomenon of regionalism prevailing opinion was that there are two main types; the post war old regionalism replaced by the wave of a new regionalism after the Cold War ended. A concept of old regionalism contained features of a bipolar world reflecting the position of the two leading superpowers, as well as basic characteristics of their cold war foreign policy. It is, therefore, referred to as the hegemony regionalism; where the initiators, or external (supra regional) hegemonic leaders of regional groups were the USA and USSR (NATO, CENTO, SEATO, Warsaw Treaty Organization) whose aim was to ensure regional security against external attacks (the security regionalism) through systems of collective defence. Old regionalism was not of an open nature, it was internally oriented, designed for its members only, and its orientation was restricted to military, and, partially, economic areas. As a result, the regional groups of this era were understood as territorial, military and economic areas representing the sphere of influence of the superpowers and fully subjected to the needs of their foreign and international policies. As a consequence of the Cold War, the spread of regionalism was restricted as it focussed on the political, military and security needs of the super powers. Therefore, in this context it cannot be regarded as an autonomous, independent and even prosperous phenomenon of international relations of that time. This implies that along with the ending of the old superpower relationship and bi-polarity of the Cold War, the regional grouping of old regionalism came to an end as well; although with some exceptions.

After the Cold War ended, regionalism moved to a new development stage called new regionalism. Its structures being established without any significant influence on the part of former super powers and built from below; i.e. at state level and with non-governmental entities becoming participants as well.

From this point new regionalism may be regarded as a multilateral and multidimensional process of regional integration, including economic, political, social and cultural aspects not only among the states themselves, but also among states and other non-governmental entities. Unlike old regionalism, new regionalism is open to the global needs, trends and challenges of the international community with the aim of strengthening mutual cooperation among their subjects and removing any problems in economic and other areas. In the processes of economic globalization which introduce new challenges and problems, states respond by establishing various regional groups as global problems require solutions beyond the framework of one state and one national economy. Differences in development and intensity of globalizing trends are, however, reflected in the uneven development of regionalism in economic, political and social areas across different parts of the world.

New regionalism in its overall context might be, therefore, understood as a continual process of change that started after the Cold War and occurring at various levels; mainly at the level of states (the macro regions) but also at the interregional level (in relations between regional structures established by the states as well as between these structures and group of states or individual third states ) at the sub-regional level and at the micro-regional level of non-governmental entities.

The reasons for establishing such regional groups represent not only military, territorial, security or other interests connected traditionally with the states and their foreign policy (even though they continue to exist also in new regionalism), but also areas in which the non-governmental

entities, such as supranational corporations, non-governmental organizations, professional groups and social groups involved and local communities, play an increasingly more important role. Areas of their interest include mainly international trade and finance, environmental, humanitarian and social issues.

Even though its beginnings are traced back to Europe, new regionalism currently has a worldwide character as it covers both developing and developed countries across almost all the continents, and many non-governmental entities on a worldwide scale. Regarding its scope and dynamics of development, new regionalism today represents a significant factor of influence on international relations and international law, and, in specific areas, a prevailing form of cooperation between their subjects.

A significant feature is its democratizing nature, since the regional organizations of new regionalism often require their member states, prior to joining, to carry out necessary democratic reforms respecting the rule of law, political plurality of the domestic political system, protection of human rights and minorities. All which contribute to the democratic legal area of the integration group. Similarly relations between the regional groups within a system of interregionalism are required to respect the fundamental rules of international law. In this respect, the regional groups make an irreplaceable contribution to the process of democratization of international law and with respect to the *rule of law* principle.

Although the development of new regionalism demonstrates a growing trend and stronger cooperation between various entities, at different levels, it also proves that there is no worldwide single model of regionalism. There are currently various models of new regionalism applied differently in different regions depending on such factors as: historical development, democracy of individual states and other specifications of future members; such as their attitude

toward state sovereignty and the needs to respect their economic interests or other specificities. It should be pointed out that new regionalism is not a uniform process but is performed at different speeds, through jumps and waves, and is affected by the various external or internal factors of future members of integrations groups and the specificities of prevailing international relations.

The irreplaceable role of international law was common for both old and new regionalism as the states have established regional organizations on the basis of international law and complied with its rules when carrying out their activities. This principal, traditional, international legal framework is, however, within the legislative competences of regional organizations completed by their own legal orders of different level and rigidity.

