

2004

Regional Integration in the Post-USSR Area: Legal and Institutional Aspects

Roman Petrov

Recommended Citation

Roman Petrov, *Regional Integration in the Post-USSR Area: Legal and Institutional Aspects*, 10 LAW & BUS. REV. AM. 631 (2004)

<https://scholar.smu.edu/lbra/vol10/iss3/10>

This Comparative Perspective is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Law and Business Review of the Americas by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

REGIONAL INTEGRATION IN THE POST-USSR AREA: LEGAL AND INSTITUTIONAL ASPECTS

*Roman Petrov**

I. BACKGROUND OF THE REGIONAL INTEGRATION IN THE POST - USSR AREA

AFTER almost seventy years of its existence, the USSR approached turbulent times. Escalating regional conflicts and accelerating political and economic difficulties entailed the collapse of entire political and economic foundations of the USSR. The USSR republics' parade of sovereignty was marked by the year 1990. Even the USSR strongholds, the Russian Federation (Russia) and Ukraine, issued declarations of sovereignty and officially questioned the supremacy of the USSR laws over their national legislation. Governments of the remaining USSR republics openly struggled with the Kremlin over the increase of their national competences. It became apparent that sooner or later the USSR republics would exercise the taboo provision of the USSR Constitution that grants them a right to the voluntary and unilateral termination of their USSR membership.¹ To prevent this, Soviet politicians began to search for adequate alternatives to the USSR, including a socialist federation based on the principle of democratic centralism.² There was hope to sign a new Union Treaty in 1991. The Union Treaty was drafted and circulated in the first half of 1991. It was aimed at the creation of a federation of the post-USSR republics with a single economic space. Upon the completion of the negotiation process, the USSR republics agreed to sign the new Union Treaty in Novoogavevo, Russia, on August 19, 1991. However, the shocking August coup (launched the same day) eliminated all hopes to wrap up the Novoogarevo process and irrevocably accelerated the collapse of the entire USSR.

At this crucial moment, the Commonwealth of Independent States

* Donetsk National University (Ukraine); Queen Mary, University of London.

1. Article 72 of the USSR Constitution adopted in 1977 reads as follows: "Each Union Republic shall retain the right to freely secede from the USSR." USSR CONST. art. 72.

2. Article 3 of the USSR Constitution clarifies the meaning of the principle of democratic centralism as "the electiveness of all bodies of state authority from the lowest to the highest, their accountability to the people, and the obligation of lower bodies to observe the decisions of higher ones." *Id.* art. 3.

(CIS) emerged as a substitution to the vanishing USSR.³ The CIS was born on December 8, 1991, in the picturesque residence of the Belarusian Government in the Belovezhskaya forest reserve, where leaders of Belarus, Russia, and Ukraine signed the Agreement to establish the CIS. Shortly after, on December 21, 1991, the heads of eight former USSR republics (except for three Baltic States) joined the CIS initiative. In December 1993, Georgia joined the CIS. The CIS Charter (signed in January 1993), and the CIS Economic Union Treaty (signed in September 1993) are basic CIS multilateral agreements. The former fixes the CIS institutional framework and major areas of competence. The latter promulgates the necessity for formation of the common economic space based on the principles of: (1) free movement of goods, services, workers, and capitals; (2) elaboration of concerted money and credit, tax, price, customs, and foreign economic policies; and (3) creation of favourable conditions for development of direct production links.

However, the CIS Member States shortly found themselves in conflicts with one another over a wide range of economic and security issues. It appeared that former USSR republics moved towards a market economy at different and asymmetric speeds. Some CIS Member States were eager to avoid close interstate cooperation in order to escape potential Russian domination. Meanwhile, Russia considered its interests damaged by losing its traditional geo-political position as the Eurasian political and economic centre. These contradictions hampered the speed of CIS integration and entailed mutual suspicion and preference to pursuing national self-interests by the CIS Member States. However, the CIS still remains the largest and the most considerable substitution for the former USSR, although it is less competent and has had relatively modest success of mutual integration. In contrast to the USSR, the CIS pursues the maintenance of traditionally close economic links within the CIS area while preserving the Member States' sovereignties. Nevertheless, the reality proved the failure of initial hopes. Eventually, the CIS Member States faced a complicated dilemma of whether to sacrifice some of their national interest to achieve progress in the CIS integration or preserve the national sovereignty at any cost.

This chapter does not offer the comprehensive analysis of the whole regional integration process within the post-USSR area. Instead it provides the general overview of major institutional and legal aspects of the CIS regional cooperation. Special attention is paid to competence and institutional framework of the newly emerged CIS regional integration structures. In conclusion, the chapter presents some general deliberations regarding nature and perspectives of economic integration within the CIS.

3. For comprehensive materials about the CIS in English, see CIS Executive Committee, *available at* <http://www.cis.minsk.by> (last visited on Aug. 28, 2004).

