

# FEATURES OF TYPOLOGIZATION AND IDENTIFICATION OF ASIAN INTERSTATE LEGAL SYSTEMS

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**Annotation.** Typologization and identification of interstate legal systems, as well as research into the state of their functioning and development trends is important not only in the context of the development of interstate legal systems themselves, but also of national legal systems for which they form legal standards. The article analyzes Asian interstate legal systems using an identification code (a set of the most general legal features that determine the features of the institutional, functional and normative parts of the legal system) and an indicator of functioning and development (a set of relevant indicators: typical, permissible deviations, progressive and regressive state). The results obtained have demonstrated the current state of their functioning and development and made it possible to formulate conclusions about the trends in their development in the future.

**Key words:** legal system, identification code, indicator of functioning and development of the legal system, typologization, identification, Asian interstate legal systems.

## 1. Introduction.

The need for the transformation of modern interstate legal systems caused by global challenges requires their typologization, identification, study of the state of their functioning and development trends. This is important not only in the context of the development of interstate legal systems themselves, but also of national legal systems for which they form legal standards.

To ensure objectivity in the research process, a sociological methodology (document analysis method) was used to process a number of official documents, in particular such sources of law as: the Charter of the Organization of Petroleum Exporting Countries, the Bangkok Declaration, the Treaty on Amity and Cooperation in Southeast Asia, the Charter of the Association of Southeast Asian Nations, the ASEAN Declaration on Human Rights, the Treaty on the Establishment of the BRICS Contingent Reserves Agreement, etc.

Such analysis created an empirical basis for the application of general theoretical constructs «identification code» (a set of the most general legal features that determine the features of the institutional, functional and normative parts of the legal system) and «indicator of the functioning and development of the legal system» (a system of corresponding indicators: typical, permissible deviations, progressive and regressive state). Such indicators are important «markers» of the institutional, functional and normative parts of the legal system: the goal, subjects of law (relevant institutions) and their powers; legal activity (law-making, law-enforcement and law-interpretation) of these subjects, as well as its results – relevant legal acts or other official documents.

These two cognitive models made it possible to analyze a number of Asian interstate legal systems (or their institutions), identify the formal and real state of their development, and also draw conclusions about possible changes in the legal form in some of them.

## 2. Analysis of scientific publications.

It must be stated that in the comparative legal literature there are practically no works devoted to the study of interstate legal systems. The most significant scientific achievement is the research of

Professor Luts. L. In view of this, as well as taking into account geopolitical changes that require updating doctrinal approaches, the article is built mostly on a sociological analysis of documents (as evidenced by the list of sources). This made it possible to offer completely new conclusions and generalizations for modern science, oriented to modern geopolitical realities.

### **3. The aim of the work.**

The aim of the article is to study (using an identification code and an indicator of functioning and development) Asian interstate legal systems; to obtain results that would demonstrate the current state of their functioning and development and allow us to formulate conclusions about the trends in their development in the future.

### **4. Review and discussion.**

Interstate legal systems operate in different regions of the world. In 1960, oil-producing countries (Iran, Iraq, Kuwait, Saudi Arabia, Venezuela) created the Organization of the Petroleum Exporting Countries (OPEC) to stabilize oil prices. Currently, OPEC members are: Algeria, Venezuela, Gabon, Equatorial Guinea, Iran, Iraq, Republic of the Congo, Kuwait, Libya, Nigeria, United Arab Emirates, Saudi Arabia. The OPEC Statute was approved in 1961, and was completely revised in 1965 [1].

According to Article 3 of the OPEC Statute, the organization is guided by the principle of sovereign equality of its member states, which must fulfill in good faith the obligations assumed by them in accordance with this Statute. The main objectives of OPEC are to coordinate and unify the policies of the member states regarding oil; to create effective means of protecting the interests of the member states; to ensure price stability on world markets and to prevent price fluctuations; to ensure the stability of the incomes of the member states and the fair distribution of income from investments in the oil industry; to protect the environment [1].

The institutional structure of OPEC is formed by: the Conference, the Board of Governors, and the Secretariat. The Conference is the highest body that meets twice a year. It determines the main directions of OPEC policy, the principles of its practical implementation, adopts the budget; issues decisions and resolutions. After ratification by the relevant bodies of the member states, the decisions become binding. The Board of Governors is the executive body that implements the decisions of the Conference, appoints the Deputy Secretary, and heads of departments. The Secretariat (currently working) includes: Research Department, Infrastructure Department, OPEC News Agency, Economic Commission. The Economic Commission develops measures to ensure the stability of oil markets [1].

In 1968, the Declaration on Petroleum Policy was adopted, which provides for the transition to direct exploitation of its own oil resources: extraction, production, marketing, investment management. In 1976, OPEC created its International Development Fund to improve cooperation between OPEC members and other developing countries.

