

## **INTERNATIONAL LAW**

### **METHODS OF INTERNATIONAL LEGAL CONVERGENCE**

Yury BEZBORODOV

ass. professor, PhD

Ural State Law University, Ural Federal University

#### **Abstract**

*This article analyzes the processes of universalization of international legal regulation and international legal convergence of national legal systems. The stages and methods of convergence - harmonization, unification and integration, which until now have not been subjected to any serious complex science investigations in the framework of international law. Article represents theoretical understanding of the convergence processes and their methods on the international legal level. The author suggests his own understanding of the terms harmonization, unification, integration and convergence.*

**Key words:** *convergence, universalization, harmonization, unification, integration.*

Human civilization and social regulators that accompany it, finally embarked on the path of convergence, consistency and integration. They in general are associated with a tendency to the universalization of social relations and their regulators. The processes of universalization (as an expansion of spheres and processes and methods of regulation) are more pronounced in the legal sphere, above all - in international law. „The universalizing vocabularies of human rights, liberalism, economic, and ecological interdependence have no doubt complicated inter-sovereign law by the insertion of public law notions such as *jus gentium* and ‘obligations owed to the international community as a whole’ and by ‘fragmenting’ the international system through the fluid dynamics of globalization”<sup>1</sup>.

The growing interdependence and integrity of the modern world, the emergence of global problems, and above all taking care of the maintenance of international peace and security, encourage states to pay more attention to the progressive development and codification of international law. Now we can see

---

<sup>1</sup> M. Koskenniemi. *What is international law for?* International law by Malcolm D. Evans. 1<sup>st</sup> ed. Oxford. 2013, p. 94.

how international law universalizes through treaties and customs, standards and norms. «The role of international law has changed: it is not only the traditional link in relations between states in the international arena, but it also became the basis for creating a common legal framework ... in the territorial limits of the States”<sup>2</sup>.

The universalization as a process promotes harmonization of legal regulation in the various legal systems of the world, as well as the activities of a number of states that can effectively deal with complex global issues. We proposed the following definition of universalization of international legal regulation: it is a process of territorial and functional expansion of existing international legal controls on the basis of principles and methods of unification and harmonization, aiming at creating a single, integrated legal framework.

In international law technically processes of convergence and universalization are implemented through a variety of methods – unification, harmonization and – the most advanced to date – integration. The legal convergence as a process has historical roots. For example: the unification of French law after the French revolution and the unification of German law after the founding of the German Reich in 1871. In general it should be noted that the processes of legal convergence initially have had mostly intrastate and economic nature. At the end of the second half of the XX century in doctrine and legislation national trends took the pas and it was typical for the XIX century. National legal systems were subjected to centripetal action forces, resulting in developing the concepts and principles that are incompatible with each other and do not meet the requirements of the development of global communication. Due to the fact that the state and the unity of its domestic law are the cornerstone of future development in the field of law, in the second half of the XIX century it was clear understanding of the need for uniformity in certain areas of human activity, which, because of their cross-border nature can not effectively be regulated only by national law, which may significantly vary in the states. It is not surprising that the first international treaties containing legal methods of convergence were signed in the field of intellectual property and transport more than one hundred and fifty years ago, in the heyday of „legal nationalism”. Subsequently, convergence techniques have become very popular in the following areas of legal regulation: trade, taxes, protection of intellectual property, transport and transport sphere.

Over time, the international legal convergence to localize and extend to a group of related or neighboring states. Obvious examples are the formation of a Benelux, the Nordic Council, the European Union, Council of Europe, UNASUR.