From the point of international law, one can speak about the treaty (non-institutional) regionalism. This is a typical characteristic of certain regions, although the reasons for the conclusion of treaties might differ from region to region. A traditional reason is the existence of a specific geographical element relating to a specific group of states. A treaty will agree the use of such geography in a commonly agreed manner and/ or to protect it through regulating certain aspects of it by international law. Examples of this type include the treaties on regional rivers and lakes, or on geographically restricted parts of environment e.g. Convention on the Navigation Regime on the Danube, the protection of environment in the Baltic Sea, the Black sea, the Arctic, in the Amazon pool or regional environment biotope.

Another aspect typical of treaty regionalism includes the geographical closeness (neighbourhood) of the states situated within a particular region. Treaty-making is in this case enhanced by their common historical roots, cultural, religious or other associations or the level and homogeneity of their economic systems. As an example one can mention the regional treaties for free trade zones, customs unions, the free movement of goods and persons within a region, regional

agreements on human rights protection and on common defence. Practice confirms that this geographical aspect is not limited to treaty regionalism alone; it can also represent a significant impulse for the establishment of regional groups within the framework of institutional regionalism.

In addition to the above noted geographical elements, the strong interests of the states involved may also constitute a significant impulse for the conclusion of regional treaties in the period of new regionalism. Such regional legislation is tend to be called functional because it is based on the intensive common interests particular to a groups of states e.g. transboundary production systems, drilling and transportation of oil and gas and elements in the area of environment: acid rain, the Amazon rainforest, the ozone layer.

Institutional regionalism is traditionally expressed in the form of intergovernmental regional organization established under the treaty in order to fulfil the agreed purpose. It is usually defined as a group of a limited number of states that are connected to each other through geographical relations and a certain level of mutual, economic or other interdependence. A prevailing trend in the second half of the 20th century shows that regionalism was promoted through institutional regionalism itself, and is reflected in a still growing number of international organizations of regional character and in the extension and specialization of the scope of their activities. As a result, they have played a yet more important role while entering into relations of cooperation with other regional organizations, non-member states, or non-governmental entities.

A traditional model of institutional regionalism, in which the regional objectives and needs are being satisfied through a specifically defined legal basis, within an agreed institutional structure and within clearly defined competences of the regional organization's bodies, began to be subject to certain changes in the second half of the 20th

century. The more sophisticated demands of a global nature meant that the regional organizations required a more comprehensive reaction through means of various non-formal, flexible and open systems of cooperation (*the open, or networked regionalism*) within and between the regional organizations and non-governmental entities; such as supranational economic groups and corporations, non-governmental organizations, representatives of civil communities, the interest and professional groups. Such "soft" regional structures are currently typical of regional groups in Asia, Africa and Latin America and it might also have *pro futuro* impact on the stricter European integration model.

Such a trend is today reflected in membership diversification within regional organizations resulting in the existence of hybrid institutional regionalism which the ASEAN is currently heading towards. Its existence is also a consequence of a strong belief that this hybrid membership of regional organizations might help them react in a better way to the problems of a specific region as well as to the problems of a global nature by enabling various non-governmental entities to participate more effectively in their activities. Further development of regionalism will show to what extent the global challenges and various regional models affect, or modify the traditional regional structures, as well as what role international law will play with respect to their establishment and functioning.

It should be noted that both intergovernmental and supranational (integration) models can be currently observed within institutional regionalism. For the intergovernmental approach it is typical that the member states continue with full sovereignty, while established regional organs serve only to prepare and carry out their common projects as member states.

The supranational model means, however, that the member states have decided to transfer some parts of their sovereignty through, and within, the regional bodies; who have an autonomous position and own responsibility for the

proper exercise of transferred competences. The EU example shows that specific legal rules and principles have been adopted within this supranational grouping with priority given above the national (internal) legal orders of the member states. Another feature typical for the European integration, are common institutions (organs) entitled to prepare and adopt supranational legal rules; where such institutions themselves represent the driving power in order to deepen and promote the integration process.

The majority of regional groups across the developing world continue to stay at intergovernmental level, as their member states are not willing to share a part of their sovereignty with regional groups. The principal reason is that many states in Asia and Africa regard membership in regional organizations as an instrument to reinforce their sovereignty (the sovereignty reinforced regionalism). This approach then puts no pressure on building relevant structures of regional organizations which, (if ever in existence) does not represent an effective instrument for promoting and enhancing the integration processes.

