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RUSSIA'S NORMATIVE INFLUENCE OVER POST-SOVIET STATES: THE EXAMPLES OF BELARUS AND UKRAINE[1]

HUGO FLAVIER,
Montesquieu University – Bordeaux IV
(Bordeaux, France)

Debate as to the relationship between law and power in Russia has long focused on the study of hard power. Adopting the work done on soft power in the sphere of American political science, and as part of a legal analysis, we wish to show that Russia has also developed her own soft power based in part on a strategy of normative influence. Law is thus part of a trend in regaining power that has previously been lost. Admittedly this strategy is not, in itself, the preserve of Russia, as is shown by the European Union's own use of the same approach. The fact remains, however, that there are aspects specific to Russia. Indeed, it may be possible to isolate three types of normative influence in Russia, the construction of which is linked, in part, to her history. Firstly, there is the normative legacy of the Soviet Union. A direct consequence of history, Russia has set about making that legacy bear fruit or, at the very least, ensuring that it is not fundamentally challenged. Secondly, and particularly by relying on the CIS's institutional and political springboards, Russia has succeeded in promoting the normative alignment of those countries that she seeks to influence, which we have termed the promotion of normative convergence. Thirdly, and with greater vigour, Russia now promotes a veritable normative expansion that is increasingly based on a fait accompli rather than persuasion. These are the three types of influence that we propose to examine in this article, limiting the legal analysis to two countries that are directly concerned with this strategy: Ukraine and Belarus.

Keywords: normative influence; normative expansion; regional integration; Customs Union; EurAsEC; CIS; Ukraine; Belarus; comparative law.

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[1] As this article was written in July 2013, we could not foresee what would later happen in Ukraine in 2014. The few developments based on the state of law prior to the new situation have, however, been retained, insofar as these illustrate the techniques and the progressiveness of Russia's normative influence over Ukraine. All my thanks to Rachael Singh, Lawyer Linguist, University of Bordeaux, for the assistance in translation of this paper from the French into the English language.

1. Introduction

Studies conducted in recent years on the issue of emergence, and more specifically the emergence of Russia, are generally conducted in a non-legal field. Work by economists, political scientists or even specialists in international relations has thus narrowed the scope of the research.[2] Jurists are increasingly few – and therefore all the more valuable – in the field. This lack is probably due to the ambiguity of emergence as a concept. Although very recent[3] and not very juridical, it is not entirely devoid of interest. It is a rich concept, offering a different understanding of the relationship between law and power in the specific context of Russia.

The relationship that the Russian State maintains with its law has long been, and perhaps continues to be as one with power. This is not illegitimate at first glance, insofar as the law is one of the key tools available to public authority; indeed, for some, it is the distinguishing feature of state sovereignty conceived as being 'the monopoly to decree positive law.'[4] The specificity of Russian law, however, is that its relationship with power is circular, and that it is not supported by other legitimizing concepts, such as that of the public service or special measures in France.[5] In other words, there is in Russia a concept of the autopoietic / self-creating nature of power, wherein it is the foundation of the law and legitimizes it, while the law is an instrument of power and legitimizes it in return. Law is therefore conceived, in Russia, essentially as an instrument of State action and dominion.[6] This historic and continued connection

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[2] *Cf.* in French: L'enjeu mondial. Les pays émergents (Christophe Jaffrelot, éd.) (Presses de Sciences-Po 2008) (we refer you specifically to the chapter on Russia, which is really the transcript of a debate); L'émergence de nouvelles puissances: vers un système multipolaire? Afrique du Sud, Brésil, Chine, Inde, Mexique, Russie (Sebastian Santander, éd.) (Ellipses 2009); David Teurtrie, Géopolitique de la Russie. Intégration régionale, enjeux énergétiques, influence culturelle (L'Harmattan 2010); Moscou et le monde. L'ambition de la grandeur: une illusion? (Anne de Tinguy, éd.) (Autrement 2008); *cf.* in English: Martin A. Smith, Power in the Changing Global Order: The US, Russia and China (Polity Press 2012); Russia's Identity in International Relations: Images, Perceptions, Misperceptions (Raymond Taras, éd.) (Routledge 2012); Eurasia's Ascent in Energy and Geopolitics: Rivalry or Partnership for China, Russia and Central Asia? (Robert E. Bedeski & Niklas Swanström, eds.) (Routledge 2012); The European Union, Russia and the Shared Neighbourhood (Jackie Gower & Graham Timmins, eds.) (Routledge 2011); Russia: The Challenges of Transformation (Piotr Dutkiewicz & Dmitri Trenin, eds.) (New York University Press 2011).

[3] In English, 'emerging markets' are often mentioned. In Russian, the term '*bystro razvivayushchayasya strana*' is sometimes used, which roughly translates as 'fast-developing country.'

[4] Olivier Beaud, La puissance de l'État 130 (PUF 1994).

[5] Incidentally, we refer you to the article by M.-E. Baudoin (Marie-Élisabeth Baudoin, *Les cultures post-soviétiques face au droit*, 2006 Revue d'études politiques et constitutionnelles Est-européennes 73). Furthermore, if we examine Russian administrative law textbooks, the authors generally study the functions of administrative law and its principles without presenting the theories that would legitimize the State's administrative actions. The State's administrative activities must be understood as the legal extension of the dominance of Russian policymakers from the executive branch (*cf. Агапов А.Б.* Административное право: Учебник [Agapov A.B. *Administrativnoe pravo: Uchebnik* [Andrey B. Agapov, Administrative Law: Textbook]] 32 f. (6th ed., Yurait 2009)). On special measures in French public law as a legitimizing concept, *cf.* Elodie Saillant, L'exorbitance en droit public (= 109 Nouvelle bibliothèque de thèses) (Dalloz 2011).

[6] This statement must, however, be now relativized (*cf.* Baudoin, *supra* n. 5).

between law and power therefore allows us to formulate a theory whereby law is a *medium* – if not key then at least a significant one – in Russia's strategy to regain her standing as a great State. While, from a Russian perspective, that standing must be won back in the eyes of the world,[7] she must first, and more modestly, target those countries with which she has shared part of her history: the 'near-abroad.' This seems all the more legitimate as emergence must first be understood from an extrinsic point of view, in relation to otherness, and is consequently characterized by its relativity and contingency.

Russia's use of the law as an instrument to support its strategy of power *vis-à-vis* third parties is tricky. A State's normative influence ought, logically, to be limited to that of its general influence and / or its history, which would have made it an example to be followed.[8] The principle of legal territoriality would thus counter more direct, more restrictive influence such as that of territorial expansion by annexation. Nevertheless, we know that the *rationae loci* limitations of law to the national territory can be given a broad interpretation as is demonstrated, for instance, by criminal law[9] or competition law.[10] Furthermore, this strategy of power via the law is frequently employed and is not the preserve of Russia; it concerns the European Union most of all. Cut off from those attributes associated with *hard power*,[11] the EU is often qualified as a 'soft power'[12] or a 'normative power.'[13] It is true that the Union has developed

[7] This is the thinking behind the rise of the BRICS group, so ardently desired by Russia. So much so, in fact, that the Russian Foreign Ministry – more specifically its National Committee for Research on BRICS – has created the *BRICS Bulletin*, published monthly.

[8] On the idea of constitutional model, *cf.* Marie-Claire Ponthoreau, Droit(s) constitutionnel(s) comparé(s) 187 f. (Economica 2010).

[9] *Cf.* situations of passive criminal jurisdiction, even the (controversial) cases of universal jurisdiction and in particular the *Yerodia* case (Case Concerning the Arrest Warrant (Democratic Republic of the Congo v. Belg.), 2000 I.C.J. 1 (Feb. 14), available at <http://iilj.org/courses/documents/TheYerodiacaseedt.pdf> (accessed Mar. 6, 2015)).

[10] *Cf.* European Union law since, in particular, the renowned *Pâte de bois* decision and the theory of anti-competitive effects (Case 129/85, *Ahlström Osakeyhtiö and others v. Commission of the European Communities*, 1988 E.C.R. 5193).

[11] One could never tire of re-reading the partial, biased and approximate analyses by R. Kagan (Robert Kagan, La puissance et la faiblesse (Plon 2003)). The more one reads him, the more one gets the impression that the desire for peace is understood as an admission – or worse, an intention – of weakness.

[12] European institutions sometimes refer to this explicitly, not to characterize the nature of European power but rather in relation to its specific strategy in the cultural sphere (*cf.* Promoting Cultural and Creative Sectors for Growth and Jobs in the EU, COM(2012) 537 final, at <http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2012/0537/COM_COM%282012%290537_EN.pdf> (accessed Mar. 6, 2015)). This intention to bolster the soft-power dimension is a desire on the part of the European Parliament (*cf.* European Parliament Resolution of 19 February 2009 on the Role of NATO in the Security Architecture of the EU (2008/2197(INI)), ¶ 19, 2010 O.J. (C 76 E) 69, 73; European Parliament Resolution of 7 July 2011 on EU External Policies in Favour of Democratisation (2011/2032(INI)), ¶ 3, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2011-0334+0+DOC+PDF+V0//EN> (accessed Mar. 6, 2015).

[13] Hedley Bull, *Civilian Power Europe: A Contradiction in Terms?*, 21(2) Journal of Common Market Studies (1982) doi:10.1111/j.1468-5965.1982.tb00866.x; Tuomas Forsberg, *Normative Power Europe,*

a real strategy for exporting its own norms, a deliberate strategy which is now an integral part of its identity on the international stage. The strategy has taken various courses / paths, giving priority to the conventional route,[14] but without excluding unilateralism.[15] In a different way, and in a separate historical context, France has also played the normative influence (even normative expansion) card: first, and almost naturally, owing to her colonial past; secondly, and more deliberately, in trying to safeguard the achievements of that same colonial past.

Russia's position is more particular: not because Russia is particular by her very essence (which she is just as much as other States) but rather because her history, following the collapse of the Soviet Union, has led her to a different conception of the techniques and purpose of normative influence. Indeed, that normative influence emerged only belatedly for two reasons. On the one hand, the difficulties that Russia faced were so serious and extensive that she could not afford the luxury of developing a normative influence strategy on a par with that of the European Union.[16] On the other hand, Russia had initially given priority to those instruments related to *hard power* rather than *soft power* in order to rebuild her power. Russia has therefore only very gradually added legal influence to her *hard power* techniques.

Once Again: A Conceptual Analysis of an Ideal Type, 49(6) Journal of Common Market Studies (2011) doi:10.1111/j.1468-5965.2011.02194.x; Ian Manners, *Normative Power in Europe: A Contradiction in Terms?*, 40(2) Journal of Common Market Studies (2002) doi:10.1111/1468-5965.00353. For Manners, such normative power consists in having the ability to shape what is normal and what is not. It is therefore a broad conception of the notion and the author therefore does not merely concern himself with the promotion of norms but also with 'normative ways.'