Methods of convergence have been actively used by the international organizations – governmental and non-governmental: first of all – the International Institute for the Unification of Private Law (UNIDROIT, founded in 1926 and

---

<sup>2</sup> Marochkim S. Mezhdunarodnoe pravo: 60 let posle sozdaniya OON // Zhurnal rossiyskogo prava. 2006. №3, p. 127.

established under the auspices of the League of Nations); United Nations Commission on International Trade Law; more specialized institutions such as the International Civil Aviation Organization, International Maritime Organization, the Central Department of International Rail Transport. This list can be enabled by including the International Chamber of Commerce and numerous business associations that have achieved success in developing standards, terms and forms of contracts that are widely used in international trade now. We can see how in the framework of globalization processes and the processes of universalization of international regulatory convergence as a legal phenomenon is precipitating, localizing and concretizing in the activities of international organizations<sup>3</sup>.

The international process of assimilating the diverse legal systems of various countries goes back into ancient history<sup>4</sup>. The legal convergence is a long process that takes a lot of time. This is because of the differences and contradictions of state's aims they seek. Another reason for its time length is the complexity of the development of uniform standards, when the task is to formulate a new rule that generalizes differing legal standards.

There is a serious problem with the ratio of the forms and methods of legal convergence in the theory and practice of international law. Most often, integration does not relate to the number of methods and harmonization considered a kind of unification, and vice versa. For example: Methodology of harmonization (convergence, unification) of the laws of the Member States of the Eurasian Economic Community, published by the Bureau of the Interparliamentary Assembly of the Eurasian Economic Community, considering the convergence and unification as the ways of harmonization<sup>5</sup>.

Professor Tikhomirov separates convergence, harmonization and unification and the model law-making. While other researchers suppose that between convergence and harmonization of legislation there are no significant differences, and the model law-making is a form of unification.

Unification, harmonization and integration as a forms of legal convergence have a common core – all of them are law-making and legislation processes aimed at the creation of new legal rules<sup>6</sup>. Based on already established international rules

---

<sup>3</sup> See: Sabino Cassese. The Globalization of Law // <http://www.iilj.org/gal/documents/CasseseGlobalPaper.pdf>; Interpretation of law in the global world: from particularism to a universal approach. Springer ed. 2010; Armin von Bogdandy. Globalization and Europe: How to Square Democracy, Globalization, and International Law // The European Journal of International Law. Vol. 15. N. 5.

<sup>4</sup> R.H. Graveson. The International Unification of Law. The American Journal of Comparative Law Vol. 16, No. 1/2, The International Unification of Law: A Symposium (Winter - Spring, 1968), p. 4.

<sup>5</sup> <http://www.ipaeurasec.org/docsdown/metod-garmoniz.pdf>.

<sup>6</sup> We can see it at: Jürgen Basedow. Worldwide Harmonisation of Private Law and Regional Economic Integration – General Report. Rev. dr. unif. 2003-1/2. 31-49 p. (<http://ulr.oxfordjournals.org/content/8/1-2/31.full.pdf+html>).

they imply further law-making as a form of implementation of international obligations. States are expected to lawmaking activity in the framework of these obligations. The main difference between them – they are different levels of concrete definition of the final products:

- newly created standards or norms (they are similar in the case of harmonization);
- uniform norms (in case of unification) or
- single norms (in the case of integration).

To prove it, take a closer look each of these methods.

## 1. Harmonization

The term „harmonization“ has French roots („Harmoniser“<sup>7</sup>) and in general and in legal aspects refers to the processes of matching and coordination. „Experience with legal harmonisation and the growing interest in legal writings for the relationship between law and economics have produced additional arguments. Of particular relevance are arguments relating to the positive role of legal harmonisation and law reform in reducing transaction costs and facilitating business worldwide“<sup>8</sup>.

In doctrine term of harmonization as a legal method of convergence is the least developed category. „Nonetheless, there is no clear idea of what harmonization means“<sup>9</sup>. Harmonization of law is a process of convergence of national legal systems, reducing and eliminating differences between them, said prof. Getman-Pavlova. This is a very imaginative and generalized definition, which is equally applicable to the integration and unification. The author equalized terms „convergence“ and „harmonization“, as opposed to developers above-mentioned Methodology of harmonization (convergence, unification) legislations of the EurAsEC member states, which have fixed that convergence (at least in EurAsEC) is a method in which the national acts **basically** correspond to the legal acts of the Community; and the harmonization – is a method in which the national acts (in its content, the principles of legal regulation and the intended results in law enforcement) are **similar (homogeneous)** to *acquis communautaire*. Indeed, there is no need to distinguish between these categories with different applicable characteristics – „compliance“ and „similarity“.