II. CURRENT STATE OF REGIONAL INTEGRATION WITHIN THE CIS

The CIS institutional and legal complications could explain the constant quest of the CIS Member States for new mechanisms of political and economic integration. One may argue that the CIS was born as a “giant on clay feet.” Indeed, as long as the CIS remains an intergovernmental forum, it can hardly fulfil its objectives.

A. THE CIS COMPETENCE

The CIS was set up as an intergovernmental forum to avoid any danger to the CIS Member States sovereignties. That is why, from the outset, the CIS was not granted any supranational powers and, consequently, a legal personality in international law.⁴ The CIS Member States enforce their cooperation initiatives through multilateral and bilateral agreements in the following areas: (1) coordination of foreign policy; (2) protection of human rights and freedoms; (3) cooperation in establishing the Common Economic Space and common customs policy; (4) setting common transport and communication networks; (5) coordination of social and migration policies; (6) fight with organised crime; and (7) collective security and military cooperation.⁵ Among those areas economic, social, legal, and military cooperation constitute explicit priorities of the CIS integration agenda.

Within the area of collective security and military cooperation, the CIS Member States may consult each other in order to prevent any military threat to their territories and may coordinate protection of common borders. Military observers and peace keeping forces could be invited to provide security in the “hot spots” within the CIS borders (the CIS peace-keeping operations took place in the disputed Karabakh area between Armenia and Azerbaijan, Dnestr river area in Moldova, Abkhasia, and Tajikistan).

In the areas of economic, social, and legal cooperation, the CIS Member States coordinate their efforts to: (1) establish the Common Economic Space and Common Information Space; (2) harmonize national social programmes; (3) develop common transport, energy, and communication networks; (4) launch financial cooperation; (5) protect mutual investments and intellectual property rights; (6) provide mutual assistance in environmental disasters; and (7) establish common programmes in education, health protection, culture, and sport.⁶ Above all, the CIS Charter calls the CIS Member States to sign the bilateral agreements on

4. CIS CHARTER art. 1, available at <http://www.cis.minsk.by/ENGLISH/charter.htm> (last visited Aug. 28, 2004). The CIS was granted the observer status in the UN on March 24, 1994. The CIS Charter was registered by the UN Secretariat as a multilateral agreement in accordance with Article 102 of the UN Charter on August 3, 1994.

5. *Id.* art. 4.

6. *Id.* art. 19.

mutual legal assistance and approximation of national legislations.⁷

B. THE CIS INSTITUTIONAL FRAMEWORK

Nearly seventy institutions and specialised agencies were set up within the CIS framework. Most of them were created to coordinate sectoral cooperation between the CIS Member States.⁸ Several intergovernmental institutions ensure general coordination of the CIS Member States cooperation across all areas of the CIS competence.

The CIS Council of Heads of State occupies the apex of the CIS institutional framework. As members of the Council, heads of the CIS Member States are authorised to consider any issue within the CIS competence by unanimous vote.⁹ However, the CIS Member States may go ahead for the enhanced cooperation by signing bilateral or multilateral agreements in case of abstention by any of the members of the Council to specific CIS initiatives. The Council has the authority to consider any conflicts between the CIS Member States.¹⁰

The CIS Council of Heads of Government supervises cooperation on the level of the CIS Member States governments. This organisation primarily focuses on economic cooperation between the CIS Member States, and coordinates the collaboration of the CIS Member States governments within specific policies of common interest, including industry, agriculture, transport, communication, energy, tax, customs and financing, research and science, and funding for the CIS institutions.

The CIS Executive Committee is a major executive organisation of the CIS. As the chairman, the Executive Secretary of the CIS is authorised to represent the CIS before international organisations and other countries. Until April 29, 1998, Belarusian politician Ivan Korotchenya had been the Executive Secretary of the CIS. He was later substituted by the notorious Russian tycoon, Boris Berezovsky. Since April 2, 1999, Russian politician Yuri Yarov has occupied the office of the CIS Executive Secretary. The CIS Executive Committee is responsible for drafting decisions and other legal documents and assisting the exchange of information between the CIS Member States and specialised CIS agencies. One of the major tasks of the CIS Executive Committee is to sustain interaction between the CIS and international organisations.

The major workload of the CIS Interparliamentary Assembly is directed towards the approximation and harmonisation of the CIS Member

7. *Id.* art. 20.

8. For example, the following specialised agencies: (1) the CIS Anti Terror Centre; and (2) the CIS Councils of Heads of Home Offices, Revenue Offices, and Security Offices. There were established specialised CIS Councils in transport, communication networks, agriculture, science, oil and gas, education, sport and tourism, etc.

9. The exclusive CIS Council of Heads of State competence covers issues like: (1) amending the CIS Charter; (2) dissolving and establishing new CIS institutes; (3) hearing reports about activities of other CIS institutes; and (4) delegating its competence to other CIS institutes.