[14] The Union's use of the well-known conditionality clauses in its association agreements is one of the most striking examples. Add to this the many European requirements imposed on candidate States so that the latter will incorporate all secondary legislation into their own national law prior to their accession to the Union. The ENP is yet another example of this normative power formalised in 'para-conventional' instruments. Finally, mention must be made of the Union's activities in the field of private international law. Thus, to illustrate, the 1968 Brussels Convention, agreed / ratified by all Member States and relative to judicial jurisdiction and the enforcement of decisions in civil and commercial matter, was adopted and 'communitarised' by the Brussels I Regulations 2000. The 2007 Lugano Convention adopted and extended the content of the Brussels I Regulations to non-Member States, particularly those in the EEE. Generally, and for a transversal and thorough approach, *cf.* Cécile Rapoport, Les partenariats entre l'Union européenne et les États tiers européens (Bruylant 2011).

[15] The Union's unilateral normative expansionism can be seen particularly clearly in competition law. It must be added that, in aviation matters, the Union's unilateral activism is just as abundant. Examples include Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 Amending Directive 2003/87/EC So As to Include Aviation Activities in the Scheme for Greenhouse Gas Emission Allowance Trading within the Community, 2009 O.J. (L 8) 3, the full effects of which were deployed on January 1, 2012, and included aviation in the Community's scheme for greenhouse gas emission allowance trading. This decision was heavily criticised by the United States and China, the latter even threatening to reduce the number of orders it had with Airbus. For a more detailed discussion on this point, *cf.* Vincent Correia, L'Union européenne et l'ordre international de l'aviation civile 891 f. (Bruylant 2012).

[16] It first had to guarantee its own domestic normative coherence. The attitude of the seething Tatarstan in the 1990[s], and Vladimir Putin's rhetoric on the 'vertical power structure' and the 'dictatorship of the law' are the most meaningful examples.

As with any *soft power* process, normative influence (which, by its very nature, is difficult to grasp) is resistant to any legal approach. An attempt can, however, be made at a definition. We may consider that it is the normative activity of a subject of international law that results, wittingly or unwittingly, in another subject of international law amending its national law in a specific sense. Admittedly, this deliberately broad definition does not challenge / call into question its nature, which is diffuse to say the least. This is no handicap in reality, as it allows us to understand the range of legal techniques that Russia has employed, one of the purposes of which would be to rebuild / regain her power. Indeed, such normative influence is not a monolithic block, but rather comprises three dimensions that are incremental: the Soviet normative *legacy*, normative *convergence* and normative *expansion*. First of all, the *legacy* is not, properly speaking, the influence of Russian law as it is only the result of the history and collapse of the Soviet Union. This does not mean to say, however, that the latter is part of the strategy of normative influence insofar as, if a legacy can be squandered, everything may also be done in order to safeguard it by means of proper management – even by due diligence. Such a legacy thus loses some its passive nature and a subjective dimension tinged with voluntarism is included therein. Secondly, normative *convergence* is the result of a process of normative interaction between legal systems based on shared values and / or a shared history. The convergence goes beyond pure national voluntarism and is a part of a normative network which, systemically or protosystemically and to some extent, objectivizes it. Consequently, fitting normative convergence into a national strategy to restore power – a purely voluntarist action by definition – may seem specious. Yet again, however, this is not to be excluded immediately, although it is true that the convergence supposes that some impetus will be given at a particular point so that the systemic drive towards convergence can begin and, thereafter, be maintained. It is to that extent that the phenomenon of normative convergence, leading to a kind of normative alignment, may fall within the scope of a Russian strategy of legal influence. Third and finally, the normative *expansion* must be considered as the most complete form of normative influence. It consists in the imposition, by means of more or less explicit coercion, of a legal rule on third parties. While it is true that, formally, this normative expansion is not systematically unilateral,[17] its defining characteristic is coercion. Russia's use of this superior form of legal influence, as a complement to her *hard power*, is more recent. In light of the interest this technique holds for the Russian authorities, it is likely that they will resort to it more and more frequently in future.

These three techniques constitute a scale of normative influence and Russia has implemented them only very gradually. In this respect, it is striking to note that their use exactly mirrors Russia's growing power and her aspirations to become a great State once again. In other words, in the early 1990[s], she could only settle for

[17] *Cf.* the conditionality clauses inserted into agreements with the European Union.

managing the Soviet legacy, in conjunction with former Soviet states. In the late 1990s and early 2000s, she strove to be the pulse of a normative convergence between those countries, particularly by using the Commonwealth of Independent States [hereinafter CIS] as leverage. Since that time, Russia has not hesitated in exporting, much more directly and conspicuously, her own law to countries 'near-abroad,' relying especially on the Eurasian Economic Community [hereinafter EurAsEC]. It should be pointed out that recourse to those three techniques has come about in stages and is not exclusive in the sense that one would preclude the others. In other words, Russia now combines these three forms of legal influence and uses them in a complementary manner within one strategy while, if not conscious, is at least under construction.

It must be said that the field covered by the purpose of this research is particularly vast and, so to speak, out of proportion. The analyses put forward will therefore necessarily be partial. Furthermore, it is essential, in order to avoid any scientific pitfalls, to establish the geographical perimeter of the research. Thus, Russia's normative influence *vis à vis* Belarus and Ukraine alone will be examined here. This choice is based on three considerations. Firstly, the two latter countries are close enough to justify a study that brings them together: with their admittedly Soviet past, they are also both parties to the CIS[18] and the free-trade area agreed on October 18, 2011.[19] Secondly, Ukraine and Belarus are different enough for them to be the subject of a shared analysis: their political regimes have followed separate trajectories and their respective memberships of institutionalised co-operation zones along with Russia are not exactly identical.[20] Finally, these two countries form

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[18] The CIS Treaty was ratified by the Decree of Belarus Supreme Council on 10 December 1991 (Постановление Верховного Совета Республики Беларусь от 10 декабря 1991 г. № 1296-XII «О ратификации Соглашения об образовании Содружества Независимых Государств» [*Postanovlenie Verkhovnogo Soveta Respubliki Belarus' ot 10 dekabrya 1991 g. No. 1296-XII 'O ratifikatsii Soglasheniya ob obrazovanii Sodruzhestva Nezavisimykh Gosudarstv'* [Decree of Belarus Supreme Council No. 1296-XII of December 10, 1991, 'On Ratification of the Agreement on Creation of Commonwealth of Sovereign Republics']]), and on the same date by the Decree of Verkhovna Rada of Ukraine (Постановление Верховной Рады Украины от 10 декабря 1991 г. № 1958-XII «О ратификации Соглашения о создании Содружества Независимых Государств» [*Postanovlenie Verhovnoi Rady Ukrainy ot 10 dekabrya 1991 g. No. 1958-XII 'O ratifikatsii Soglasheniya o sozdanii Sodruzhestva Nezavisimykh Gosudarstv'* [Decree of Verkhovna Rada of Ukraine No. 1958-XII of December 10, 1991, 'On Ratification of the Agreement on Creation of Commonwealth of Sovereign Republics']]).

[19] This Treaty, signed in Saint Petersburg on October 18, 2001, was officially ratified by Belarus on May 26, 2012 [Закон Республики Беларусь от 26 мая 2012 № 381-З «О ратификации Договора о зоне свободной торговли» [*Zakon Respubliki Belarus' ot 26 maya 2012 g. No. 381-Z 'O ratifikatsii Dogovora o zone svobodnoi torgovli'* [Law of the Republic of Belarus No. 381-Z of May 26, 2012, 'On Ratification of the Treaty on Creation of the Free-Trade Area']]) and by Ukraine on August 9, 2012 (Закон Украины от 9 августа 2012 г. № 5193-VI «О ратификации Договора о зоне свободной торговли» [*Zakon Ukrainy ot 9 avgusta 2012 g. No. 5193-VI 'O ratifikatsii Dogovora o zone svobodnoi torgovli'* [Law of Ukraine No. 5193-VI of August 9, 2012, 'On Ratification of the Treaty on Creation of the Free-Trade Area']]).

[20] Ukraine only has observer status in EurAsEC and is therefore not part of the Customs Union.

part of Russian's western border / frontier, a 'shared neighbourhood area' with the European Union.[21]

All efforts will thus be made, in a properly legal standpoint, to reinstate this progressiveness and the combination of normative influence techniques. On a limited scale, these started out as the straightforward good management of the normative legacy (sec. 2), then focused on the promotion of normative convergence (sec. 3) before resulting in the current boost being given to a true normative expansion (sec. 4).

2. The Proper Management of the Normative Legacy

The collapse of the Soviet Union, independent of the considerable human, political and constitutional difficulties that ensued, was a period of transition. That transition was not only economic and political, but also legal. Indeed, it was impossible, in such short timeframes, to re-draft all the laws governing legal life and transactions. For many years, the law applicable was therefore that of the former republics[22] and it is only recently that the codification process has at least partly reached its conclusion.[23] In such circumstances, it cannot be said that this transitional phase constitutes the expression of Russia's normative influence over Ukrainian or Belarusian law, but must instead be qualified simply as a legacy.

Nevertheless, over the course of the transition period, Russian actively set about to preserve that legacy. The aim – to protect the interests of the Russian Federation in countries 'near-abroad' – was an eminently strategic one and quite logically took concrete form through the medium of the law. It is therefore no longer a matter for Ukraine and Belarus of simply being the beneficiaries of such a legacy; it falls instead to Russian to make it bear fruit and incorporate a degree of voluntarism therein. The latter is expressed, most particularly, in an increase in the number of legal acts that are extraterritorial in scope, with regard to two sections of the population: civilian (sec. 2.1) and military (sec. 2.2).

2.1. Preserving the Civil Legacy

The dislocation of the Soviet Union was the underlying cause of an unprecedented diaspora. Many Russians now found themselves in independent and third-party States that were legally separate from the Fatherland. Russia was thus deprived of

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[21] *Cf.* Hugo Flavier, *Le voisinage commun de l'Union européenne et de la Russie*, in L'Europe face au monde 199 f. (Loïc Grard, éd.) (Pedone 2013).

[22] For a transversal and constitutional analysis of this transition, *cf.* Marie-Elisabeth Baudoin, Justice constitutionnelle et État post-soviétique 115 f. (PU Clermont-Ferrand 2005).

