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# The Emerging Eurasian Union: Problems and Perspectives

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## SUMMARY

*This article examines the legal aspects of the regional integration processes in Eurasia. It contends that these processes are driven by both political and economic factors, which in particular include the desire of a number of post-Soviet countries to consolidate regional peace and security and to create a larger and more effective economic system, thus increasing their power and influence on the international scene. It is also argued that the formation of a united Eurasia is conducted in the framework of two separate but closely connected – with almost identical membership – international organisations: the Collective Security Treaty Organisation (CSTO) and the Eurasian Economic Community (EurAsEC), which is currently transforming into the Eurasian Economic Union. Therefore, the article provides the background of the CSTO and the EurAsEC and explains the factors contributing to their consolidation. In addition, it examines the institutional framework of these alliances and expounds their purposes, principles and major areas of co-operation. Finally, the article contains conclusive remarks attempting to illustrate problems and to assess perspectives of integration processes in Eurasia.*

**Keywords:** Commonwealth of Independent States (CIS), Collective Security Treaty Organisation (CSTO), Eurasian Economic Community (EurAsEC), Eurasian Economic Union (EEU), Russia, Kazakhstan, Eurasia, regional integration, collective security

### 1. Introduction

One of the most spectacular phenomena in modern international relations is the rise of regionalisation. Being in many regards a reflection of, and a response to, globalisation, the drive towards regionalisation, i.e. the process of forming regional integration groupings, continues around the globe.<sup>1</sup> The major purpose of these groupings is to secure the political and

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<sup>1</sup> As of 1 January 2014, 583 regional trade agreements (RTAs, also called regional integration agreements) have been notified to the WTO and of these, 377 agreements were in force. See WTO, Regional Trade Agreements,

economic interests of their Member States. Another major characteristic of such groupings is that they are created within certain regions, i.e. cohesive areas of the world (or subsystems of the international system), possessing a certain degree of unity among their constitutive parts and their own identity in international relations. Also, their creation reflects the perpetual transformation of the international system, in which these groupings (as well as the regions) are constructed and deconstructed through interactions between actors of the international system.<sup>2</sup>

At present, one of the major regions under (re-)construction is Eurasia, i.e. the land mass that may potentially encompass a substantial number of the former republics of the Union of Soviet Socialist Republics (USSR).<sup>3</sup> Fully in line with contemporary trends in international relations, the current situation in this area is characterised by the development of the regional integration processes with the purpose of promoting political stability and stimulating economic growth. This article aims at providing an overview of the development of those processes, demonstrating their problems and illustrating their perspectives.

## 2. Background of Integration Processes in Eurasia (Commonwealth of Independent States)

The expansion of regionalisation processes in recent decades coincided with one of the most crucial geopolitical events of the 20<sup>th</sup> century, the collapse of the USSR. Despite legal separa-

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available at <[http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm)>. All internet references in this article were last visited on 1 June 2014.

<sup>2</sup> See e.g. Luk van Langenhove, *Building Regions: the Regionalisation of the World Order* (Ashgate Publishing, Farnham, Burlington, 2011).

<sup>3</sup> The idea of Eurasia originates from treatises of Russian theorists of XIX and XX centuries (most notably Nikolai Trubetzkoy, Pyotr Savitsky and Lev Gumilyov), who argued that it is a region of its own being different from any other European and Asiatic civilisations. In the modern time, the proposal of an Eurasian Union, as a voluntary association of the peoples of Europe and Asia, was first made by the great Russian scientist and humanist Andrei Sakharov on the eve of the collapse of the Soviet Union in 1989. In March 1994, the President of Kazakhstan Nursultan Nazarbayev revived this initiative and put forward a draft of the creation of the Eurasian Union as “a form of the integration of sovereign states aimed at a strengthening of stability and security and socio-economic modernization in the post-Soviet space”. See Nursultan Nazarbayev, *Evrasiiskii Soiuz Idei, Praktika, Perspektivy. 1994-1997* (FSRSPN, Moscow, 1997), 44. The Eurasian Union was envisioned as an effective confederation of the integration-willing states, which would ensure conducting close co-operation in security matters and achieving integration of national economies.

tion, the successor states of the USSR shared many common problems, as the breakdown of the socialist system resulted in numerous political challenges and unprecedented, in modern history, economic decline.<sup>4</sup> As a result, they were required to find solutions for creating a new peace and security architecture in the post-Soviet area as well as for synchronising the transition to a market economy and upholding the remaining trade patterns. Therefore, the Minsk Agreement, which was concluded by Belarus, Russia and Ukraine on 8 December 1991 and terminated the existence of the USSR, proclaimed also the establishment of the Commonwealth of Independent States (CIS),<sup>5</sup> which on 21 December 1991 was also joined by Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan.<sup>6</sup>

However, the functioning of the CIS was from the very beginning, characterized by a fundamental disagreement between its members over the purposes of their organisation, which can be confirmed by examining the wording of the Minsk Agreement with respect to the following two (in our mind) major objectives of the CIS. First, the CIS members agreed to “preserve and maintain a common military-strategic space under united command, including unified control over nuclear weapons” (which was evidently the will of Russia); however, the process of the creation of such a space was to be governed by a special agreement (a condition that reflected the interests of Ukraine in particular).<sup>7</sup> Second, the CIS members committed themselves to co-operate in “forming and developing a common economic space (CES), common European and Eurasian markets”.<sup>8</sup> With respect to this objective there are grounds to believe that the agreement’s drafters (knowing the experience of European integration) were fully aware of the meaning of the term “a common economic space” (in other words a

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<sup>4</sup> See e.g. Pradeep Mitra & Marcelo Selowsky, *Transition. The First Ten Years: Analysis and Lessons for Eastern Europe and the Former Soviet Union* (World Bank, Washington, DC, 2002), 5.

<sup>5</sup> See *Soglashenie o sozdanii Sodrzhestva Nezavisimykh Gosudarstv* (8 December 1991), Preamble and Art. 1, (hereinafter the Agreement establishing the CIS).

<sup>6</sup> See Protocol to the Agreement establishing the CIS of 21 December 1991. Thus, at present the CIS consists of 11 abovementioned members. When another post-Soviet country, Georgia, joined the CIS in December 1993, all of the former republics of the USSR, except the Baltic States, had become members of the CIS. However, following the Russian-Georgian conflict in August 2008 Georgia terminated its membership in the CIS. On the emergence of the CIS, see e.g. Theodor Schweisfurth, “Vom Einheitsstaat (UdSSR) zum Staatenbund (GUS): Juristische Stationen eines Staatszerfalls und einer Staatenbundentstehung”, 52(3/4) *Heidelberg Journal of International Law* (1992), 541-702; Sergei Voitovich, “The Commonwealth of Independent States: An Emerging Institutional Model”, 4(3) *European Journal of International Law* (1993), 403-429.

<sup>7</sup> See Agreement establishing the CIS (8 December 1991), Art. 6.

<sup>8</sup> *Ibid.*, Art. 7.

common market) as a space involving the establishment of an effective customs union and the free movement of the so-called factors of production such as goods, labor, services and capital. Realizing the importance of integration processes, the agreement's parties could not agree however on the quintessence of the envisioned common market. While Russia wanted to create an independent CES in the framework of a strong (Eurasian) confederative union, in particular Ukraine charted a course towards being a part of the (at that time) materialising European Single Market. The deep discrepancy in interests of these countries could not be overcome, which was the major reason for formulating a controversial but (provisionally) mutually acceptable aim of creating "common European and Eurasian markets".

As can be clearly seen, Russia desired the CIS to become a strong decision-making entity and attempted to (re)integrate the post-Soviet area across both political-military and economic lines. Nevertheless, Russian efforts to transform the CIS into a single effective bloc along the lines of the USSR met with limited success. The initial plans to create "joint armed forces" and to maintain a single currency ended in failure as all post-Soviet countries (including Russia) considered the creation of their own armed forces and the introduction of national currencies as crucial components of the consolidation of their newly (re)established statehood.<sup>9</sup>

Yet on 15 May 1992 Armenia, Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan adopted the CIS Treaty on Collective Security (CST),<sup>10</sup> which by the time of its entering into force (on April 20, 1994) was also joined by Azerbaijan, Belarus and Georgia. However, the attempt to collect all CIS countries into one collective security block failed, since Moldova, Turkmenistan and Ukraine refused to participate in it. Moreover, Turkmenistan (which proclaimed the policy of absolute neutrality) and Ukraine (which took the course towards the integration with Euro-Atlantic organisations) refused to ratify the CIS Charter of 22 January

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<sup>9</sup> In May 1992 President Yeltsin, who faced an ever-increasing violent opposition within the country, issued a decree forming a separate Russian Army (at that point only Ukraine, Moldova and Azerbaijan had firmly declared their intention of forming independent armed forces). The decision of Russia to set up its own armed forces was immediately followed by other republics, irrevocably writing off the plans of those who still hoped for a united defense system. For more details on the relationship between Russia and the CIS see Zbigniew Brzezinski and Paige Sullivan, *Russia and the Commonwealth of Independent States. Documents, Data, and Analysis* (Sharpe, Armonk, NY, 1997).