10. CIS CHARTER art. 17(3).

States legislation. For this purpose the Assembly issues model laws and recommendations and forwards them to the CIS parliaments. The CIS harmonisation of laws agenda covers: (1) social and consumer protection; (2) free movement of labour; (3) protection of war prisoners and civilians; (4) legislation on cultural and education; (5) environmental protection, science, and research; (6) corruption and crime prevention; and (7) legislation on exercising peacekeeping operations within the CIS. In the meantime, the Assembly prepared over 130 model legislative acts (among them are model civil and criminal codes) and approximately forty recommendations. The Assembly initiated annual St. Petersburg economic forums, which consider issues of economic integration within the CIS and encourages further investment cooperation between the CIS Member States.

The CIS Economic Court is functioning in accordance with the CIS Economic Court Statute adopted in 1992. Only a few CIS Member States (Armenia, Belarus, Kazakhstan, Kyrgyz Republic, Moldova, Russia, Tajikistan, and Uzbekistan) became parties to the CIS Economic Court Statute. The CIS Economic Court is comprised of two judges at most from each contracting party who ensure the uniform application of agreements and treaties signed by the CIS Member States, as well as acts of the CIS institutions and agencies. Additionally, the CIS Economic Court is competent to solve intergovernmental economic disputes between the CIS Member States, *inter alia* with regard to compliance of their states' national laws to the CIS agreements and legal acts. However, the Court's effectiveness and activism is hampered by ostensibly limited jurisdiction and the non-binding force of its decisions.¹¹

The CIS Council of Foreign Affairs Ministers was established by the CIS Council of Heads of State in 1993, to coordinate the common foreign affairs policy in issues of the Member States common interest. It shares its competence with the CIS Council of Defence Ministers in issues related to peacekeeping activities within the CIS area. The latter organ comprises the CIS Ministers of Defence, apart from Moldova, Turkmenistan, and Ukraine, and the CIS Defence Head of Staff. The CIS Council of Border Troops Commanders coordinates common defence of external CIS borders and economic zones. The Council is comprised of Border Troops Commanders of the CIS Member States, with exemption to Azerbaijan, Moldova, and Ukraine.

At first glance, the CIS institutional structure looks too complicated and overloaded with specialised agencies and advisory organisations. Institutions with general competence have no authority to issue binding decisions, and therefore, to influence the enforcement procedure in the CIS Member States. One may argue that the "deficit of democracy" syndrome is inherent to the CIS. Indeed, the CIS Council of Heads of State occupies significant decision-making powers without sharing it with the

11. About fifty cases have been decided by the CIS Economic Court from 1994 to 2000.

CIS Interparliamentary Assembly, which is mainly an advisory forum for the CIS Member States. The workload of the CIS institutions drags far behind the dynamic working schedule of the EU institutions.¹²

C. REGIONAL INTEGRATION INITIATIVES WITHIN AND BEYOND THE CIS

From the outset, the CIS Member States have been constantly engaged in performing dubious tasks, such as working on setting up the Economic Union based on a customs union and exploring various scenarios of political and economic rapprochement that could satisfy their national interests. Highlighted below are several major periods of CIS regional integration.

1. 1991-1994

Foundations of the CIS intergovernmental cooperation were laid down in the first period from 1991 to 1994. Immediately after the collapse of the USSR, the CIS Member States focused their attention on dividing the USSR property (especially located abroad), armed forces, and weapons arsenal. For that purpose, the following major military agreements were signed in 1992: (1) Agreement on the Status of Strategic Forces; (2) Agreements on the CIS United Armed Forces and CIS Border Troops; (3) Declaration on non-use of the force or threat of use of the force in relations between the CIS member states; and (4) Treaty on Collective Security. In accordance with these agreements, the CIS was designated as competent to undertake peace keeping missions within the territory of its Member States. The position of the Chief Commander of the CIS United Armed Forces was established, and CIS military observers and collective peace-keeping forces were introduced. At the same time, the issue of closer CIS economic cooperation remained a priority of the CIS integration agenda. The CIS Member States agreed to fulfil the following ambitious objectives: (1) approximation/rapprochement of national economic legislation; (2) establishment of a single monetary system and coordination of fiscal and credit and monetary policies; (3) free movement of CIS nationals within the CIS; (4) establishment of the interstate TV and radio broadcasting companies; and (5) creation of the CIS Interstate Bank. The 1993 Economic Union Treaty reflected and unanimously endorsed these goals.¹³ This treaty was followed by the signing a series of

12. In more than ten years of the CIS functioning, there have been prepared and conducted about thirty meetings of the Council of Heads of State and forty meetings of the Council of Heads of Government, which resulted in the adoption of more than 1,000 documents.

13. Ukraine joined the Economic Union as an associate member. In accordance with article 4 of the Economic Union Treaty, the contracting parties cooperate to achieve the establishment of a free trade area/customs union, internal market (four freedoms), monetary union, common foreign policy, and joint mechanism of human rights protection within the CIS. CIS Economic Union Treaty, Sept. 24, 1993, 34 I.L.M. 1298, available at http://www.cis.minsk.by/russian/osn_dokum/cis_doc1.htm.

nically sounding, but ultimately ineffectual, subsidiary agreements on free trade (April 1994), payments (October 1994), customs (January 1995), legal harmonisation (January 1996), customs classification lists (February 1996), and railway tariffs (October 1996). In reality, these agreements incorporated little in the way of effective sanctions and enforcement powers, but expressed mere intentions. As a first step towards the Economic Union, the CIS Member States signed the Agreement to establish the free trade zone and the 1994 Agreement to establish a payment union.