[23] The Russian Civil Code was only completed in 2006, the Ukrainian Civil Code – in 2003, the Belarusian Civil Code – in 1998. The Ukrainian Criminal Code was overhauled in 2001, the Russian Criminal Code – in 1996, and the Belarusian Criminal Code – in 1999.

a significant part of a population that had a 'natural' vocation to reside within her vast territory. Not without a certain political dexterity, Russia made an asset of what could otherwise have been an impediment. On May 24, 1999, completing a process that had begun in 1994, the Federal Law was passed.[24] The fundamentally extraterritorial nature of the Federal Law No. 99-FZ emerges not only in the scope of its application, but also in the concrete action envisaged therein.

As regards the scope of application of the Federal Law No. 99-FZ, we cannot help but notice the reference made to the concept of 'compatriot,' previously unseen amongst the ranks of those usually employed.[25] Intuitively, we quickly perceive the opportunity presented by the choice of such an obscure term as a condition for the applicability of the Federal Law No. 99-FZ. That intuition is confirmed by the definition it provides for Russian 'compatriots.' Under the terms of Art. 1, these are 'persons born in a State and residing or having resided in the same and who have the shared features of language, history, cultural heritage, traditions and customs, and equally the direct descendants of such persons.' It goes on to identify who such 'compatriots from overseas' are. A compatriot from overseas is 'a citizen of the Russian Federation, residing permanently beyond the borders of the Russian Federation,' but also 'persons and their descendants residing beyond the borders of the Russian Federation and who maintain, as a general rule, relationships with populations residing historically within the territory of the Russian Federation, together with persons who have freely made the choice to have spiritual, cultural and legal ties with the Russian Federation.' It also concerns 'persons whose direct kin lived within the territory of the Russian Federation' and 'in particular:

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[24] Federal Law No. 99-FZ of May 24, 1999, 'On the National Policy of the Russian Federation in Her Relations with Compatriots from Overseas' [Федеральный закон от 24 мая 1999 г. № 99-ФЗ «О государственной политике Российской Федерации в отношении соотечественников за рубежом» [*Federal'nyi zakon ot 24 maya 1999 g. No. 99-FZ 'O gosudarstvennoi politike Rossiiskoi Federatsii v otnoshenii sootechestvennikov za rubezhom'*]] [hereinafter Federal Law No. 99-FZ]. It is true that the latter may be seen as coming too late. The truth is that it is the result of a much older process; owing to the internal political and economic difficulties that Russia faced at the time, the 1990[s] were not propitious for intense legislative activity. The Federal Law No. 99-FZ was adopted following Government Decree No. 590 of May 17, 1996, 'On the Programme of Measures Aimed at Supporting Compatriots Overseas' [Постановление Правительства РФ от 17 мая 1996 г. № 590 «О программе мер по поддержке соотечественников за рубежом» [*Postanovlenie Pravitel'stva RF ot 17 maya 1996 No. 590 'O programme mer po podderzhke sootechestvennikov za rubezhom'*]], which itself was passed on the basis of the Russian Federation Presidential Decree (the famous edicts) No. 1681 of August 11, 1994, 'On the Fundamental Guidelines for the Russian Federation's National Policy on Compatriots Living Overseas' [Указ Президента РФ от 11 августа 1994 г. № 1681 «Об основных направлениях государственной политики Российской Федерации в отношении соотечественников, проживающих за рубежом» [*Ukaz Prezidenta RF ot 11 avgusta 1994 g. No. 1681 'Ob osnovnykh napravleniyakh gosudarstvennoi politiki Rossiiskoi Federatsii v otnoshenii sootechestvennikov, prozhivayushchikh za rubezhom'*]].

[25] In this area, the normative texts concern 'nationals,' or 'citizens.' On the exploration of the concept of 'quasi-nationals,' *cf.* Sébastien Touzé, *La «quasi nationalité», réflexions générales sur une notion hybride*, 115(1) Revue générale de droit international public (2011).

persons who were citizens of the USSR, residing in a State that was a member of the USSR and who have obtained citizenship of those States or have become stateless persons;

emigrants from the Russian State, the Russian Republic of the Soviet Union or the Russian Federation who held the corresponding citizenship and who have become citizens of a foreign State or stateless persons.'

The choice of these terms on the part of the Russian legislature go beyond mere reference to legal standards offering a broad margin of interpretation; these are the very haziest terms and concepts that give an almost limitless scope to the Federal Law No. 99-FZ.

In this same vein of extraterritoriality, the concrete action envisaged by the federal legislature are no less instructive as to Russia's ambitions.[26] Admittedly, some provisions may be viewed as worthy phrases that do not constitute any kind of undertaking for their author.[27] There are, however, others that appear far more intrusive.[28] Such is the case, in particular, for Art. 5(2), which provides substantively that 'compatriots' have the right to establish 'cultural and national autonomies,' together with 'mass media and participate in the activities of the same.' The amendment brought on July 23, 2010, slightly extended the boundaries of Art. 5: 'compatriots' now have the right to use 'the Russian language and the mother-tongues of the peoples of the Russian Federation in order to develop their spiritual and intellectual potential,' and to establish 'religious organisations of compatriots.'[29] Admittedly, it goes without saying that a State may not unilaterally impose obligations on third parties by means of a 'heteronormative' act[30] and that, therefore, the legal consequences of such extraterritoriality must be

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[26] Furthermore, these feature very clearly in the Federal Law No. 99-FZ. We may cite one example, Art. 14(2), under which '[t]he defence of the fundamental rights and freedoms of man and the citizen concerning compatriots forms an indefeasible part of Russian foreign policy.' The legislature also provided that compatriots have the right to 'freely choose, protect and develop their identity, to support and develop their spiritual and intellectual potential.'

[27] In particular, Art. 5(2) under which, particularly '[t]he national policy of the Russian Federation with regard to compatriots is founded on the principles of:

the inalienability and accession of all, from birth, to the fundamental rights and freedoms of man and the citizen;

the duty for all States to respect the general principles and norms of international law in the full respect of the principle of non-interference in internal affairs . . .'

[28] Although it is provided, under the Federal Law No. 99-FZ, 'the duty for all States to respect the general principles and norms of international law in the full respect of the principle of non-interference in internal affairs' (Art. 5(2)).

[29] As amended by the Federal Law No. 179-FZ of July 23, 2010 [Федеральный закон от 23 июля 2010 г. № 179-ФЗ «О внесении изменений в Федеральный закон «О государственной политике Российской Федерации в отношении соотечественников за рубежом»» [*Federal'nyi zakon ot 23 iyulya 2010 g. No. 179-FZ 'O vnesenii izmenenii v Federal'nyi zakon "O gosudarstvennoi politike Rossiiskoi Federatsii v otnoshenii sootechestvennikov za rubezhom"*]].

[30] Patrick Daillier et al., Droit international public ¶ 240 (8e éd., LGDJ 2009).

put into context. However, such a statute is never neutral as, on the one hand, it could have triggered a dispute[31] and, on the other hand, because Russia's support for her compatriots was accompanied by a financial package. The Russian Federation's financial support for initiatives launched by her 'compatriots' had already been hinted at when the Federal Law No. 99-FZ was adopted. Provision had been made, in particular, for support to be given for the protection of their fundamental rights[32] and 'in the economic and social sphere.'[33] Moreover, humanitarian aid in the event of 'exceptional circumstances,'[34] specific assistance for 'socially vulnerable categories' or even incentives for commercial co-operation through the creation, for instance, of joint commercial ventures.[35] Concrete financial assistance nevertheless took time to achieve a degree of effectiveness. It took the Presidential Decree No. 678 of May 25, 2011, to institute a 'fund for the support and protection of the rights of compatriots living overseas.' This scheme, which was mysteriously financed,[36] entered its operational phase on January 1, 2012; its aim is to support groups protecting Russian compatriots by providing, for example, legal advice or other assistance connected to the protection of the Russian language[37] or in educational matters.[38] The implementation of such a structure is indeed a sign that the Kremlin now has the means to fulfil its aims and wishes make the protection of its 'compatriots' a weapon of foreign policy. Purely from a strategic point of view, it would be wrong not to do so.

This unilateral activism has been extended in part extended by conventions. Russia concluded a series of agreements intended to settle the issue of the status of its nationals living overseas. Specific agreements were thus concluded with Belarus[39]

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[31] On the legal characterisation of the triggering of a dispute, *cf.* Carlo Santulli, Droit du contentieux international 203 f. (Montchrestien 2005).

[32] It is Art. 15 'Support for Compatriots in the Field of the Fundamental Rights and Freedoms of Man and the Citizen.'

[33] This is Art. 16.

[34] These 'exceptional circumstances' should be understood as a reference to natural or human disasters and not as the notion of 'exceptional circumstances' that is so well known, particularly in French law.

[35] This is Art. 16(1).

[36] The Decree provides that the fund is supplemented, quite obviously, firstly by the federal budget but also, more surprisingly, by gifts and bequests.

[37] In this respect, the Baltic States are the subject of particular attention which appears quite clearly on the fund's website <http://www.pravfond.ru/>. The creation of the website is itself a sign of the importance that Russia now attaches to this policy.

[38] *Cf.,e.g.,* the willingness to participate in the 'Young Leaders' School' in Moscow and to recruit 60 students in former Soviet states (<http://pravfond.ru/?module=news&action=view&id=815>).

[39] *Cf., e.g.,* the Treaty on friendship, good neighbourliness and co-operation of February 21, 1995 [Договор о дружбе, добрососедстве и сотрудничестве между Российской Федерацией и Республикой Беларусь от 21 февраля 1995 г. [*Dogovor o druzhbe, dobrososedstve i sotrudnichestve mezhdu Rossiiskoi Federatsiei i Respublikoi Belarus' ot 21 fevralya 1995 g.*]], or even the Treaty of December 25, 1998, 'On

and Ukraine,[40] and posit the principles of national treatment, non-discrimination and the protection of minorities. While these agreements naturally could not enshrine the concept of 'compatriot' (which would not be readily accepted by third parties), they do give concrete expression in Belarusian and Ukrainian law of Russia's intention to protect her nationals. The use of conventions is, moreover, a special and indispensable instrument for matters relating to the status of Russian troops on Ukrainian and Belarusian territory.

