1. The Eurasian Customs Union: framing the analysis

Rilka Dragneva and Kataryna Wolczuk

Regionalism – that is, the tendency for states to form regional groupings – has attracted considerable attention as a major force for global change. The proliferation and diversity of the regional integration regimes across the world has spawned major debates, focusing on the various designs, motives and modalities of participation and varying rates of integration. The ‘new regionalism’, mainly involving non-Western and often non-democratic states at various levels of economic development, greatly enriched the knowledge of regional integration in becoming the focus of the so-called ‘second wave’ of literature on regionalism. Research on the design and effects of regional institutions has benefitted considerably from the increased number of case studies. Scholars of international law and international relations have examined the diversity of regional integration regimes with particular reference to the mechanisms of coordination they use and the extent to which they resort to binding, legalized commitments in structuring cooperation.¹

However, developments in the communist bloc were treated as a distinct phenomenon and were not fully embraced by the literature on new regionalism. The East-Central European states rushed to join the European Union (EU) and NATO, even before their accessions were duly absorbed into the fold of European studies with their distinct analytical perspectives associated with the ‘old’ regionalism.² In contrast, the post-Soviet states featured only occasionally in comparative studies of regionalism.³

¹ See, for example, Special Issue ‘Legalization and World Politics’ (2000) 54(3) International Organization.
² Enlargement fuelled the perception of the EU as a normative power, which differs from other cases of regional integration.
³ Recently some comprehensive analysis of Eurasian integration (including aspects of the Eurasian Customs Union) in light of the political economy of

---

1 See, for example, Special Issue ‘Legalization and World Politics’ (2000) 54(3) International Organization.
2 Enlargement fuelled the perception of the EU as a normative power, which differs from other cases of regional integration.
3 Recently some comprehensive analysis of Eurasian integration (including aspects of the Eurasian Customs Union) in light of the political economy of
With the dissolution of the Soviet Union and its single economic system, the ongoing economic interdependencies between the newly independent republics meant that they faced the challenge of setting up new – this time international – economic relations among themselves, while engaging in state-building and trying to overcome the negative economic effects of the break-up. Over the next two decades, the region witnessed a stream of initiatives directed towards economic integration – some within the framework of the Commonwealth of Independent States (CIS), others outside it (see Appendix 1). These projects were characterized by weak and ineffective institutional frameworks and delivered limited economic results. They generated high volumes of international agreements and a multitude of high-profile political meetings, but failed to make much impact. The declarative and ultimately insubstantial initiatives resulted in fatigue and scepticism amongst observers of post-Soviet developments.

When, in 2007, Russia, Kazakhstan and Belarus announced their intention to set up a customs union within the Eurasian Economic Community (hereafter ‘Eurasian Customs Union’ or ECU), there was little reason to believe that the initiative would fare better than its predecessors. Only five years later, however, the organization has proved itself a more credible integrative mechanism, thereby meritng renewed attention to economic integration in Eurasia.

Firstly, there have been significant practical developments in setting up a customs union: a common customs tariff was agreed upon in January 2010, a common customs territory became effective as of 1 July 2010 (6 July for Belarus), and internal physical border controls were eliminated in January 2011. A common Customs Code of the Customs Union, containing the bulk of customs regulation, was adopted and upon its entry into force replaced the respective domestic legislation of the member states of the ECU.

Secondly, the customs union project was supported by a more effective legal and institutional framework compared with previous initiatives. The set-up of the ECU provides for supranational delegation, an identifiable and transparent legal basis, and binding third-party dispute resolution. Thus, it is presented as a ‘new style’ project – one that appears to rely on a modern, rule-based legal and institutional framework in delivering economic benefits.

Thirdly, Eurasian integration has been a fast-moving and ambitious project. The economic cooperation agenda has developed from a customs union to a single economic space which was launched in January 2012. Importantly, the process of preparing for a Eurasian Economic Union to become effective as of January 2015 is currently under way.

Fourthly, the ECU has been presented not in terms of past-oriented discourses about shared values and history, but one that offers a future-oriented modernization agenda and tangible economic benefits, and incorporates best international practice in the field. Importantly, and unlike previous frameworks in the post-Soviet world, the ECU must operate in harmony with the commitments which are associated with Russia’s accession to the World Trade Organization (WTO), which took place in August 2012.