2. 1994-2000

In the second period from 1994 to 2000, the speed of the CIS integration lost its initial impetus. The CIS Member States appeared reluctant to implement their earlier integration commitments. To respond to this challenge, the group of leading CIS Member States embarked upon the policy of enhanced cooperation by setting up regional integration structures. One of the first CIS enhanced regional integration initiatives took place in Central Asia. Three Central Asian former USSR republics, Kazakhstan, Uzbekistan, and Kyrgyz Republic, established the customs union, Central Asian Economic Area, on April 30, 1994. Four years later, Tajikistan joined the Central Asian Economic Area. The institutional framework of the Central Asian Economic Area replicates the institutional structure of the CIS and comprises the Interstate Council and the Interstate Executive Committee, Council of Heads of governments, the Council of Foreign Ministers, and Council of Defense Ministers. It also established the Central Asian cooperation bank. The Executive Committee of the Area is situated in Bishkek in the Kyrgyz Republic.

However, in a very short time, it became apparent that the Central Asian Economic Area could hardly function without Russia. Thus, most of the Central Asian Economic Area Member States turned their integration aspirations toward the new customs union. On March 26, 1996, five CIS Member States (Russia, Kazakhstan, Belarus, Kyrgyz Republic, and Tajikistan from February 1999) signed the Agreement to enhance the mutual integration in economic and humanitarian areas, which was eventually aimed at establishing a customs union between the five CIS Member States, as well as the common policies in areas of economy, science, education, culture, and social protection. Institutions of the Community replicate the CIS institutional structure. The staff quarter of the Integration Committee is situated in Alma-Ata in Kazakhstan.¹⁴

Almost simultaneously, two CIS Member States, Russia and Belarus, agreed to go as far as merging into a bilateral political and economic union. The first agreement for the establishment of the Russia-Belarus

14. Problems in fair application of VAT and excise duties constituted major impediments for functioning of the customs union. In most cases, the non-Russian members were raising their tariffs and VAT to match the Russian levels. The Kazakhstan's proposal to pay VAT in the country of selling was refused due to tax evasion fears.

Community was signed in April 1996.¹⁵ On December 8, 1999 the presidents of both countries signed the Treaty on the Russia – Belarus Union, which the comprehensive Working Programme supplemented.¹⁶ The Treaty designates to the Union the legal personality in accordance with international law¹⁷ and endorses the respect of the principles of sovereignty and equality of the members of the Union. Thus, apart from voluntary transferred competences, the parties to the Union maintain complete sovereignty and territorial integrity. The Union pursues objectives aimed at: (1) enhanced cooperation in the political sphere (coordination of common foreign policy); (2) economic cooperation (customs union, single currency, national treatment of nationals and companies); (3) harmonisation of social policies; (4) defense and border protection cooperation; and (5) cooperation in the legal sphere (unification of legislation, mutual legal assistance). Citizens of Russia and Belarus enjoy the Union citizenship on conditions similar to the EU citizenship. The Union Treaty envisions the gradual introduction of the common currency between the parties to the Union Treaty with a subsequent establishment of a common monetary emission centre. The Union Treaty does not consider the creation of the Union Armed Forces, but foresees the establishment of regional armed troops.

The Highest State Council is the major decision-making organ of the Union. It comprises heads of both states' governments and parliaments, and it is chaired by one of the parties on the principle of rotation. The Highest State Council adopts decisions on the basis of unanimity and endowed powers to sign international treaties on behalf of the Union. The Parliament of the Union was set up as the representative and legislative institution. It has two chambers, the Chamber of Union and the Chamber of Representatives. The former consists of appointed members of both states. The latter is formed on the basis of direct election for the term of four years. The Parliament of the Union issues Union laws and ensures the unification of the national legal systems of Russia and Belarus, approve the budget of the Union. The Council of Ministers is the main executive institution of the Union appointed by the Highest State Council. It drafts the Union laws and budget, ensures the enforcement of the Highest State Council decisions and application of Union laws, and coordinates common policies of the Union. The Court of the Union ensures the unified interpretation and application of the Treaty of the Union and legal acts of the Union by issuing binding decisions.¹⁸ The Permanent Committee assists the Union institutions in drafting Union le-

15. The Russia-Belarus Union Charter was signed on May 23, 1997.

16. For comprehensive information about the Russia – Belarus Union, see <http://www.sinfo.ru> (last visited Aug. 28, 2004).

17. CIS Economic Union Treaty, *supra* note 13, art. 4, 34 I.L.M. at 1304.

18. The Court is comprised of nine judges appointed by the Parliament of the Union upon the proposal of the Highest State Council. Judges occupy their offices for six year terms that rotate every two years. The Court decisions are mandatory for the application.

gal acts and coordinating political and economic cooperation between the members of the Union.