Many non-European regional groups have, however, been inspired by the experience that European integration has had in the area of institutional structure. Various organs copying the EU model are characteristic of every regional organization within the institutional area, i.e. the Commission or Secretariat, the Council (consisting of heads of states or Ministers), the regional Parliamentary Assembly, the regional Court of Justice, and other organs depending on the scope of the regional agenda, e.g. economic and social issues, regional central or development banks.

However, in reality such organs do not automatically copy the competences of such bodies within the European model because the need to respect the sovereignty of member states is strongly prioritised. For instance, the establishment of regional Commissions (following the European Commission model) makes it impossible to propose regional legislation;

this results in states still having control over regional legislation or sanctions imposed due to breach of agreed rules being subject to the unanimous consent of the member states, etc.

A main obstacle in preventing the developing regional groups from coming closer to the European integration model is, therefore, a difference in understanding the place and importance of sovereignty of a member state within the integration processes; resulting in restricting the development and deepening of the integration process.

For historical, political, and different economic conditions, the regional groupings within the developing world are not willing to assign a more important role to the regional groups in furthering the development and deepening of the integration process.

Regionalism and regional organizations are suitable also for the application of the rule of law, and thus contributing to the development and enhancement of regional processes and structures within a specific legal framework including legal stability and application of relevant legal guarantees. The Rule of Law within regional cooperation between the states is significantly affected by the principle of equality between the states when creating and applying the rules of international normativity, as well as the principle of the state's sovereignty. Such features affect the universal application of regional law with regard to all the member states within the regional organization which are supposed to be legally equal. Equality, however, should be maintained not only when applying the legal norms, but when creating regional normativity, too.

Another significant feature is the responsibility applied especially within the judicial enforcement of normativity as a consequence of breaching its specific rules and their enforcement by means of regional law.

Regional organizations have set up different mechanisms and bodies to promote the Rule of Law, including legal cooperation (interregionalism or treaty regionalism),

technical support, exchange of information and good practice as well as initiatives to ensure accountability (institutional regionalism). A number of regional organizations and their member states expressed their commitment to democracy, the Rule of Law and human rights in their constituent instruments. Each regional organization has a different mandate, regional contexts, and resources, which means that their work in the promotion of the Rule of Law is not uniform and has regional variations. On the other hand, such differences, inter alia, give way to the development of regionalism within which the international organizations can conduct dialogues and exchange experience. Current practice proves that it is especially European regionalism which is providing a space for application of the Rule of law, promoted by the institutional basis of regional cooperation. The European Union has the strongest position within the European region, developing the institutional, treaty regionalism, as well as interregional cooperation among the states and other regions or the regional organizations themselves. The Rule of Law affects European regionalism mostly through judicial systems protecting rights and obligations of states or individuals.

This is, however, not the only area within which the European region allows the Rule of Law to develop. The Rule of Law is strengthened also through democracy, human rights, peace and security or cooperation in the field of economy, creating suitable conditions for the development of the member states. The Rule of Law is thus a basic principle stemming from the common institutional traditions of the member states of the European Union and one of the fundamental values upon which the European Union is based. The confidence of the European citizens and authorities in the functioning of the Rule of Law is particularly vital for the further development of the European Union into "an area of freedom, security and justice without internal frontiers". Regional organizations, however, also carry out activities in

order to strengthen the Rule of Law within the national law of the member states. The respect for the rule of law is a condition for the states to join the regional organization and should they fail to respect it during their time of membership, it includes also the possibility to apply regional sanctions.

The Rule of Law in terms of regional organisations reflects the cultural and political background as well as the level of economic development of member states of a particular regional organisation. Its impact on regionalism is also based on the conditions of admission for the state to membership in the regional organisation established in respect of the Rule of Law.

According to the quality of democracy in member states, it is possible to predict the quality of democracy within a regional organisation; this is clear in the case of regional organisations based on the transferred sovereignty from member states. Throughout the regional organisations member states with developed Rule of Law principles can promote and strengthen the Rule of Law in other member states. Significant in this context is inter-regionalism and treaty regionalism, where regional organisations with the developed concept of the Rule of Law, as within the European region, can promote and strengthen the Rule of Law in regions with weak judiciary, legislation or other principles of the Rule of Law; such as regions of South-East Asia or Africa.

Another region, region of the North America, known as a powerful promoter of democracy and the Rule of Law is interesting due to the fact that there operates just a regional court for the protection of human rights, as only one aspect of the Rule of Law. All principles of the Rule of Law can be protected just by an independent judicial body, regional or international, with broader substantive jurisdiction, whose creation depends on the will of states and effectively exists just in the European region.

