

Legal Aspects of Regional Integration in Central Asia

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I. Introduction

The growth of regional integration schemes intensified in recent decades and became one of the most dramatic developments in international relations. At present almost all sovereign nations participate in at least one regional integration agreement (RIA), or are actively negotiating to do so.¹ Further, the amount of RIAs already exceeds that of sovereign states,² and outnumbers those of international organizations of a universal nature by approximately a five-to-one ratio.³ International actors choose a regional approach to serve a variety of purposes and secure common interests.⁴ The trend towards regional integration looks set to continue in the twenty-first century, not least because regional integration reconciles the tension between globalization pressures and demands for greater local autonomy.

The aim of this article is to analyze legal and political aspects of the integration processes in Central Asia, which is one of the distinct regions of the world, located in the centre of the Eurasian landmass and extending from the Caspian Sea in the west to the border of western China in the east and occupying an area of 3,994,400 square kilometers, or slightly more than the area of the European Union of 25 member states and almost half the area of the United States.⁵ The idea of Central Asia as a distinct region of the world was introduced by Alexander von Hum-

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¹ As of October 2003, all 146 WTO members, with the exception of Mongolia, were involved in RIAs. C. B o o n e k a m p, *The Changing Landscape of RTAs 1* (prepared for the Seminar on Regional Trade Agreements and the WTO, WTO Secretariat, Geneva, 14 November 2003).

² By July 2005, a total of 330 RIAs had been noticed to the WTO, see UN Information and Media Relations Division, World Trade Organization, *Understanding the WTO*, 63, 2005, available at <http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey1_e.htm> (last visited Feb. 4, 2006). For comparison, note that as of February 2005, the United Nations has 191 member states, see List of UN Member States, available at <<http://www.un.org/Overview/unmember.html>> (last visited Feb. 4, 2006).

³ A. L e R o y B e n n e t, *International Organizations: Principles and Issues*, 6th ed. 1995, at 229.

⁴ See, e.g., R. E. L u t z / Z. K e m b a y e v, *Ten Years of the WTO: Reflections on the Future of Regional and Global Trade*, *Int'l Law News* 1 (2005).

⁵ Calculated by the author on the basis of information provided by United States Cent. Intelligence Agency, *World Fact Book* (2005), available at <<http://www.cia.gov/cia/publications/factbook>> (last visited Feb. 4, 2006).

boldt already in 1843.⁶ However, the borders of Central Asia were subject to multiple definitions for a long time. The most limited definition was the Soviet Union's "Srednyaya Azia" as consisting solely of Uzbekistan, Turkmenistan, Tajikistan, and Kyrgyzstan, and not including Kazakhstan. But after the disintegration of the USSR in December 1991 the most common definition of Central Asia includes all the five Central Asian successor states. This view was confirmed by attempts undertaken by the Central Asian states to create RIAs in order to maintain existing economic and trade relations and cooperate on some non-trade matters such as developing transport and pipeline routes and the desiccation of the Aral Sea.⁷

In this context, there are three issues to be clarified: (1) the meaning of "integration"; (2) the meaning of "region", and (3) the meaning of "RIA". "Integration" refers to the unification of a number of previously independent units into a larger whole; regional integration, then, is a process describing the degree of unity existing within a particular regional system. "Regions" can be defined in the most general sense as politically and territorially based subsystems of the general international system and can be found at all territorial levels.⁸ It should be also noted that regions (groups of nation-states) may consist of their own distinct components – micro-regions (regions within nation-states) and on a much wider scale may form macro-regions (regions comprising up to several groups of nation-states).⁹ At the present, there are all the reasons to assume that Central Asia is a part of a larger entity – Eurasia, which is one of the world's emerging macro-regions. Finally, "Regional Integration Agreements" are most commonly understood as associations of economies which have agreed to liberalize their intra-association trade under a certain set of market access conditions.¹⁰ RIAs may exist anywhere along the spectrum,

⁶ A. von Humboldt, *Asie Centrale*, 3 vol. 1843.

⁷ See e.g. Ashgabat Declaration (1999) issued by the Presidents of all five Central Asian states which partially provides that "We, Presidents of fraternal Central Asian nations ... firmly aspire to overcome together consequences of the crisis and to improve the ecological conditions in the basin of Aral sea". See text in Russian in Reference System "Yurist – Legislation of Kazakhstan Online" available at <<http://www.base.zakon.kz>> (last visited Feb. 4, 2006).

⁸ On the issue of regions, see, e.g., P. Aronsson, *The Desire for Regions. The Production of Space in Sweden's History and Historiography 1-42* (1995), <<http://www.hum.vxu.se/publ/texter/regions.html>> (last visited Feb. 4, 2006); C. Harvie, *The Rise of Regional Europe*, 1994.

⁹ From a geographical perspective one can distinguish almost a dozen macroregions in the world, including Europe, the Post-Soviet Area (Eurasia), North America, South America, Greater Middle East, Sub-Saharan Africa, South Asia, East Asia, Southeast Asia, Australia and the Pacific. The drive towards RIA formation has continued unabated in all of the above mentioned macroregions and in the most of the underlying regions since the early 1990s. For example, Europe is represented by the EU, the most advanced model of a regional integration striving to become a political union. North America is represented by the North American Free Trade Agreement (NAFTA), and Southeast Asia by the Association of Southeast Asian Nations (ASEAN). See e.g. M. Farrel/L. Van Lengenove, *Introducing Regional Integration*, in: A. Antoine (ed.), *Allied Consultants & UNU-CRIS, 2002-03*, <<http://www.allied-co.com/ri>> (last visited Feb. 4, 2006).

¹⁰ K. Anderson/R. Blackhurst (eds.), *Regional Integration and Global Trading System, Introduction and Summary*, 1993. On the economics of these different types of agreements, see, e.g.,

from basic (preferential trade agreements and free trade areas) to advanced forms (customs unions, common markets, economic unions and political unions), depending on the degree of integration of participating states, i.e. their willingness and commitment to share their sovereignty.