2.2. Preserving the Military Legacy

Following the collapse of the Soviet Union, one of the major issues for Russia was how to maintain her military bases in those countries that had become third-party states, and particularly in Belarus and Ukraine. For the latter, the Russian base at Sebastopol drew particular attention. Admittedly, the return of the Crimea to the Russian Federation means that the legal issues surrounding the Sebastopol base no longer reflect positive law. Those issues are no less interesting, not only from a historical but also from a scientific point of view for the purpose of this article. Russian soldiers based at Sebastopol benefited from a number of guarantees provided under the Agreement of May 28, 1997,[41] initially concluded for a 20-year term[42] and then extended for another 25 years, as of May 28, 2017, by a further agreement of April 21, 2010.[43] The initial 1997 Agreement contained clauses establishing criminal jurisdiction rules in the event of criminal offences committed by Russian soldiers on Ukrainian soil. It provided under Art. 19(1) that, in principle, in the event of a crime committed by a Russian soldier or by a member of his family, the Ukrainian courts had jurisdiction to try the case. However, Art. 19(2) added a series of exceptions to

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the Equal Rights of Citizens' [Договор от 25 декабря 1998 г. «О равных правах граждан» [*Dogovor ot 25 dekabrya 1998 'O ravnykh pravakh grazhdan'*]] (specifically Art. 17 f.), which is itself based on the Treaty on the Union of Belarus and Russia [Договор о союзе Беларуси и России [*Dogovor o soyuze Belarusi i Rossii*]], the effects of which are still virtual. Equally, *cf.* the Treaty of April 28, 1998, 'On the Legal Status of Citizens of a State Residing Continuously within the Territory of Another State' [Договор от 28 апреля 1998 г. «О правовом статусе граждан одного государства, постоянно проживающих на территории другого государства» [*Dogovor ot 28 aprelya 1998 g. 'O pravovom statuse grazhdan odnogo gosudarstva, postoyanno prozhivayushchikh na territorii drugogo gosudarstva'*]] concluded within the framework of the CIS.

[40] *Cf.* the Treaty of May 21, 1997, 'On Friendship, Co-operation and Partnership' [Договор от 31 мая 1997 г. «О дружбе, сотрудничестве и партнерстве» [*Dogovor ot 31 maya 1997 g. 'O druzhbe, sotrudnichestve i partnerstve'*]] (specifically Art. 10 f.).

[41] This is the Agreement between the Russian Federation and Ukraine on the status and living conditions of the Russian Federation's Black Sea fleet in Ukrainian territory [Соглашение между Российской Федерацией и Украиной о статусе и условиях пребывания Черноморского флота Российской Федерации на территории Украины [*Soglashenie mezhdu Rossiiskoi Federatsiei i Ukrainoi o statuse i usloviyakh prebyvaniya Chernomorskogo flota Rossiiskoi Federatsii na territorii Ukrainy*]].

[42] Article 25.

[43] It provides for rent of US $ 100 million as well as a preferential rate on gas (Art. 2 of the Agreement of April 21, 2010).

the automatic exercise of Ukrainian jurisdiction, featuring (fairly typically) those crimes directly committed by Russian soldiers in deployment zones or crimes against the Russian State. In an equally classic sense, the Agreement also provided that, in cases where Russia wishes to exercise jurisdiction, she could proceed with a repatriation request, it being understood that the Ukrainian authorities were to make decisions 'humanely and without delay.'[44] Conversely, and more unusually, the scope of application of Russia's active criminal jurisdiction related not only to acts committed by members of the military *per se*, but also 'members of their families.' If we refer to Art. 2(5) of the same Agreement, these are defined, broadly speaking, as 'the partners, children, other next of kin living continuously with them, or their dependents.' The scope of application *rationae personae* therefore proved, *in fine*, to be particularly broad as it was not limited to soldiers in active service or located on the Sebastopol base, but rather concerned an indeterminate number of persons. All in all, the scope of application of the treaty fluctuated in relation to decisions, not of the contracting parties, but rather those arising from the personal relationships that Russian soldiers had with more or less distant relatives. It was therefore not impossible that where, by chance, the great aunt of a Russian soldier in Sebastopol (with whom she lived) had murdered a person in Kiev, Russia would submit a repatriation request to the Ukrainian authorities and that the latter should give a decision 'humanely and without delay.' For the sake of comparison, it will be noted that the treaties on the status of French soldiers stationed in a third-party State would not benefit from such a broad scope of application *rationae personae*.[45]

The Agreement concluded with Belarus on January 6, 1995, on the status of Russian military personnel on Belarusian soil is palpably similar.[46] The notion of

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[44] Article 19(3).

[45] *Cf.* Art. 13 of the Agreement concluded with Morocco on the status of forces of May 16, 2005 [Décret n° 2009-428 du 16 avril 2009 portant publication de l'accord entre le Gouvernement de la République française et le Gouvernement du Royaume du Maroc relatif au statut de leurs forces, signé à Rabat le 16 mai 2005] (Decree No. 2009-428 of April 16, 2009, J.O., April 19, 2009, p. 6748); Art. 16 of the Treaty on co-operation in defence matters concluded with Djibouti of December 21, 2011 (ratification bill No. 425 of November 21, 2012, put before the National Assembly); Art. 15 of the Treaty on partnership in defence matters concluded with the Ivory Coast of January 26, 2012 (ratification bill No. 426 of November 21, 2012, put before the National Assembly).

The notion of dependent is generally defined as 'the partner or any other person living in a conjugal relationship, in accordance with the legislation of the host State, with a member of staff, together with their underage children' (*cf.* the Agreement with Cameroon instituting a defence partnership of May 21, 2009 [Décret n° 2012-989 du 23 août 2012 portant publication de l'accord entre le Gouvernement de la République française et le Gouvernement de la République du Cameroun instituant un partenariat de défense (ensemble une annexe), signé à Yaoundé le 21 mai 2009] (Decree No. 2012-989 of August 23, 2012, J.O., August 25, 2012, p. 13800)).

[46] This is, more exactly, the Agreement between the Russian Federation and the Republic of Belarus on issues of jurisdiction and mutual judicial co-operation in relation to the temporary residence of military formations of strategic forces of the Russian Federation on the territory of the Republic of Belarus of November 27, 1995 [Соглашение между Российской Федерацией и Республикой Беларусь

'family member' is almost identical, except that it excludes those individuals who hold Belarusian nationality. Conversely, the extent of Russian jurisdiction in criminal matters was circumscribed with a little more precision. Russian criminal jurisdiction shall only apply to offences committed by members of a Russian soldier's family where such individuals are 'in the deployment zones of . . . [military] formations.'[47] All in all, in the Agreement concluded with Belarus, the scope of application *rationae personae* is limited by a stricter framework from a *rationae loci* point of view. Consequently, it would appear that the extension of jurisdiction permitted under the terms of the Agreement remains more favourable to Russia in the case of Ukraine than with Belarus. The latter therefore succeeded, in part, to contain the extraterritorial reach of Russian jurisdiction in criminal matters.

Russia's interests, *i.e.* Russian presence in Belarus and Ukraine inherited from the Soviet Union, have thus been protected in part thanks to the extraterritorial scope of Russian or international norms relative thereto. This aspect of those norms is, in principle, little more than one of the most common legal techniques. We must therefore consider that Russian normative influence in this particular field remains marginal as Russia has contented herself with extending a factual situation brought about by the collapse of the Soviet Union. In that sense, it is only the minimum degree of her normative influence. This is likely the reason why Russia quickly adopted another, more effective, technique, whereby Russia becomes the instigator of normative convergence through the promotion of normative alignment.

3. The Promotion of Normative Convergence

The phenomenon of normative convergence, which is especially clear and often studied within the European Union, is not the preserve of Western Europe. It is a global phenomenon that affects Russia, which also plays an active part therein. Experience tells us that this movement is all the more dynamic in that it takes place within an international organization or, at the very least, within institutionalized relationships. Thus Europe – especially over the course of the 1990[s] but less so now, in reality – played a significant role in promoting this convergence, which has greatly permeated some laws in Russia, Belarus and Ukraine.[48] From a slightly

о сотрудничестве и взаимодействии в обеспечении безопасности воинских формирований Российской Федерации, временно размещенных на территории Республики Беларусь, и лиц, входящих в их состав, от 27 ноября 1995 г. [*Soglashenie mezhdu Rossiiskoi Federatsiei i Respublikoi Belarus' o sotrudnichestve i vzaimodeistvii v obespechenii bezopasnosti voinskikh formirovanii Rossiiskoi Federatsii, vremenno razmeshchennykh na territorii Respubliki Belarus', i lits, vkhodyashchikh v ikh sostav, ot 27 noyabrya 1995 g.*]].

47 Article 5(1) of the Agreement.

48 This is the case, for example, for laws, the titles of which are absolutely identical – 'On the Freedom of Conscience and Religious Organisations:' in Ukraine (Law of Ukraine No. 987-XII of April 23, 1991 [Закон України от 23 апреля 1991 г. № 987-XII «Про свободу совісті та релігійні організації» [*Zakon Ukrayiny*

different standpoint, the CIS has also served as an institutionalised framework for the concertation and promotion of normative convergence (sec. 3.1). Except that the CIS has not been the setting for mutual and egalitarian / equal convergence where each State would be an active participant on the same footing as the others. Russia has also played a key role in this convergence, so much so that the convergence is tantamount to an alignment, where the CIS is in reality nothing more than a lever of influence for Russia in ensuring the projection of her law to other CIS Member States (sec. 3.2).

3.1. The CIS – a Framework for Convergence

In addition to the fact that it allowed the relatively peaceful secession of the former Republics, the CIS was instituted for the purposes of constructing normative convergence. Founded on (initially) common principles, its objectives are varied and aim, particularly through the conclusion of international agreements, to develop co-operation in fields such as the economy, education, health, the environment,[49] and security.[50] In addition, there is a duty to co-operate and co-ordinate amongst the States Parties, for instance in immigration, customs duties and organised crime.[51] This drive towards integration was favoured by the highly progressive[52] creation of

vid 23 kvitnya 1991 r. No. 987-XII 'Pro svobodu sovisti ta religiini organizatsiyi']]); Belarus (Law of the Republic of Belarus No. 2054-XII of December 17, 1992) [Закон Республики Беларусь от 17 декабря 1992 г. № 2054-XII «О свободе совести и религиозных организациях» [*Zakon Respubliki Belarus' ot 17 dekabrya 1992 g. No. 2054-XII 'O svobode sovesti i religioznykh organizatsiyakh'*]]); Russia (Federal Law No. 125-FZ of September 26, 1997 [Федеральный закон от 26 сентября 1997 г. № 125-ФЗ «О свободе совести и о религиозных объединениях» [*Federal'nyi zakon ot 26 sentyabrya 1997 g. No. 125-FZ 'O svobode sovesti i o religioznykh ob'edineniyakh'*]]). Once again, we can see that the Russian legislative process was slower which is essentially due to the political instability of the 1990[s]. For a more detailed study of this law, *cf.* Olga Gille-Belova, *La situation des minorités religieuses dans la Russie contemporaine*, in L'Europe des religions (Hugo Flavier & Jean-Pierre Moisset, éds.) 121 f. (Pedone 2013).