Although the regional organizations were emerging more or less spontaneously during the second half of the 20th century, this fact has never precluded their mutual relations

and various forms of cooperation. Even though the intensity and form, as well as legal regulation, differed throughout various periods of development of regionalism, literature generally refers to this type of mutual relations as interregionalism. This is not a completely new phenomenon, since it emerged along with the first regional organizations in the second half of the 20th century as their associate segment, and it has been growing into a general phenomenon within current global international relations.

The interregional relations are carried out and developed in specific international forums which represent a certain novelty within the international relations and international law, since they are called for the purposes of interregional cooperation and, in some cases, we can already notice slight features of an emerging institutionalism (e.g. in the form of permanent secretariats).

Considering the specifications of old and new regionalism, the interregional relations appearing in the old regionalism may be called the old interregionalism, while those arising later and being connected with new regionalism are called the new interregionalism; both of them differing in character.

The old interregionalism was typical for having a dominant position in the European Community (EC) which entered into relations based on dialogue and cooperation both with the regional organizations and with the groups of states as well or with individual states; while also maintaining its exclusive position as the most developed regional organization (*the hub and spokes model*).

The EC within the interregional relations featured various characteristics at that time. The European communities, especially in their external relations, took advantage of mainly interregional cooperation mechanisms as a means to make the integration relations stronger and advanced within other regional groups, to strengthen its own international position and, finally, to ensure international

regional security, stability and prosperity outside their own borders, too.

At the time of old regionalism, the interregional relations had been developing between the regional groups only in trade and economically and had been geographically limited due to the existence of world colonial system. The development of interregional relations between political and security regional groupings was slowed down by being oriented internally and by the Cold War atmosphere, too.

However, after the Cold War ended and new regionalism started, the new interregionalism began to develop under more favourable conditions because the obstacles connected with the superpowers' policy, spheres of influence and closed character of regional organizations had been removed. New interregionalism extended its scope geographically because new regional organizations in other parts of the world started to join the interregional relationship.

New interregionalism is now producing new types of relations (even if not having equal level and intensity) which are becoming institutionalized, which is a new phenomenon in terms of international relations.

Ultimately, the interregional relations reflect the rules and principles typical for regional groups in different parts of the world. As a result, the regional organizations in the developing world promote the rather flexible and informal character of their interregional relationships, with no strong institutional structure and with rather informal systems of consultations and exchange of opinions. In contrast, the EU approach is affected by attempts to formalize and institutionalize the interregional relations at the higher level, which is enhanced by its significant position and growing intensity and complexity of such relations.

Considering the forms of current interregionalism, one can say that the treaty interregionalism laid down the rights and obligations of the subjects of interregional relations through rules of international law. Currently it concerns a set of treaties of the EC-EU with other regional organizations, as

well as with individual states and groups of states from different parts of the world. In brief, we can highlight the different content and institutional variety as well as uneven complexity of interregional treaties reflecting different level of relations and cooperation their parties have, on the one side, and the willingness of the parties to regulate such relations by means of international treaties on the other. In this respect we can speak about the individualization of the interregional treaty regulations.

Another feature the interregional treaties have in common is their institutional element, as there is a rule that those with a more complex character and higher level of cooperation (association agreements, partnership agreements) bring also a more complex institutional structure.

Within its framework, along with common bodies with general competence, there are also bodies of specialized nature for purposes of cooperation in specific areas, which implies an element of specialization. The existence of more or less developed and specialized institutional bodies thus allows describing the current treaty interregionalism as an institutional one. One can therefore infer that basic condition of the current treaty interregionalism represents institutional regionalism whose organizations are competent to conclude treaties with third subjects.

Even though the international treaties the EC-EU concluded within the framework of its interregional relations regulate mainly various types and forms of trade, economic and development cooperation, their contribution to general international law is indubitable. This is based especially on the fact that the essential element of such treaties constitutes an obligation of the parties to respect the democratic principles of international law and fundamental human rights (with reference to the Universal Declaration of Human Rights), as well as to the rule of law that the internal and external policies of the parties should be based on.

Considering the significant (still more or less dominant) position of the EU within such relations, one can see it seeks to ensure the respect for general values and principles of international law also in terms of interregional relations with third countries or their groups, as well as in terms of international regional organizations in various parts of the world. In the context of the treaty interregionalism, this respect is the basis and essential assumption for purposes of successful cooperation between the parties. Monitoring and ensuring that they are complied with in the process of the treaties application is enhanced by the institutional structure of treaties, political dialogue between the parties, and the agreed consultations regime. The specific sanction systems are however not typical for interregional treaties.