II. Advantages of Integration Processes in Central Asia

The formation of RIAs is driven by a variety of factors: among them are economic and political considerations. The WTO's 2003 World Trade Report indicated RIA formation may be motivated by the search for access to larger markets, which are built much easier at the regional or bilateral level.¹¹ Countries may band together in a RIA to advance deeper economic integration and strengthen their bargaining power. Membership in RIAs can also provide a means of securing foreign direct investment, particularly for a country with low labor costs, which has preferential access to a larger, more developed market. Thus, RIAs may perform a sort of dual locking function – locking out competition and locking in investment. Nowadays the choice of RIA partners increasingly appears to be based also on political and security concerns. In creating a RIA, a government seeks, first, to consolidate peace and increase regional security with its RIA partners, and, secondly, it desires to increase its bargaining power in multilateral negotiations by securing commitment on a regional basis. Indeed, for a long time attention to the regional integration issue focused on the process of European economic integration, which was viewed in turn as predominantly a political exercise.

All these benefits are fully applicable to a potentially very profitable RIA between the Central Asian states which have a number of very important advantages for their successful integration. Among the region's key assets are a geographical location that provides links between Europe and the growing markets of Asia, significant oil and gas reserves and well-educated population. But most importantly, Central Asian states are unusually complementary to each other geographically, historically, politically, and economically. First, a fundamental rule of regional integration is the regional nature of trading blocks. The geographical proximity of member countries within each block lends itself to the creation of a RIA. In fact, RIAs form traditionally between "natural" trading partners – geographically contiguous countries with well-established trading patterns. Second, the Central Asian states share not only in geographic proximity and extensive common borders, but also in cultural and linguistic affinities and a common heritage. Third, the Central Asian states were for many times throughout their history politically united.

B. Balassa, *The Theory of Economic Integration*, 1961; P. Robinson, *The Economics of International Integration*, 3rd ed. 1987.

¹¹ WTO, *World Trade Report*, 2003, available at <http://www.wto.org/English/news_e/pres03_e/pr348_e.htm> (last visited Feb. 4, 2006).

Fourth, they have long histories of interaction and economic connections,¹² making successful integration among them more probable. Finally, the last but not least advantage is popular support of the integration processes in Central Asia. Indeed, a substantial majority of the population feels very positively towards integration because it is perceived to include numerous social and economic benefits.¹³

All the advantages and benefits of the Central Asian integration were very well reflected in the annual message of the President of Republic Kazakhstan, Nursultan Nazarbayev, who stated that:

“Until the end of 15th century, Central Asia was a major player in the global economy. Our region bridged the East and the West. The population of the region was not divided into countries and nations. The decline of the Silk Road turned Central Asia into backwaters of progress. For the first time in over five centuries, our independence is making it possible to restore the economic importance of our region. We are developing our transit infrastructure and emerging as a global major supplier of commodities, including oil, gas, iron ore and agricultural products. The network of new oil and gas pipelines and modern highways and railways can already be seen along the ancient Silk Road ... We have a choice between remaining the supplier of raw materials to the global markets and wait patiently for the emergence of the next imperial master or to pursue genuine economic integration of the Central Asian region ... In the region, we share economic interest, cultural heritage, language, religion, and environmental challenges, and face common external threats. The founding fathers of the European Union could only wish they had so much in common. We should direct our efforts towards a closer economic integration, a common market and a single currency.”¹⁴

If and when the Central Asian countries would be able to successfully pursue integration projects, they may benefit enormously not only from an integrated market but also from the increased stability and security in the region.

III. Background of Integration Processes in Central Asia

As the starting point of the regional integration processes in Central Asia can be considered the conclusion of the Minsk Agreement, signed by the heads of state of

¹² “For example, one of the major reasons of the economic disaster after the disintegration of the USSR was the fact that the Soviet Union was an integrated economy built on the organizing principle of no duplication of economic activities; none of its successor states was yet able to pursue an independent economic life successfully.” E. Marks, Institute for National Strategic Studies, *The CIS and the Caucasus*, Nov. 1996, in: H. Binnendijk et al. (eds.), 1996, available at <http://www.ndu.edu/inss/strforum/SF_90/forum90.pdf> (last visited Feb. 4, 2006). “The result was that the economic output by 1999 had fallen to less than 40 % of the 1991 level.” See United States Cent. Intelligence Agency, *World Fact Book* (2005), <<http://www.cia.gov/cia/publications/factbook/geos/up.html>> (last visited Feb. 4, 2006).

¹³ See N. Isingarin, *10 Years of CIS: Problems, Search and Solutions*, 2001 (in Russian).

¹⁴ Address by the President of the Republic of Kazakhstan Mr. Nursultan Nazarbayev to the People of Kazakhstan, February 18, 2005, “Kazakhstan on the Road to Accelerated Economic, Social and Political Modernization”, available at <http://www.akorda.kz/page.php?page_id=156&lang=2&article_id=80> (last visited Feb. 4, 2006).

Russia, Belarus, and Ukraine at Belarus on December 8, 1991, which formally established the Commonwealth of Independent States (CIS).¹⁵ The Minsk Agreement concluded that “the USSR has ceased to exist as a subject of international law and a geopolitical reality” and recognized the sovereignty, equality, and territorial integrity of each republic.¹⁶ The three original signatories were joined by Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan in Alma-Ata on December 21, 1991, when those states acceded to the Minsk Agreement.¹⁷ All these states unanimously adopted the Alma-Ata Declaration, confirming the devotion of the former union republics to cooperation in external and internal policies, and guaranteeing the implementation of the former Soviet Union’s international commitments.¹⁸ In September 1993, the CIS countries signed the Treaty on the Establishment of the Economic Union.¹⁹ This Treaty committed the CIS states to the gradual creation of an Economic Union; the Treaty envisioned its creation through a multistage process, beginning with a multilateral FTA and culminating in a monetary union with a single currency.²⁰ However, from its very inception, the CIS was plagued by in-fighting between member states and a disregard for written declarations.²¹ In 1994, the member states of the CIS signed an agreement on the establishment of an FTA to implement the provisions of the Treaty on the Establishment of the Economic Union. Although this agreement was signed by all parties, it was not unanimously ratified by the national parliaments of each respective member state. The main reason for this was a fundamental disagreement over the goals and purpose of the CIS. One camp, led by Russia, envisaged the CIS as a vehicle for closer economic and political integration, while another camp, led by Ukraine, visualized the CIS as a transitional organization that was to serve only to prepare the individual republics for complete independence. While the first camp strived to create a customs union, the second camp worked toward the creation of a bilateral preferential trade system. By 1994-1995, it was clear that further integration in the framework of CIS was possible only at different levels and in different camps.²²

¹⁵ Agreement Establishing the Commonwealth of Independent States, Dec. 8 1991, 31 I.L.M. 142 (1992).