OPEC's activities in the 1990s were characterized by cooperation with other organizations and oil-producing countries that are not OPEC members, and in the early 21st century, by maintaining oil prices. Currently, OPEC is an economic organization that cooperates with other oil-exporting countries.

In Asia, integration associations are also being formed that compete with the free trade zone of the European Union and the North American Union. Thus, in 1967, the Association of Southeast Asian Nations (ASEAN) was established in Bangkok at a summit of ministers of affairs of Indonesia, Malaysia, Singapore, Thailand, and the Philippines. As stated in the Bangkok Declaration, the Association should form a framework mechanism for regional cooperation within the following tasks: stimulating economic and cultural development and social progress; strengthening peace and security in Southeast Asia; developing cooperation and mutual assistance in the economic, social, cultural, technical, and administrative spheres [2].

ASEAN declared the territories of its member states a zone of peace and neutrality, and later – free from nuclear weapons; the official ideology is anti-communism. ASEAN now includes: the Philippines, Malaysia, Indonesia, Singapore, Thailand, Brunei, Vietnam, Laos, Myanmar and Cambodia. The main objectives of this international organization are: to accelerate economic development and social progress in the member states, to protect peace and stability in the region, and to provide assistance to the member states in the peaceful resolution of disputes. The main areas of activity to achieve these goals are: active cooperation; mutual assistance in training and research in education and vocational training; effective use of agriculture and industrial potential; expansion and improvement of the transport system; improvement of the living standards of the population of the member states [2].

The Treaty of Amity and Cooperation in Southeast Asia, signed at the first ASEAN summit in 1976, enshrines the following principles of its activities: mutual respect for the independence, sovereignty, equality, territorial integrity and identity of all nations; the right of nations to exist free from external interference; non-interference in the internal affairs of member states; peaceful settlement of disputes; renunciation of threats or use of force; effective cooperation [3]. At the Manila Summit in 1999, a decision was made to create a «triple» to facilitate the settlement of internal political problems of member states. In addition to the above, important ASEAN documents are: Declaration on a Zone of Peace, Freedom and Neutrality in Southeast Asia (1971) [4]; Treaty on the Establishment of a Nuclear-Weapon-Free Zone in Southeast Asia (1995) [5]; Declaration on Joint Action to Counter Terrorism (2001) [6]; ASEAN Charter (2007) [7].

The institutional structure of ASEAN is formed by: Summit of Heads of State and Government – the highest body (meets every three years); Meeting of Foreign Ministers – the central governing body (meets annually); Standing Commission – the executive body, consisting of the Minister of Foreign Affairs of the chairing state and ambassadors of other member states (functions between conferences); special committees – social development, finance, science and technology, etc.; Secretary-General, who heads the Secretariat, which includes: bureaus of economic cooperation of member states; Asian free trade areas; communities in the field of information, culture, ecology, etc.; Partnership and Dialogue Communities (Australia, EU, India, Canada, China, New Zealand, Republic of Korea, Russian Federation, United States of America, Japan, Democratic People's Republic of Korea, Papua New Guinea) [7].

Committees of heads of diplomatic missions in third countries (Brussels, London, Paris, Ottawa, etc.) have been established to develop international relations; special institutions also operate, such as the Energy Center; Tourist Information Center; Regional Center for the Conservation of Biological Diversity, etc. An important role is played by the Meeting of Senior Officials, which is subordinate to the Meeting of Ministers of Foreign Affairs and is responsible for implementing political cooperation.

The ASEAN system has established the Chamber of Commerce and Industry; Business Forum; Ports Association; Institute for Strategic and International Studies; Tourism Association. ASEAN cooperates with 53 non-governmental international organizations. The Joint Consultative Committee has been operating since 1987.

It is worth emphasizing, however, that the analysis of ASEAN's economic activities indicates insignificant achievements over the 25 years of the organization's operation. This is hindered, in particular, by a number of legal factors, such as: decision-making by consensus (consensus forms), rather than by majority vote; decisions are not binding and are implemented by member states as far as possible; and centralized ASEAN structures are not actively being formed.