This is also the case for laws on the protection of national minorities: in Ukraine (Law No. 2494-XII of June 25, 1992 [Закон Украины от 5 июня 1992 № 2494-XII «О национальных меньшинствах в Украине» [*Zakon Ukrainy ot 5 iyunya 1992 g. No. 2494-XII 'O natsional'nykh men'shinstvakh v Ukraine'*]]); Belarus (Law of the Republic of Belarus No. 1926-XII of November 11, 1992 [Закон Республики Беларусь от 11 ноября 1992 г. № 1926-XII «О национальных меньшинствах в Республике Беларусь» [*Zakon Respubliki Belarus' ot 11 noyabrya 1992 g. No. 1926-XII 'O natsional'nykh men'shinstvakh v Respublike Belarus'*]]); in Russia where there is a broader Federal Law 'On Cultural and National Autonomy' (Federal Law No. 74-FZ of June 17, 1996 [Федеральный закон от 17 июня 1996 г. № 74-ФЗ «О национально-культурной автономии» [*Federal'nyi zakon ot 17 iyunya 1996 g. No. 74-FZ 'O natsional'no-kul'turnoi avtonomii'*]]).

[49] Article 4 of the Agreement establishing the Commonwealth of Independent States.

[50] Article 6 of the Agreement establishing the Commonwealth of Independent States. It will be noted that, surprisingly Art. 6 also provides that '[t]he Parties shall respect the wish of each to secure the status of nuclear-free zone and that of neutral State.'

[51] Article 7 of the Agreement establishing the Commonwealth of Independent States.

[52] While the issue of the status of CIS bodies has been established since 1993, in the Agreement titled 'Charter of the Commonwealth of Independent States' of January 22, 1993 [Устав Содружества Независимых Государств от 22 января 1993 г. [*Ustav Sodruzhestva Nezavisimykh Gosudarstv ot 22*

shared institutions with powers to take unilateral action;[53] so much so that, in 1998, the Economic Court of the CIS considered that it was a fully-fledged international organisation.[54] Amidst the profusion of institutions and agreements resulting from the CIS, the Interparliamentary Assembly of States Parties to the CIS played an often forgotten part in the construction a common normative platform. This was formally established by the Agreement between the Supreme Soviets of the States Parties to the CIS on March 27, 1992. Composed of delegations from the respective parliamentary assemblies of the Member States, it is only a consultative body; surprisingly for an assembly, it decides 'by consensus.'[55] In particular, it is competent

yanvarya 1993 g.]] [hereinafter CIS Charter], it took until October 9, 2009, for the decision-making process to be specified in the Decision of the Council of Heads of State of the CIS October 9, 2009, 'On Procedural Rules of the Council of Heads of State, the Council of Heads of Government, of the Council of Foreign Ministers and of the Economic Council of the Commonwealth of Independent States' [Решение от 9 октября 2009 г. «О Правилах процедуры Совета глав государств, Совета глав правительств, Совета министров иностранных дел и Экономического совета Содружества Независимых Государств» [*Reshenie ot 9 oktyabrya 2009 g. 'O Pravilakh protsedury Soveta glav gosudarstv, Soveta glav pravitel'stv, Soveta ministrov inostrannykh del i Ekonomicheskogo soveta Sodruzhestva Nezavisimykh Gosudarstv'*]] [hereinafter Decision on Procedural Rules].

53 More precisely, the Council of Heads of State and the Council of Heads of Government decide by consensus. It is true, however, that the constructive abstentions technique was included (Art. 23 of the CIS Charter and Art. 7(5) of the Decision on Procedural Rules).

54 *Cf.* the Consultative Opinion No. 01-1/2-98 of the Economic Court of the CIS of June 23, 1998, on the interpretation of the CIS Charter [Консультативное заключение Экономического Суда СНГ от 23 июня 1998 г. № 01-1/2-98 о толковании Устава Содружества Независимых Государств от 22 января 1993 г. [*Konsul'tativnoe zaklyuchenie Ekonomicheskogo Suda SNG ot 23 iyunya 1998 g. No. 01-1/2-98 o tolkovanii Ustava Sodruzhestva Nezavisimykh Gosudarstv ot 22 yanvarya 1993 g.*]] which concluded that, considering that the Commonwealth can establish relations with international organisations, it had already concluded treaties with other subjects of international law, that it had adopted unilateral acts 'in its own right,' that it has the option of imposing sanctions on its members, the CIS has international legal personality. This position was confirmed by the Decision No. 01-1/1-10 of February 15, 2010, on the clarification of the Consultative Opinion No. 01-1/2-98 of January 22, 1993 [Определение от 15 февраля 2010 г. № 01-1/1-10 о разъяснении Консультативного заключения Экономического Суда СНГ от 23 июня 1998 г. № 01-1/2-98 о толковании Устава Содружества Независимых Государств от 22 января 1993 г. [*Opredelenie ot 15 fevralya 2010 g. o raz'yasnenii Konsul'tativnogo zaklyucheniya Ekonomicheskogo Suda SNG ot 23 iyunya 1998 g. No. 01-1/2-98 o tolkovanii Ustava Sodruzhestva Nezavisimykh Gosudarstv ot 22 yanvarya 1993 g.*]]. In the latter case, the Court reaches the logical conclusion that the CIS may be a party to a multilateral agreement.

55 Article 7 of the Agreement of March 27, 1992 [Соглашение от 27 марта 1992 «О Межпарламентской Ассамблее государств – участников Содружества Независимых Государств» [*Soglashenie ot 27 marta 1992 g. 'O Mezhparlamentskoi Assamblee gosudarstv – uchastnikov Sodruzhestva Nezavisimykh Gosudarstv'*]]. The decision-making process is surprising. It is, to our knowledge, the sole instance where a parliamentary body finds itself under a duty to decide by consensus. This voting system reveals a great deal about the true nature of the Interparliamentary Assembly, which is merely a para-parliamentary extension of the intergovernmental bodies of the CIS. Indeed, consensus implies that the Assembly is not a forum for debate and not, therefore, the political arena understood as being a place of institutionalised confrontation (in this respect, *cf.* Slobodan Milacic, De l'âge idéologique à l'âge politique. L'Europe postcommuniste vers la démocratie pluraliste (Bruylant 2010)). Furthermore, it is clear that voting by consensus is better adapted to international organisations composed of diplomatic representatives of Member States, not to interparliamentary assemblies. The sole, very

to discuss economic and social issues, promote parliamentary co-operation, but also to adopt recommendations establishing templates for laws or legal acts relative to issues 'of common interest to all parties.'[56]

Despite the lacunae inherent to the status held by that body and its more than limited powers, the Interparliamentary Assembly has done some interesting work which was formerly directed at maintaining a common judicial area but now contributes to the promotion of the normative community. This is how many model codes[57] or model laws[58] have been adopted, and we might think that these play a part, on their own level, in the construction of a common judicial area, and underline the originality of the convergence phenomenon. Convergence is indeed the result of a process made up of a multitude of national and international acts which lead towards a sort of normative unification. In this sense, convergence is to be found at the mid-point of a normative strategy: while the impetus behind the convergence may appear to be proactive, the effects induced retain a number of objective characteristics, especially where they are implemented in a multilateral framework of institutionalized co-operation which transcends the intentions of one single State. And it appears that the CIS has constitutes a lever of power for Russia which has been extended on a normative level. This convergence, in the specific

modest, exception in the CIS can be found in Art. 9(2) of the Regulations on the permanent committees of the Interparliamentary Assembly [Постановление Межпарламентской Ассамблеи государств – участников Содружества Независимых Государств от 23 мая 1993 г. «Об утверждении положения о постоянных комиссиях Межпарламентской Ассамблеи» [*Postanovlenie Mezhparlamentskoi Assamblei gosudarstv – uchastnikov Sodruzhestva Nezavisimykh Gosudarstv ot 23 maya 1993 g. 'Ob utverzhdenii polozheniya o postoyannykh komissiyakh Mezhparlamentskoi Assamblei'*]], where it is stated that '[t]he decisions of the committees on procedural issues are adopted by simple majority of those participating in the meeting.'

56 Article 8.

57 *Cf., e.g.,* the Model Civil Code (adopted in stages: the first part – on October 29, 1994; the second – on May 13, 1995; the third – on February 17, 1996; amended on June 16, 2003, in respect of intellectual property provisions), the Model Criminal Code (adopted on February 17, 1996), Taxation Code (December 9, 2000), Code on Land Use (adopted December 7, 2002), Information Code (the first part was adopted on November 23, 2012), *etc.*

58 The fields are varied. To illustrate, there are the model laws of November 2, 1996, on the fight against criminal organisations [Рекомендательный законодательный акт от 2 ноября 1996 г. «О борьбе с организованной преступностью» [*Rekomendatel'nyi zakonodatel'nyi akt ot 2 noyabrya 1996 g. 'O bor'be s organizovannoi prestupnost'yu'*]], and that, of the same date, on physical education and sport [Рекомендательный законодательный акт от 2 ноября 1996 г. «О физической культуре и спорте» [*Rekomendatel'nyi zakonodatel'nyi akt ot 2 noyabrya 1996 g. 'O fizicheskoi kul'ture i sporte'*]]. There is also that of February 17, 1996, on joint stock companies [Рекомендательный законодательный акт от 17 февраля 1996 г. «Об акционерных обществах» [*Rekomendatel'nyi zakonodatel'nyi akt ot 17 fevralya 1996 g. 'Ob aktsionernykh obshchestvakh'*]]; that of the November 16, 2006, on the *Prokuratura* [Модельный закон от 16 ноября 2006 г. «О прокуратуре» [*Model'nyi zakon ot 16 noyabrya 2006 g. 'O prokurature'*]]; that of November 23, 2012, on rail transport [Модельный закон от 23 ноября 2012 г. «О железнодорожном транспорте» [*Model'nyi zakon ot 23 noyabrya 2012 g. 'O zheleznodorozhnom transporte'*]] or even that, of the same date, business confidentiality [Модельный закон от 23 ноября 2012 г. «О коммерческой тайне» [*Model'nyi zakon ot 23 noyabrya 2012 g. 'O kommercheskoi taine'*]].

framework of the CIS, has to be understood as a progressive alignment of Member States on Russian law and not as the result of a series of concerted activities that themselves result, over a period of years, in a common normative platform.

3.2. The CIS – a Lever of Influence

Whilst it is true that the CIS is a multilateral framework of co-operation and concertation, the balance of power bears the stamp of inequality. The CIS is not an organisation in which the political balance between Member States is the product of a scholarly weighting between the 'big' and the 'small' States as is the case with the European Union. This economic and political imbalance, to Russia's advantage, runs through the CIS as a whole[59] and had necessarily to materialise in legal form.

