

**GUEST EDITOR'S NOTE –
SOME REFLECTIONS ON INTEGRATION IN EURASIA**

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In this prefatory article the author surveys the general concept of “integration” and its development and application in Soviet and post-Soviet space and then reviews the particular contributions made by each article contributed to this special issue of the Russian Law Journal.

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“Integration” is a slippery term when used in the fields of law or economics. When used in its classical general meaning, “integration” means to make entire or complete, to make up or constitute a whole, to bring together or to combine into a whole. When applied to human communities organized as States, the definition begs the question: what is the “whole” that the components seek to achieve? In the field of international law, the answer in the twentieth and early twenty-first centuries has been the formation of a treaty-based international organization which may or may not possess qualities of sovereignty and supranationality. The arrangements range of advanced forms of “cooperation” at the low end to aspirations to create a supranational State at the “high” or most ambitious end. Of the latter variety, the two best examples are the Union of Soviet Socialist Republics (USSR) and what is today known as the European Union (but which commenced as a set of autonomous European communities).



It is unusual to view the USSR as a species of integration project. Consider the formal legal aspects of the USSR for a moment. Revolutions commenced in 1917 in the Russian Empire and led to the dissolution of the Empire. In its place emerged a group of independent States (RSFSR, Ukraine, Belorussia, Transcaucasian SFSR), two which at the time were multi-national species of federalism (RSFSR and Transcaucasian SFSR – which later broke up into its constituents, Armenia, Azerbaijan, and Georgia). The RSFSR remains to this day, now known as the Russian Federation, or Russia, a federated State.

The USSR did not come into being until the conclusion of the Treaty of the Union on 30 December 1922. Economic and legal integration were not specifically named as the primary aims of the new entity, which formed in Moscow and exercised highly centralized competence and authority over its constituents. The number of constituents increased over the 1920s and 1930 until they reached sixteen (later reduced to fifteen) union republics in number, each regarded as an autonomous State and part of the Union. Whatever the formal trappings of statehood – and they were present – the USSR came in reality to be recognized by the international community as a State in its own right. It entered into treaties in its own name, engaged in diplomatic relations with other powers, joined the League of Nations as a State, became a founding member of the United Nations (together with Belorussia and Ukraine); in short, possessed all the attributes of a single, cohesive, “integral” actor in international relations.

When, however, the constituent members of the USSR decided to terminate their relationship, they invoked the law of treaties under international law and dissolved the USSR by withdrawing from the 1922 Treaty of the Union. Legally speaking, they returned to the treaty foundations of the Union and exercised their rights as independent States. In many respects, of course, the members of the USSR were “integrated,” economically dependent upon one another. Cessation of that “community” imposed social, economic, and political costs upon each. Here the institutional foundations of the Union served them well. Each had in force on its territory the principal legal codes of the Soviet period: civil, criminal, civil procedure, criminal procedure, family, forestry, water, land, administrative violations, labor, among others, or union republic laws which addressed such matters as environmental protection, flora and fauna, the atmosphere, and so on. The USSR codes (air, merchant shipping, internal water transport, and surprisingly few others) remained in force in each union republic with modifications as necessary. All other USSR legislation continued in force except insofar as expressly repealed, inconsistent with union republic legislation, or superseded by Independent State legislation. The break with the legal system of the Union, in other words, or with the USSR community law, was remarkably soft, well-conceived, and well-organized.

Issues of State succession were addressed rationally and in the interests of each Independent States, with the Russian Federation becoming the “legal continuer” of



the USSR and the other fourteen union republics, the “legal successor” of the USSR – with all the implications of each legal status.

Thus, ended one experiment with high-level legal and economic integration at the supranational level.