---

<sup>7</sup> [http://www.oxforddictionaries.com/definition/american\\_english/harmonize?q=harmoniza tion#harmonize\\_18](http://www.oxforddictionaries.com/definition/american_english/harmonize?q=harmoniza tion#harmonize_18).

<sup>8</sup> José Angelo Estrella Faria. Future Directions of Legal Harmonisation and Law Reform: Stormy Seas or Prosperous Voyage? // Unif. L. Rev. 2009. P. 5. (<http://www.unidroit.org/english/publications/review/articles/2009-1&2-faria-e.pdf>).

<sup>9</sup> E J Lohse. The Meaning of Harmonisation in the Context of European Community Law – a process in need of difinitions // [https://www.academia.edu/3506314/\\_The\\_Meaning\\_of\\_Harmonisation\\_in\\_the\\_Context\\_of\\_European\\_Union\\_Law\\_a\\_Process\\_in\\_Need\\_of\\_Definition](https://www.academia.edu/3506314/_The_Meaning_of_Harmonisation_in_the_Context_of_European_Union_Law_a_Process_in_Need_of_Definition).

In confirmation of our approach to art. 2 of the Treaty on the Eurasian Economic Union, 2014 by harmonizing understood the approximation of legislation of Member States, aimed at establishing a similar (comparable) of normative legal regulation in some areas<sup>10</sup>.

Securing international humanitarian standards (without its national specification) and their subsequent implementation in national law, of course, brings together and harmonises national legal systems, and therefore is an example of harmonization in international law. For example, the universal right to education is harmonizing standards, but not unifying, because it is filled with all the right of the state in different ways. Harmonisation, therefore, indicates the direction of regulation, without any specific content. Many international treaties do not provide for any specific measures or actions in the domestic sphere, have just harmonizing effect – they figuratively universalizing national regulation, making it similar (but not identical – this is the inheritance of the unification and integration). Blur of harmonization allows to strengthen the effect of universalizing international legal obligations. It is even possible to conclude that harmonization is a common feature of international treaties.

We can see an example of harmonizing standards in art. 2 International Covenant on Economic, Social and Cultural Rights, 1966: "Each Party to the present Covenant undertakes to state individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, to achieving progressively the full realization of the rights in the present Covenant by all appropriate means, including particularly the adoption of legislative measures<sup>11</sup>".

Another example – in article 9 of the Convention for the Regulation of Whaling, 1946: „Each Contracting Government shall take appropriate measures to ensure the application of the provisions of this Convention and the punishment for the violation of these provisions in operations carried out by persons or vessels under the jurisdiction of that Contracting Government<sup>12</sup>".

We may agree with Eva Lohse about multi-level nature of harmonization: 1) „harmonisation is a process. It begins with the conscious creation of a concept... by various actors and included in various normative instruments... Harmonisation requires the insertion and adaptation of the concept into the domestic legal orders by different means, as only thereby the important part of the process is triggered... 2) harmonisation has an intended result. This is to create a law as uniform as it is needed for the goals to be achieved. Most importantly, similarity in norms, i.e. texts and rules, is not enough... Harmonisation can thus be defined as a conscious process that has the aim to lead to the insertion of a concept into the national legal orders<sup>13</sup>".

---

<sup>10</sup> [www.eurasiancommission.org/ru/Lists/EECDocs/635375701449140007.pdf](http://www.eurasiancommission.org/ru/Lists/EECDocs/635375701449140007.pdf).