This is now Russia has used the CIS as a stepping stone for her own norms towards Belarus and Ukraine. Such normative activism has been particularly significant in the context of the fight against terrorism. It is well known that Russia has been greatly affected by terrorism and that the Russian authorities' response had been widely covered in the media. These attacks, essentially linked to the conflicts in the Caucasus and particularly to the wars in Chechnya – which the Russian Constitutional Court has dubbed a '*civil* war'[60] – had pushed Russia to put in place a legislative arsenal, initially limited to her own territory and subsequently exported. The aim of this paper is not to examine the content or opportunity of this legislative activity, but to analyse the extent to which it may have constituted the impetus for reforms in Ukraine and Belarus. Russia's Federal Law on the fight against terrorism was adopted on June 25, 1998.[61] It consists of eight chapters on the institutions competent to take part in that fight, the issues related to the damage caused by acts of terrorism and the social support to be offered to victims, *etc.* It is especially striking to see the extent to which the Belarusian Law of January 3, 2002, is similar.[62] Not only is its structure identical word for word, but the very content of the provisions is a (certified?) copy of the Russian Federal Law. The Ukrainian Law, passed on March 20, 2003,[63] bears only marginal differences, in its phrasing and organisation, to the Russian 'template.'

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[59] On the *de jure* imbalance within EurAsEC, *cf. infra*, sec. 4.1.

[60] Ruling No. 10-P of the Constitutional Court of the Russian Federation of July 31, 1995, on the constitutionality of various presidential decrees on the war in Chechnya [Постановление КС РФ от 31 июля 1995 г. № 10-П [*Postanovlenie KS RF ot 31 iyulya 1995 g. No. 10-P*]], ¶ 2.

[61] Federal Law No. 130-FZ of June 25, 1998, 'On the Fight against Terrorism' [Федеральный закон от 25 июля 1998 г. № 130-ФЗ «О борьбе с терроризмом» [*Federal'nyi zakon ot 25 iyulya 1998 g. No. 130-FZ 'O bor'be s terrorizmom'*]].

[62] Law of the Republic of Belarus' No. 77-Z of January 3, 2002, 'On the Fight against Terrorism' [Закон Республики Беларусь от 3 января 2002 г. № 77-З «О борьбе с терроризмом» [*Zakon Respubliki Belarus' ot 3 yanvarya 2002 g. No. 77-Z 'O bor'be s terrorizmom'*]].

[63] Law of Ukraine No. 638-IV of March 20, 2003, 'On the Fight against Terrorism' [Закон Украины от 20 марта 2003 г. № 638-IV «О борьбе с терроризмом» [*Zakon Ukrainy ot 20 marta 2003 g. No. 638-IV 'O bor'be s terrorizmom'*]].

The only substantive difference between the three statutes is to be found in the definition of 'terrorism.' The Russian Federal Law was adopted before the attacks of September 11 and did not benefit from the discussions held on an international, or at least a European level.[64] It thus puts forward a criterion of intention, which is unusual to say the least, as an act of terrorism has been committed if the latter 'is carried out with the intention of provoking a way or complicating international relations.' This is, nonetheless, less obscure than Ukraine's criterion, whereby an act of terrorism targets activities 'the purpose of which is to achieve a criminal aim;' ultimately, Belarus Law appears, formally, to be the most precise.[65]

The influence of Russian Federal Law is patent in the fight against terrorism. It did not come about directly, in an immediate relationship between legal systems, but via the CIS.[66] Russia has indeed called for the establishment of the Anti-Terrorist Centre, formally created by the Heads of State of the CIS on June 21, 2000,[67] tasked to facilitate operational co-operation by organising joint exercises for instance, or even to promote scientific co-operation through financial contributions to the organisation of lectures or seminars.[68] This will has brought with it a fresh impetus and was consolidated on December 8, 1998, by the adoption of the Model Law by the Interparliamentary Assembly,[69] which contains, identical to the very last comma, the definition of acts of terrorism forged by the Russian Federal Law and its unusual final criterion.[70] It is therefore the bodies within the CIS and its Member States taken as

64 *Cf.* the definition posited by the Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP), 2001 O.J. (L 344) 93.

65 This is, in particular, 'an explosion, arson or other acts that endanger human life, causing bodily harm, large-scale damage or other serious consequences, with the aim of destabilising the social order or intimidating a section of the population or influence the decision-making process of public authorities.' Numerous supplementary examples follow this provision.

66 Article 7 of the Agreement establishing the CIS stated from the outset that the common actions of the High Contracting Parties include 'the fight against criminal organisations.'

67 Decision of June 21, 2000, 'On the Establishment of an Anti-Terrorist Centre of the States Parties of the Commonwealth of Independent States' [Решение Совета глав государств Содружества Независимых Государств от 21 июня 2000 г. «О создании Антитеррористического центра государств – участников Содружества Независимых Государств» [*Reshenie Soveta glav gosudarstv Sodruzhestva Nezavisimykh Gosudarstv ot 21 iyunya 2000 g. 'O sozdanii Antiterroristicheskogo tsentra gosudarstv – uchastnikov Sodruzhestva Nezavisimykh Gosudarstv'*]]. This was a political decision followed by the further Decision of the Council of Heads of State of December 1, 2000 [Решение от 1 декабря 2000 г. «Об Антитеррористическом центре государств – участников Содружества Независимых Государств» [Reshenie ot 1 dekabrya 2000 g. 'Ob Antiterroristicheskom tsentre gosudarstv – uchastnikov Sodruzhestva Nezavisimykh Gosudarstv']], then by Regulations, of the same date, which establish the centre's status main operational rules.

68 Regulations, *supra* n. 67, Art. 2.12.

69 Model Law of December 8, 1998, 'On the Fight against Terrorism' [Модельный закон от 8 декабря 1998 г. «О борьбе с терроризмом» [*Model'nyi zakon ot 8 dekabrya 1998 g. 'O bor'be s terrorizmom'*]].

70 *Id*. Art. 4. It will be noted, however, that the new Model Law adopted by the Interparliamentary Assembly on April 17, 2004 (amendment resulting from Decree No. 23-5) [Модельный закон «О борьбе

a whole that have contributed to the emergence of a full legislative arsenal by following the path initially taken by Russia. This systematic adoption of Russian provisions does indeed show that Russian law wields its own influence. In this particular case, it did not resort to the extraterritoriality technique but set about publicising that influence through the CIS, the latter becoming a level of power. In practice, this 'multiplier effect' that Russia intends the CIS to have is reflected in positive law.

The phenomenon of normative convergence, studied in a relational framework with Russia on one side and Ukraine and Belarus on the other, is doubly curious. On the one hand, it is a convergence which is in keeping with an alignment with Russian law. On the other hand, this is not done directly but through the CIS. This international organisation thus becomes, even on a legal level, an institution disseminating Russian normative influence throughout post-Soviet states. In that respect, we cannot formally speak of Russian unilateralism. However, it seems that in recent times Russia has not hesitated in employing a number of unilateral practices in order to force her partners to align themselves with her legislation. This is another technique used by Russia, over and above the other two, which supplements the legal arsenal intended to promote her legal influence.

4. The Boost to Normative Expansion

Normative influence techniques are not static. They are in a state of constant evolution and have had to adapt to new legal instruments, new political and legal contexts created by States as players in international legal transactions. Russia has, in particular, relied upon her advantageous institutional position within EurAsEC to promote her law and her own choices by imposing them, unilaterally, on Ukraine and Belarus. By institutionalising the political and economic imbalance of its members, EurAsEC has allowed Russia to use that organisation as a catalyst for her power (sec. 4.1). EurAsEC is thus gradually becoming an organisation that allows Russia to expand her legal influence within that organisation, but also to transform it into a stepping stone for her power and to impose certain choices, beyond EurAsEC and in breach of the rules, on non-Member States (sec. 4.2).

4.1. The Expression of Power within EurAsEC

Russia has long sought to create a framework for institutionalised co-operation with newly independent States. Faced with their reluctance – some, like the Baltic States, clearly opting for Europe – it has been difficult for Russia to achieve tangible results. This explains the proliferation of agreements concluded with CIS States, the purpose of

с терроризмом» (новая редакция) (принят Постановлением Межпарламентской Ассамблеи государств – участников СНГ от 17 апреля 2004 г. № 23-5) [*Model'nyi zakon 'O bor'be s terrorizmom' (novaya redaktsiya) (prinyat Postanovleniem Mezhparlamentskoi Assamblei gosudarstv – uchastnikov SNG ot 17 aprelya 2004 g. No. 23-5)*]], does not adopt the same final criterion.

which was to intensify relations in the context of regional alliances. Without claiming to be exhaustive, we may mention, aside from the specific case of the Collective Security Treaty Organisation,[71] the Treaty on the creation of the Union State between Belarus and Russia of December 8, 1999,[72] which followed on the heels of the Treaty of February 26, 1999, on the Customs Union and the Single Economic Space.[73] The latter Treaty went on to become, on October 10, 2000, EurAsEC, which would have a more glorious future. Indeed, it was the setting for the creation, in the long run, of the Customs Union with Belarus, Kazakhstan, Kyrgyzstan and Tajikistan. For Russia, EurAsEC has been a way of ensuring the effectiveness of the regional alliances that she has brought about or encouraged. The results are tangible, numerous and come one after the other at a frenetic pace, thus demonstrating that the integrative approach of cultivated spill-over[74] has retained its virtues. The Customs Union, the Treaty concluded in through EurAsEC on October 6, 2007,[75] came into effect on July 1, 2011: there are no internal

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[71] This organisation, based on the Collective Security Treaty signed on May 15, 1992 [Договор от 15 мая 1992 г. «О коллективной безопасности» [*Dogovor ot 15 maya 1992 g. 'O kollektivnoi bezopasnosti'*]], was established by two treaties dated October 7, 2002: one concerning the statutes of the Collective Security Treaty Organisation [Устав Организации Договора о коллективной безопасности [*Ustav Organizatsii Dogovora o kollektivnoi bezopasnosti*]], the other on the legal status of the Collective Security Treaty Organisation [Соглашение о правовом статусе Организации Договора о коллективной безопасности [*Soglashenie o pravovom statuse Organizatsii Dogovora o kollektivnoi bezopasnosti*]].