<sup>10</sup> See Dogovor o kollektivnoi bezopasnosti (15 May 1992), (hereinafter CIS Treaty on Collective Security, CST).

1993, which envisioned a multipurpose regional organisation based on the close co-operation of its members both in the military-political and economic areas.<sup>11</sup>

The efforts to implement economic integration on a new market-economy basis culminated in the adoption of the CIS Treaty on Economic Union of 24 September 1993, which called for the progressive establishment of a free trade area (FTA), a customs union, a common market, and subsequently an economic and monetary union.<sup>12</sup> Even though most CIS countries adopted that Treaty, Ukraine agreed only to an associate membership in the CIS Economic Union, being interested only in its first stage, the creation of an FTA. Although on 15 April 1994 an Agreement on FTA (as the first step towards the Economic Union) was signed, this document remained ineffective as Russia refused to ratify it.<sup>13</sup> For Moscow, the establishment of an FTA with post-Soviet countries made sense only as an inseparable part of the CIS Economic Union. Since it subsequently failed to persuade Ukraine to be a part of this Union (and thus to abandon its ambitions towards integration into the EU and NATO), Russia had little interest to open up its market and to supply its energy-carriers to Ukraine at its domestic prices.<sup>14</sup>

By 1995, it was clear that the creation of a single “geopolitical space” encompassing the entire CIS was not possible in the near future due to fundamental disagreements between its Member States over the purpose of their organisation.<sup>15</sup> One camp, led by Russia (and sup-

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<sup>11</sup> On the CIS Charter see Valentin Fissenko & Igor Fissenko, “The Charter of Co-operation”, 4 *Finnish Yearbook of International Law* (1993), 229-280; for more details on the initial developments of the CIS see also Vratislav Pechota, “The Commonwealth of Independent States: A Legal Profile”, 2(4/5) *The Parker School Journal of East European Law* (1995), 583-638; Joachim Lippot, “The Commonwealth of Independent States as an Economic and Legal Community”, 39 *German Yearbook of International Law* (1996), 334-360.

<sup>12</sup> See *Dogovor o sozdanii Ekonomicheskogo soiuzu* (24 September 1993), Art. 4, (CIS Treaty on Economic Union).

<sup>13</sup> In detail see Rilka Dragneva & Joop de Kort, “The Legal Regime For Free Trade in the Commonwealth of Independent States”, 56(2) *The International and Comparative Law Quarterly* (2007), 233-266. The only other country, which did not ratify the Agreement, was Turkmenistan.

<sup>14</sup> As a result of the failure to create a CIS-wide free trade area, Russia developed a very complex hub-and-spokes FTA pattern between post-Soviet countries. On 2 April 1999 a Protocol to the 1994 FTA Agreement was adopted, which made the bilateral agreements a long-term component of the structural design of the trade regimes of the CIS countries and also repealed references to the FTA as a transitional step to a Customs Union (and further to the Economic Union). This is not to say, however, that the idea of a multilateral FTA encompassing the entire CIS was ultimately abandoned. At the time of the rapprochement between Russia and Ukraine in 2003-2004, attempts were made to create an FTA in the framework of the entire CIS.

<sup>15</sup> On the development of the CIS of that time see also Rilka Dragneva, “Is “Soft” Beautiful? Another Perspective on Law, Institutions, and Integration in the CIS”, 29(3) *Review of Central and East European Law* (2007), 279-324.



ported primarily by Belarus and Kazakhstan), envisaged the CIS as a vehicle for closer military-political and economic integration, while another camp, composed in particular of Azerbaijan, Georgia, Moldova and Ukraine, visualized the CIS as a transitional organisation intended to prepare the individual republics for complete independence. While the first camp strove to create a system of collective security and an economic union, the second camp was interested in creating merely a free trade system and brushed away any plans to enter into any military-political alliances.

As a result, the CIS has become merely a loose intergovernmental organisation for broad regional-political discussions and economic co-operation aiming at the creation of an FTA,<sup>16</sup> while advanced integration processes started to be pursued within different camps and groupings.<sup>17</sup> Among those groupings, of particular interest are two organisations: the CSTO and the EurAsEC, which in our opinion constitute *de facto* a single structure (for discussion purposes subsequently referred to as the “Eurasian alliance”).

### **3. Formation and Consolidating Factors of the Eurasian Alliance**

#### **3.1. Initial Phase**

Since integration processes within the CIS ended in failure, in the second half of the 1990s efforts were made to pursue advanced integration projects at least among those CIS countries that were willing to create an effective collective security block and to integrate their economies into an economic union even if only among themselves. Accordingly, on 6 Janu-

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<sup>16</sup> It should be noted that Russia’s position emphasising bilateral relations fully changed only after 2008. Moscow began to move from the system of bilateral FTAs to a new, effective multilateral agreement, accompanied by the advancement in the substance of the agreements (in particular by elimination of contingent protection clauses) and the strengthening of the institutional capacity for enforcement. As a result, on 18 October 2011 the CIS Free Trade Agreement (CIS FTA) was signed by Russia, Belarus, Kazakhstan, Armenia, Ukraine, Kyrgyzstan, Moldova and Tajikistan. It provides for free movement of goods within the territory of the CIS, non-application of import customs duties, non-discrimination, gradual decrease of export customs duties and abolishment of quantitative restrictions in mutual trade between the CIS FTA Member States. As of March 2014, the CIS FTA was in force between all of those countries (except for Tajikistan). It was also joined by Uzbekistan on the basis of a separate protocol.

<sup>17</sup> For an overview of all integration groupings created on the territory of the former USSR see e.g. Zhenis Kembayev, *Legal Aspects of the Regional Integration Processes in the Post-Soviet Area* (Springer Verlag, Berlin, Heidelberg, 2009).

ary 1995 Belarus and Russia concluded an Agreement on Customs Union in order to ensure closer political and economic interaction. On 20 January 1995 the grouping, which became known as the “Customs Union”, was also joined by Kazakhstan and on 29 March 1996 by Kyrgyzstan.<sup>18</sup> The creation of this alliance reflected the desire of its members’ political elites to increase their rapidly falling popularity in the wake of continuing economic decline. However, it was evident that the Customs Union’s objectives were unrealistic in the short term given the four states’ different economic policies and their substantial disagreements over trade policy with other countries. Consequently, during the Russian financial crisis of August 1998 all members of the alliance saw establishing protective barriers *vis-à-vis* each other as the only effective solution to their problems.<sup>19</sup>

Because of the miserable economic situation, the Eurasian alliance could not make any progress towards the development of the CIS collective security system and the resolution of numerous international problems in the post-Soviet area (in particular in Abkhazia, Nagorno-Karabakh and South Ossetia). Thus, when the CST expired in April 1999, three of its nine initial participants – Azerbaijan, Georgia, and Uzbekistan – chose not to extend it. Moreover, that same month those three states joined Ukraine and Moldova to form an organisation called GUUAM as an alternative to the emerging Eurasian alliance.<sup>20</sup>

### 3.2. Establishment

However, the difficult period experienced by the Eurasian alliance did not cause its members to abandon it. On the contrary, they all showed their interest in strengthening their organisation and they even managed to attract new members. Thus, on 26 February 1999, Belarus, Kazakhstan, Kyrgyzstan and Russia, joined by Tajikistan (the Five), concluded an Agreement

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<sup>18</sup> For more details on the Customs Union of that time see Richard Sakwa & Mark Webber, “The Commonwealth of Independent States 1991-1998: Stagnation and Survival”, 51(3) *Europe-Asia Studies* (1999), 379-415.

<sup>19</sup> The fact that the proclaimed Customs Union existed only on paper is clearly confirmed by the individual accession of one of its members, Kyrgyzstan, to the World Trade Organisation (WTO) in December 1998.

<sup>20</sup> To note is that this decision was taken at the NATO summit in Washington DC. On this grouping see Olexandr Pavliuk, “GUUAM. The maturing of a Political Grouping into Economic Co-operation”, in Renata Dwan & Olexandr Pavliuk (eds.), *Building Security in the New States of Eurasia: Subregional Co-operation in the Former Soviet Space* (Sharpe, Armonk, NY, 2000), 34.



on Customs Union and Single Economic Space (SES),<sup>21</sup> a framework treaty aiming at the creation of a customs union and thereafter the establishment of a SES.<sup>22</sup>

Soon thereafter, on 2 April 1999, the Five and Armenia extended the CST for another 5 years and decided that henceforth it will be prolonged automatically for five-year periods.<sup>23</sup> As the Taliban forces in Afghanistan approached the border with Tajikistan in 2000, all CST State Parties pledged to defend Tajikistan and to create a joint rapid-reaction force to go to the aid of any member threatened by external aggression or terrorism.<sup>24</sup>

Another step was taken on 10 October 2000, when the Five adopted the Treaty on the Eurasian Economic Community. It was obvious that the creation of a common market required the reinforcement of the institutional framework of the emerging alliance. Accordingly, the major aim of this Treaty, consisting of only 20 articles, was to supplement the previous agreements (in particular the Agreement on Customs Union and SES of 1999) by introducing some new elements to the alliance's legal status and the decision-making process.