<sup>11</sup> [http://www.un.org/ru/documents/decl\\_conv/conventions/pactecon.shtml](http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml).

<sup>12</sup> <http://www.sevin.ru/bioresrus/law/international/whaling.html>.

<sup>13</sup> E J Lohse...

If we compare visions of harmonization and unification it can be argued that the harmonization is a broader concept, as the convergence of national legal systems can be carried out outside the unification of the law. International law harmonizes national legal systems, and sometimes – when states are showing the desire and the will – International law begins to unify. Prof. Getman-Pavlova argues that the main difference from the harmonization of unification – the absence of international obligations (international treaty form) in the process of harmonization, and this statement is difficult to accept: „The absence of contractual forms determines the specificity of the whole process of harmonization of law in general, which can be either spontaneous or deliberate. The essence of the spontaneous harmonization is that in the process of collaboration and cooperation of States in their legal systems similar, or even identical legal regulation are appeared (reception of Roman law in Europe, Asia, Latin America). The essence of targeted harmonization – the perception of by one state of legal achievements of other state (reception of Belgian, German and French civil code in Russian civil code)”<sup>14</sup>. As we have seen in the presented examples spontaneous harmonization can purchase treaty forms. Targeted harmonization is not a phenomenon of international law, international legal convergence.

States choose this method of international legal convergence – harmonization – in case of need, this way they can achieve great results in the coordination, in problem solving. Unification is the next, more advanced in relation to the harmonization level of cooperation of subjects of international law. The next level, which may characterize as a stage of closer (merger) cooperation of states is integration.

## 2. Unification

The term „unification” is derived from the Latin words *unus* (one) and *facio* (do). In the most general meaning unification is an association, to bring something to uniformity, to a single form or system.

In the aforementioned article 2 of the Treaty on the Eurasian Economic Community 2014 unification meant „the approximation of legislation of Member States, aimed at establishing identical regulatory mechanisms in specific areas defined by this Agreement”. The Methodology of harmonization (convergence, unification) of the laws of the Member States of the EurAsEC harmonization of national legislation – a „harmonization of national regulations in this ratio with the legal acts of the Community, in which the rules of national acts identical to (coincide) of title norms and the provisions of legal acts of the Community”. Indeed, it is a measure of the identity (essential features) for the characterization of international legal unification.

---

<sup>14</sup> Mezhdunarodnoe chastnoe pravo. Ed. by I.V. Getman-Pavlova. Urait. 2013, p. 164.

In doctrine there is still not yet have formed a consensus terms about the concept of unification, but there are no differences in the definition of the essence of this legal phenomenon<sup>15</sup>.

For example, prof. Abdullin meant by legal unification "process to develop uniformed (harmonized) standards in international private law. It is already the result of a unified legal norms"<sup>16</sup>.

Prof. Makovsky assigned unification of much wider scope of distribution. He developed not only the definition of unification, but also classify the process. According to him, unification is the creation of the right of different countries on the content of the uniform rules by using international legal means and the influence of different legal systems on each other.

According to prof. Averkov, unification is the creation of new uniform rules of law that provides conflict-regulation of domestic relations.

An example of a uniform approach to the regulation of certain relations is the art. 76 Convention on the Law of the Sea, 1982: "The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea, where the outer edge of the continental margin does not extend up to that distance". The agreement contains specific and already standardized model of how continental shelf should be determine by the national law.

There are different instruments of legal unification. The choice of a way (method) of unification is reflected in the form of an international legal instrument:

- **a single unifying act**, for example, the Convention 1998 on International Financial Leasing and International Promissory and bills of exchange, the Vienna Convention on Contracts for the International Sale of Goods, 1980;

- **mixed act** - containing unified rules and unifying (model) rules, eg., the European Framework Convention on Trans-frontier Cooperation between Territorial Communities or Authorities (Madrid, 1980), Convention relating to a Uniform Law on the International purchase and sale of goods 1964.