Other experiments, however, proceeded in parallel with the development of the USSR. For this, the formation of the European Economic Communities after the Second World War is partly to blame. In response to the formation of those Communities and to the economic and other assistance provided under the United-States initiated “Marshall Plan,” the Soviet authorities decided to pursue their own policies of “bloc integration”; that is, the formation of another inter-State economic community, known by various acronyms in English: COMECON, CMEA, CEMA, all having in view the Council of Mutual Economic Assistance, established in 1949.

The initial idea was to create autarchic economic systems in each Eastern and Central European socialist country – replicas of the USSR. This approach rapidly proved to be unrealistic, for none of the countries concerned had the physical resources to each be a USSR. As developments in Western Europe proceeded, it was decided instead to pursue policies that eventually matured as a goal of “socialist economic integration.”¹ Whether, had the course of history been otherwise, that goal would have evolved into one of creating a supranational State can merely be the object of speculation.

When the Soviet Union was dissolved by its members, there was sufficient interest and objective reasons for retaining an international organizational structure to coordinate relations in agreed spheres of activity by the Independent States. This resulted in the establishment of the Commonwealth of Independent States (CIS), which continues to function, albeit with fewer members than originally created the body. The CIS has been complemented by a series of other organizations intended to facilitate closer cooperation among the members, take advantage where appropriate of the economic laws of comparative advantage, harmonize legislation in post-Soviet space where in the past the Soviet model predominated, and, usually by treaty, establish new legal space in the interests of the parties.

None of these models replicates the former Soviet Union or the European Union. But each model draws upon the reality that the constituent members were part of the Soviet or socialist legal tradition; that shared heritage and legal experience operates for the most part as a positive factor in the institution-building which is taking place. For the moment, each institution seems to be addressed to a specific constituency and to achieving specific purposes. No “Grand Plan” is in evidence to re-create a species of the former Soviet Union in post-Soviet space, nor, if that were the Plan, is there any realistic likelihood that the package of organizations in existence could

¹ *A Source Book on Socialist International Organizations* (W.E. Butler (ed., comp. & transl.), Alphen aan den Rijn: Sijthoff & Noordhoff, 1978).



achieve that end. In this writer's perception, the pattern of different organizations for different purposes continues a tradition in evidence from COMECON onwards (the USSR was a partial exception in this respect): a reluctance of Russia to become truly dependent economically and legally upon its immediate neighbors. Insofar as that reluctance is an accurate perception, the formation of a truly integrated supranational State in post-Soviet space is unlikely.

For the moment, at least, the existing international institutional arrangements would seem to support that perception – although it is not necessarily shared by all the authors in the present issue. "Eurasia" in its present incarnation is not President Charles de Gaulle's (1890–1970) conception of an entity extending from the Atlantic to the Pacific oceans. "Eurasia" has a distinctive Russian heritage and conception, which Zakharova and Przhilenskiy trace back to the early years of the Russian emigration in southeastern Europe. To them, Eurasian law is a special type of a law of obligations capable of uniting heterogeneous entities without requiring their full unification or depriving them of their civilizational and value-based peculiarities. If such exists, it differs from the western European model founded on different values – although there is, of course, an overlap of values across Europe. In their view, Eurasian integration practices manifested themselves in the emergence at the turn of the twenty-first century of *Eurasian law*. Eurasian law governs the set of social relations between Eurasian States during the creation and dissolution of regional associations, interaction of regional associations with their members, cooperation between the countries within the framework of the regional associations created by such countries in various spheres of relations driven by their goals, as well as the interaction of regional institutional structures within a specific association. Russian political leaders have adroitly used the Eurasian idea to legalize the regional order, a central component of which is Russia, and to protect this order from the foreign-policy-related and economic ambitions of the global neoliberal order led by the United States.

When one looks back on the history of the former Soviet Union, one may reflect on the role played by the emergence of national economic planning, which played a central role in the development of that entity. Russian economists, among them Wassily Wassilyevich Leontief (1905–1999), played a major role in creating the analytical tools for such planning, such as input-output analysis, that in turn had a massive impact on the Soviet legal system. Shokhin and Kudryashova draw attention to the ideological foundation of what is called Eurasian economic integration being "economic pragmatism," which in their perception means establishing the foundations for the free movement of goods, service, labor, and capital – but on the basis of macro-economic strategic economic planning. A Eurasian legal order is part of this equation.