¹⁶ *Ibid.*, at Preamble and art. 5.

¹⁷ Protocol to the Agreement Establishing the Commonwealth of Independent States, Dec. 21, 1991, 31 I.L.M. 147 (1992). When Georgia joined in 1993, all of the former republics of the USSR, except the Baltic States, had become members of the CIS.

¹⁸ *Ibid.*, at 148-49; see also Review of the Implementation of the Declaration on Strengthening of International Security, G.A. Res. 47/60, U.N. Doc. A/RES/47/60 (Dec. 9, 1992).

¹⁹ See text in Russian in Reference System “Yurist – Legislation of Kazakhstan Online” (note 7) and also at <<http://www1.umn.edu/humanrts/russian/cis/Reconuntreaty.html>>, (last visited Feb. 4, 2006).

²⁰ CIS Treaty on the Establishment of the Economic Union (1993), art. 4.

²¹ See e.g. R. Sakwa/M. Webber, *The Commonwealth of Independent States, 1991-1998: Stagnation and Survival*, 51 *Europe-Asia Studies* 379, 386-387 (1999).

²² See M. Roberts/P. Wehrheim, *Regional Trade Agreements and WTO Accession of CIS Countries*, *Intereconomics: Review of European Economic Policy*, Nov.-Dec. 2001, at 322; M. Web-

Central Asia became one of those camps where the regional integration processes started on 10 January 1994 with the signing of a treaty for the establishment of an integrated economic space between Kazakhstan and Uzbekistan. In less than a week, on 16 January the contracting parties decided to admit Kyrgyzstan upon its application as a full-fledged partner to their emerging organization. Thus, on 30 April 1994 in Cholpon-Ata (Kyrgyzstan), Kazakhstan, Kyrgyzstan and Uzbekistan concluded the Treaty on the Establishment of Single Economic Space.²³ This Treaty mostly reiterated the provisions of the treaty between Kazakhstan and Uzbekistan and provided that the contracting parties entrust the following objectives to the organization: (1) to coordinate joint actions in the matters of the economic reforms, the development of market economy, and the formation of effective mutually advantageous economic relations in order to more effectively use rich natural and mineral resources of the contracting parties; and (2) to create and develop a common economic space based on the freedom of movement of goods, services, capital and labor in the light of the necessity to implement the provisions of the CIS Treaty on the Establishment of the Economic Union.²⁴

The 1994 Treaty clearly provided that the contracting parties would not allow any discrimination on the basis of nationality with respect to labor conditions in their respective territories and would provide a visa-free regime of the movement of their citizens within the common economic space.²⁵ It is noteworthy that the contracting parties also laid down the most basic preconditions even for the creation of an economic union and agreed to operate their monetary systems on the principles of mutual recognition of national currencies, and creation of conditions of their mutual convertibility in current payments;²⁶ and harmonization of their respective tax systems.²⁷ At first view, it seems that the Central Asian states pursue the goal of the creation of an advanced form of RIAs, and namely the formation of the Common Market. However, the Treaty provides no provision with regard to the establishment of the CET; it just reads that the contracting parties recognize as necessary: (1) to eliminate customs duties and consecutively decrease taxes, fees and other restrictions; (2) to simplify customs procedures; (3) to harmonize cus-

ber, *CIS Integration Trends: Russia and the Former Soviet South*, 50 *The Royal Inst. Int'l Affairs* (1997).

²³ Treaty on the Establishment of Single Economic Space between Kazakhstan, Kyrgyzstan and Uzbekistan (1994), see text in Russian in Reference System "Yurist – Legislation of Kazakhstan Online" (note 7).

²⁴ *Ibid.*, at Preamble.

²⁵ *Ibid.*, art. 9.

²⁶ *Ibid.*, art. 6.

²⁷ *Ibid.*, art. 8. In this regard, it should also be noted that on 14 March 1997 Intergovernmental Agreement on the Principles of Rapprochement of Main Directions of National Legislations between Kazakhstan, Kyrgyzstan and Uzbekistan was adopted which foresaw the creation of a Legal Information Exchange Center. The objectives of the Center include: (1) to exchange information on legal acts of the contracting parties; (2) to conduct comparative analysis on the legal acts and work out proposals on their unification; (3) to create a database of legal acts. See text in Russian in Reference System "Yurist – Legislation of Kazakhstan Online" (note 7).

toms legislation and unify methods of the customs statistics; (4) to unify transportation tariffs observing the principle of freedom of transit; and (5) to eliminate customs inspection with respect to the luggage of citizens of the contracting parties, unless there are serious grounds for presuming that it contains weapons, narcotic and psychotropic substances as well as currency and cultural valuables.²⁸ Thus, it may be concluded that the contracting parties merely pursued the objective of creation of an FTA but simultaneously laid down the foundation to proceed to advanced forms of RIAs – to Customs Union and eventually to the Common Market.

Further, the Treaty foresaw the creation of an institutional framework providing that its formation is to be regulated by additional agreements between the parties.²⁹ Thus, on 10 February 1995 in Almaty, the contracting parties also adopted an Agreement on the Inter-State Council and its Institutions. This Agreement provided for Inter-State Council consisting of the presidents of the contracting parties as the supreme organ which should consider the most important integration issues and meet not less than once in six months.³⁰ The further organs included the Council of Prime Ministers, the Council of Foreign Ministers,³¹ as well as the Executive Committee as the permanent working organ of the organization.³² Each state had one vote in the process of decision-making, and the decisions could be taken only by consensus.³³ Finally, the Treaty also provided that it was open for accession of other CIS countries provided that they recognize its provisions and get the approval of the original participants.³⁴ Thus, in March 1998 Tajikistan, which had previously had observer status, became a full member in the scheme which became known as the Central Asian Economic Community (CAEC).