Meanwhile the US-led War on Terror after 11 September 2001 had profound effects on the development of collective security in Eurasia. Pledging their support in the international campaign against terrorism, the CST parties intensified their efforts towards developing their grouping into a corner stone of the regional security system. As a result, on 7 October 2002, the Five and Armenia decided to institutionalise their relations and created a full-fledged international organisation, the CSTO.

The establishment of EurAsEC and CSTO came as Eurasian countries (especially Russia and Kazakhstan) started to benefit from a favourable economic situation (in particular rising oil and raw materials prices), which enabled them to accumulate significant financial reserves.

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<sup>21</sup> The term "obshchee ekonomicheskoe prostranstvo" (common economic space) was now replaced by the "edinoe ekonomicheskoe prostranstvo" (single economic space, SES); however, its meaning remained the same, i.e. a common market.

<sup>22</sup> See Dogovor o Tamozhennom soiuzie i Edinom ekonomicheskom prostranstve (26 February 1999), Art. 2, (hereinafter the Agreement on Customs Union and Single Economic Space).

<sup>23</sup> See Protokol o prodlenii Dogovora o kollektivnoi bezopasnosti (2 April 1999), Arts. 1 and 2, (Protocol to the CIS Treaty on Collective Security).

<sup>24</sup> See Soglashenie o statuse formirovanii sil i sredstv sistemy kollektivnoi bezopasnosti (11 October 2000), Arts. 2-7, (Agreement on Forces and Instruments of the Collective Security System).

Furthermore, after the turn of the millennium they gradually began to consider how to achieve sustainable and consistent economic growth outside of natural resources while the desire to create a common collective security system (in particular to struggle against terrorism) offered an additional common denominator. Consequently, they embarked on a process of institutionalizing their mutual relationships thus creating momentum for greater integration.

In contrast to the CIS, both the EurAsEC and CSTO were clearly endowed with the necessary legal capacity to exercise their functions and fulfill their objectives (in particular, both groupings were entitled to conclude international treaties).<sup>25</sup> Hence, at the beginning of the new century two regional organisations emerged in Eurasia having almost identical membership and pursuing the objective of creating a common military-political and economic space.<sup>26</sup> The synchronised materialisation of the EurAsEC and the CSTO confirm the political will of its Member States (and primarily of Russia) to create two major pillars (military-political and economic) of a single Eurasian alliance as an independent geopolitical bloc.

### **3.3. Membership and Consolidating Factors**

Despite a series of setbacks in the 1990s, Russia remains one of the world powers, and is vitally interested in maintaining and expanding its political and economic influence in the world. It considers the creation of a single Eurasian alliance as a means to strengthen its hold over post-Soviet countries and to enhance its bargaining position in international relations. Therefore, Russia is the core and driving force of both the CSTO (consisting currently of the following six countries: Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia and Tajikistan) and the EurAsEC (including all of the above-mentioned countries except for Armenia). Another country Russia tried to engage is Uzbekistan. Following the Andijon events (2005) in the largest Central Asian country in terms of population, the Kremlin (unlike the EU and the US)

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<sup>25</sup> Dogovor ob uchrezhdenii Evraziiskogo ekonomicheskogo soobshchestva (10 October 2000), Art. 11, (hereinafter the Treaty on the Eurasian Economic Community); Ustav Organizatscii Dogovora o kollektivnoi bezopasnosti (7 October 2002), Art. 22, (hereinafter the CSTO Charter).

<sup>26</sup> Thus, the integration processes in Eurasia clearly confirm the logic that “the motives of governments deciding to enter a customs union are never purely commercial...[and] experience has shown that customs unions are seldom formed except as a step towards economic or political union and unless progress is made towards a broader objective the Customs Union is unlikely to endure”. See Frank Haight, “Customs Unions and Free-Trade Areas under GATT: A Reappraisal”, 6(4) *Journal of World Trade Law* (1972), 391-404, 393.

refused to criticise Tashkent and offered it a more extensive political and economic co-operation. Consequently, Uzbekistan withdrew from GUUAM and joined the Eurasian alliance by obtaining the membership of both the EurAsEC in January 2006 and the CSTO in June 2006. However, due to deepening integration processes in Eurasia in recent years and the gradual improvement of relations with the West, Uzbekistan decided to suspend its membership in the EurAsEC in November 2008 and in the CSTO in June 2012.

All of those countries (primarily Belarus and Kazakhstan, but also Kyrgyzstan, Tajikistan and Armenia) support the idea of a strong Eurasian alliance. They largely share Russia's views with respect to the evaluation of certain respective geopolitical threats (in particular NATO expansion, the rise of Islamic fundamentalism and the growth of China) and are interested in the restoration and maintenance of traditional economic links in the framework of the former USSR. Furthermore, Russia, Belarus and most Central Asian states have similar centralised (semi-) authoritarian political regimes based on managed national elections, where power is concentrated in the hands of the respective presidents and political freedoms are limited to a substantial extent. Attempting to legitimise their systems through ensuring political stability and continued economic growth, the leaders of those countries consider the Eurasian alliance a convenient and useful tool for achieving their purposes. It is also to be mentioned that the uniting factors of the Eurasian alliance are constituted by similar social and cultural traditions as all these countries share a common historical background and a common *lingua franca*, the Russian language.

Armenia is a traditional ally of Russia. It is in a (currently frozen) conflict with Azerbaijan over Nagorno-Karabakh and is vitally interested in participating in the CSTO. For a long time Armenia was reluctant to join the EurAsEC claiming that it has no direct customs borders with other members of the alliance. Another reason was that a substantial part of Armenia's political elite desired its nation to pursue European integration. However, in September 2013 Armenia declined to sign an EU association agreement and opted to join the emerging Eurasian Economic Union.

Belarus (like Russia) is very suspicious of NATO expansion in the last decades and advocates the idea of a “multi-polar world”.<sup>27</sup> Also, as part of its Soviet legacy, Belarus possesses many manufacturing industries that heavily depend on Russia (and other Eurasian countries) for raw materials and that require Eurasian markets for their goods (especially numerous defense companies). Therefore, Belarus undertook the most ambitious integration project thus far in the post-Soviet area, the creation of the Belarusian-Russian quasi-federative union (the so-called *Soyuznoe gosudarstvo*, the “Union State”) with the officially proclaimed goal of creating common armed forces (which would exist along with the national armies of both countries) and introducing a common currency. However, with the change in Russian leadership at the turn of the millennium, this project was practically frozen; currently all integration plans are realised in the format of the Eurasian alliance.<sup>28</sup>

The Central Asian countries Kazakhstan, Kyrgyzstan and Tajikistan are (like Uzbekistan) directly threatened by the expansion of Islamic fundamentalism (especially from Afghanistan) and therefore are interested in co-operating closely with Russia in combating a broad range of border security issues, including illegal migration, drug and weapons trafficking and terrorism. Along with anti-terrorism, major consolidating factors were also fears of civil resistance and internal revolutions as well as the US-led democracy enforcement campaigns in the mold of Afghanistan and Iraq.<sup>29</sup> In addition, these countries are interested in co-operating within the framework of the CSTO, as it provides the possibility to purchase Russian weapons and military equipment on favourable terms (in turn, Russia itself strongly encourages this reliance on its weapons since it promotes its military industries and consolidates the CSTO by harmonising military equipment and tactics). Even though Central Asian countries attempted to pursue integration projects among themselves, in particular by creating the Central Asian Economic Community in 1994, which became the Central Asian Cooperation Organisation (CACO) in 2002.<sup>30</sup> These attempts failed in particular because Central

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<sup>27</sup> See e.g. Alyaksandr Tsikhamiraw, “Russia in the Foreign Policy of Belarus”, in Valer Bulhakaw (ed.), *Belarus-Russia Integration* (Minsk 2003), 373.

<sup>28</sup> For details see Alex Danilovich, *Russian-Belarusian Integration: Playing Games Behind the Kremlin Walls* (Aldershot, Burlington, Ashgate, 2006).

<sup>29</sup> See e.g. Adam Weinstein, “Russian Phoenix: The Collective Security Treaty Organisation”, 8(1) *The Whitehead Journal of Diplomacy and International Relations* (2007), 167-180.