Secretariat of UNCITRAL highlighted next methods of unification in law: 1) uniform or 'model' national laws; 2) international conventions; 3) practice unification<sup>17</sup>.

Summarizing and supplementing approaches to the definition of unification it is possible to give to it the following definition: legal unification - it is the law-making process aimed at the creation of uniform rules of law not only in order

---

<sup>15</sup> R.H. Graveson...

<sup>16</sup> Abdullin A. K voprosu ob unifikacii v mezhdunarodnom chastnom prave // Pravovedenie. 1998. № 1.

<sup>17</sup> <https://www.uncitral.org/pdf/english/yearbooks/yb-1968-70-e/vol1-p13-17-e.pdf>.

to avoid contradictions and differences between national legal systems or between international legal norms, but also to the creation of new standards, which complete the existing gaps in the regulation of certain special issues.

### 3. Integration

The term „integration“ has Latin roots also: *integrum* – whole; *integratio* – restoration. In a general sense it means to unite, to get union structures – political, economic, government and public at different scales – regional, global, governmental. Integration is a condition of connectedness of differentiated parts into a whole one, as well as the process leading to such a state. In philosophical aspect integration is a process or action with integrity as a result; it is also an association, union, unity of recovery.

Integration is a multi-faceted term, and is also used to describe the convergence of the processes taking place along with the process of divergence<sup>18</sup>. Integration has a social nature, it is mental product of human life. Analyzing integration and its problems in international law related to understanding the knowledge of integration processes – their causes, forms, objectives, and aimed at, to reveal to them the general trends related to the reasons that determine the facts, the main features of this phenomenon. With regard to the integration of international law is a higher level of cooperation between States and other subjects, when the participants of the process of alienating some of their sovereignty in favor of supranational bodies.

International legal integration is a form of international legal cooperation which means interaction process between two or more entities, which excludes the use of armed force, in which the joint search for realization of common interests are dominated. „Integration is both a process and a state that has a tendency to replace the fragmented international relations, composed of independent units with new, more or less wide associations, endowed with a minimum of decision-making powers, or in one or more specific areas, or in all the areas that fall within the competence basic units. At the level of individual consciousness integration designed to generate loyalty and commitment to the new association and at the structural level, the participation of all its support and development<sup>19</sup>“.

International legal integration is a process of convergence of legal systems with help of special international legal methods to achieve unity of the legal regulation related to the activities of law-making subjects in international law, extending the universal and regional levels, with specific legal methods in the different forms. At the same time integration is a process of strengthening the interdependence of states, it is a higher degree of consistency of the wills of states.

---

<sup>18</sup> Paradoxes of European Legal Integration / edited by Hanne Petersen... Ashgate. 2008.

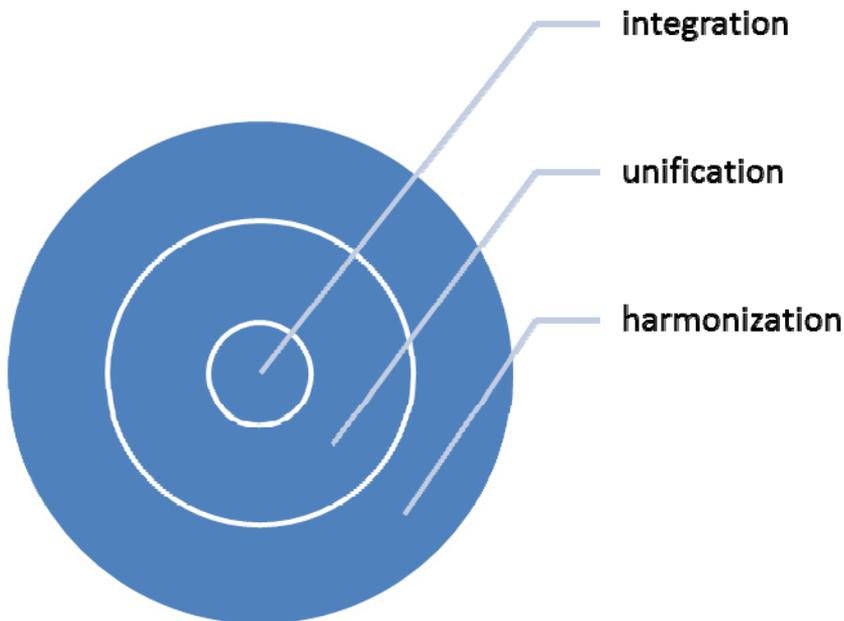
<sup>19</sup> *Gonidec P.-F., Charvin R.* Relations Internationales. Paris. 1984, p. 435.

