



# Regional Integration and the Role of International Court

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-Experience of the European Court  
of Justice -

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# I. Introduction

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- - Regional Integration in East Asia –
  - Discussion about the East Asian Community
  - Network of bilateral free trade agreements (FTAs)
  - Regional Integration and Type of Judicial Organs



## II. Unique features of regionalism in Europe

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- 1. Creation of ‘Sui Generis’ Legal Order
  - The EC established its own legal order (EC/EU law), supranational law
  - Not national laws, Not international law
  - Implementation of the EC law by national governments



## II. Unique features of regionalism in Europe

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- 2. 'Private Led' Legal Order
  - The task of private parties is very important
  - Two basic principles developed by judgments of the ECJ



## II. Unique features of regionalism in Europe

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- 2. 'Private Led' Legal Order
  - (1) Supremacy of Community Law
    - Costa v. ENEL in 1964
  - (2) Direct Effect of Community Law
    - Van Gend en Loos in 1963



## II. Unique features of regionalism in Europe

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- 2. ‘Private Led’ Legal Order
- (3) Private party as a guardian of the Community law
  - Private parties bring lawsuits before national courts to protect their Community law rights
  - Alternative legal principles developed by the ECJ, ‘indirect effect’, ‘state liability’



## II. Unique features of regionalism in Europe

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- 3. European Integration and the role of law
  - Due to lawsuits by private parties, national barriers hindering the free movement of goods, services, people and capital have been gradually eliminated



## III. Contribution of the ECJ to the development of regional integration

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- 1. Incorporation of the court of justice into the regional integration
  - European Court of Justice (ECJ) and the Court of First Instance (CFI)
  - Wide range of jurisdictions for ‘direct actions’
  - Jurisdiction for ‘preliminary ruling’ procedure
  - Compulsory jurisdiction





## III. Contribution of the ECJ to the development of regional integration

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- 2. Judicial activism of the ECJ
  - The purposive or teleological method of interpretation
  - The ECJ's conclusions were contrary to the intentions of Member States



## III. Contribution of the ECJ to the development of regional integration

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- 3. General Acceptance of Judicial Activism
  - Member States have not bitterly attacked the ECJ by reason of its neglect of their intentions



## III. Contribution of the ECJ to the development of regional integration

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- 4. Factors supporting the judicial activism of the ECJ
  - (1) Supranational character of the Community
  - (2) Conflict between the Member States
  - (3) Self-restraint attitude of the ECJ
  - (4) Persuasiveness of reasoning



### III. Contribution of the ECJ to the development of regional integration

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- 5. Legitimatizing the judicial activism of the ECJ
  - Division of powers produces a need to higher-law judicial review courts to solve a conflict that arises out of that division
  - “Junk-yard dog” theory (the junk-yard dog may bite the junkyard operator as well as the thief in the night)

# IV. Regional Integration and judicial organs



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- 1. Necessity of effective dispute settlement mechanism
  - Effective mechanism of dispute settlement is considered as a necessary tool to achieve the goal of regional integration

# IV. Regional Integration and judicial organs



- 2. Dispute settlement mechanism and judicial organs
  - What type of mechanism is optimal for respective regional integration?
- (1) WTO type ad-hoc panel and EU type permanent court
- (2) Recent argument for a permanent organ
- (3) Permanent court or Ad-hoc panel



# IV. Regional Integration and judicial organs

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- 3. Factors being favorable to the court
  - Some factors which seem favorable to the adoption of a permanent court mechanism
- (1) Sovereignty and the court
  - The transfer of sovereignty tend to lead to a permanent court
- (2) Multilateral regional integration
  - Within multilateral integration, the court will probably have more discretion



# V. Dispute Settlement Mechanism in East Asia

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- 1. Legalization in East Asia
  - WTO members in East Asia have already prepared for their acceptance of the WTO type dispute settlement
- 2. Protecting national sovereignty
  - Very much cautious of transferring their sovereign powers





# V. Dispute Settlement Mechanism in East Asia

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- 3. Development toward multilateral FTA
  - The FTA network may contain momentum to encourage itself toward a multilateral FTA
  
- 4. Permanent court in East Asian Regional Integration
  - The system of EFTA Court is acceptable by countries in the East Asia



## VI. Concluding remark

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- The ECJ is not always a model for regional integration in East Asia
- Consensus on the necessity of effective dispute settlement mechanism for the regional integration
- The impact from the conclusion of many bilateral FTAs in this region
- Comparison EU and WTO