Another feature of the interregional treaties lies in their provisions concerning political dialogue; the scope of which regularly goes beyond the interregional framework. This is so because the subject matter might be any issue concerning international policy constituting a matter of joint interest of the parties. A political dialogue might result in the coordination of procedures and positions between the parties at international conferences, within the UN, the World Trade Organization, or any other international organization. In this respect it should be noted that interregionalism might bring impulses, proposals or recommendations made by the regional parties to deal with current issues of global international policy in the area of international conferences or within universal international organizations.

Finally, with respect to the democratization of international law, here, the contribution of interregional treaties is not limited to official bodies of international organizations or to the representatives of states. There is a tendency to involve also other structures and entities such as informal associations of civil society representatives, entrepreneurial circles, social and trade union partners, and non-governmental organizations; providing them with the possibility to formulate their own views, positions or

recommendations. The aforesaid is relevant not only in respect to the development of interregional relations itself, but these entities in developing countries apply those provisions to enforce their legitimacy and importance within domestic civil society and in a wider context have a democratising nature.

From the point of general international law, there are two more facts that should be mentioned in relation to treaty interregionalism. The first relates to the impact the interregional treaties have on the treaty-making power of member states within regional organizations. For example, within the areas where the regional organizations have been authorized by their member states to conclude treaties with third parties, they substitute (fully or partially) the treaty-making capacity of member states. This generally results in limiting the subjects with treaty-making power in general international law. The second is the subject matter of interregional treaties containing common regional principles and values instead of individual values typical for international treaties concluded between states.

As regards other aspects of the relationship between the regionalism and general international law, history confirms that regional organizations were not established inside an international-legal vacuum, but in the "background" of general international law with which they entered into certain relations. The aforementioned applies to regional treaty-making organizations because the legal rules contained in it might have a larger or smaller impact on the general international law, too. It is like this because general international law has no rule that would restrict the scope and content of regional law-making to matters related only to the regional organization and the subject of its activities.

Similarly the process and the law-making of general rules of international law do not preclude the regional rule at the beginning of their creation if the content and significance

of such rule exceeds the regional scope and interests, and a wider international community of states regards it as useful.

As a result, treaties adopted at a regional level might not only confirm or develop existing rules of general international law, but they might become initiators of its new rules, too. If the originally regional rules of regional law overlap in general international law, they can lose their regional character and can be regarded as contributing for the purposes of the development of the general international law. It is, therefore, possible that regional rules might gain the character of general rules in future, provided that they reflect not only particularity and specification of relations within a regional group, but also that the scope and application within the international group is wider. Third and non-member states can become familiar with them through custom or a treaty.

The aforesaid proves that currently there are no strict dividing lines between the regional treaty systems and general international law but the impact they have on each other might have different forms, extent or intensity in various periods.

To sum up, regional organizations' law-making can contribute to the confirmation of the rules of general international law, to their development among the members of the regional group or trigger the process of the creation of a new rule of general international law.

Finally, the aforesaid is not to the detriment of the "*soft law*" rules accepted and applied within the regional organizations through recommendations, resolutions, opinions, codes of conduct, etc. which, despite having legally unbinding character, may have a real impact on the conduct of the member states of the regional organization. This impact is apparent when these rules have been adopted in a transparent and democratic way and when their content is useful and practical. Such soft rules of the organization are currently recognized not only as useful for the organizations themselves but can play a role in the process of rising regional treaties and the customary rules. It should also be added that

international organizations are, in certain areas, subject also to internal legal orders of their "host" states to such a scope and manner as compatible with their privileges and immunities.

With respect to general international law governing activities of international organizations, it should be pointed out that their dynamic growth in the post war period meant that the legal rules of regional character were not sufficient enough to regulate all aspects of their activities. In the second half of the 20th century the rules of general international law were gradually completed in implementation. Therefore, the complex legal basis of regional organizations today consists of not only their constituent acts, own legal orders, but also the relevant rules of general international law.

The International Law Commission was charged with the preparation of the codification conventions in the 1970s and 1980s, regulating the uniformly some activities of international organizations. Its character is not concerned with the specific activities of individual international organizations, but concerns activities common to international organizations regardless of their variety and number of member states (universal and regional).

