The Commonwealth of Independent States: An Emerging Institutional Model

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I. Introduction

The Commonwealth of Independent States (CIS) has emerged as a dramatic geopolitical consequence of the dissolution of the USSR, which confirmed once again the historical fact (after the Roman Empire, the Arab Caliphate, Austria-Hungary, etc.) that huge multinational state formations are necessarily temporary. Along with historical, socio-economic and political aspects, which are beyond the scope of the present article, this event raised notable legal issues, including legal succession, multiplicity of legal regimes within the CIS, its legal nature, institutional structure, and working mechanisms. The present study focuses on the institutional facets of the CIS.

It must be admitted that at the time this paper was written the author could base his research merely on the texts of the CIS basic constituent instruments, some available factual data and initial, mostly non-legal, comments.[1] This gave rise to both advantages and handicaps. The evident advantage was a practically untouched topic for analysis. On the other hand, due to the still ambiguous legal status of the CIS and the shortage of available information on its practical work, some views expressed in the article are suppositions and suggestions rather than final statements.[2]

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1 Only two legal articles were written before the adoption of the CIS Charter. See Schweisfurth, 'Vom Einheitsstaat (UdSSR) zum Staatenbund (GUS). Juristische Stationen eines Staatszerfalls und einer Staatenbundsentstehung', *ZAoRV (1992) 541*; Pustogarov, 'The International Legal Status of the Commonwealth of Independent States', *Gosudarstvo i Pravo* No. 2 (1993) 27 (in Russian).

2 The facts and developments within the CIS are analysed in the article as they were on 1 April 1993.

II. The Emergence and Early Evolution of the CIS

A brief summary of the chronological succession of events reveals the following picture. On the 8 December 1991 in Minsk the leaders of the three Slav Republics of the Soviet Union signed the *Declaration by the Heads of State of the Republic of Belarus, the Russian Soviet Federative Socialist Republic*[3] *and Ukraine*, and the *Agreement Establishing the Commonwealth of Independent States*.[4] These framework documents noted that 'the talks on the drafting of a new Soviet Treaty have become deadlocked and that the de facto process of withdrawal of republics from the Union of Soviet Socialist Republics and the formation of independent States has become a reality'.[5] The documents laid down two fundamental decisions: (1) it declared that the USSR as a subject of international law and a geopolitical reality no longer existed; (2) it proclaimed the establishment of the CIS, that comprised the above three States, but was open for accession to all Member States of the USSR, as well as by other States sharing the purposes and principles of the founding agreement.

From a technical legal point of view, the Declaration and Agreement were far from perfect, and appeared to be hastily drafted. It is enough to mention the absence in the text of the Agreement of any provision on its entering into force (this ommission was subsequently filled by the Protocol of 21 December 1991). Another drawback is Article 11 which states that:

> From the moment of signature of the present Agreement, application of the laws of third States, including the former Union of Soviet Socialist Republics, shall not be permitted in the territories of the signatory States.

A practical application of this rule with regard to the laws of the Soviet Union (even admitting hypothetically that it could be considered 'the former' from the moment of signature) would inevitably uncover many lacunae in the legal systems of the newly emerged States, and would in many ways hinder a normal course of legal succession.[6] Obviously, at the time of drafting, political considerations prevailed over the legal motivation of the signatories.

It is also apparent from the viewpoint of both general international law and the 1922 Union Treaty, that three of the remaining twelve Member States of the USSR,[7] even though they were the founding[8] and most powerful members, could exercise only limited competence with regard to the status of the Soviet Union. That is, (1) they could withdraw from the USSR, and (2) they could set up any other association or union of sovereign States. By declaring the non-existence of the USSR as a subject of international law without the formal consent of the other nine Member States, the above three States had exceeded their power, and this could have been

3 Hereafter referred to as the *RSFSR*.

4 See the texts in 31 ILM (1992) 138.

5 See the Declaration, in 31 ILM (1992) 142.

6 The subsequent practice of the CIS States did not *stricto sensu* follow this Article. For example, under Article 5 of the Agreement on the Protection of the State Boundaries and Maritime Economic Zones of the States-Participants of the CIS of 20 March 1992, 'until the conclusion by the States-Participants of the Commonwealth of inter-republican agreements on boundaries, maritime economic zones, and their regime, the organization and activity of border forces shall be regulated by acts of the Commonwealth, national legislation of the States, and normative acts of the former Soviet Union which are not contrary to it'. 31 ILM 497 (1992).