So-called "public/private partnerships" have become fashionable around the world as a mode of attracting private investment for public purposes; in effect, a form of outsourcing what are normally public concerns by attracting private entrepreneurs



to their construction and/or operation. Examples are legion, and include the building and operation of highways, bridges, and other infrastructure projects. Eurasian integration projects are no exception, and Lisitsa and Moroz survey the legislation introduced by several (but not yet all) members of the Eurasian Economic Union to encourage such arrangements. Among the by-products of these arrangements will be a unification of relevant legal rules, the attraction of foreign investment, and the harmonization of appropriate dispute settlement arrangements.

As observed above, the CIS is the earliest international organization in post-Soviet legal space. Letova and Kozhokar address the family codes of CIS members with particular reference to the legal status of the child. The CIS has been instrumental in encouraging the conclusion of treaties intended to facilitate the recognition and enforcement of judicial decisions among CIS members and the harmonization of family legislation, at least to the extent of procedures, documentation, and the like to be submitted in cross-border family issues. They speak of “CIS family legislation” and “norms of CIS family law” when referring to what are, in essence, treaty rules widely, if not universally, shared among CIS members. These too represent a measure of integration, and on a broader level, for the moment at least, than the Eurasian Economic Union.

The fate of Eurasian or any other economic integration will necessarily depend upon the place of public and private international law rules within the national legal systems of the post-Soviet Independent States. The reason is straightforward: all the institutions of Eurasian economic integration – in the broadest possible sense of those words – are treaty-based. The respective institutions are created by treaty and subject to the rules of public international law governing the law of treaties. All the States concerned are parties to the 1969 Vienna Convention on the Law of Treaties, and some to other Vienna conventions governing more specialized questions of the law of treaties. Kalinichenko, Petrov, and Karliuk examine the respective constitutional provisions and legislation specifically regulating the law of treaties in Russia, Ukraine, and Belarus with a view to assessing the impact of these materials on modern integration projects. The issues are real in each legal system and may have far-reaching effects on the course and effectiveness of integration – whatever that is understood to be.

Any advanced scheme for legal and integration will include a “court” to enforce and develop integration policies and rules; otherwise under the law of treaties the members of the organization are left to resolve these by negotiation, usually omitting the participation and interests of natural and juridical persons who become the beneficiaries/victims of the administration of integration norms. The Eurasian Economic Union (EAEU) is no exception, and in its relatively brief existence already has experienced a measure of reformulation of the role of the Court – one which reduces or limits its role in the integration process. Judge Neshataeva and Myslivskiy explain the role of the Court of the EAEU in its revised form and what was initially



contemplated. The EAEU was created with minimal doctrinal and practical perceptions of how such an organization may interact with the principle of State sovereignty and whether the EAEU constituted the first step towards the emergence of a new State. They consider that the EAEU should not be confused with a State but is rather a new type of international organization, supranational, to which member States transferred competence. The principal function of the Court is to ensure the uniform application of Union law by hearing disputes and providing advisory opinions in various spheres of integration and thereby establishing practice having an *erga omnes* effect in the law of the Union and national legal systems of the member States. Success in this endeavor will turn partly on the place of international law in the respective legal systems and the extent to which the Court creates a body of Union law.