<sup>30</sup> The CACO Member States (Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan and from May 2004 also Russia) decided to disband their organisation and to cooperate only in the framework of the EurAsEC when Uzbekistan officially applied for the EurAsEC membership in October 2005. The unification of the CACO and EurAsEC was a

Asian economies never constituted a single self-sufficient system.<sup>31</sup> Therefore, Central Asian countries are interested in preserving and developing long-established economic relations with other post-Soviet countries and, especially, with Russia. In particular, Kazakhstan has a 6,846 km long border with Russia (the longest continuous border in the world) and a significant portion of Russian-speaking population. Being currently one of the world's major oil producers, it is however interested in diversifying its economy and, therefore, in gaining access to larger markets. Kyrgyzstan and Tajikistan (as well as Uzbekistan) are countries with predominantly agrarian economies. Supporting integration in Eurasia, they aspire for the freedom of movement not only with respect to their goods but also primarily to their abundant labor resources.

## **4. Major Areas of Co-operation within the Eurasian Alliance**

Fully in line with its two pillars, the Eurasian alliance has the following two major areas of co-operation: 1) the creation of a collective security system in the framework of the CSTO; and 2) the establishment of a single economic area within the EurAsEC.

### **4.1. Eurasian Collective Security System**

Building and maintaining an effective collective security system (i.e. a political arrangement by which states agree to take collective action against any external party acting as an aggressor) is the quintessence of the CSTO. Furthermore, it should be noted that the CSTO aims not only at ensuring peace and security in Eurasia but also at forming a "just world order".<sup>32</sup> This means that the CSTO (and primarily its major driving force Russia) committed itself to the concept of multipolarity, i.e. a relatively equal division of power among a number of global

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logical move as the two structures were very much the same in composition (the only difference was that Uzbekistan was a member of the CACO but not of EurAsEC, while Belarus was a EurAsEC member but not a part of the CACO). See Zhenis Kembayev, "Legal Aspects of the Regional Integration in Central Asia", 66 Heidelberg Journal of International Law (2006), 967-983.

<sup>31</sup> See Richard Pomfret, *The Economies of Central Asia* (Princeton University Press, Princeton, 1995).

<sup>32</sup> CSTO Charter (7 October 2002), Arts. 3-4.

actors, as opposed to attempts to establish domination of one (or a group of) state(s) in international relations.<sup>33</sup> Thus, it attempts to act as a single geopolitical bloc capable of consolidating its standing in international relations and counterbalancing other geopolitical powers (in particular NATO).

In operating a collective security system the CSTO members agreed to co-ordinate their military (by establishing regional armed groupings) as well as foreign and security (by conducting consultations with each other on all major international and security matters) policies.<sup>34</sup>

With respect to co-operation in the military field, it is clear that Russia exercises prominent weight in the block providing a security umbrella for all other CSTO members. In return, all CSTO members committed themselves to observe the following fundamental rules: (1) not to join or take part in any military alliances directed against any other state party;<sup>35</sup> (2) not to conclude international agreements incompatible with the treaties adopted within the CSTO;<sup>36</sup> and (3) not to allow the stationing of armed forces and military facilities of third states in their territories without an agreement with the other Member States.<sup>37</sup>

However, it is also evident that the CSTO Member States (except for Russia) have different interests in close co-operation on military and security issues. As a result, the CSTO is virtually composed of three rather separate subsystems of collective security (the East European,<sup>38</sup> the Caucasian<sup>39</sup> and the Central Asian<sup>40</sup> regional armed groupings),<sup>41</sup> with each of them primarily interested in pursuing their own specific (mostly local) objectives.<sup>42</sup>

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<sup>33</sup> In this regard it should be noted that presidents of many CSTO members (and in particular Russia, Belarus and Kazakhstan) repeatedly advocated the establishment of multipolarity in global affairs.

<sup>34</sup> On the CSTO see also Alena Douhan, "Commonwealth of Independent States: Is There Any Chance to Establish an Effective System of Collective Security in the Region?", 15 Max Planck Yearbook of United Nations Law (2011), 281-327.

<sup>35</sup> CIS Treaty on Collective Security (15 May 1992), Art. 1.

<sup>36</sup> Ibid, Art. 8.

<sup>37</sup> Ibid, Art. 7 (2). Until recently the only foreign military base in the territory of the CSTO members was the Manas airbase near Bishkek (Kyrgyzstan) operated by the US Air Force. It was created in 2001 under a UN mandate (and the consent of the CSTO members) to support Operation Enduring Freedom in Afghanistan. However, in June 2013 Kyrgyzstan decided not to extend the American lease and in June 2014 closed the base.

<sup>38</sup> The East European Grouping is constituted by the armed forces of Belarus and Russia. Within this grouping the State Parties agreed not only to implement collective security but also to assign the entire Belarusian army and Russia's western military district to a joint command, which is to be activated in case of a crisis.

<sup>39</sup> The Caucasian Grouping consists of the armed forces of Armenia and Russia (the latter maintains a military base in Armenia and monitors its border with Iran and Turkey).

Still most of them share the fear of “colour revolutions”, which rocked Georgia, Ukraine and Kyrgyzstan over the last decade. It is very indicative that in October 2007, after a series of successful and attempted government overthrows in CIS countries, a joint CSTO Peacekeeping Force was established. Theoretically, this Force may be deployed upon a UN mandate anywhere in the world;<sup>43</sup> however, it is obvious that this move primarily aimed at establishing the CSTO’s “peacekeeping” monopoly in the territory of its members and even in the entire CIS. In addition, in February 2009 the Collective Rapid Reaction Force (CRRF) of up to 20,000 troops was created with the purpose to repulse military aggression, conduct anti-terrorist operations, and even to neutralize the effects of natural disasters.<sup>44</sup> The CSTO members not only allowed the CRRF to act in a wide range of (both external and internal) crises but also removed the need for full consensus prior to initiating its operations. In this regard, it is noteworthy that the CSTO Charter contains no provisions relating to peoples’ democratic will or the protection of human rights. In fact, the CSTO rapid reaction (or peacekeeping) forces would most likely be used to ensure stability of political regimes in the territories of the CSTO Member States (in particular by protecting them from domestic revolts comparable to Andijon events of 2005).

Regarding the co-operation in foreign and security policy, the CSTO makes efforts to harmonise the positions of its members on regional and international developments and to establish co-operation with other states and intergovernmental organisations in particular on the

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<sup>40</sup> Currently the Central Asian Grouping includes the armed forces of Kazakhstan, Kyrgyzstan, Russia and Tajikistan. In May 2001, within this grouping the Central Asian Collective Rapid Deployment Forces were created with main declared purposes being struggling terrorism and averting external aggression. Those Forces consist of a Russian military base in Tajikistan, a Russian air wing deployed in Kyrgyzstan and one battalion from Kazakhstan, Kyrgyzstan and Tajikistan each.

<sup>41</sup> To be noted is also that a single CSTO Air-Raid Defense System as aspired by Russia is being created on the basis of respective bilateral agreements as CSTO members are not ready to enter advanced multilateral commitments. Currently, Russia concluded agreements on a Single Air-Raid Defense System with Belarus (3 February 2009) and Kazakhstan (on 30 January 2014). With all other CSTO members Russia cooperates on the basis of the CIS Agreement on Common Air-Raid Defense System (10 February 1995).

<sup>42</sup> For example, it is very unlikely that the Central Asian countries would provide military assistance to Armenia in the case of its confrontation with Azerbaijan. On the other hand, in 2009 Belarus (during economic disputes with Russia) openly rejected a possibility of sending its troops to Central Asia.

<sup>43</sup> See Soglashenie o mirotvorcheskoi deyatelnosti Organizatsii Dogovora o kollektivnoi bezopasnosti (6 October 2007), Art. 3, (Agreement on CSTO Peacekeeping Activity).

<sup>44</sup> See Soglashenie o Kollektivnykh silakh operativnogo reagirovaniya ODKB (4 February 2009), Arts. 1-2, (Agreement on Collective Rapid Reaction Force). These forces reportedly include one airborne division and one brigade from Russia, one brigade from Belarus and Kazakhstan each, as well as special purpose police units from each country. The remaining members contribute a battalion-size force each.



issues related to combating international terrorism and extremism, arms and drug trafficking, illegal cross-border migration and organised transnational crime. Thus, the CSTO established a productive relationship with the UN.<sup>45</sup> It closely cooperates with the EurAsEC on numerous issues such as harmonising and unifying national laws governing border and visa policies, with the aim of developing a unified border control and migration policy (as an essential component in the creation of both common security and economic areas).<sup>46</sup> Dynamic relations are also maintained with the Chinese-led Shanghai Co-operation Organisation (SCO);<sup>47</sup> both organisations agreed to co-operate “within the limits of their [respective] competences” demonstrating thus the political willingness of the CSTO members to act jointly regarding security issues in relation to China and the readiness of the rapidly growing Asian giant to recognize the importance of the CSTO.<sup>48</sup>

At the same time, despite repeated attempts the CSTO was not able to formalise relations with NATO and the OSCE,<sup>49</sup> as those organisations have been reluctant so far to conclude any agreements with the CSTO,<sup>50</sup> fearing that such a step would seal Russian dominance (of the most) of the post-Soviet area.<sup>51</sup> Instead, those organisations have focused on direct co-operation with the CSTO’s individual members, not least of all because many of those members consider collaboration with NATO and OSCE as an integral component of their foreign

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<sup>45</sup> On 2 December 2004, the UN General Assembly granted observer status to the CSTO and on 2 March 2010 it adopted a resolution establishing co-operation between the CSTO and the UN Office on Drugs and Crime and the UN Counter-Terrorism Committee. Furthermore, on 18 March 2010 a co-operation agreement was concluded between the secretariats of the CSTO and the UN.