Finally, the ECU is seen as the nucleus for attracting other former Soviet republics to the project. Deepening of integration is happening alongside its widening. While Tajikistan has expressed interest, Kyrgyzstan is already negotiating accession, although their ultimate membership is far from certain. With its intense focus on Ukraine as a potential member, the ECU has put itself into direct competition with the EU’s policy in its Eastern neighbourhood.

Therefore, Eurasian economic integration has been a dynamic process leading to actual domestic changes and appearing to rely on EU-style, legalized mechanisms of coordination, with implications for the EU’s own policy in the post-Soviet space. In the confident words of one of the intellectual architects of Eurasian integration, the Russian economist and current adviser to President Putin, Sergei Glaz’ev:

\[T\]he fast development of Eurasian integration process calls for amazement in observers, bewilderment in the remaining countries of the CIS, and a desire for further deepening of integration and general development in its members.5

The emergence of the ECU has inevitably sparked a reawakening of interest in the region, yet the reaction has not necessarily been of the kind that Glaz’ev anticipated. Businesses have had to respond to the changed

---

4 Rilka Dragneva and Kataryna Wolczuk, ‘Russia, the Customs Union and the EU: Cooperation, Stagnation or Rivalry?’, Briefing Paper REP BP 2012/01 (Chatham House, August 2012).
customs formalities in everyday transactions. As various company publications and surveys show, there has been a keen interest in making sense of the new regulatory framework and its particular implications for trade.6

Policy-oriented responses and analysis have only gradually followed. For many, including the EU, the project represents a ‘great mystery’.7 Understandably, given the past record, there is a great deal of scepticism as to whether the ECU is something to be taken seriously at all. The EU has largely sought to ignore the new regime (despite some engagement at the technical level), not recognizing it as a formal regional actor to which individual member states have ceded control over customs policy and other matters, primarily because of the lack of WTO membership of its two member states, Kazakhstan and Belarus. The question of international recognition is critically connected with the issue of whether the ECU can be regarded as what it purports to be—a developed regional economic grouping formed on a voluntary basis with a credible economic rationale. Certainly, well-respected analysts have been sceptical as to the extent to which the ECU is capable of delivering economic benefits to its members.8

For many, the creation of the ECU serves political ends and amounts to nothing else but a neo-imperial vehicle for Russia’s domination of the post-Soviet countries. In the words of US Secretary of State, Hillary Clinton, in December 2012, acceptable labels such as ‘customs union’ or an ‘economic union’ do not conceal Russia’s regional power ambitions.9

6 For example, Galina Dontsova, ‘Assessment of How the Customs Union is Working’, *The Moscow Times*, 29 November 2011, reporting on an Ernst & Young survey of major foreign investors. Most large law and accounting firms have published overviews and news updates of legal developments related to customs regulation in the ECU region.


This claim relates closely to concerns that Russia’s ‘smart hegemony’ through the use of such labels masks the spread of ‘bad governance’ and the deterioration in democratic standards across the region. As some commentators have argued, this has been a ‘primitive’ policy initiative from an economic point of view and, ultimately, an attempt by Putin’s Russia to set itself as ‘an independent centre of power that does not intend to strengthen ties with modern democracies but to rally around itself countries with political systems less advanced than its own’.10 The spectre of the Soviet Union has not been put to rest, despite President Putin’s assurances that the Eurasian project is not a restoration of the USSR but a vehicle for a functional economic cooperation like other regional groupings.11 As Putin’s press secretary pointed out in response to Secretary Clinton, ‘[w]hat we see on the territory of the ex-Soviet Union is a new type of integration, based only on economic integration. Any other type of integration is totally impossible in today’s world’.12 Thus, the question is not only about whether Russia – given its past history, regional hegemony and global ambitions – can engage in genuine economic integration with smaller states. Certainly many other regional economic integration groupings, such as NAFTA or Mercosur, exhibit strong asymmetry in membership too. It could be argued that asymmetry may not be such an issue if tamed by a stable and transparent set of rules governing the interactions. The question is also about whether Russia and its partners can ‘do rules’ – that is, engage in rule-based integration. Given the concerns about domestic standards of the rule of law in these countries, the claim to a new style, rule-based regional integration merely fuels scepticism. Do rules and respect of sovereignty for partner countries prevail when Russia’s interests are at stake? After all, crude energy-related arm-twisting has often ended up as Russia’s preferred negotiating method with the post-Soviet states. Similarly, would the new common regulation contribute to a business-friendly environment? Or would it amount to yet another mechanism for redistribution of resources between neo-patrimonial networks and oligarchs as well as the extraction of rents by corrupt state officials?