The formation of the Union is not finished since the adoption of the Constitution of the Union, which is going to set up the competence and legal structure of the Union, is still pending. The draft of the Union Constitution envisages the creation of the Union State. The Member States are expected to transfer part of their competences to the Union State, while sustaining national sovereignty. The Union State project is going to be supplemented by the Russian-Belarus customs union, internal market, and single currency. Legal acts of the Union State are going to be considered as directly applicable within the Member States' territory. Thus, the most advanced regional integration project within the CIS area might emerge out of the Russia – Belarus Union. Nevertheless, it is unlikely that the Union's supranational nature would attract many CIS Member States. Hitherto, despite the possibility for any country to join the Russia – Belarus Union, none of the CIS Member States have formally expressed their willingness to participate in this initiative.

In opposition to the Russia – Belarus rapprochement, Pro-Western CIS Member States have explored variable forms of integration beyond original CIS structures. One of the most widely known projects of this kind is the GUUAM (the Member States' acronym). It was founded on October 10, 1997, in Strasbourg, at the Council of Europe Summit, where the presidents of Georgia, Ukraine, Azerbaijan, and Moldova signed the Communiqué on enhanced cooperation¹⁹ (Uzbekistan from April 24, 1999). The GUUAM was created as merely an intergovernmental forum for political and economic cooperation²⁰ without international legal personality. There are no executive organs in GUUAM, but all activities within the GUUAM competence are undertaken mainly by national coordinators.²¹

As opposed to the CIS agenda, the GUUAM focuses on consolidation of Euro Atlantic integration efforts of its Member States. For that purpose, the GUUAM Member States join their efforts to launch common

19. Officially, the GUUAM was launched in Baku on November 25, 1997.

20. The GUUAM Member States pursue their cooperation within the following areas: (1) joint peace keeping operations; (2) mutual assistance in solving regional conflicts; (3) energy supply; (4) establishment of the Euro Asian transport and industrial corridor; (5) common positions at international organisations as for problems of common interest; and (6) joint rapprochement with the transatlantic and European institutions.

21. The GUUAM institutional structure is comprised of: (1) the Annual Summit of heads of the GUUAM Member States is the highest institution; (2) the Council of foreign affairs ministers is the executive institution; (3) the Committee of National Coordinators implements GUUAM activities; and (4) the GUUAM information office. GUUAM Working Groups ensure cooperation within specific fields, such as energy, telecommunications, culture, science and education, tourism, fighting terrorism, and organised crime and drugs trade. The GUUAM Business Council was created at the GUUAM Yalta Summit in 2002, as a coordination institution for encouraging cooperation between business circles in the GUUAM Member States. The first GUUAM Business Forum took place in Baku in 2002. There are plans to establish the GUUAM Parliamentary Assembly. The GUUAM Anti Terror Centre was set up in 2003 under the U.S. government sponsorship.

pan Eurasian transport and energy projects (“Europe – Caucasus – Asia” transport corridor, Eurasian oil corridor). The GUUAM free trade area Agreement was signed on November 4-5, 2002, in Kiev, and was ratified by all GUUAM Member States. Hitherto, the GUUAM free trade area arrangements are not completed.²² At the second GUUAM Summit on July 20, 2002, in Yalta, the President of Ukraine called for the expansion of the GUUAM cooperation objectives to include new dimensions of regional security, money laundering, and fights with terrorism. However, the GUUAM did not prove different and more successful than other CIS regional integration initiatives. Uzbekistan formally abandoned this initiative in 2003, being openly dissatisfied with poor effectiveness of the GUUAM cooperation programme. Political factors like change of political environment in Azerbaijan and Georgia in 2003, and coming presidential elections in Ukraine in 2004, caused the period of uncertainty and stagnation in realisation of the GUUAM objectives.

Another integration initiative beyond the CIS, known as the Black Sea Economic Cooperation (BSEC), was set up as a regional economic organisation with legal personality on June 5, 1998, at the BSEC Summit in Yalta.²³ Its major objective is to encourage the regional cooperation of countries of the Black Sea region.²⁴ The founding Istanbul Declaration on Black Sea Cooperation was signed on June 25, 1992, by all Black Sea region countries and beyond, including Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey, and Ukraine. Countries with strategic interests in the Black Sea region (Poland, Tunisia, Israel, Egypt, Slovakia, Italy, Austria, France, and Germany) obtained the BSEC observer status.

The BSEC Council of the Ministers of Foreign Affairs is the highest decision-making authority with competence to issue binding resolutions, decisions, and non-binding recommendations.²⁵ The Committee of Senior Officials represents the Council of Ministers of Foreign Affairs. The Committee functions as a board where all pertinent BSEC matters are discussed and submitted thereafter to the approval of the Council Permanent International Secretariat (PERMIS). The latter performs secretarial services and acts as the coordinating centre for the whole BSEC process.