An important achievement of ASEAN was the creation in 1992 of a free trade area (AFTA) – a form of economic integration of Asian countries. The agreement on the establishment of AFTA entered into force in 1993. This is a model of a classic free trade area and customs union. An important step towards the creation of a free trade area was the ASEAN Investment Area Agreement (1998), which provided for the expansion of investment decisions not only for member states, but also for third countries. In 2001, the issue of a single regional currency (ASEAN) was activated. The free trade area began to operate in 2002, and the Ministries of Finance of the participating states began to unify national legislation on stock markets. An important issue for ASEAN was security. In 1967, the Summit of Heads of State and Government of the participating states adopted the following political

documents: the ASEAN Declaration [8] and the already mentioned Treaty of Amity and Cooperation in Southeast Asia [3]. This secured the status of a political union for ASEAN. Military cooperation between the participating states is carried out in the form of bilateral or trilateral agreements, and in 1993 the ASEAN Regional Forum on Security was established, which united 22 states, including: the United States of America, China, Japan, India, Canada, the Russian Federation, etc. The main goal of this Forum was declared to be to contribute to strengthening international peace and security, ensuring stability in the region through preventive diplomacy, reparations, and the introduction of methods for peaceful conflict resolution.

Among the important prerequisites for the creation of a free trade area (economic liberalization, attracting foreign investment) was participation in the activities of the Asia-Pacific Economic Cooperation (APEC), which was founded in 1989 to promote economic cooperation and free trade among the countries of the Asia-Pacific region. APEC includes: Australia, Brunei, Indonesia, Canada, Malaysia, New Zealand, the Republic of Korea, Singapore, the United States of America, Thailand, the Philippines, Japan, Hong Kong, the People's Republic of China, Taiwan, Mexico, Papua New Guinea, Chile, Vietnam, Peru, and the Russian Federation. The main principles of the organization's activities are: open dialogue and consensus on key issues; equal partnership and economic cooperation. The institutional structure is formed by: summits at the highest level; ministerial summits; summits of senior officials; group of prominent figures; Pacific Business Forum; Trade and Investment Committee; Budget and Administrative Committee; Economic Committee; Working Groups; Secretariat.

Among the regional organizations, it is worth mentioning the Association of South Asian Associations for Regional Cooperation (SAARC) – an economic and political organization of the states of South Asia (Bangladesh, Bhutan, Maldives, Nepal, Pakistan, India, Sri Lanka; Afghanistan joined in 2007), established in 1985 to ensure socio-economic cooperation.

An international organization, the members of which are seven Asian and three European states, is the Economic Cooperation Organization (ECO), established in 1985. It includes Pakistan, Turkey, Iran, and since 1992, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. It is the successor to the Organization for Regional Cooperation and Development (ROCD), established to deepen economic, technical, and cultural cooperation between member states. The activities of the Economic Cooperation Organization are carried out through a directorate under the leadership of the Secretary-General and his deputies and are aimed at developing programs in a number of areas, such as: trade, investment, transport, telecommunications, agriculture, industry, tourism, energy, mining, and environmental protection. Considerable attention is paid to projects in economic research and statistics. As for the regional system for the protection of human rights, it has not yet been formed, but some indicators of the Asian approach in this area can be identified in the Asian-Pacific Declaration on Human and Peoples' Rights of 1988. About 200 lawyers from 22 states of the region participated in the conference at which the Declaration was adopted. The Declaration provides for the following rights: the right to life (no one should encroach on the highest gift, all individuals, peoples and states are obliged to respect the right of everyone to life, regardless of race, sex, religion, nationality, level of development); the right to peace and security in their collective, state, on the Earth as a whole (preservation of peace and security at all these levels is the concern, duty and obligation of every individual, every people, every state); the right to a decent existence – material, spiritual, physical – regardless of race, nationality, religion, sex, level of development; the right to a favorable living environment (preservation of the proper state of the environment on Earth is the duty and obligation of every individual, people and state); the right to development (every individual and every people can participate in such economic, social, cultural and political development that ensures all human rights and fundamental freedoms, and has the right to contribute to such development and enjoy its benefits); the right to be free from violence and fear [9, p. 139].

The ASEAN Charter also refers to the protection of human rights and fundamental freedoms, with due regard for the rights and responsibilities of ASEAN member states (Article 1), and Article 2 includes respect for fundamental freedoms, the protection of human rights and the promotion of social justice as one of its principles [7]. To implement these provisions, Article 14 of the Charter provides for the establishment of an ASEAN human rights body, which must act in accordance with the powers defined by the ASEAN Foreign Ministers' Meeting [9, p. 140].

The Regulation on the ASEAN Intergovernmental Commission on Human Rights was adopted in 2009. According to it, the main functions of the Commission include: developing a strategy for the promotion and protection of human rights and fundamental freedoms; raising public awareness of human rights among the peoples of ASEAN countries through education, research and dissemination of information; developing common approaches and positions on human rights issues of interest to ASEAN; preparation of thematic studies on human rights in ASEAN countries, etc. [9, p. 141]. At the same time, the Regulation does not establish a mechanism for considering private complaints about human rights violations; the Commission acts as an advisory body; consensus on decision-making creates the prerequisites for blocking inconvenient decisions.