<sup>46</sup> In fact, in January 2008 the CSTO announced that it will work with the EurAsEC on the project of a “Eurasian Schengen”, which would allow the creation of a common area of security and visa-free movement of people.

<sup>47</sup> These relations are based on a memorandum of understanding between the CSTO and the SCO concluded on 5 October 2007. There is considerable overlap in the membership of both organisations: five of the seven CSTO members (all except for Armenia and Belarus) are in the SCO whereas five of the six SCO members are in the CSTO (all except for China).

<sup>48</sup> The growth of China and the consolidation of the SCO were among major factors that facilitated integration processes in Eurasia in recent years. See Zhenis Kembayev, “Problemy i Perspektivy Chlenstva Respubliki Kazakhstan v Shankhaiskoy Organizatsii Sotrudnichestva”, (11) *Yurist* (2012), 42-52.

<sup>49</sup> See Roger McDermott, “CSTO Proposes Co-operation with NATO on Afghanistan”, *Eurasia Daily Monitor* (10 April 2012), available at <[http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews\[tt\\_news\]=39246](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=39246)>.

<sup>50</sup> At the same time, the CSTO called co-operation with NATO “desirable, but not so important to the CSTO, which is a self-sufficient organisation”. See Radio Free Europe/Radio Liberty (14 February 2006), available at <<http://www.rferl.org/content/article/1143574.html>>.

<sup>51</sup> See Dmitri Trenin, “NATO and Russia: Sobering Thoughts and Practical Suggestions”, *NATO Review* (Summer 2007), available at <[http://www.nato.int/docu/review/2007/Partnerships\\_Old\\_New/NATO\\_Russia\\_practical/EN/index.htm](http://www.nato.int/docu/review/2007/Partnerships_Old_New/NATO_Russia_practical/EN/index.htm)>.

and security policy.<sup>52</sup> Even though during the recent crisis in Ukraine the CSTO Secretariat announced that it would halt its contacts with NATO and instead strengthen co-operation with the SCO, it is doubtful that all CSTO members will unequivocally follow Russia in freezing relations with the West.

Unlike the Warsaw Treaty Organisation, the CSTO is not fastened together by ideological bonds and its members are free to withdraw from the organisation and to pursue their own foreign and security policies.<sup>53</sup> This flexibility is certainly another reason (along with the proclaimed goals of combating terrorism and drug trafficking, the threat of Islamic fundamentalism, fear of “colour revolutions”, perceived NATO interference and belief in Russia as an effective counterbalance) why the CSTO will be of value for its Member States as an organisation capable of addressing both external and internal threats and guaranteeing their sovereignty. Furthermore, in recent years the CSTO on a number of occasions reiterated its commitment to building up its military capabilities ahead of the withdrawal of the NATO-led security mission from Afghanistan in 2014, as there are serious grounds for fearing that Islamic extremists could increase their influence in the region.

#### **4.2. Eurasian Economic Space**

The EurAsEC was created to pursue the following two major purposes: 1) to create a customs union between its Member States; and 2) to establish (on the basis of a functioning customs union) a SES.<sup>54</sup> As is clearly seen, the creation of a customs union was never considered an ultimate goal but a precondition for the establishment of a SES. In fact, international experience shows that the operation of a customs union is not sufficient to completely en-

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<sup>52</sup> All CSTO members participate at the Partnership for Peace Program that allows them to build up an individual relationship with NATO choosing their own priorities for co-operation. Moreover, Armenia (on 16 December 2005) and Kazakhstan (on 31 January 2006) choose to deepen their co-operation with NATO by developing Individual Partnership Action Plans.

<sup>53</sup> For example, despite Russian criticism Armenia and Kazakhstan participated in the multi-national force (or the so called “coalition of the willing”) in Iraq. In addition, none of the CSTO members (except for Russia) recognized the independence of Abkhazia and South Ossetia following the Georgia-Russia conflict of August 2008.

<sup>54</sup> Treaty on the Eurasian Economic Community (10 October 2000), Art. 2. Also, it should be noted that another major purpose of the EurAsEC is to co-ordinate the efforts of its Member States in the matter of accession to the WTO. Eurasian countries began their integration into the international trading system only in 1990s and therefore had to synchronize their regional initiatives with their efforts to become a part of the global economy.

sure a free flow of goods and all its concomitants and logically leads to the removal of restrictions on the movement of the so-called factors of production (labour, services and capital) within the union and thus the establishment of a common market. In achieving these purposes, the Eurasian states pledged themselves to build their relations on the principles of common advantage, mutual assistance, good will, equality, transparency and responsibility for obligations assumed.<sup>55</sup>

As is international practice, by pursuing the creation of a customs union the EurAsEC members decided to fully liberalise trade among themselves (by creating an effective FTA) and subsequently to erect a common set of tariff barriers against the rest of the world. However, the initial development of the EurAsEC did not provide grounds for optimism. Although the EurAsEC members could agree to eliminate most tariffs and quotas in mutual trade on goods (thus effectively establishing an FTA), they were not able to achieve any progress with respect to the harmonisation of their foreign trade policies *vis-à-vis* third countries. The major reason for this inability was that all Eurasian countries were preoccupied with the consolidation of their national statehoods and the resolution of numerous economic transition issues. In the course of establishing their nascent states, they had chosen different political and economic trajectories and, as a result, had incompatibilities in their trading regimes.<sup>56</sup>

Also noteworthy is that the collapse of the USSR caused an unparalleled economic recession and a significant contraction of trade between the post-Soviet republics.<sup>57</sup> As a result, the share of the CIS countries in the Russian external trade became relatively insignificant,<sup>58</sup> while Russia also lost its leading position in the trade of with most CIS countries.<sup>59</sup> In this

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<sup>55</sup> Agreement on Customs Union and Single Economic Space (26 February 1999), Art. 4.

<sup>56</sup> For example, economic reforms in Russia and Kazakhstan resulted in a substantial shifting of assets into the private sector, while Belarus and Uzbekistan sought to maintain Soviet-style command economies.

<sup>57</sup> By 2000, the economic output of the CIS countries had fallen to merely 60 % of the 1990 level. See Mitra & Selowsky, *op.cit.* note 4, 5.

<sup>58</sup> In 2013 the CIS countries made up 13,6 % and the EurAsEC members only 7,6 % in the Russian external trade. See Tamozhennaia statistika vneshnei torgovli, available at <[http://www.customs.ru/index2.php?option=com\\_content&view=article&id=19301&Itemid=2095](http://www.customs.ru/index2.php?option=com_content&view=article&id=19301&Itemid=2095)>.

<sup>59</sup> As of 2013, Russia dominated in the external trade of Belarus with a share of 40 % while the EU was responsible for 28 %. It was still the major trading partner of Kyrgyzstan, Uzbekistan and Tajikistan accounting for ca. 20 % of their trade but was closely followed by China. It was on par with the EU in trade with Ukraine and Moldova with ca. 30 % share in their total export and import. The EU was the first trade partner of Azerbaijan (with 50 % of its trade while Russia has only 7 %) and Kazakhstan (with almost 40 % share while

regard, it can be argued that the Eurasian integration is a (military-) political rather than an economic project and the EurAsEC constitutes an economic complement to the CSTO.

Additionally, the Eurasian alliance is characterised by Russian domination<sup>60</sup> which creates substantial difficulties in finding a mutually acceptable balance between Eurasian countries that would ensure the creation of effective supranational institutions and simultaneously guarantee the sovereign interests of EurAsEC members. Furthermore, the leading member of the alliance, Russia (like all other Eurasian countries), experienced significant economic difficulties and was not able to push integration processes (and thus assume what in effect were very costly obligations).

Nevertheless, the situation started to change by 2003, when Russia (as well as Kazakhstan) began to benefit from rising oil and other commodity prices (as well as from market economy reforms and inflow of foreign investment) and embarked on a course aimed at achieving a sustainable increase of national income outside extractive industries. Therefore, the Kremlin started to seek the entrance of Ukraine into the EurAsEC, a step that would not only significantly expand the Eurasian alliance but also bring a more acceptable balance of power within it (thus increasing the possibility of creating supranational organs). Russia's insistence to bring Ukraine into its orbit was also facilitated by the EU's eastward expansion process, which culminated in the 2004 "big bang" enlargement and resulted *inter alia* in introducing the European Neighborhood Policy<sup>61</sup> (considered by many in Russia as penetration into the sphere of its vital national interests).<sup>62</sup> The Kremlin's "symmetrical" response to the EU enlargement towards the CIS borders was another attempt to launch an economic integration

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Russia has 23,5 % and China 22,5 %). Also noteworthy is that the major trading partner of Turkmenistan was China with 45,4 %, whereas the EU's share was 12,6 % and Russia's was 7,4 %.