[72] Many agreements have been concluded on this subject and not a single one has yielded concrete results. This is the case for the Treaty on the creation of the Russia-Belarus Community of April 2, 1996 [Договор об образовании Сообщества России и Беларуси от 2 апреля 1996 г. [*Dogovor ob obrazovanii Soobshchestva Rossii i Belarusi ot 2 aprelya 1996 g.*]], and the Treaty on the Belarus-Russia Union of April 2, 1997 [Договор о Союзе Беларуси и России от 2 апреля 1997 г. [*Dogovor o Soyuze Belarusi i Rossii ot 2 aprelya 1997 g.*]]. Following the Declaration on the further unification of Russia and Belarus on December 25, 1998 [Декларация о дальнейшем единении Беларуси и России от 25 декабря 1998 г. [*Deklaratsiya o dal'neishem edinenii Belarusi i Rossii ot 25 dekabrya 1998 g.*]], the Treaty establishing State Union was concluded on December 8, 1999 [Договор от 8 декабря 1999 г. «О создании Союзного государства» [*Dogovor ot 8 dekabrya 1999 g. 'O sozdanii Soyuznogo gosudarstva'*]]. The proliferation of treaties on the same or similar aims was already the sign of a lack of effectiveness . . . For an overview of these agreements and a geopolitical analysis, *cf.* Teurtrie, *supra* n. 2.

[73] This Treaty, signed by Russia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan, is itself an extension of the Treaty of April 30, 1994, establishing the Single Economic Space between Kazakhstan, Kyrgyzstan and Uzbekistan [Договор от 30 апреля 1994 г. «О создании Единого экономического пространства между Республикой Казахстан, Кыргызской Республикой и Республикой Узбекистан» [*Dogovor ot 30 aprelya 1994 g. 'O sozdanii Edinogo ekonomicheskogo prostranstva mezhdu Respublikoi Kazakhstan, Kyrgyzskoi Respublikoi i Respublikoi Uzbekistan'*]], and of the Agreement on Customs Union between Russia and Belarus of January 6, 1995 [Соглашение от 6 января 1995 г. «О Таможенном союзе между Российской Федерацией и Республикой Беларусь» [*Soglashenie ot 6 yanvarya 1995 g. 'O Tamozhennom soyuze mezhdu Rossiiskoi Federatsiei i Respublikoi Belarus"*]].

[74] Panayotis Soldatos, Le système institutionnel et politique des Communautés européennes dans un monde en mutation: théorie et pratique 138 (Bruylant 1989).

[75] This is the Treaty establishing the Single Customs Area and instituting the Customs Union of October 6, 2007, concluded between Belarus, Russia and Kazakhstan [Договор от 6 октября 2007 г. «О создании

customs frontiers for goods between Belarus, Kazakhstan and Russia. On November 18, 2011, the Member States of the Customs Union set up a Commission,[76] the operation of which is fundamentally different to that of the European Commission,[77] and whose missions consist in guaranteeing the proper functioning of the Customs Union, be it in terms of customs duties, competition, energy policy, *etc.*, as well as ensuring that the treaties and agreements of the Customs Union and the Single Economic Space are respected.[78] On the same day, the Declaration on Eurasian economic integration announced the creation of the Single Economic Space in which the free movement of goods, services, capital and persons would be guaranteed and which may result a real Eurasian Economic Union in 2015.

Finally, to complete this (Impressionist) picture of intra-CIS conventional relationships, it will be noted that Ukraine refused to be a party to all aspects of this integration process. Either hesitant or cautious, she wished to manage her European partners whilst only associating herself with the agreements concluded through EurAsEC one at a time. In the face of this, Moscow opted for a 'bait strategy' towards her reluctant neighbours. She offered to conclude the Treaty on the Free Trade Zone (FTZ) which seeks to unite the States that have not joined the Customs Union, amongst which number Ukraine seems to be essential. The Treaty establishing the FTZ was signed by many CIS Member States on October 18, 2011. Ratified by Russia, Belarus and Ukraine, it came into force on September 20, 2012.[79] Russia is thus weaving a web of conventional networks, which take the form of concentric circles.

единой таможенной территории и формировании Таможенного союза» [*Dogovor ot 6 oktyabrya 2007 g. 'O sozdanii edinoi tamozhennoi territorii i formirovanii Tamozhennogo soyuza'*]], as well as the Treaty on the Customs Union Commission of October 6, 2007 [Договор от 6 октября 2007 г. «О Комиссии Таможенного союза» [*Dogovor ot 6 oktyabrya 2007 g. 'O Komissii Tamozhennogo soyuza'*]].

[76] This was created by the Treaty of November 18, 2011, on the Eurasian Economic Commission [Договор от 18 ноября 2011 г. «О Евразийской экономической комиссии» [*Dogovor ot 18 noyabrya 2011 g. 'O Evraziiskoi ekonomicheskoi komissii'*]], the practical operation of which us governed by the Working Regulations of the Eurasian Economic Commission adopted by Decision No. 1 of the EurAsEC Interstate Council on the same date [Решение от 18 ноября 2011 г. № 1 «О Регламенте работы Евразийской экономической комиссии» [*Reshenie ot 18 noyabrya 2011 No. 1 'O Reglamente raboty Evraziiskoi ekonomicheskoi komissii'*]].

[77] This Commission is in no way a supranational body. In reality, it is itself divided into two bodies: the Council of the Commission and the College of the Commission. Under Art. 12 of the Treaty on the Eurasian Economic Commission, the Council of the Commission 'adopts decisions by consensus' and, where this requirement is not satisfied, one of its members may appeal to the Eurasian Higher Economic Council which is a meeting of the Council involving the Heads of State and Heads of Government. The College of the Commission, which is the true executive body of the EurAsEC Customs Union, adopts decisions and recommendations by consensus or a two-thirds qualified majority, and each State has three representatives.

[78] Article 3 of the Treaty.

[79] *Cf.* Treaty on the Free Trade Zone of October 18, 2011 [Договор от 18 октября 2011 «О зоне свободной торговли» [*Dogovor ot 18 oktyabrya 2011 g. 'O zone svobodnoi torgovli'*]], Art. 22 (on the formalities for the entry into force of the Treaty).

In these new regional economic relationships, Russia has restructured her power by compelling her partners to accept that she ought, institutionally, to have carry more weight than them. The time when the decisions of the CIS were made purely through the adoption of an international agreement and when, by definition, each State formally retained a power of veto, has passed. Step by step, the majority approach has taken its course and this is quite obvious in EurAsEC. Firstly, the operation of EurAsEC institutions is based on a double approach, a striking intergovernmental approach in which the decision-making process requires unanimity.[80] This is the case, in particular, within the EurAsEC Interstate Council, which is 'the highest body of the Customs Union'[81] and where the ordinary rules of procedure require consensus, except for decisions on the exclusion of a Member State.[82] Such pure intergovernmentalism is made up for by voting rules that follow a majority approach within the Integration Committee, in a sense that is eminently favourable to Russia, given that she has 40% of the votes[83] and decisions require a two-thirds majority; this, in practice, means that Russia still have to obtain the support of at least two other Member States. In other words, the voting conditions for the Integration Committee allow Russia to make it endorse decisions and constitute a crucible for her normative expansion.[84]

Secondly, on June 9, 2009, following the disastrous consequences of the financial crisis in 2008, the EurAsEC Member States set up the EurAsEC Anti-Crisis Fund.[85] This Fund is almost entirely financed by Russia, which secured 88% of the voting of the fund's Council Committee.[86] As a decision can only be made once a quorum of 90%

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80 With the constructive abstention mechanism.

81 Treaty on the foundation of the Eurasian Economic Union of October 10, 2000 [Договор об учреждении Евразийского экономического сообщества от 10 октября 2000 г. [*Dogovor ob uchrezhdenii Evraziiskogo ekonomicheskogo soobshchestva*]] [hereinafter EurAsEC Treaty], Art. 5.

82 These decisions have to be made unanimously, not counting the vote of the State concerned (EurAsEC Treaty, Art. 13(1)).

83 For the rest, Belarus and Kazakhstan account for 15 votes, while Kyrgyzstan and Tajikistan account for 7.5 votes. Uzbekistan had 15 votes prior to its withdrawal in 2008.

84 This imbalance is logical as the political and economic difference is obvious. We may even go so far as to say that, had the number of votes been strictly proportional to the real weight of Member States, Russia could have claimed to hold a majority all by herself. This balance of votes must therefore be understood as a concession on Russia's part. The fact remains, however, that she is in a more favourable position than in the CIS, where it was necessary almost systematically to conclude a treaty subject to approval by each national legal system.

85 The Fund is based on the Treaty signed on June 9, 2009, between Russia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Armenia establishing the EurAsEC Anti-Crisis Fund [Договор от 9 июня 2009 г. об учреждении Антикризисного фонда Евразийского экономического сообщества [*Dogovor ot iyunya 2009 ob uchrezhdenii Antikrizisnogo fonda Evraziiskogo ekonomicheskogo soobshchestva*]] (with additional Regulations on the EurAsEC Anti-Crisis Fund), and on the Agreement on the management of the Anti-Crisis Fund adopted on the same date [Соглашение об управлении средствами Антикризисного фонда Евразийского экономического сообщества [*Soglashenie ob upravlenii sredstvami Antikrizisnogo fonda Evraziiskogo ekonomicheskogo soobshchestva*]].

86 Russia finances the Fund to the tune of US $ 7.5 billion out of the approximately US $ 8.5 billion (*cf.* Treaty establishing the EurAsEC Anti-Crisis Fund, Art. 3, and Regulations on the EurAsEC Anti-Crisis Fund, Art. 14(4)).

of the votes is obtained, it should not be very difficult for Russia to decide the policy of this new body almost single-handedly. Conversely, nothing can be done without her, and it may even be said that Russia has a blocking majority. It will be noted, incidentally, that it is quite possible that the fund will grant loans subject to a number of reform conditions. Consequently, Russia is operating a policy of conditionality, even though she has traditionally rejected the same, citing the principle of non-interference in internal affairs.[87]

Thirdly and finally, the methods for resolving disputes within EurAsEC is also favourable to Russia. The basic principle is that of seeking a diplomatic solution to disputes, for which Russia has always had a natural inclination. Consequently, in the event of gross violations of EurAsEC rules by Russia, such behaviour could nevertheless be approved *ex post* following a diplomatic arrangement. A measure initially contrary to EurAsEC law could therefore be accepted or imposed on Russia's fellow contracting parties, without the matter coming before the EurAsEC Court.[88] The flexibility of the EurAsEC dispute resolution mechanism will therefore undoubtedly allow Russia to impose some of her norms on her partners via the diplomatic route.

EurAsEC is therefore a catalyst for Russian power which is likely, in future, to use all of its potential to the great benefit of her strategy of legal influence. Despite an institutional framework that could not be more favourable, Russia has not hesitated in recent times deliberately to break the most fundamental rules in order to impose new ones, beyond EurAsEC, on Ukraine and Belarus.