12 Cited in Clover, above note 9.
It is not surprising that given the history of the region and the high geopolitical stakes of the ECU’s potential expansion, the debate has been politically charged and subject to strong views and stereotypes. Yet it also suffers from a polarization of views in which the ECU is branded as insignificant and doomed to inconsequential collapse, on the one hand, or as the omnipotent tool of Russia’s intentions for the region, on the other. While both perspectives have validity, their use as a normative lens for understanding the ECU offers a limited and skewed interpretation of the complex processes that have taken place. Given its scholarly and policy salience, it is critical that the ECU is examined in a comprehensive, clearly structured and theoretically informed manner. While academic analysis of various aspects of Eurasian integration is slowly building up, it does not yet present a systematic analysis of developments.

This volume seeks to address this academic gap in examining the development, architecture and implications of the Eurasian Customs Union. In particular, it focuses on the following questions:

1. What are the factors relating to the scope, mode and pace of cooperation that characterize the project? What developments have taken place and what is the institutional architecture built around them? How does the ECU compare in those terms with other regional integration initiatives?
2. What are the key driving forces behind the ECU? How can its origin be explained and how do theoretical frameworks help us to understand it?
3. What are the likely implications of the ECU for its existing and prospective members, and also for key international players with stakes in the region, such as the EU?

In conducting such an analysis, we encounter two broad challenges – an analytical and an empirical one. We will outline them in turn and explain how we address them.

In engaging in an analysis of the development of the ECU, we draw on the analytical tools used by international law and international relations scholars in examining the regional integration efforts between states: why they cooperate, what mechanisms of coordination they use, and why they resort to binding, legalized commitments in structuring cooperation. Yet, in approaching Eurasian integration we are only too conscious of the problems of trying to neatly fit it into existing theoretical frameworks.

Given Russia’s hegemonic position in the post-Soviet space, realism at first glance appears to be a particularly attractive analytical perspective. In international relations and international law this perspective rests on
several assumptions: that states are the primary actors in the international system; their preferences are exogenous and fixed; and the anarchic nature of the international system determines that states compare relative power and zero-sum struggle. With the realists’ main focus being on the variation of power and interest, international law is viewed as the embodiment of interests and is made effective through the balance of power. Legal rules that ‘work’ are those that emanate from the interests of strong states and bind the weak ones. 

We find this perspective instructive in certain ways. Given the nature of statehood in post-Soviet states, the locus of decision-making power is firmly at the state level (with a very limited role for societal actors). Similarly, traditional conceptions of power are paramount in Russia’s regional behaviour. Yet, in this volume, we go beyond a purely realist (and often ideologically driven) paradigm limited to highlighting Russia’s hegemonic ambitions. Asymmetry undoubtedly is a strong feature of Eurasian integration, but it is unhelpful to oversimplify Russia’s motivation and underestimate the political, economic, administrative and international challenges that the formation of the new regime entails for the biggest country in the region. Also, one cannot ignore the role of other member states. Even if the input of Kazakhstan and Belarus in the institutional design of Eurasian integration is likely to be constrained, domestic preferences and capacity for reform in all member states matter enormously for the architecture, legitimacy and the implementation of the common regime.

The rational functionalist or institutionalist perspective, as defined in the international law and international relations literature, views international agreements as a way of addressing perceived needs. Functionalists assume rational actors who design institutions on the basis of the outcomes anticipated. As Keohane states, ‘institutions can be accounted for by examining the incentives facing actors who created and maintain

---


them’.\(^{15}\) International institutions help to satisfy particular concerns in international relations, such as reducing uncertainty and transaction costs; ensuring credibility of commitments while maintaining flexibility; generally balancing policy benefits with maintaining policy discretion. Recently there has been a growing interest in why states enter into legalized, binding agreements as opposed to purely political, soft forms of cooperation. Abbott and Snidal argue that the diversity and asymmetry between nations, sovereignty sensitivities, conditions of uncertainty and complexity, and the level of negotiation and implementation costs are critical factors for the choice between hard and soft forms of cooperation.\(^{16}\)