<sup>60</sup> Even including Uzbekistan, Russia has in comparison to other five EurAsEC members together more than 2-fold dominance in terms of population and more than 6-multiple superiority in terms of GDP.

<sup>61</sup> On the ENP see e.g. Marise Cremona, "The European Neighbourhood Policy: More than a Partnership?", in Marise Cremona (ed.), *Developments in EU External Relations Law* 244 (Oxford University Press, Oxford, 2008), 244-299.

<sup>62</sup> It is also argued that the legal framework of EU-Ukraine trade relations in the context of the ENP and in particular the envisaged establishment of a Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Ukraine precludes Ukraine's full participation in the EurAsEC. See Guillaume van der Loo and Peter van Elsuwege, "Competing Paths of Regional Economic Integration in the Post-Soviet Space: Legal and Political Dilemmas for Ukraine", 37(4) *Review of Central and East European Law* (2012), 412-447.

project with Ukraine.<sup>63</sup> As a result, on 19 September 2003 Belarus, Kazakhstan, Russia and Ukraine concluded an Agreement on SES,<sup>64</sup> which, on the one hand, foresaw that each state party would independently choose a desired level of integration (from FTA to common market) but, on other hand, clearly aimed at the creation of a SES as the ultimate goal. The Agreement provided significant concessions to Ukraine, reflecting a significant change in the integration policy of Russia,<sup>65</sup> which was now able and willing to assume financial commitments in order to encourage other CIS countries to move towards its integration projects and thus to expand the boundaries of the Eurasian market.<sup>66</sup> In September 2004, the “Four” approved the list of so-called “first priority” treaties and planned to start negotiations on them in December 2004. However, after the Orange Revolution, pro-Western movements in Ukraine declared the incompatibility of the SES with the country’s strategic objective of integration into Euro-Atlantic structures.

Even though the integration project with Ukraine was frozen, Belarus, Kazakhstan and Russia decided to continue the negotiation process in the format of the EurAsEC. However, it became clear that other (less developed) EurAsEC members were not yet ready (mostly for economic reasons) for deep integration processes.<sup>67</sup> Although Kazakhstan and Russia set up the Eurasian Development Bank for supporting common projects with neighbouring states in June 2005, this step was obviously not sufficient to eliminate the enormous heterogeneity between the Eurasian countries in the short term.

The solution was found in August 2006 and formalised on 6 October 2007, when the EurAsEC members agreed to pursue multi-level and multi-speed integration, which implied that the three advanced members (Belarus, Kazakhstan and Russia) would create a trilateral Cus-

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<sup>63</sup> See Zhenis Kembayev, “The (In)Compatibility between Regional Integration Processes in the Post-Soviet Area and within the European Neighborhood Policy”, 59(4) *Osteuropa-Recht* (2013), 369-377.

<sup>64</sup> See Soglashenie o formirovanii Edinogo ekonomicheskogo prostranstva (19 September 2003), (Agreement on SES). On the SES and other trade issues related to the integration in the post-Soviet area see Sherzod Shadikhodjaev, “Trade Integration in the CIS Region: A Thorny Path Towards a Customs Union”, 12(3) *Journal of International Economic Law* (2009), 555-578.

<sup>65</sup> Only the change from the country-of-origin to the country-of-destination principle with respect to the collection of the value-added tax on Russian oil and gas supplies could provide Ukraine some \$800 million (at prices of 2004) annually.

<sup>66</sup> In fact, the envisioned integration project with Ukraine could potentially lead to a common market uniting 225 million people and accounting for 94% of the GDP of the CIS.

<sup>67</sup> Currently Belarus, Kazakhstan and Russia belong to middle-income economies, while Kyrgyzstan, Tajikistan and Uzbekistan are among the poorest countries in the world. Moreover, the change in economic situation in the last decade only increased the heterogeneity of Eurasian countries.

toms Union,<sup>68</sup> while the rest of the members would take steps to liberalise their trade regimes and/or to improve their economic outputs and subsequently, when possible, join the Customs Union. In addition, Belarus, Kazakhstan and Russia committed themselves to create a supranational organ (the Commission<sup>69</sup>) and to make the Customs Union effective by 2010, the first time ever that a deadline for the completion of the Customs Union was agreed upon. Thus, these countries effectively created a sub-organisation within the EurAsEC, the so-called *Tamozhennyi Soyuz*, the Customs Union of Belarus, Kazakhstan and Russia.<sup>70</sup>

On 27 November 2009 the Three signed a package of documents (the most important among them being the common Customs Code), which came into force on 1 January 2010 and unified the rules for customs controls applied to goods originating in third countries (i.e. establishing common external tariffs).<sup>71</sup> The next step was taken on 1 July 2010, when customs controls at the internal customs borders were eliminated and the process of creating the Customs Union was effectively completed.

From the very beginning of the integration processes in Eurasia the formation of a Customs Union was regarded as the first step towards the establishment of a SES. In fact, already on 19 December 2009 (on the eve of launching the Customs Union) the Three adopted an Action Plan for 2010-2011 envisioning the creation of a SES within the next two years.<sup>72</sup> Conse-

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<sup>68</sup> That practically meant that the three parties arranged to implement the package of documents, prepared initially in the format of a SES with Ukraine, among each other.

<sup>69</sup> See more on this organ *infra*.

<sup>70</sup> To be noted is that on 6 June 2009, Belarus, Kazakhstan and Russia notified the WTO of their intention to join it as a Customs Union. But since there was no precedent for countries to join the WTO as a Customs Union and because of the opposition on the part of some WTO members (for the reason that many trade issues such as farm subsidies cannot be handled by a Customs Union), on 15 October 2009, the three countries announced that they would resume talks on WTO accession separately, but with synchronized positions. Belarus' and Kazakhstan's accession is still in progress whereas Russia became a WTO member on 22 August 2012. Among other EurAsEC members only Kyrgyzstan is a WTO member, while Tajikistan's and Uzbekistan continue their access negotiations.

<sup>71</sup> See *Tamozhennyi kodeks Tamozhennogo soiuz*a (27 November 2009), (Customs Code of the Customs Union). For an English translation, see <<http://www.tsouz.ru/Docs/kodeks/Pages/default.aspx>>.

<sup>72</sup> In accordance with this Plan, Belarus, Kazakhstan and Russia enacted the first package of 14 agreements by 1 July 2011 and the second one by 31 December 2011 with the primary purpose of ensuring a co-ordinated economic policy of the State Parties by harmonizing their anti-monopoly, competition, tax and finance policies. For the list of these agreements, see <[http://www.tsouz.ru/Docs/IntAgrmnts/Pages/Perechen\\_MDTs.aspx](http://www.tsouz.ru/Docs/IntAgrmnts/Pages/Perechen_MDTs.aspx)>.

quently, on 1 January 2012 the establishment of the *Edinoe Ekonomicheskoye Prostranstvo* (SES) was officially proclaimed.<sup>73</sup>

Still on 19 December 2011 the presidents of Belarus, Kazakhstan and Russia decided to reorganise the EurAsEC into the Eurasian Economic Union (EEU) by 2015 and encouraged the remaining EurAsEC members (Kyrgyzstan and Tajikistan) and the EurAsEC observers (Armenia, Moldova and Ukraine) to begin the process of joining the emerging EEU. In particular, Russia endeavoured to involve Ukraine into the EEU. Following the defeat of pro-Western candidates in presidential elections in 2010, the Kremlin intensified its efforts to persuade the subsequent Ukrainian leadership to embark on Moscow-led integration projects. However, after the Maidan revolution (2013-2014) and the ensuing confrontation with Russia, Kiev ultimately turned to the West. Moldova followed suit and openly proclaimed its European aspiration. Kyrgyzstan, Tajikistan and Armenia, on the other hand, expressed their intention to join the Three, which on 29 May 2014 signed a Treaty on the Eurasian Economic Union that will become effective on 1 January 2015.

## 5. Institutional Framework of the Eurasian Alliance

The institutional framework of both the CSTO and the EurAsEC/EEU consists of supreme, executive, representative and administrative bodies (moreover, the EurAsEC has a specialised judicial body).<sup>74</sup> While the institutions of the CSTO are stable and organised fully in line with the principles of intergovernmental co-operation, the institutional framework of the EurAsEC/EEU is still evolving and has (increasingly) characteristics of a supranational organisation.<sup>75</sup>

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<sup>73</sup> Furthermore, on 15 March 2011 the Three adopted an Action Plan for 2012-2015, which foresees the realization of 70 specific measures provided for by the previous agreements and the adoption of 13 treaties and 42 technical regulations aiming at harmonisation of the social, educational, migration and visa policies of the State Parties and elimination of all restrictions on the freedom of labor, establishment, services and capital. For more information, see <<http://www.evrases.com/customunion/eepr>>.