Including the codification matters related to international organizations in the working programme of the International Law Commission, was not a problem since the aim, according to its Statute, is to promote the progressive development of international law and its codification, and the Commission is entitled to carry out this function both in the field of public international law and private international law. Because the codification and the progressive development of international law is not restricted only with respect to states and among states, the working programme of the Commission can include the rules concerning international organizations for the purposes of their codification and/or progressive development.

As with codification issues related to the states, the international organizations also contained the elements of codification and its progressive development to a different degree. Although some codification drafts could have been based on a more or less stable practice of international organizations, emphasizing the traditional codification aspect (representation of states in international organizations, conclusion of international treaties between the international organizations and the states or the international organizations themselves), the regulation of further matters was based on the relatively weak practice of international organizations (responsibility of international organizations for international unlawful conduct).

The codification outputs carried out by the Commission up to now include four international conventions, one draft of articles and one Guide to Practice on Reservations to Treaties; namely: the Vienna Convention on the Law of Treaties of 1969, the Vienna Convention on the Representation of States with the international organizations of universal character of 1975, the Vienna Convention on Succession of States in respect of Treaties of 1978, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986, the Draft of Articles on the Responsibility of International organizations of 2011 and the Guide to Practice on Reservations to Treaties of 2011.

Although the codification of topics related to international organizations taking place after a similar topic concerning the states had been completed, it had an impact on the Commission's work relating to international organizations. The results of the Commission's work confirm that in preparing some drafts, the Commission was more or less inspired by previous works, for example, within the preparation of the draft Convention on the Law of Treaties between States and International Organizations or between International Organizations or the Draft of Articles on the responsibility of international organizations.

The outcome of the Commission's work was, despite their diversity, the unified rules of general international law in specific areas of activities of international organizations. As a practical consequence in these areas the organizations own rules applies only to a limited extent and in cases expressly laid down in codification treaties. It should be noted that the dominant position of the organization's own rules was confirmed in the Vienna Convention on the Law of Treaties of 1969 (Article 5), the Vienna Convention on Succession of States in respect of Treaties of 1978 (Article 4), the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986 (Article 6), as well as in the Draft of Articles on the responsibility of international organizations of 2011 (Article 64). This approach, fixing the scope of application of internal rules of organization *vis á vis* codified rules of international law, provides a legal guarantee for the proper application of relevant legal rules.

Regarding the difficulties of general international law arising due to law making activities of international organizations, this matter was included in the International Law Commission's programme concerning the fragmentation of international law in 2002. The Commission's output is the Report of the Study Group.

According to the Study Group, international law is fragmented as a consequence of its development and diversification, with various sets of specialized and relatively autonomous groups of legal rules (commercial law, human rights law, environmental law) with their own institutions and principles. They are autonomous to each other and so they relate also to the general international law. These sets of rules (including regional character) do not necessarily comply with the general rules of international law, and if their deviations become more significant and occurrence more frequent, it would harm the unity of general international law.

When analysing this aspect of fragmentation, the Study Group of the Commission concluded that the Vienna Convention on the Law of Treaties of 1969 is suitable for dealing with these problems upon application of the relevant principles of treaty law; namely *lex specialis derogat legi generali*, the systemic interpretation of international treaties in accordance with Article 31 Section 3 (c) of the Vienna Convention on the Law of Treaties, the *lex posterior derogat legi priori* principle and Article 103 of the UN Charter.

The Study Group at the same time also pointed also out that the institutional scope of fragmentation was based on the parallel existence of two or more international judicial bodies having competing jurisdiction and the problems related to this procedural aspect of fragmentation. It was, however, decided to leave this issue aside as, according to the Study Group it was best dealt with by the international courts themselves in their procedural codes.

## RESUMÉ

This publication address the present challenge for regional and general international law. According to the topic, the main task was to evaluate regionalism in its various relationships and forms with respect to international law, and also to evaluate the place, importance and duties of international law in respect to the establishment and functioning of various forms of regional groups. The book is divided into the eight chapter. Every chapter keep focus on specific part of regionalism, its relation to international organizations, to international law, to treaties and institutions, to Rule of Law or interregional cooperation. Chapters concern also codification of international law because of the need to unify the legal regulation of relationships which the regional organizations currently enter into, and the evaluation of the possible impact of initial activities and the application of international law rules through regional organizations within the context of the so-called international law fragmentation. The object of publication is to specify individual types of regionalism and interregionalism in specific areas of international law; in particular the international protection of human rights, international security and peace as well as in the area of economic and commercial cooperation.

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