The BSEC agenda focuses on the establishment of a Europe-wide eco-

22. Ukraine in cooperation with OBSE is coordinating the BSEC free trade area negotiation process.

23. The BSEC Charter came into force on May 1, 1999. BSEC CHARTER, available at http://www.bsec.gov.tr/charter_.htm (last visited Aug. 28, 2004). The BSEC obtained the observer status in the UN in 1999. For the BSEC statutory documents and other related information, see Organization of the Black Sea Economic Cooperation, *Charter and Statutory Documents*, available at <http://www.bsec.gov.tr> (last visited Aug. 28, 2004) [hereinafter BSEC Documents].

24. Turkey was the major driving force behind this initiative.

25. In accordance with articles 17-19 of the BSEC Rules of Procedure, the BSEC Council of the Ministers of Foreign Affairs Decisions are adopted by qualified majority and binding as for the Member States that voted for it. The BSEC Council of the Ministers of Foreign Affairs Recommendations have no binding force. BSEC Documents, *supra* note 23.

conomic area, enhancement of mutual economic cooperation,²⁶ and improvement of business environment between the BSEC Member States.²⁷ The ultimate objective of the BSEC is the establishment of the BSEC Free Trade Area to ensure non-discriminatory access of the Member States goods and services to their markets. The BSEC Member States already embarked upon specific projects of common interest: (1) establishing the Black Sea Transport Circle; (2) setting up the united energy network; and (3) implementing a common programme on fighting organised crime. However, the BSEC Member States face serious problems in implementing objectives of the organisation. These problems relate to shortage of financial resources, lack of coherent definition of aims and priorities, and poor enforcement of adopted resolutions and decisions. Besides, the BSEC Member States belong to different geopolitical groups. Some BSEC Member States are the EU Member States (Greece) or should obtain the EU membership in the definite future (Romania, Bulgaria, Turkey), while others emphatically deny any interest in the EU integration (Russia). Some BSEC Member States (Ukraine and Moldova) consider using the BSEC structures for their EU membership aspirations.²⁸

3. 2000-2003

The third period of the CIS integration activities coincided with a change of political leadership in Russia in 2000, when Vladimir Putin came into power. His strong standing on continuing Russian military actions in Chechnya contributed to the elevation of the anti-terrorism issue to the height of the CIS agenda. In 2000, the Council of Heads of State adopted the programme of the CIS member states on struggle against international terrorism and other kinds of extremism for the period up to 2003. At that time, the CIS Anti-terrorism Centre was established.

Further acceleration of the CIS economic integration was associated with the birth of the Eurasian Economic Community (EEC) in Kazakhstan, in October 2000. Russia, Belarus, Kazakhstan, Kyrgyz Republic,

26. In accordance with articles 3 and 4 of the BSEC Charter, the Parties cooperate within the specific areas of transport, standardization, energy, tourism, agriculture, health care, science and technology, banking and finance, exchange of statistical data, emergencies, combating crime, economic development, and communications. BSEC CHARTER arts. 3, 4.

27. BSEC Member States have undertaken the following activities to improve mutual business environment: (1) signing bilateral agreements on free movement of businessmen; (2) setting up favourable conditions for mutual investments, sustaining capital flows, and exchanging information; (3) protecting the Black Sea environment; and (4) establishing the Black Sea Foreign Trade and Investment Bank. For instance, the BSEC Member States signed Agreements on the elimination of visa barriers for business and for lorry drivers, the Agreement on early warning on nuclear disaster, and the Agreement on civil nuclear energy.

28. The BSEC Economic Agenda for the Future calls to pursue further integration within the BSEC integration, in accordance with the recent BSEC Member States' bilateral arrangements with the EU (Europe Agreements and PCAs) and in accordance with the WTO rules.

and Tajikistan joined the EEC as full members. Armenia, Ukraine, and Moldova decided to limit their participation in the EEC by the observer status. The EEC Agreement is based upon existing CIS customs union agreements, though with the explicit intention to push the EEC economic integration toward ASEAN or NAFTA-style international trade agreements.²⁹ Another rationale behind the EEC is the need to coordinate the Member States' efforts to join the World Trade Organization (WTO) and, subsequently, to increase their negotiation power within the WTO accession negotiation process. The EEC promulgates respect to the principle of sovereignty of its member states, but it is vested with the legal personality and some negotiating powers within international organisations.³⁰ The Inter-State Council, the Integration Committee, the Inter-Parliament Assembly, and the EEC Court form the institutional skeleton of the EEC. The EEC differs from its predecessors in the respect that it has greater enforcement powers than other CIS customs arrangements. For instance, a member state that refuses to abide by the EEC rules can be excluded from the Community.³¹ The EEC voting and financing schemes reflect the weighting powers of its Member States. Thus, Russia exercises forty percent of the voting rights and, subsequently, meets forty percent of the EEC's budget commitments. Belarus and Kazakhstan have twenty percent of the voting shares each. Kyrgyzstan and Tajikistan have ten percent each. The voting formula implies that, on any given major policy issue, Russia should have at least two other states supporting it to ensure a victory on a vote.³² It also implies that Russia exercises a veto power on major EEC policy decisions.