This volume is informed by a broad functionalist perspective, which explains the emergence of regional integration groupings and the extent to which they use legal mechanisms for coordination as a response to the calculation by member states of policy benefits and (loss of) policy discretion. We note, however, that much of the comparative analysis of integration initiatives uses a set of abstract, stylized preferences and indicators. While some of the functionalist arguments will be applicable to our case, there are clear tensions in applying them to the post-Soviet context.\(^{17}\) Further, as Simmons points out, functionalist explanations have been mostly systemic, focusing on international market failure and collective action.\(^{18}\) Yet they omit critical factors located in the domestic arena yet related to the design of international institutions as well as compliance with obligations (both in terms of domestic interests and domestic capacity).

The liberal international framework identifies domestic groups and actors as key actors who use the state as a means to their pre-existing ends. The state interacts with these actors in a complex process of


\(^{17}\) James McCall Smith, ‘The Politics of Dispute Settlement Design: Explaining Legalism in Regional trade Facts’ (2000) 1 *International Organization* 137, for example, developed a model seeking to explain the variations in the juridicization of dispute resolution in different regional integration groupings using a functionalist perspective. High levels of asymmetry between member states is one of the key factors accounting for low levels of legalization. He notes, however, that the case of the CIS is a clear exception (the CIS Court by design exhibited strong features of legalization), suggesting ‘potential tension between the structure of political power and their institutional design’.

\(^{18}\) Simmons, above note 13.
representation and regulation. State interactions depend on the aggregation of domestic preferences. Hence, domestic interest groups and the nature of domestic representation, as well as state-society relations, matter. Regime type, for example, is found to be important – democracies or countries with independent judiciaries are more likely to comply with international obligations. Similarly, domestic groups with preferences for compliant behaviour can exercise a compliance pull.

The usefulness of this perspective is underscored by the analysis of 20 years of post-communist transformation processes, which means that the examination of this domestic dimension is absolutely imperative. Thus the emphasis is on the specificity of state-society relations in the ECU member states. These relations do not exhibit a Western-style separation but develop in the context of state capture, personalized presidencies, authoritarian conditions, and penetration by neo-patrimonial networks.

It is clear that a proper consideration of the nature of state-society relations in ECU countries requires extensive reliance on the approaches of area studies: in-depth empirically grounded, context-sensitive analysis of the processes, actors, preferences and emergent interactions and structures.

A further important difficulty of researching Eurasian integration relates to the conditions of legality in post-Soviet countries. The legal and regulatory sphere falls short of the standards of the rule of law promoted by (and expected by) Western actors and extralegal forms of coordination have proved to be dominant. It is not that formal law and institutions are missing. It is rather that they are used strategically and selectively, intermediated (or supplemented) by a set of social and political coordination mechanisms.

Thus, the analytical approach adopted here draws on key aspects of the perspectives mentioned but adjusts them to take into account the conditions of weak rule of law characterizing its member states, semi-authoritarian political regimes, and a complex geopolitical context. This

---

20 Susan Stewart, Margarete Klein, Andrea Schmitz and Hans-Henning Schröder (eds), Presidents, Oligarchs and Bureaucrats: Forms of Rule in the Post-Soviet Space (Ashgate, 2012).
Eurasian economic integration

is also required because the initiative is a rare example of a ‘holding-together integration’,\(^\text{22}\) that is when the states pursuing economic integration previously were part of a single state. To explore Eurasian integration, the volume relies on a systematic interdisciplinary analysis of the member states’ motivations – economic, geopolitical, or domestic power-driven. In this exploration we intentionally eschew the language of variables while studying economic integration in Eurasia, in order to avoid being straightjacketed by economic rationalism. We argue that we cannot understand and explain the ECU developments without integrating insights from area studies, particularly in relation to understanding the nature of commitment and capacity for implementation, as well as the important legacies that characterize developments in the region.\(^\text{23}\) Therefore, in addition to making an empirical contribution in bringing the ECU to academic light, the book seeks to contribute to the development of an interdisciplinary framework to explain Eurasian integration as a relatively rare case of advanced economic integration pursued outside the well-studied context of Western liberal democracies and rule of law.