4.2. The Expression of Power beyond EurAsEC

Very recently – and, therefore, very shortly after the Customs Union and the FTZ came into force – Russia has made decisions that directly disregard those undertakings. Russia has therefore positioned herself in some sense *beyond* EurAsEC by exceeding her own rules and those of the integration zone that she shares with Ukraine. It is no longer a matter of mere normative alignment, *i.e.* a fundamentally legal Russian act that would induce neighbouring States to adopt the normative provision, but an illegal act which has attempted to force Ukraine and Belarus to amend their own legislation in the area in question. In this respect, the case concerning the recycling tax on vehicles caused uproar. The tax, brought in by Federal Law on July 28,

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87 Admittedly, this conditionality is closer to that of the IMF than that of the EU. The fact remains that it is a first step towards the development of a policy of conditionality, which has been roundly criticised. The enlargement of the customs union to include Kyrgyzstan and the adoption of a detailed road map raise the same issues.

88 Only State and institutional applications may be brought before the Court. On the Court's jurisdiction, *cf.*, essentially, EurAsEC Treaty, Art. 8. Equally, reference can be made to the following instruments on the Customs Union: Treaty establishing the Single Customs Area and instituting the Customs Union, Art. 6; Treaty on the Customs Union Commission, Art. 16; Agreement on integrated customs tariff regulation, Art. 9; Treaty on the Eurasian Economic Commission, Art. 18.

2012,[89] amends Art. 51(1) of the Budgetary Code of the Russian Federation. Its ultimate purpose us to guarantee Russia's 'environmental safety'[90] by imposing a new tax on vehicles imported into Russia, which mainly affects used cars. A number of Russian car manufacturers[91] were excluded from the scope of the new tax, as well as vehicles manufactured in a Member State of the Customs Union.[92] This does not, for all that, guarantee their full and complete compliance. Indeed, the exclusion only operates in respect of vehicles 'that have the status of Customs Union goods.'[93] In other words, and in accordance with the Customs Union Statutes, only vehicles that have undergone significant changes in Belarus, for instance, are exempted. Consequently, all imported products, including those transiting through Belarus, are subject to the tax and nearly all of the automobile fleet, as the vehicles are already finished products; the same applies to those transiting through Russia en route to Belarus.

It is not difficult to understand just how poorly this tax, which can prove to be very high (up to several thousand Euros), was viewed by the people and the governments of Belarus and Ukraine. Their reaction was now identical, however. Ukraine, the more turbulent neighbour, vociferously protested and the bill was put forward on November 19, 2012, seeking to impose a 'recycling tax' on vehicles imported from Russia.[94] This draft piece of so-called mirror legislation, which was intended to come into force on January 1, 2013, is a genuine counter-measure within the meaning

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89 Federal Law No. 128-FZ of July 28, 2012, 'On the Amendment to the Federal Law "On the Production and Consumption Wastes" and Article 51 of the Budgetary Code of the Russian Federation' [Федеральный закон от 28 июля 2012 № 128-ФЗ «О внесении изменений в Федеральный закон «Об отходах производства и потребления» и статью 51 Бюджетного кодекса Российской Федерации» [*Federal'nyi zakon ot 28 iyulya 2012 No. 128-FZ 'O vnesenii izmenenii v Federal'nyi zakon "Ob otkhodakh proizvodstva i potrebleniya" i stat'yu 51 Byudzhetnogo kodeksa Rossiiskoi Federatsii'*]] [hereinafter Federal Law No. 128-FZ].

90 Federal Law No. 89-FZ June 24, 1998, 'On the Production and Consumption Wastes' [Федеральный закон от 24 июня 1998 г. № 89-ФЗ «Об отходах производства и потребления» [*Federal'nyi zakon ot 24 iyunya 1998 g. No. 89-FZ 'Ob otkhodakh proizvodstva i potrebleniya'*]], Art. 24.1(1) (as amended by the Federal Law No. 128-FZ).

91 For instance, *Avtovaz*, *Kamaz* or *Gaz*, where these gave environmental 'guarantees' and undertook to set up a waste recycling and treatment loop.

92 *Cf.* Federal Law 'On the Production and Consumption Wastes,' Art. 24.1(6) (as amended by the Federal Law No. 128-FZ). Equally, reference may be made to the Government Decree No. 870 of August 30, 2012, 'On the Recycling Tax Concerning Road Vehicles' [Постановление Правительства РФ от 30 августа 2012 г. № 870 «Об утилизационном сборе в отношении колесных транспортных средств» [*Postanovlenie Pravitel'stva RF ot 30 avgusta 2012 g. No. 870 'Ob utilizatsionnom sbore v otnoshenii kolesnykh transportnykh sredstv'*]].

93 Federal Law 'On the Production and Consumption Wastes,' Art. 24.1(6) (as amended by the Federal Law No. 128-FZ).

94 Bill No. 11437 of November 19, 2012, put before the Verkhovna Rada [Проект Закону від 19 жовтня 2012 р. № 11443 «Про внесення змін до статті 47 Закону України «Про охорону навколишнього природного середовища» (щодо утилізаційного збору)» [*Proekt Zakonu vid 19 zhovtnya 2012 g. No. 11443 'Pro vnesennya zmin do statti 47 Zakonu Ukrayiny "Pro okhoronu navkolishn'ogo prirodnogo seredovishcha" (shchodo utylizatsiinogo zboru)'*]]. This did not pass into law.

of international law – *i.e.* the Treaty establishing the FTZ – by means of another violation, in order to bring Russia back within the bounds of legality and re-establish the conventional balance. Belarus was – as it frequently is – more measured and understanding. Indeed, on July 16, when the Russian Federal Law was about to be voted upon, the Council of the EurAsEC Commission adopted a decision seeking to legalise the principle of a tax on recycling within the Community.[95] Very shortly thereafter, on October 12, the same Council of the EurAsEC Commission, following an impact study on the Russian tax, adopted the Decision fully approving the scheme.[96] It is therefore quite possible that Belarus will soon align herself completely with Russian law. This likelihood is far illusory inasmuch as Belarus has applied for a loan from the Anti-Crisis Fund and is therefore positioning as herself as an applicant *vis-à-vis* Russia.[97] Furthermore, the Russian minister for trade and industry suggested on April 11, 2013, that the scheme be extended to the entire Customs Union.[98]

The 'recycling tax' episode is far from over and stands as a revealing example of a trend in Russian normative expansionism. This is the highest degree of normative influence whereby the Russian Federation manages to impose her rules in contravention of commitments to which she voluntarily subscribed shortly before. It must be added that there is, in reality, a double violation. Openly discriminatory, the Russian provisions breach not only the rules provided in her regional economic alliances, but also disregard those of the WTO, which Russia joined on August 22, 2012. Furthermore, the European Union has expressed considerable concern and is currently threatening Russia with dispute resolution proceedings before the

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[95] *Cf.* Decision No. 55 of July 16, 2012, 'On the Application by Belarus and Kazakhstan of Import Duties Other Than the Customs Duties of the Customs Union with Regard to Certain Categories of Goods' [Решение от 16 июля 2012 г. № 55 «О применении Республикой Беларусь и Республикой Казахстан ставок ввозных таможенных пошлин, отличных от ставок Единого таможенного тарифа Таможенного союза, в отношении отдельных категорий товаров» [*Reshenie ot 16 iyulya 2012 g. No. 55 'O primenenii Respublikoi Belarus' i Respublikoi Kazakhstan stavok vvoznykh tamozhennykh poshlin, otlichnykh ot stavok Edinogo tamozhennogo tarifa Tamozhennogo soyuza, v otnoshenii otdel'nykh kategorii tovarov'*]].

[96] *Cf.* Decision No. 84 of October 12, 2012, 'On the Results of the Monitoring of the Application of the Recycling Tax in Russia with Regard to Vehicles with Customs Union Goods Status Imported from Belarus and Kazakhstan' [Решение Совета Евразийской экономической комиссии от 12 октября 2012 г. № 84 «О результатах мониторинга администрирования утилизационного сбора в Российской Федерации в отношении транспортных средств, ввозимых из Республики Беларусь и Республики Казахстан и имеющих статус товаров Таможенного союза» [*Reshenie Soveta Evraziiskoi ekonomicheskoi komissii ot 12 oktyabrya 2012 g. No. 84 'O rezul'tatakh monitoringa administrirovaniya utilizatsionnogo sbora v Rossiiskoi Federatsii v otnoshenii transportnykh sredstv, vvozimykh iz Respubliki Belarus' i Respubliki Kazakhstan i imeyushchikh status tovarov Tamozhennogo soyuza'*]]. It provides, in particular – and very fortunately – that '[t]he parties guarantee that vehicles imported into the territory of the Russian Federation from the territory of Belarus and of the Republic of Kazakhstan by natural persons, subject to the payment of customs duties as required in the territory of these parties, are not subject to the tax on recycling in the Russian Federation.'

[97] On Russia's strategic place in the Anti-Crisis Fund, *cf. supra*.

[98] *Cf.* the dispatch issued by *Interfax* in Belarus on the following website: <http://www.interfax.by/news/belarus/128413> (accessed Mar. 6, 2015).

WTO.[99] In this respect, we could well ask whether the case illustrates the limits of Russian normative expansion. Endowed as they are within limited powers of political resistance, Belarus and Ukraine can only put up marginal resistance to the Russian strategy of legal influence. Russia's most influential partners, like the European Union, will not hesitate in demanding that she respect the law to which she has freely subscribed and in using various forms of political and economic pressure against her. Decidedly, the study of normative influence is indeed that of the meeting point between law and power, whatever the country or organisation resorting to it.

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[99] *Cf.* Trade and Investment Barriers Report 2013, COM(2013) 103 final, at <http://trade.ec.europa.eu/doclib/docs/2014/april/tradoc_152379.pdf> (accessed Mar. 6, 2015). The wrath of the European Union is all the greater as Russian infringements within the framework of the WTO multiplied, and particularly of health and plant-health standards (importing of live animals and slaughter pigs). In the same report, the Commission states that '[t]he EU is worried by the systemic use of bans towards its product by Russia as soon as one problem arises, without taking into account the WTO principles of justified and proportionate actions for SPS measures' (*id.* at 14).

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Information about the author

Hugo Flavier (Bordeaux, France) – Associate Professor of Public Law and European Law at Montesquieu University – Bordeaux IV, Centre de Recherche et Documentation Européen et International (CRDEI) (16 Avenue Léon Duguit, Pessac, 33608, France; e-mail : hugo.flavier@gmail.com).