Despite so many regional advantages and predictions that the newly independent Central Asian countries would seek to renew fractured connections with each other, a striking feature of the Central Asian countries' economic policies since independence has been the fact that they simply avoided any significant commitment to regional trading arrangements. Turkmenistan with its fierce neutrality which has not even initiated negotiations for WTO accession is a special case;³⁵ nevertheless,

²⁸ Ibid., art. 4.

²⁹ Ibid., art. 5.

³⁰ Agreement on the Inter-State Council and its Institutions between Kazakhstan, Kyrgyzstan and Uzbekistan (1995), arts. 1, 6. See text in Russian in Reference System "Yurist – Legislation of Kazakhstan Online" (note 7).

³¹ Ibid., art. 2.

³² Ibid., art. 3. It should also be noted that on 17 July 1998, the members of CAEC adopted Agreement on the Legal Status of Officials and Servants of the Executive Committee which provided them broad diplomatic immunities and privileges. See text in Russian in Reference System "Yurist – Legislation of Kazakhstan Online" (note 7).

³³ Ibid., art. 5.

³⁴ Treaty on the Establishment of Single Economic Space between Kazakhstan, Kyrgyzstan and Uzbekistan (1994), art. 14.

³⁵ Turkmenistan's main foreign policy principle has been strict neutrality, which it has interpreted as allowing only limited cooperation with the CIS, even to the extent of not supplying statistics to the

all other new independent states of Kazakhstan, Kyrgyz Republic and Uzbekistan, although signing regional agreements, persistently ignored their integration commitments in its practical politics if not in its statements of principle. Trade within the CAEC declined steadily over the 1990s, and in most areas the members pursued independent policies without regard to intra-CAEC cooperation and at times in contradiction to stated CAEC policies and goals.³⁶ Moreover, Central Asian integration has severely deteriorated and even became a complete disintegration when bombs blasted in the Uzbek capital, Tashkent, in 1999 killing more than a dozen people and the Islamic Movement of Uzbekistan broadcast a declaration of jihad demanding the resignation of the Uzbek leadership. Central Asian leaders responded by placing barriers to regional cross-border interactions citing perceived national security threats.

The trend to ensure regional security through confrontation instead of cooperation continued until December 2001 when the presidents of the four Central Asian states issued the Tashkent Declaration. This Declaration called for joint actions against terrorism, political and religious extremism, transboundary organized crime and other threats to the stability in the region and acknowledged the importance of the further promotion and diversification of the political dialogue. The Declaration envisioned to extend the scope of the integration and to transform the CAEC into Central Asian Cooperation Organization (CACO) including not only economic issues but also political, social, scientific-technical, cultural and educational relations under its integration agenda.

On 28 February 2002, the Treaty on the establishment of the Central Asian Cooperation Organization (CACO) was signed by Presidents of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. The Treaty sets forth the following basic purposes of the CACO: (1) Cooperation in the political, economic, scientific-technical, environmental, cultural-humanitarian spheres, and also in the matters of regional security and stability; (2) Prevention of threats to the independence, sovereignty and territorial integrity of member states; (3) Combating regional and transnational criminality, in particular with the illegal circulation of drugs, the organized crime, illegal migration and terrorism; (4) Coordination of efforts in the stepwise formation of a common economic space; (5) Creation of the joint infrastructure of the transport and energy network systems; (6) Coordination of the politics in the field of the boundary and customs control; (7) Cooperation in the field of the tariff politics; (8) Coordination in the field of rational and mutually advantageous use of water resources; and (9) Contributing to the growth of the spiri-

CIS statistical agency. See R. Pomfret, *Regional Trade Arrangements and Economies in Transition: The Central Asian Countries* (Paper prepared for the session "Regional Integration and Economic Cooperation: New Issues and Directions" at the 2001 ASSA meetings in New Orleans), available at <<http://www.economics.adelaide.edu.au/staff/pomfret/aeaitfa.pdf>> (last visited Feb. 4, 2006).

³⁶ See e.g. R. Pomfret, *Trade Initiatives in Central Asia: The Economic Cooperation Organization and the Central Asian Economic Community*, in: R. Dwan/O. Pavliuk (eds.), *Building Security in the New States of Eurasia: Subregional Cooperation in the Former Soviet Space*, 2000, 59.

tual potential of the peoples of member states through the development of cooperation in the field of culture, science, education, sports and tourism.³⁷

Although the CACO mentioned the idea of the formation of a common economic space, it could hardly be qualified as a RIA even in comparison to the CAEC, since it did not strive to eliminate even partially trade tariffs and barriers and provided just for mere cooperation and coordination in the sphere of the boundary and customs control. With respect to the institutional structure and decision-making, the Treaty largely reiterated the CAEC Treaty providing however that the Inter-State Council should meet once a year (not twice as previously) and renaming the Executive Committee to the Committee of National Coordinators.³⁸ The CACO Treaty also restated that it is open to all the states which share its goals and principles and accept its obligations.³⁹ Thus, in May 2004 Russia joined this organization and since the CACO did not implement a single initiative of its members and was dominated by centrifugal forces, in October 2005 all five CACO member states decided that Uzbekistan will join the Eurasian Economic Community (EurAsEC) and that CACO and EurAsEC will merge together.

IV. Problems of Integration Processes in Central Asia

The five Central Asian states have drawn up many plans for regional cooperation among themselves but these have been feeble measures with little practical impact. Although they have numerous significant advantages for successful integration, they have also experienced many serious problems. First, the Central Asian countries have different levels of *per capita* GDP,⁴⁰ incompatible trading regimes,⁴¹ and as a result, the lack of political commitment to regional trade liberalization. Second, an additional precondition of successful integration is a large degree of

³⁷ Treaty on the Establishment of the Central Asian Cooperation Organization (2002), art. 2. See text in Russian in Reference System "Yurist – Legislation of Kazakhstan Online" (note 7).