<sup>74</sup> For a recent overview of the institutional framework of the EurAsEC/EEU, see also Christoph Schewe & Azar Aliyev, "The Customs Union and the Common Economic Space of the Eurasian Economic Community: Eurasian counterpart to the EU or Russian domination?", 54 *German Yearbook of International Law* (2011), 565-606.

<sup>75</sup> At present, the concept of supranationality was officially discussed only in Kazakhstan. Even though the Constitution of Kazakhstan does not contain any provisions allowing the transfer of the sovereign authorities to



## 5.1. Supreme Bodies

Fully reflecting the constitutional structures of its Member States (which are all republics with strong presidential authorities), the institutional framework of both the CSTO and the EurAsEC/EEU is completely dominated by their respective supreme bodies (Collective Security Council in the CSTO, the Interstate Council (IC) in the EurAsEC and the Supreme Eurasian Economic Council (SEEC) in the EEU), which consist of the heads of the Member States and meet at least once a year to adopt decisions on principal issues by consensus.<sup>76</sup>

The IC and the SEEC may also meet at the level of heads of government (at least twice a year); when they do, they decide important (mostly economic) issues by consensus within the directions given by the heads of state. Apparently, the SEEC will replace the IC when the EEU (which will entirely replace the EurAsEC) is fully implemented.

## 5.2. Executive Bodies

Due to the nature of the issues dealt with by the CSTO, its executive organs include: the Council of Foreign Ministers, the Council of Defense Ministers, the Committee of Secretaries of National Security Councils and the Permanent Council (which is a standing organ consisting of the plenipotentiary representatives of the Member States). Their decisions are made by consensus and are aimed at the implementation of CSC decisions.<sup>77</sup> In their activities, they are supported by a number of working organs (such as the CSTO Joint Staff; the Commission on the Military-Economic Co-operation; the Council on the Struggle against Illegal Migration and the Council on Emergencies).

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international organisations, the Kazakh Constitutional Council found that Kazakhstan may participate in supranational organisations. See Angelika Nussberger, "Supranationales Recht jenseits des Ural", 56(1) *Osteuropa-Recht* (2010), 113-121; Zhenis Kembayev, "Basic Features of the Legal System", in Zhenis Kembayev (ed.), *Introduction to the Law of Kazakhstan* (Kluwer Law International, Alphen aan den Rijn) (2012), 23-35.

<sup>76</sup> As these bodies are (almost) identical with respect to their composition, their meetings often coincide with respect to time and place (or follow one another). Thus, on 9-10 October 2008, summits of the EurAsEC and the CSTO (as well as of the CIS) took place in Bishkek. On 19 March 2012, meetings of the Interstate Council and the Supreme Eurasian Economic Council came about in Moscow.

<sup>77</sup> CSTO Charter (7 October 2002), Arts. 12, 14-16.

The executive organ of the EurAsEC is the Integration Committee, which is composed of the deputy heads of government and meets every three months. It is responsible for preparing proposals for the IC and monitoring the implementation of the IC's decisions.<sup>78</sup> In its activities, the Integration Committee is assisted by 20 auxiliary bodies (various councils and commissions composed of ministers and heads of different agencies of Member States) and the Commission of Permanent Representatives (a standing organ consisting of the Member States' plenipotentiary representatives). Both the Integration Committee and the Commission of Permanent Representatives may decide by "weighted voting"<sup>79</sup> by a majority of two thirds.<sup>80</sup> However, decisions of both bodies have merely a recommendatory character.

In the framework of the Customs Union of Belarus, Kazakhstan and Russia, on 6 October 2007 the Three created initially a Commission, which was composed of the deputy heads of government and could take binding decisions by majority of two thirds (in so doing, Russia had 57 votes while Belarus and Kazakhstan 21.5 votes each). However, should one of the parties not be willing to accept the decision adopted by the Commission, it could refer the matter to the supreme body (and thus insist on decision-making on this matter by consensus). Furthermore, any party could address the supreme body with a request to revise any decision of the Commission.<sup>81</sup>

Nevertheless, on 18 November 2011 the Three established a new Commission (the Eurasian Economic Commission), which may adopt binding and directly applicable decisions and consists of two chambers: the Council and the Board (*Collegium*).<sup>82</sup> The Council consists of the deputy heads of government and decides by consensus. The Board consists of nine members

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<sup>78</sup> Treaty on the Eurasian Economic Community (10 October 2000), Arts. 4, 6 (1).

<sup>79</sup> Ibid, Art. 13 (2). The number of votes for each member state corresponds to its contribution to the Community's budget. Thus, Russia exercises 40 percent of the voting rights and is responsible for meeting 40 percent of operating expenses, Belarus and Kazakhstan each have 20 percent, Kyrgyzstan and Tajikistan each 10 percent. When Uzbekistan took part in the EurAsEC, the votes were distributed as follows: Russia could keep 40 percent; Belarus, Kazakhstan and Uzbekistan had each 15 percent; Kyrgyzstan and Tajikistan each 7.5 percent.

<sup>80</sup> That means that Russia would have to have at least two other states supporting it to win a vote.

<sup>81</sup> See *Dogovor o Komissii Tamozhennogo soiuza* (6 October 2007, ceased to be in force), (Agreement on Commission of the Customs Union).

<sup>82</sup> See *Dogovor o Evraziyskoy ekonomicheskoy komissii* (18 November 2011), Arts. 4, 5 (1), (Agreement on Eurasian Economic Commission). This Agreement entered into force on 2 February 2012. The seat of the Eurasian Economic Commission is Moscow.

(three from each member state) appointed for a term of four years by the SEEC (meeting at the level of heads of states); it may take decisions by a two-thirds majority.

The Board is responsible for making proposals to the Council on how to pursue integration, for executing decisions of the SEEC and the Council, and for monitoring the implementation of agreements underlying the Customs Union and the SES.<sup>83</sup> Even though the Board is supposed to be independent, the Council can effectively influence and control its activities. Thus, any of the Council's members can disagree with the decision taken by the Board and refer it to the SEEC (and thus make the adoption of this decision in question subject to consensus). Also, only the Council may submit proposals (in particular drafts of international agreements) to the SEEC and it alone may initiate a procedure before the EurAsEC Court against a member state not fulfilling its obligations under agreements underlying the Customs Union and the SES.<sup>84</sup> Accordingly, the Eurasian Economic Commission is currently not a functional equivalent to the European Commission. However, it is evident that the Eurasian countries have attempted to create a body that would be an effective guardian of the EEU's treaties and agenda. The existence of a SES necessitates the evolution of the Eurasian Economic Commission into a truly supranational body and the progress of this evolution will definitely determine whether the SES is sustainable and whether the EEU can be consolidated into an effective organisation.

### **5.3. Administrative Bodies**

Both the EurAsEC and the CSTO have their own permanent secretariats. They are headed by secretaries general, who are appointed by the respective supreme bodies for a three-year term (in the case of the EurAsEC it is done on the proposal of the Integration Committee). As is generally accepted in international practice, both secretaries general and the secretariats' staffs (like plenipotentiary representatives of the State Parties at both organisations and employees of the working organs) enjoy broad diplomatic immunities.<sup>85</sup>

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<sup>83</sup> Ibid, Art. 18.

<sup>84</sup> Ibid, Arts. 9, 13, 20.

<sup>85</sup> See Konventsiya o privilegiiakh i immunitetakh Evraziyskogo ekonomicheskogo soobshchestva (31 May 2001), (Convention on the Privileges and Immunities of the EurAsEC); Soglasheniye o pravovom statuse Organi-

#### 5.4. Dispute-Settlement Bodies

In contrast to the CSTO, where the CSC is the only organ which may deal with disputes between Member States (in case that these disputes could not be resolved through negotiations),<sup>86</sup> the institutional framework of the EurAsEC includes a Court consisting of two judges from each Member State who are appointed by the Parliamentary Assembly on the proposal of the Interstate Council for a term of six years. The Court is tasked with: (1) ensuring that all treaties concluded in the framework of the EurAsEC as well as decisions adopted by the EurAsEC organs are applied by the Member States in a uniform manner; (2) settling disputes of an “economic character” arising between Member States on matters relating to the implementation of the EurAsEC treaties and decisions; and (3) making official interpretations of the EurAsEC treaties and decisions.<sup>87</sup>

The Court’s first Statute was introduced on 27 April 2003. Similar to the CIS judicial body (the CIS Economic Court),<sup>88</sup> the EurAsEC Court was endowed with compulsory jurisdiction with respect to claims submitted to it by the State Parties; but unlike the former (the decisions of which are merely of a recommendatory character), the decisions of the Court must be executed by the State Parties within three months in accordance with their national legislation. Still, the EurAsEC members could not agree when the Statute should enter into force; therefore, the functions of the EurAsEC Court were temporarily entrusted to the CIS Economic Court.<sup>89</sup>

The situation started to change with the facilitation of the integration processes in Eurasia. On 5 July 2010 the EurAsEC members adopted a new, significantly modified Statute which

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zatsii dogovora o kollektivnoy bezopasnosti, (7 October 2002), Arts. 10-26, (Agreement the Legal Status of the CSTO). The seat of the CSTO Secretariat (as well as of the Permanent Council and the working organs of the CSTO) is Moscow. The EurAsEC Secretariat has (like the EurAsEC Commission of Permanent Representatives) two permanent seats in the cities of Almaty and Moscow.