Any Eurasian integration project of whatever nature is bound to invite comparison with European Union integration, where the avowed intention is to ultimately create a supranational State – although not all members necessarily agree with that objective. Entin and Voynikov undertake precisely such a comparison with respect to the institutional and legal development of the EAEU and the European Union. They suggest that the EAEU was formed largely in the image of the European Union. However, what they characterize as “supranational constitutionalization” within the European is not intended in the EAEU and, indeed, would be harmful and perhaps counter-productive. The technical tools developed by the European Union might be useful to the EAEU for resolving challenges of sustainability and self-affirmation in the international arena. The crisis, as they see it, being experienced by the EU is helpful in choosing institutional and legal decisions that actually work within an integration association and those that deserve to be discarded. They believe that the EAEU should not repeat the mistakes and miscalculations of the European Union. A serious contribution to the comparative law of Eurasian institutions.

The EAEU was formed as the Russian Federation and some other EAEU members became part of the World Trade Organization (WTO). The WTO is more than a treaty, but rather an international organization which is not designed as an integration-oriented body. The objectives and status of the EAEU immediately found themselves in conflict with aspects of WTO operations and jurisprudence. Although the law of the EAEU and WTO law might be regarded as autonomous complexes of rules, in current disputes the Dispute Settlement Body of the WTO treats norms of EAEU law as measures adopted by a specific EAEU member, but not as international law. These disputes, which concern import tariffs, anti-dumping investigations, and technical regulation, reveal specific features. First, the EAEU measures are attributable to every EAEU member. Second, the WTO members may challenge in the Dispute Settlement Body the measures adopted by an EAEU member in its national legislation based on EAEU law that affect national legislation of that EAEU member, rather than EAEU law as such. Third, “forum shopping” may arise, for the same measure can be challenged under EAEU law in the EAEU Court and under WTO law in the Dispute Settlement Body. Boklan and Lifshits argue that to



overcome uncertainty concerning WTO law in EAEU Court jurisprudence, the approach of the EAEU Court should be clarified. They believe that this approach should provide for the Court's right to interpret EAEU law relying on WTO law and Dispute Settlement Body jurisprudence. Such interpretations should be made within the context and object of the EAEU Treaty. However, they observe that the autonomous EAEU legal order cannot be implemented until the Treaty on Functioning of the Customs Union within the Multilateral Trading System is applicable.

This issue concludes with an overview of the jurisprudence of the Court of the EAEU (and its predecessor, to which the Court is a legal successor – the Court of the Eurasian Economic Community). The analysis presents a mixed picture. From September 2012 to May 2019 the Court(s) primarily dealt with appeals of economic entities who challenged acts of the EAEU, as well as requests from Member States and the EAEU to interpret international treaties. Taken as a whole, in the author's view, the decisions of the Court meet basic international standards and are responsive to the questions submitted to the Court.

On the other hand, in style they do not present detailed arguments and clear conclusions; sometimes they reflect the Court's predisposition towards the Commission and Member States. As a result, they successfully resolve specific disputes, but do not perform (at least effectively) the general task of strengthening the rule of law of the EAEU. The Court did not in this period formulate major concepts that complement and enrich the law of the EAEU. Tolstykh analyzes the Court use of sources of law and evidence; its participation in judicial dialogue; its technique of argumentation; linguistic features of its decisions; procedural and substantive problems faced by the Court, and options for their solution; the practice of presenting separate or dissenting opinions; legal concepts formulated by the Court, and its overall influence on the development of EAEU law.

The ineffective resolution of problems faced by the Court are attributable to subjective and objective reasons – shortcomings of applicable acts, the Court's isolation from Russian doctrine, the Court focus on an internal model of legal proceedings, mistrust on the part of Member States, failure of the Court organizational structure to conform to international standards, and the vertical nature of the EAEU. If these factors are not overcome, and the Court does not change its conduct, the author believes that the Court risks becoming a decorative body engaged in explaining provisions that are clear (and will repeat the sad fate of the CIS Economic Court).

These articles collectively offer much insight into the origins, ideology, policies, legal infrastructure, roles in various models of integration, and possible future of Eurasia – a segment of the globe whose population, DNA evidence now confirms, has exerted an enormous impact upon the populations of Europe and the Americas over several millennia.