³⁸ Ibid., arts. 4, 5, 7.

³⁹ Ibid., art. 3.

⁴⁰ Kazakhstan had \$ 8,700 per capita GDP on a purchasing power parity basis while Uzbekistan had \$ 1,900, Kyrgyzstan \$ 1,800 and Tajikistan \$ 1,200. See United States Cent. Intelligence Agency, World Fact Book (2005), (note 12).

⁴¹ Due to the 1995-97 government program of economic reform and privatization resulting in a substantial shifting of assets into the private sector, to the well-managed monetary policy as well as the rapidly growing oil prices, Kazakhstan enjoyed double-digit growth in 2000-01 – and more than 9 % per year in 2002-05. See e.g. A. A s l u n d, An Expanding Europe, in Decline: The EU Is an Economic Laggard. If You Want Growth, Kazakhstan's the Ticket, The Washington Post, April 25, 2004. In Uzbekistan, another major country of the region, the government sought to prop up its Soviet-style command economy with subsidies and controls on production and prices emphasizing import substitute industrialization within its largely closed economy. Only in 2003, the government accepted the obligations of under the International Monetary Fund, providing for full currency convertibility. However, strict currency controls and tightening of borders have lessened the effects of convertibility and have also led to some shortages that have further stifled economic activity. See United States Cent. Intelligence Agency, World Fact Book (2005), (note 5).

democratization and political liberalization. Although the political systems of the Central Asian countries underwent some degree of democratization in the 1990s and made certain achievements on the way to rule-of-law, democracy remains in many countries elusive as the legacy of state control and endemic corruption stalls efforts at economic reforms and civil freedoms. Third, a fundamental problem in Central Asia is that despite a common historical heritage and a legacy of tightly interwoven economies from the Soviet era, the five countries' economies never constituted a single self-sufficient system being for many years just a part of a highly integrated Soviet economy and their resource endowments are more competing than complementary.⁴² An important reason why integration in Central Asia has not progressed is the similarity of the members' economic specialization in a fairly limited range of resources. Cotton, oil, gas and minerals are all sold (to the extent that this is not limited by the inherited pipeline network) at world prices and the exporters see no benefit from preferential regional arrangements. Fourth, in addition to the lack of a strong economic basis for regional arrangements, there are also significant political tensions. The two largest countries, Uzbekistan and Kazakhstan, compete for regional hegemony. In Kyrgyzstan, ethnic tensions between Uzbeks and Kyrgyz surfaced in an area of the Osh Oblast where Uzbeks form a majority of the population, leading to violent confrontations and a state of emergency. Tajikistan has been riven by civil war for most of the period since 1991, and Turkmenistan is committed to a concept of neutrality which precludes membership in any of the regional integration arrangements.

The main factor underlying the most important problems is that the Central Asian states strive to create the advanced forms of RIAs while lacking the political motivation to surrender even an insignificant part of their sovereignty. The motives to enter an advanced form of RIAs are never purely commercial and their member states tend to be political-military allies; moreover, the world experience has shown that the advanced forms of RIAs are seldom formed except as a step towards either economic or political union. Unless progress is made towards the creation of supranational authorities any attempts are unlikely to endure.⁴³ In other words, the major problem is the lack of compatibility between the juridical institutional framework and the stated economic aims and objectives.

More specifically, the most important obstacle was the lack of the political will to create supranational organs. The institutions of Central Asian integration blocs did not possess any substantial amount of power to conduct effective independent policies. The members of the institutions and their staffs were representatives of the governments of the member states and were subject to their government's authority and direction.⁴⁴ As a consequence, the mechanism for enforcing decisions was extremely weak. Another significant problem was the lack of an effective dis-

⁴² See e.g. R. Pomfret, *The Economies of Central Asia*, 1995.

⁴³ See F. A. Haight, *Customs Unions and Free-Trade Areas under GATT – A Reappraisal*, 6 J. World Trade L. 391 (1972.)

⁴⁴ See Anderson/Blackhurst, *supra* note 10.

pute resolution system. As shown above, Central Asian states have been able to enact a number of norms designed to integrate their economies. However, in order to be effective, these norms must be interpreted in a consistent manner and must be effectively enforced. Unfortunately, both integration blocs simply did not have an effective dispute-resolution mechanism. It should be noted that the post-Soviet states generally did not feel the need to grant the supranational powers to e.g. the Economic Court of the CIS. One of the main reasons is that they feel sufficiently protected by their right of veto guaranteed by the consensus rule that governs the decision-making procedure of practically all organs of the CIS.⁴⁵

The absence of effective supranational institutions and transparent dispute-resolution created major obstacles to the implementation and expansion of the integration agenda of Central Asian states. The implication is clear: an international organization that cannot efficiently enforce compliance with its norms and resolve disputes arising out of its operations cannot be effective and is very unlikely to endure.

V. From Central Asian Union to the Eurasian Union?

In view of the above-mentioned advantages of the regional integration in Central Asia and the on-going process of globalization, no one, however, could characterize the achieved level of the integration as satisfactory. Dissatisfaction was fully reflected in the annual address of the President *Nazarbayev* to the people of Kazakhstan on 18 February 2005 where he said that: "We can clearly see the causes of success by Asian tigers and the European Union ... The global economy demands larger markets ... Further regional integration will lead to stability, regional progress, and economic, military and political independence. This is the only way for our region to earn respect in the world. This is the only way to achieve security, and to fight effectively against terrorism and extremism. Regional integration will advance the interests of all the common folk that live in Central Asia. I propose therefore to create a Union of Central Asian States."⁴⁶ President *Nazarbayev* in his address to the nation specifically named Kazakhstan, Kyrgyzstan and Uzbekistan as would-be members of a Central Asian Union saying also that "other countries may also wish to join". The Union, in his view, should be modeled on the European Union and must be an effective instrument in fighting terrorism and extremism and achieving peace and security in the region.

Although both Kyrgyzstan and Uzbekistan expressed their support for the Central Asian Union idea, the only partner of Kazakhstan which attached due value to *Nazarbayev's* call for Central Asian Union seemed to be Russia. Mos-

⁴⁵ See G. M. *Danilenko*, *The Economic Court of the Commonwealth of Independent States*, 31 N.Y.U. J. Int'l L. & Pol. 893 (Summer 1999).