<sup>86</sup> CSTO Charter (7 October 2002), Art. 27,

<sup>87</sup> Treaty on the Eurasian Economic Community (10 October 2000), Art. 8.

<sup>88</sup> On the CIS Economic Court see Gennady Danilenko, “The Economic Court of the Commonwealth of Independent States”, 31(4) *New York University Journal of International Law and Politics* (1999), 893-918.

<sup>89</sup> See Soglasheniye mezhdru Evraziyskim ekonomicheskim soobshchestvom i Sodruzhestvom Nezavisimykh Gosudarstv o vypolnenii Ekonomicheskimi Sudom SNG funktsiy Suda EvrAzES (3 March 2004), (Agreement between the CIS and the EurAsEC on the Implementation of Functions of the Community Court by the CIS Economic Court).

enabled the Court to rule (within the Customs Union) on actions brought not only by the State Parties but also by the EurAsEC bodies and most importantly by the economic entities of the members states of the Customs Union.<sup>90</sup> On 1 January 2012, the EurAsEC Court began operating and on 12 September 2012 it issued its first ruling.<sup>91</sup>

## 5.5. Representative Bodies

Both the CSTO and the EurAsEC have their parliamentary assemblies, which perform representative functions and deal with the harmonisation of national legislation in the Member States by drafting framework legislation and model draft laws.<sup>92</sup>

Similar to the analogous body existing in the framework of the CIS, the CSTO Parliamentary Assembly consists of parliamentary delegations of the Member States. Each delegation has one vote in the decision-making process and all decisions are taken by consensus.<sup>93</sup> However, the Parliamentary Assembly of the EurAsEC is composed not of delegations, but of representatives delegated by the national parliaments of the Member States (28 delegates from Russia, 14 from Belarus, Kazakhstan and Uzbekistan each, and 7 from Kyrgyzstan and Tajikistan each). The Assembly adopts its decisions by two-thirds majority; still, the Assembly's agenda is formulated by its Bureau, which consists of Member States' delegations and decides by consensus.<sup>94</sup>

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<sup>90</sup> Statut Suda Evraziyskogo ekonomicheskogo soobshchestva (5 July 2010), Art. 14 (1), (Statute of the EurAsEC Court).

<sup>91</sup> The first case heard by the Court was between South Kuzbass (the coal subsidiary of Russian mining giant Mechel) and the Kemerovo region customs officials. South Kuzbass claimed that inconsistent application of the agreements underlying the Customs Union has cost it 17 million rubles (\$515,000) in fines imposed by customs in the Kemerovo region. South Kuzbass challenged a decision by the Commission of the Customs Union (now the Eurasian Economic Commission) obliging companies exporting coal from Russia to file customs declarations (which have been kept for the purposes of recording mutual trade statistics). The Court satisfied the claim of South Kuzbass and ruled that the Commission's decision does not correspond to the agreements underlying the Customs Union and the SES.

<sup>92</sup> The seat of both assemblies (the same as of the CIS Parliamentary Assembly) is the city of St. Petersburg.

<sup>93</sup> See *Konventsiya o Mezhparlamentskoy Assambleye gosudarstv-uchastnikov Sodruzhestva Nezavisimykh Gosudarstv* (26 May 1995), (CIS Convention on the Interparliamentary Assembly); *Vremennoye polozheniye o Parlamentskoy Assambleye ODKB* (30 March 2007), Par. 6, (Temporary Regulations on the CSTO Parliamentary Assembly).

<sup>94</sup> Treaty on the Eurasian Economic Community (10 October 2000), Art. 7.

In light of the creation of the Eurasian Economic Commission and the EurAsEC Court, transforming the EurAsEC's Parliamentary Assembly into the Eurasian Parliamentary Assembly and expanding its authority were discussed;<sup>95</sup> however, this idea is currently opposed by Kazakhstan and Belarus fearing that such move would undermine their national sovereignties and arguing that the advanced integration processes within the Eurasian Economic Union must be of purely economic nature.

## 6. Problems and Perspectives of Integration Processes in Eurasia

At present, the international community observes the process of the emergence of Eurasia as one of the world's new geopolitical centers. This process is driven by both political and economic factors, which in particular include the desire of a number of post-Soviet countries to consolidate regional peace and security and to create a larger and more effective economic system, thus increasing their power and influence on the international scene. As a result, the process of the formation of a united Eurasia is conducted in the framework of two separate but closely connected – with almost identical membership – coalitions: the CSTO and the EurAsEC (which is currently transforming into the EEU).

The CSTO attempts to create an effective collective security system which implies the establishment of a close and comprehensive alliance conducting co-ordinated foreign and defense policies and harmonising their efforts in combating international terrorism, extremism, organised transnational crime, illegal migration and other threats to the security of its Member States. However, currently a major characteristic of the CSTO is that its Member States (except for Russia) have different interests in close co-operation on military and security issues. As a result, the CSTO is virtually composed of three rather separate subsystems of collective security (Belarus-Russia, Armenia-Russia and Central Asia-Russia). In this regard, it is evident that the only effective method of consolidating the CSTO is to unite the national economies of Eurasian countries into an effective economic alliance. Looking at the European experience, where it was exactly the economic component that has driven the integration pro-

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<sup>95</sup> See Sergei Naryshkin and Taliya Khabrieva, "K novomy parlamentskomu izmereniyu", (8) *Zhurnal Rossiyskogo Prava* (2012), 5-15.

cesses, it may be assumed that the creation of the united Eurasia will significantly depend on the progress towards the creation of an EEU.

In contrast to the CSTO (i.e. the military-political pillar of the Eurasian alliance), which is fully based on the principles of intergovernmental co-operation, the economic pillar of the Eurasian alliance is endowed with some elements of supranationalism. Notable in this regard are in particular the creation of the Eurasian Economic Commission and the EurAsEC Court. The establishment of these bodies shows that the Eurasian states could potentially diverge from the strict commitment to the principle of sovereign equality and transform into a supranational organisation (the creation of which is objectively made necessary by the advancement towards the creation of the Economic Union).

Examining the institutions and the progression of stages of the envisioned EEU, one can easily notice a striking similarity with the process of European integration, which led to the creation of today's European Union. However, the legal nature of both integration groupings is completely different: while the EU is in principle an association of (mostly) parliamentary states with a significant degree of decentralisation, the Eurasian alliance is a union of highly centralised presidential republics. Therefore, the present time (especially in light of the recent proliferation of integration processes in Eurasia) is characterized by the competition of two opposite models of regional integration.

However, the future of the Eurasian integration processes is still uncertain. It is obvious that such advanced structures as the SES and the Economic Union necessitate the creation of an effective supranational organisation. At the same time, supranational organisations may operate only on the principle of separation of powers between the organisation and its Member States. Such separation requires a commitment to democracy and rule-of-law, i.e. those fundamental ideas that can ensure that integration would be regarded as means to strengthen national sovereignty by increasing stability and security and ensuring faster economic growth, rather than a threat to that sovereignty. The achievement of such separation was possible only with great difficulty within the (parliamentary) EU and it will certainly be an enormous challenge for the presidential republics of Eurasia, as the reality of political decision-making in Eurasian countries (despite formal commitment to democratic values) is



in many regards estranged from real democracy. In this regard to be noted is that circumstances contributing to the consolidation of the Eurasian alliance include not only the desire to promote political stability and stimulate economic growth but certainly also the respective political elites' fear of "colour revolutions" in their countries. Consequently, regional integration processes in Eurasia are dependent not on the democratic will of Eurasian peoples, nor on stable institutions responsible before them, but on a very limited number of national leaders who are primarily interested in maintaining and strengthening their own political power. Therefore, the lack of political liberalisation in Eurasian countries will certainly impede the processes of regional integration making the Eurasian alliance similar to a "giant with feet of clay" based only on the individual will of a few politicians.

Nevertheless, the stronger the political will of the Eurasian countries to continue integration processes towards the full materialisation of the EEU (and therefore towards the creation of effective supranational institutions), the more progress they may achieve on their way to becoming free democracies, as the operation of supranational bodies will require Eurasian countries to adhere to democratisation and rule of law and pursue constitutional reforms (in particular strengthening parliamentary and judicial bodies, developing the principle of subsidiarity, creating supranational political parties, etc.). As a result, the future Eurasian Union may be based on the same values and principles as the EU and that may constitute a solid foundation for co-operation between these two groupings in creating a space of freedom, security and prosperity from Atlantic to Pacific for the benefit of all peoples living in it.