In its pure form the international legal integration is a „child“ of special international organizations, departed from the methods of coordination in the direction of subordination. These are organizations with a special hybrid legal nature. They are not international organizations in classical aspects, but not federal states yet. We are talking about international organizations with supranational legal nature. Members of such organizations demonstrate the features of identity at all levels: legal, cultural, religious and other. This identity is pushing them to consolidate unity on all levels, including at the level of legal controls. So there is integration law. To date, the European Union's experience is an classical example of integration as a method of legal convergence. All decisions and directives adopted by the EU institutions, precedence and automatically integrated into the legal systems of EU member states (and not even the Member States in the case of the *Schengen acquis*).

The beginnings of the integration of law we may see in the Treaty on the Eurasian Economic Union, 2014. Especially in those parts of it which speak of a unified policy of the Member States (Article 2), the common customs (Art. 25) and so on. Integration is still an active law-making process (stemming primarily from the competence of the bodies of international organizations), but the signs of it at the level of major organs of the Eurasian Economic Union we couldn't find. For example, Art. 13 of the Treaty on the decisions and orders of the Supreme Council, did not contain any information about the nature, the legal force of acts of this body. Therefore it is difficult to answer positively to the question whether the integrating effect of the right of the Union (except, perhaps, a single customs law).

Scholarship provides for very divergent analyses of how convergence impacts on the existing forms of legal regulations and proposes different strategies for responding to the diagnosed challenges. We may agree with prof. Bogdandy that the multiplicity and divergence of opinions should, given the diffused nature of the phenomenon and the dynamics of its development, be welcome: it protects against viewing the problem too narrowly and rashly opting for a strategy that might do more harm than good.

Harmonization, unification and integration of legal systems are the various stages of extended over time convergence process. We can visualize it next way:



The result of this process may seem fantastic – the emergence of a common legal space of planetary scale on par with the emergence of a single world state and the uniform enforcement of his reign. Maybe this would require more than one hundred years, but with proper legal and stable development of all states should come to this. In this process, international law has played a leading role as the necessary legal denominator for the legal systems of the states. The first step towards a single legal space (at least in a certain area or for certain states) are the processes of harmonization; followed by legal unification, which is much closer to the designated purpose; then, to prepare for the creation of unions and reduce the amount of sovereignty, the era of integration.

International law with its special methods is at the forefront of legal convergence processes. Convergence as a legal category is closely connected with the process of enlargement of the subject of international law and of the circle of relationships that this law regulates. Expansion of the subject is developing at the moment in two ways:

- 1) first way is characterized by the regulation of the regulatory system of new areas of intergovernmental cooperation;
- 2) content of the second way is a deep penetration of the regulatory impact of international legal norms in the sphere of interstate relations.

Science highlights the many ways of interaction and influence of international law on the legal systems of a particular states: transformation, reference, reception, implementation, adaptation and legitimation.

In the light of ideas given above, it would seem useful to have a comprehensive and expert survey on international legal convergence in general. Such a survey would: 1) monitor and review the works in the field of legal convergence and its methods in national and international levels; 2) analyze the methods and approaches suitable for harmonization, unification or integration, including the question whether what method are more suitable for concrete relations on regional, interregional and worldwide scales; 3) consider the important role of international organizations in this field, especially United Nations.