⁴⁶ Address by the President of the Republic of Kazakhstan Mr. Nursultan *Nazarbayev* to the People of Kazakhstan, (note 14).

cow cannot put up with the gloomy prospect of irretrievably losing its former domains in Central Asia and the Kazakh President's call for integration comes at a time when the Kremlin is desperately trying to bring back Central Asia to its fold, and feels increasingly uncomfortable with the U.S. troops stationed there. In the 1990s and even in recent years Moscow had to swallow bitter pills of humiliation caused by a series of setbacks, as Russia lacked the necessary money and political desire to strengthen its influence in the CIS, bogged down with its own domestic problems. The proposed Central Asian union to some extent revives the hope of forging a pro-Moscow alliance in the post-Soviet area tied together by common currency and economic infrastructure as well as serving as a buffer zone for Russia warding off the threat of military blows from Islamic extremists. In essence, Kremlin policy-makers merely regard the would-be Central Asian Union as an initial step towards implementing the scheme of a Russian-dominated Eurasian Union in the CIS.⁴⁷

It should be noted that already on 10 October 2000, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan signed the Agreement on the establishment of the Eurasian Economic Community (EurAsEC).⁴⁸ The main purpose of the Community was to effectively advance the process of the formation of the customs union and to proceed to the next stage of integration, namely, common market.⁴⁹ Initially, the level of the multilateral integration, in which Russia, Belarus and the Central Asian states were involved, did not as yet provide grounds for unrestrained optimism.⁵⁰ Bureaucratic barriers were being removed with difficulty and centrifugal tendencies were persisting. The integration was still regarded as a threat to the national sovereignty and not as means to strengthen sovereignty by ensuring faster economic growth.⁵¹ One of the most important reasons for that is the lack of the balance among the members of the Community; Russia enormously dominates over all other member states of the EurAsEC. In order to avoid the problems arising from this imbalance especially Russia desperately sought the willingness of Ukraine to join the Community and share in the plans for deeper integration within the format of the Single Economic Space (a quartet of Russia, Ukraine, Belarus and Kazakhstan conceived to develop into an economic union).⁵²

⁴⁷ A Russian strategist, commenting on Nazarbayev's integration concept, assessed it as an "irreproachable and timely move, a step towards the strategy of integration into a Eurasian union in the post-Soviet space". See M. Yermukanov, *Nazarbayev's Integration Drive Blows Wind into Moscow's Sails*, *Central Asia-Caucasus Analyst*, March 09, 2005, available at <http://www.cacianalyst.org/view_article.php?articleid=3122&SMSESSION=NO> (last visited Feb. 4, 2006).

⁴⁸ Treaty on the Establishment of the Eurasian Economic Community, (2000); Text in 2212 U.N.T.S. 309.

⁴⁹ See art. 2 of EurAsEc Treaty.

⁵⁰ See, e.g., Pomfret (note 36).

⁵¹ D. Trenin, *Moscow's Realpolitik*, Carnegie Moscow Center (2004), available at <<http://www.carnegie.ru/en/pubs/media/69778.htm>> (last visited Oct. 12, 2005).

⁵² Ukraine already introduced, during the signing of the agreement in September 2003, a provision saying that its participation in the Single Economic Space must adhere to the Ukrainian constitution and its strategic goal is to integrate into the European Union. Thus, Ukraine limited its participation

However, the highly uncertain future of the Single Economic Space after the Ukrainian orange revolution made the Kremlin concentrate more strongly than ever on the idea of Eurasian Union. Furthermore, previously all the EurAsEC countries were actively engaged in developing their own cohesive national identity and/or expanding the development of their vast energy resources and exporting them to world markets; nowadays they began to consider how to achieve a sustainable and consistent economic growth outside the oil, gas, and mining sectors. In order to do so, they necessarily became aware of the need to strengthen relations with neighboring states and integrate their economies. This new realization came at the time when the EurAsEC countries such as Russia and Kazakhstan are benefiting from rising oil prices enabling them not only to pay off much of their formerly huge foreign debts but also accumulate significant reserves of foreign exchange and gold.⁵³ If before these countries just sold their resources at world prices and competing with each other saw no benefit from RIAs, at the present they had already started a successful process of institutionalizing joint economic and trading relationships with each other, thus creating momentum for greater integration. In June 2005, Russia and Kazakhstan set up an investment bank with an authorized capital of \$ 1.5 billion which is designed to become an effective financial instrument in the post-Soviet space.⁵⁴

Another significant event followed in July 2005 when Uzbekistan ordered the United States to vacate an air base in Karshi-Kanabad (near the Uzbek border with Afghanistan) within 180 days. Previously close to Washington, Uzbekistan was an indispensable ally of U.S. efforts against worldwide terrorism. However, the relationship between Uzbekistan and the United States began to deteriorate after the so-called “color revolutions” in Georgia, Ukraine, and especially in Kyrgyzstan. When the U.S. joined in a call for an independent international investigation of the bloody events at Andijon,⁵⁵ the relationship took an additional nosedive and Presi-

merely to the creation of an FTA because anything more would be incompatible with the envisioned membership in the European Union. Although the Ukrainian Parliament voted in April 2004 overwhelmingly in favor of the Single Economic Space, most observers, however, believe that Yushchenko's victory in the Ukrainian presidential election of 2004 was a significant blow against the project. See, e.g., Rada ratifies agreement on Single Economic Space, *Ukrainian Weekly*, Apr. 25, 2004, available at <<http://www.ukrweekly.com/Archive/2004/170401.shtml>> (last visited Feb. 4, 2006); Yushchenko in Strasbourg: *European Aspirations v. Zero-Sum Games*, *Eurasia Daily Monitor*, Jan. 26, 2005, available at <http://www.jamestown.org/publications_details.php?volume_id=407&issue_id=3210&article_id=2369147> (last visited Feb. 4, 2006).