Our empirical challenges are closely connected to the already noted nature of statehood and state-society relations. Policy-making and preference formation in post-Soviet countries are not easy to research. As far as countries like Belarus and Kazakhstan are concerned, examining preference formation requires detailed analysis of the domestic political context and the rationale for presidents Lukashenko and Nazarbaev, respectively, to engage in Eurasian integration, as Frear and Kassenova show in this volume. Thus, the country contributions seek to map out the official moves and track records of participation, identify important domestic factions which matter (directly or indirectly), as well as spell out the factors that influence or constrain policy choices. Furthermore, given the early days of the ECU’s existence and very limited academic research on the subject, it is essential to analyse its legal and institutional design. This design is complex and convoluted, yet critical for understanding the ECU. Therefore, this volume includes the detailed presentation of the legal framework of the Eurasian Customs Union, which has not been undertaken elsewhere.

The empirical scope of the analysis needs to be explained too. As noted at the beginning, the primary interest here is the Eurasian Customs

\(^{22}\) As described by Libman and Vinokurov, above note 3.

Union, which was agreed upon in 2007 and entered into life in 2010. Given the practical changes that have already taken place, as well as the reform of domestic customs legislation that has followed, we expect that this will be a durable regime with important domestic and international implications. Yet, as will be examined in Chapters 2 and 3, the analysis of the ECU takes us back to the past and into the future. The ECU is developing on the basis of several contractual integration regimes set up in 1995 and the framework of the Eurasian Economic Community set up in October 2000. Thus, any discussions cannot be limited to developments in the late 2000s but must go back to the 1990s in order to understand fully the current processes. Similarly, given the fast-moving nature of integration and the extent to which it is likely to affect arrangements within the ECU, we refer to the Single Economic Space and the planned Eurasian Economic Union and examine developments up to the end of 2012.

Finally, in terms of the empirical focus, the volume examines the formation and design of the regime rather than the governance of integration, something which dominates European Studies. We do not seek to assess the balance between intergovernmentalism and supranationalism, or the functioning of the institutions and implementation across different policy fields in the member states. It is too early for this given that institutions such as the Eurasian Economic Commission or the Court of the Eurasian Economic Community were created only in January 2012. Our analysis also sends a warning signal against superficial comparison and underlines the importance of the careful formulation of research agendas and choice of analytical tools when studying the ECU.

Economic integration in Eurasia is a rapidly developing project and its eventual format is far from clear. This makes analysis a difficult task, with some of the forward-looking elements of the volume vulnerable to the vagaries of unpredictability. The justification for embarking on such an analysis, beyond the evident economic and political importance of these developments, is the need for a critical scrutiny of the ongoing process of economic integration in Eurasia, in light of the highly politicized view of the initiative. The analysis puts the new project on the map of international law and regionalism, thereby advancing our understanding of the political and economic forces shaping the regional international order.

The volume is divided into three parts. The first part of the book examines the development and legal design of the ECU and consists of three chapters. In Chapter 2 Julian Cooper presents the origin of the ECU.
and provides an essential empirical background to the subsequent chapters. Rilka Dragneva examines the legal and institutional framework of the ECU in Chapter 3, and Richard Connolly deals with the implications of Russia’s membership of the WTO for the ECU in Chapter 4.

The second part of the volume examines the relative role and the preferences of the ECU’s members. The objective has been to offer an insight into the key identifiable domestic interests in the Eurasian integration process, the factors affecting it, key sensitive issues that have structured the integration agenda and, where possible, its initial reception and results. Russia’s role is examined by Julian Cooper in Chapter 5. Silvana Malle, in Chapter 6, continues to focus on Russia but analyses how the ECU relates to the Asian vector of Russia’s domestic and external policies. Matthew Frear analyses the ‘integration behaviour’ of Belarus in Chapter 7, and Nargis Kassenova examines Kazakhstan in Chapter 8.

In the last part of the volume we address some of the key implications of the emergence of the ECU for the region, and more specifically for the EU. Chapter 9, by Hiski Haukkala, examines the implications for the relationships between the EU and Russia itself. In Chapter 10 Laure Delcour and Kataryna Wolczuk examine the implications of the ECU for the EU’s Eastern policy. Finally, Chapter 11 develops the empirical findings of the volume into a number of analytical generalizations with regard to the origins and design of the ECU, against the backdrop of theoretical perspectives referred to in the volume.