In 2012, the ASEAN Declaration on Human Rights was adopted, Article 10 of which states that the participating states reaffirm all civil and political rights in the Universal Declaration of Human Rights [10]. This Declaration enshrines: the right to life (Article 11); the right to personal liberty and security (Article 12); the prohibition of slavery and trafficking in human organs (Article 13); the prohibition of torture, cruel, inhuman or degrading treatment or punishment (Article 14); the right to freedom of movement and residence (Article 15); the right to asylum (Article 16); the right to protection of property (Article 17); the right to citizenship (Article 18); the right to non-interference in private and family life (Article 21); the right to freedom of religion and thought (Article 22); the right to freedom of peaceful assembly (Article 24); the right to a safe environment and health care (Article 28); the right to social insurance (Article 30), etc. [10]. However, it is worth paying attention to the lack of a mechanism for monitoring the protection of human rights, in particular regarding the responsibility of the violating states, and therefore we can speak of the declarative nature of this document [9, p. 142].

The legal literature has expressed a number of considerations regarding regional Asian international organizations, in particular: integration processes are taking place slowly; The factor that contributed to the creation of these organizations was that the states of the region were unable to resolve the issues of cross-border interaction independently, and the scale of security problems did not allow them to be resolved, which activated the creation of regional international organizations. Another factor that activated regional cooperation was the COVID-19 pandemic. It can be argued that Asian states now prefer international universal organizations, in particular the UN, to resolve regional issues [11]. In the context of Asian international organizations, one can conditionally mention BRICS (Brazil, Russian, India, China, South Africa –BRICS). Although it is not a regional organization, it includes a significant number of member states of the Asian region. BRICS was created in 2009 as an organization to strengthen investment opportunities, but it has turned into a geopolitical bloc (as a geopolitical rival to the G7 bloc). Currently, BRICS includes: Brazil, Russian Federation, India, China, South Africa, Egypt, Ethiopia, Iran, United Arab Emirates. Algeria, Bangladesh, Belarus, Bolivia, Cuba, Kazakhstan, Kuwait, Palestine, Senegal, Thailand, Venezuela, Vietnam, Nigeria have also submitted applications for participation. Potential candidates include Afghanistan, Angola, Comoros, Democratic Republic of Congo, Gabon, Guinea-Bissau, Libya, Myanmar, Nicaragua, South Sudan, Sudan, Turkey, Tunisia, Syria, Uganda, Zimbabwe. The legal and financial basis of BRICS is the Treaty Establishing the BRICS Contingent Reserves Agreement of 2014 [12], and the main financial organization is the BRICS Development Bank (NDB).

## 5. Conclusions.

A study of Asian intergovernmental organizations, such as the Organization of the Petroleum Exporting Countries (OPEC), the Association of Southeast Asian Nations (ASEAN), the Association of South Asian Associations for Regional Cooperation (SAARC), and the Asia-Pacific Economic Cooperation (APEC), gives grounds to conclude that this is the weakest group of intergovernmental legal systems from the standpoint of their compliance with typical indicators. Thus, OPEC should ensure coordination and unification of the activities of member states in the oil industry. ASEAN aimed to form a framework mechanism for regional cooperation of member states in various spheres of public life. At the same time, security issues were also raised at later stages of development. It must be noted that the analyzed regional international organizations are somewhat decorative. And the active participation of the Russian Federation in them may indicate its intentions to strengthen its political influence in the Asian region.



As for the mechanism for protecting human rights, it is perhaps the least effective of all the international organizations analyzed. And although the ASEAN Charter contains provisions on human rights, it also emphasizes that they are implemented taking into account the rights and obligations of ASEAN member states.

Despite the adoption of the Regulations on the Intergovernmental Commission on Human Rights, the Asia-Pacific Declaration on Human and Peoples' Rights, and the ASEAN Declaration on Human Rights, there is currently no procedure for considering private complaints about human rights violations, there is a consensus on decision-making, which can block «inconvenient» decisions. Researchers note that these documents are declarative in nature.

At the same time, the legal literature suggests that the integration procedure within Asian international organizations is taking place rather slowly, and Asian international organizations are still trying to delegate the resolution of a number of issues to universal international organizations, in particular the UN.

So, it can be stated that this group of legal systems does not always meet even typical indicators. And although their goals and principles of functioning are declared, an institutional structure is created, constituent documents are adopted, in reality a number of issues have not yet been resolved. Among the permissible deviations, some indicators of legal unification are traced (bringing national sources of law into line with the requirements of international organizations). A regressive state is largely recorded, in particular: replacement of legal means with other social (often political) ones; the development of international organizations does not always correspond to real social factors; indicators of internal organization and legal activity are not met; the legal means used do not always help achieve the goal of regional international organizations – regional law and order. And the nature of the analyzed international organizations does not quite meet the requirements of a typical regional international organization.

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