⁵³ According to the CIS Interstate Statistical Committee, as of July 1, 2006 Russian Federation had \$ 250,6 billions of financial reserves and Kazakhstan \$ 22,9 billions. Information available at <www.cis.minsk.by/sm.aspx?uid=7174> (last visited Nov. 4, 2006).

⁵⁴ See RIA Novosti, Russia, Kazakhstan to Set Up Investment Bank in Alma Ata, available at <<http://en.rian.ru/business/20050602/40463544.html>> (last visited Feb. 4, 2006).

⁵⁵ “To U.S. analysts, Andijon signaled that the boiling point had been reached. Encouraged by the success of the Orange Revolution in Ukraine, the Rose Revolution in Georgia, and the Tulip Revolution in Kyrgyzstan, U.S. policymakers would have embraced political liberalization in Uzbekistan as a welcome step in an unfolding positive trend. To Uzbek authorities, however, neighboring Kyrgyzstan's March 2005 Tulip Revolution and resulting turmoil proved that unrest could only be dealt

dent Islam Karimov moved more closely into the orbit of Russia, which not only refused to criticize the Uzbekistan's leadership but offered a more extensive political and economic cooperation.

In October 2005, at the CACO summit in St. Petersburg the members of the Central Asian Cooperation Organization made a decision to disband their organization and join to EurAsEC after Uzbekistan applied for the membership at that organization. Unification of the CACO and EurAsEC was a logical step designed to streamline the process of integration on the post-Soviet territory. The two structures were very much the same in composition. Until recently the only difference was that Uzbekistan was a member of the CACO but not of EurAsEC, while Belarus was a EurAsEC member but not part of the CACO. Thus, although the regional integration processes in Central Asia reached an impasse because of many above mentioned fundamental problems, they received a new impetus on the macroregional level. The dissolution of CACO and Uzbekistan's accession to EurAsEC make the Eurasian Economic Community the only feasible integration project not only in Central Asia but also in the entire post-Soviet area.

The EurAsEC is strikingly different from any other attempts to combine economies of post-Soviet countries to a single effective system. First, its institutional framework resembles very much the EU institutions and includes: the Interstate Council, the Integration Committee, the Interparliamentary Assembly and the Community Court. The Interstate Council is the supreme organ of EurAsEC which is composed of the Heads of State and Government of the Contracting Parties.⁵⁶ The Integration Committee is a standing body of EurAsEC, the main tasks of which are: (1) to ensure cooperation between the organs of EurAsEC; (2) to prepare proposals for the agenda of meetings of the Interstate Council and the level at which they are to be held, together with draft decisions and documents; (3) to prepare proposals for drawing up the budget of EurAsEC and monitor its execution; and (4) to monitor the implementation of decisions taken by the Interstate Council.⁵⁷ The purposes of the Interparliamentary Assembly, composed of members of parliament delegated by the national parliaments of the member states, are: (1) to draft framework legislation for examination by the Interstate Council in the basic areas of legal relations; (2) to adopt model draft laws to serve as a basis for the drafting of national legislation; and (3) to be able to submit questions and recommendations to the EurAsEC organs as well as to the parliaments of the member states.⁵⁸ A very important advantage of the Community is that it establishes its permanent Court to ensure that the EurAsEC Treaty and decisions adopted by the organs of EurAsEC are applied by the member states in a uniform manner. The

with by force and that any relaxation of political controls would be regime suicide ... and that democracy would inevitably and rapidly lead to chaos ...” See E. Rumer, *The U.S. Interests and Role in Central Asia after K2*, 29 *The Washington Quarterly*, 146, (Summer 2006), available at <http://www.twq.com/06summer/docs/06summer_rumer.pdf> (last visited Nov. 4, 2006).

⁵⁶ Treaty on the Establishment of the Eurasian Economic Community, (2000), art. 5.

⁵⁷ *Ibid.*, art. 6.

⁵⁸ *Ibid.*, art. 7.

Community Court is composed of one judge from each member state appointed for a term of six years by the Interparliamentary Assembly on proposal by the Interstate Council.⁵⁹

Another significant advantage of the EurAsEC in comparison with other integration blocs in the post-Soviet area is a system of decision-making by “weighted voting”, which is commonly used in the European Union. According to this principle, initially Russia exercised 40 percent of the voting rights and was responsible for meeting 40 percent of the organization’s operating expenses, Belarus and Kazakhstan each had 20 percent of the shares, Kyrgyzstan and Tajikistan each 10 percent. After the joining of Uzbekistan the votes were redistributed: Russia will keep for itself 40 percent quota, Belarus, Kazakhstan and Uzbekistan will have each 15 percent quotas, Kyrgyzstan and Tajikistan each 7,5 percent quotas. It should also be noted that the EurAsEC Charter specifies that a vote on major policy issues requires two-thirds agreement, so Russia would have to have at least two other states supporting it to win a vote on a major issue.⁶⁰

Last but not the least benefit is that one of the major aims of the EurAsEC is pursuing a united position in relations with the WTO and other international economic organizations and joint accession to the WTO.⁶¹ As of February 2006, of all the EurAsEC members only Kyrgyzstan is a member of the WTO; all other countries are still in the process of accession.⁶²

However, all integration efforts in the framework of EurAsEC will be destined to fail because of the lack of the commitment of the parties to the principles of rule-of-law and democracy and resulting disability to create effective supranational organs. Moving past this point will require substantial reforms to resolve the following problems: 1) the formation of effective institutions with an efficient norm-enforcement mechanism; and 2) the creation of a transparent dispute resolution within the EurAsEC.

The institutional framework of the EurAsEC may seem to be very similar to that of the European Union; however, the real power belongs only to the Interstate Council, i.e. to the presidents of the member states, with other institutions playing just a subsidiary role. More specifically, the EurAsEC’s Integration Committee consisting of the deputy heads of governments and being completely subordinated to the Interstate Council is just not equivalent to the European Commission, which is absolutely independent in the performance of its responsibilities and is in charge of proposing and implementing the EU legislation.⁶³ This situation

⁵⁹ Ibid., art. 8.

⁶⁰ Ibid., arts. 13 and 15.

⁶¹ Ibid., at Preamble.