The EEC laws are not directly applicable within the Member States legal orders. None of the EEC's institutions are authorised to issue laws binding for the Member States. Instead, decisions of the EEC institutions must be enforced only through the national legislation and constitutional enforcement procedure of the EEC Member States.³³ The lack of direct applicability of EEC laws could be considered as a compromise to attract more Member States into the EEC. However, Ukraine and Caucasus CIS Member States remain distant from the EEC. Hitherto, the EEC made quite modest progress in the course of realisation of its initial aims. Throughout its short history the EEC Member States have not been eager to accelerate the implementation of key EEC decisions, therefore, the objective of EEC free trade area leaves much to be desired.

The latest breakthrough on the issue of creating a free trade area within the CIS took place at the Yalta CIS Summit on September 18-19, 2003. In the Yalta Declaration, the CIS Heads of State acknowledged

29. For the EEC documents and other related information, see <http://www.ipaeurasec.org/evra/?data=Evra> (last visited Aug. 28, 2004).

30. EEC CHARTER art. 11.

31. *Id.* art. 9.

32. The EEC Charter specifies that a vote on major policy issues will require the agreement of two-thirds of the Member States. *Id.*

33. *Id.* art. 14.

that the establishment of a free trade zone with the gradual advancement towards a single economic space is the absolute priority for the CIS integration. In this respect Russia, Belarus, Kazakhstan, and Ukraine took an initiative and signed the Agreement on Single Economic Space (SES). Therein the parties expressed their interest to: (1) set up the SES free trade area without exceptions; (2) create a common policy of tariff and non-tariff regulation; (3) start to harmonize competition and state aids rules, standards, and sanitary norms; (4) ensure free movement of goods, services, workers, and capital; (5) harmonize national legislations, especially in area of competition and trade; (6) adopt common principles of functioning of natural monopolies, especially in rail transport, telecommunication, energy, oil, and gas; and finally, (7) dismantle discrimination in access to mutual markets. The SES is going to function on principles of supranational and intergovernmental cooperation, and in accordance with the WTO trade rules. The Council of Heads of State coordinates the SES activities in accordance with the one country – one vote principle. The SES supranational institution is going to be established with the competence to issue binding decisions. The voting power within the supranational institution is going to be shared in accordance with economic strength of the SES Member States. The SES cooperation strategy is based on the principle of multi-level and multi-speed integration. It means that the SES Member States enjoy freedom to pick up and choose specific SES initiatives and projects, which they would like to adhere to. However, the SES Agreement warns that transition from one level of integration to a higher level of integration is possible only after completion of previous levels of integration.

Unfortunately, the SES Agreement failed to ensure the direct applicability of the SES legal acts within the Member States legal systems. Instead, the Member States implement and, subsequently, enforce decisions of the SES institutions through national constitutional arrangements just like any other international law obligations. It appears that the newly born SES initiative already echoes some significant setbacks. Ukraine apparently expresses some reluctance towards its participation in the SES process due to its growing fears that its participation in the SES would contradict EU aspirations, *inter alia* setting up the free trade area with the EC. In the latest resolution, the EP has explicitly noted that the Ukraine's participation in the SES would impede its European integration perspectives.³⁴ Furthermore, the continuing Russian tough stance on liberalization of its energy sector undermines the original idea of the SES serving as a common forum in the course of the WTO accession negotia-

34. Resolution on 'Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, EUR. PARL. DOC. (COM 104), para. 18 (2003), available at <http://www.europarl.eu.int/meetdocs/delegations/esto/20031208/07.docen.pdf> (last visited Aug. 28, 2004). This European Parliament resolution explicitly states, "[T]he projected establishment of a Common Economic Space together with Russia, Belarus and Kazakhstan could hamper further cooperation between Ukraine and the EU." *Id.*

tions. Therefore, the SES founding Member States (Ukraine) steadily pursue unilateral WTO accession negotiations.

IV. CONCLUDING REMARKS

The intergovernmental CIS serves as an attractive platform for mutual cooperation of the sovereignty concerned CIS Member States. Nevertheless, the full CIS potential is hardly explored yet. Indeed, the fulfilment of CIS's original objectives of a political, defensive, and peacekeeping partnership is pending. The CIS substantive economic agenda is yet to be properly considered. On one side, the history of the CIS already offers us a valuable experience that ought to be taken into account in the course of further integration initiatives. On other side, one has to acknowledge that the CIS future is doomed. The depth of the CIS integration seems irrevocably scooped. Several points are relevant here to prove such a bitter statement.

First, there is no steadfast regional leader within the CIS that could take up all responsibilities for leading, and subsequently, financially contributing to further intergovernmental CIS programmes. Russia is not ready for the ambitious role to respond to national interests of ever-diverging CIS Member States. Furthermore, Russia could already be tired of its repeatedly failing efforts to start up the CIS integration engine. For more than a decade, none of the CIS dazzling initiatives have been crowned with acknowledged success, but remain in the cradle.

Second, the CIS objectives focus mainly on regional integration, but do not offer substantive responses to the international globalisation processes, *inter alia* the accession of the CIS Member States into the WTO. As a result, most of the CIS Member States still remain distant from the international economic environment. Meanwhile, only three out of twelve CIS Member States have joined the WTO.³⁵

Third, the gap in economic development and political priorities of the CIS Member States is constantly yawning. On the background of the tightening Russia-Belarus Union, Moldova and Ukraine openly promulgated their European aspirations. Therefore, the CIS Member States maintain a strong preference to the bilateral relations over multilateral agreements in pursuing the CIS initiatives. Further contradictions might arise when the enlarged EU advances to the western CIS borders and launches its neighbourhood policy, thereby encouraging neighbour CIS Member States to integrate into the EC internal market.

However, the need for closer integration in the post-USSR area could hardly fade away in the near future. The CIS Member States steadily approach an economic recovery. The CIS area comprises a vast and extremely attractive market of twelve countries with 221,146 square km of

35. Kyrgyz Republic acquired WTO membership on December 20, 1998; Georgia on June 14, 2000; Moldova on July 26, 2001. Armenia, Belarus, Kazakhstan, Ukraine, Russia, and Uzbekistan have an observer status.

territory³⁶ and total population of about 277.4 million,³⁷ with annually increasing industrial output and GDP.³⁸ The CIS mutual trade is constantly growing.³⁹ Relative stability of national currencies exchange rates was retained at the currency market of the majority of the CIS countries. However, overly competitive foreign markets remain hardly accessible for cheap goods and services from the CIS Member States. With exemption to Russia, all CIS Member States are labelled as non-market economy countries that significantly aggravate their chances to escape discriminative anti-dumping and anti-subsidy measures.⁴⁰ Furthermore, developed western countries appear reluctant to be engaged in long-term economic projects with the CIS Member States in areas of energy, transport, armament, and space. Yet none of the CIS Member States entered into free trade area arrangements with global trade powers.⁴¹ The EU-Russia Single Economic Area project is still undergoing long deliberations and is unlikely to move further before completion of the EU enlargement saga.

Therefore, there are few alternatives to further regional economic integration within the CIS area. The core group of the CIS Member States is pushing forward the enhanced economic agenda. It is argued that the eventual establishment of the CIS free trade area/customs union would contribute to dismantling discriminatory obstacles of mutual access to the CIS markets. In short-term dimension, further CIS economic integration would protect fragile CIS industries and businesses from highly competitive international goods and services after joining the WTO. However, one has to consider if these short-term recipes suit long-term appetites of all CIS Member States that seriously consider themselves as part of the

36. Versus 31,911 sq. km-in the EU of fifteen Member States.

37. Versus 370 million in the EU of fifteen Member States.

38. Recent growth of the CIS Member States GDP constitutes 7-12% annually. However, this progress is not so impressive since it is only 40-50% percent of what existed in early nineties.

39. The biggest CIS exporters are Russia (53.5%), Belarus (13.8%), Ukraine (13.3%), and Kazakhstan (7.4%). Biggest importers are Russia (29.2%), Ukraine (28.8%), Belarus (20.6%), and Kazakhstan (8.3%). However few CIS Member States maintain active trade with third countries, such as Russia (62.7%), Ukraine (14.2%), and Kazakhstan (6.7%). See CIS Interstate Statistical Committee database, at <http://www.cisstat.com> (last visited Aug. 28, 2004).

40. According to the European Commission, there are about sixty anti-dumping investigations and measures considered by the EU against goods from the CIS Member States by the end of 2003.

41. All CIS countries, apart from Tajikistan, Turkmenistan, and Belarus (two latter did not come into force), have signed almost identical bilateral Cooperation and Partnership Agreements (PCAs) with the EC and the Member States. These agreements pursue objectives of closer political dialogue and economic cooperation, but do not offer any perspective of the EU membership. The evolutionary clause for the European PCAs (Russia, Ukraine, and Moldova) envisions the possibility of setting up a free trade area with the EU upon successful completion of market reforms. See R. Petrov, *The Partnership and Cooperation Agreements with the Newly Independent States*, in *HANDBOOK ON EUROPEAN ENLARGEMENT – A COMMENTARY ON THE ENLARGEMENT PROCESS* 175-194 (Andrea Ott & Kirstyn Inglis eds., 2002) (detailing comparative overview and scrutiny of the PCAs). The USA entered into bilateral trade agreements with all the CIS countries.

European space. In the meantime, these countries face a puzzling dilemma. On one hand, Pro-Western CIS Member States (Ukraine and Moldova) continue to be cautious about sacrificing their European aspirations to unpredictable trade arrangements within the CIS. On the other hand, these countries meet a lukewarm response from the EU to their insisting free trade area proposals. Thus, a key for the next CIS integration programme could be hidden in Europe, or in other words, in the European attitude towards further eastward enlargement.