⁶² WTO Summary Table of Ongoing Accessions, available at <http://www.wto.org/english/thewto_e/acc_e/status_e.htm> (last visited Feb. 4, 2005).

⁶³ The European Commission has been called the motor of the European integration. It is the guarantor of the integration process (“guardian of agenda”) and custodian of the Union’s interests (“guardian of treaties”). The Commission, with its long-term planning and persistence, is credited with “keeping the flame of European integration alive” and promoting the expansion of the organization

yields two consequences. First, the absence of an independent supranational “guardian of the agenda” results in an uneven progression of the integration process. The integration processes may move expeditiously when the economic situation is stable and the member states’ enthusiasm for integration and trade liberalization is high. However, in times of economic crisis, as Central Asian experience has shown, the member states fully dedicate their resources and efforts to resolving their domestic economic problems and often neglect their integration agenda, often acting completely contradictorily to it.⁶⁴ Secondly, the EU Commission, in its function as the “guardian of the treaties”, serves an important role in enforcing member-state compliance with the EU’s norms.⁶⁵ The Commission has the right to investigate and commence proceedings before the European Court of Justice (ECJ) against any member state which does not conform to the spirit of the EU’s formation treaties or fails to follow EU law.⁶⁶ The fact that an institution which has substantial powers to implement and enforce EU law is a supranational entity unconnected to any particular member state gives its actions great credibility. Furthermore, the EurAsEC member states will require a lot of political will to make out of the EurAsEC’s Community Court an institution similar to the European Court of Justice that would not be influenced by the interests of the member states and would ensure that a growing body of community law and norms is correctly interpreted and applied effectively and consistently in all the member states.⁶⁷

through times of economic trouble and low member state interest. See generally J. McCormick, *The European Union: Politics and Policies*, 1999. See also D. W. Urwin, *The Community of Europe* 1991, 81; J. Bednar et al., *The Politics of European Federalism*, 16 *Int’l Rev. L. & Econ.* 279, 286 (1996); see generally N. Nugent, *The European Commission*, 1999; Zepter, *Zukunft und Aufgaben der Europäischen Kommission, Integration* (2000), 260.

⁶⁴ This is clearly the case where a choice is presented between a protectionist measure that might yield short-term domestic benefits and a liberalization measure that might actually provoke a short-term negative economic effect. In fact, that is what also happened to the CIS countries in 1998 and to MERCOSUR in 2001. See Z. Kembayev, *Integration Processes in South America and Post-Soviet Area: A Comparative Analysis*, 12 *Sw. J.L. & Trade Am.* 1(2005).

⁶⁵ See, e.g., Press Release, European Commission, *Investment restrictions – Commission reaffirms its exclusive competence as guardian of Treaties* (Apr. 5, 2001), available at <<http://europa.eu.int/rapid/pressReleasesAction.do?&language=EN&reference=IP/01/517>> (last visited Feb. 4, 2006).

⁶⁶ Treaty Establishing the European Economic Community, art. 211, Mar. 25, 1957, 298 U.N.T.S. 86.

⁶⁷ The ECJ has been extremely influential in the process of European integration. With its generous interpretation of Union law, it has established of an autonomous Union legal order, which is the basis upon which the Union may yet develop into statehood. Without the ECJ it is unlikely that the EU would have reached the degree of integration that it enjoys at present. See, e.g., L. Brown/T. Kennedy, *The Court of Justice of the European Communities*, 2000; G. S. Sander, *Der Europäische Gerichtshof als Förderer und Hüter der Integration*, 1998.

VI. Conclusion

Experience has shown that one of the most important rules with respect to regional integration is the fact that regions as well as RIAs are constructed, deconstructed and reconstructed through interactions between various actors in response to changes in their internal and external environment on the basis of what is most appropriate for the pursuit of their commonly held goals.⁶⁸ In other words, the process of regional integration is a part of the perpetual transformation of the international system, in which regions as well as RIAs emerge, subsist and eventually cease to exist as separate entities. What the international community may witness now is the process of the emergence of Eurasia as one of the world's new macro-regions with Central Asia along with Russia, Belarus and potentially some other post-Soviet and neighboring countries (such as Mongolia) becoming a part of this rising integration entity.

The formation of RIAs in Central Asia in particular and in the post-Soviet area generally is driven by a variety of the same reasons as all around the world and most prominently in the European Union, which include not only economic considerations aimed at the liberalization of trade but also more increasingly political and security factors such as consolidation of peace and security and rise of their bargaining power in international relations by securing commitment on a regional basis.⁶⁹

However, at this point, moving the integration processes forward will be difficult, if not impossible. Integration within the framework of the advanced forms of RIAs needs to be managed by supranational institutions with adequate resources and supreme authority at least in the designated areas of integration. Looking at the European experience, it is clear that supranational organs may operate only on the principles of democracy and rule-of-law. Given the current configuration of the EurAsEC, it is obvious that until the institutional framework of this organization can be democratized and become transparent, there is little likelihood of any substantial further progress on the implementation and expansion of the EurAsEC's agenda. The democratization of the institutional framework in its turn will necessarily require the EurAsEC member states to more or less completely resolve their economic difficulties and be persistent in pursuing internal reforms in the difficult transition to truly free-market democracies.

⁶⁸ An example of changing perceptions of a region is the change from regarding the border of Europe as falling between Eastern and Western Europe. Nowadays almost all the former Eastern European countries are members or potential members of the EU. Another example is the beginning of accession membership talks between the EU and Turkey; see Z. K e m b a y e v, *Legal Aspects of European Union Enlargement*, *Int'l Law News* 4 (2005). See e.g. F a r r e l / V a n L e n g e n h o v e (note 9).

⁶⁹ See J. B h a g w a t i, *Regionalism and Multilateralism: An Overview*, in: J. de Melo/A. Panagariya (eds.), *New Dimensions in Regional Integration*, 1993, 22; E. D. M a n s f i e l d, *Effects of International Politics on Regionalism in International Trade*, in: K. Anderson/R. Blackhurst, (eds.), *Regional Integration and Global Trading System*, 1993, 199-217. See also WTO, *World Trade Report* (2003).