7 By that time three Baltic States had already withdrawn from the USSR.

8 The Treaty of 1922 was initially signed by four Soviet Socialist Republics – the Russian, Ukrainian, Buelorussian and Transcaucasian (later the Transcaucasian Federation was divided into the Azerbaijan, Armenian and Georgian Republics).

legally challenged if it had not been followed by the Alma-Ata decisions of eleven States, which smoothed out the legal awkwardness of the Minsk arrangements. It is hard to say definitely what motivated this decision: an intentional political manoeuvre on the part of the three leaders, or rather an error of their legal advisors.

The Alma-Ata summit of 21 December 1991, which ironically almost coincided with the 69th anniversary of the USSR, was another crucial point in the hasty transition from the USSR to the CIS. The leaders of eleven Member States of the Soviet Union,[9] apart from Georgia,[10] confirmed and developed the Minsk arrangements. All States signed the Protocol to the Agreement Establishing the CIS which was to enter into force for each of the parties from the moment of its ratification.[11]

The key document of the summit was undoubtedly the Alma-Ata Declaration which stated – this time more appropriately – that 'with the establishment of the Commonwealth of Independent States, the Union of Soviet Socialist Republics ceases to exist'.[12] One commentator has noted 'the extinction of the USSR took place in the form of a dismemberment', which was completed by the Alma-Ata Declaration.[13] One might argue that a referendum procedure would have been legally preferable. Moreover, less than a year before, in March 1991, an all-Union referendum had supported the maintenance of the USSR. Nonetheless, the political decision of the leaders of eleven Member States of the USSR was tacitly supported – even before its approval by the relevant representative State bodies – by the majority of the population in the above States, and was also subsequently *de facto* recognized by the international community. The latter recognition was confirmed officially by the admission of the former Soviet Republics to the Conference on Security and Cooperation in Europe and the United Nations, as well as by the recognition of Russia's succession to the USSR as a member of the United Nations, including permanent membership of the Security Council.[14]

Some other notable innovations of the Alma-Ata Declaration warrant mention. First, it declared that 'cooperation between the parties in the Commonwealth shall be conducted in accordance with the principle of equality through coordinating bodies constituted on a basis of parity and operating under a procedure to be determined by agreements between the parties in the Commonwealth'.[15] This provision leaves no room for any 'weighted' representation or voting within the CIS. Second, it definitely stated that the Commonwealth 'is neither a State nor a supra-State entity'.[16] This point will be considered in more detail in a subsequent section of the article. Third, the CIS is open to accession by other States 'with the consent of all its participants'.[17] Hence the openness of the Commonwealth to other States (both members and non-members of the former Soviet Union) sharing its purposes and principles is combined with a consensus rule which is typical for associations of limited membership. Finally, the Alma-Ata Declaration confirmed the earlier statements of the three States to discharge, in accordance with

9 These were, the Republic of Azerbaijan, the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Republic of Moldova, the Russian Federation (RSFSR), the Republic of Tajikistan, Turkmenistan, the Republic of Uzbekistan, and Ukraine.

10 Georgia's non-participation in this process did not essentially alter the dissolution of the USSR, since a union presumes at least two members. At present Georgia sends observers to the CIS meetings and does not intend to become a member of the Commonwealth.

11 31 ILM (1992) 147.

12 Ibid., at 149.

13 Schweisfurth, *supra* note 1, at 700.

14 Blum, 'Russia Takes Over the Soviet Union's Seat at the United Nations', 3 *EJIL* (1992) 354.

15 31 ILM (1992) 148.

16 Ibid.

17 Ibid.

their constitutional procedures, the international obligations deriving from treaties and agreements concluded by the former USSR. The most important Alma-Ata decisions which shaped the legal image of the Commonwealth were:

- the Agreement on coordinating bodies of the CIS providing for the establishment of the Council of Heads of State (the supreme organ of the Commonwealth) and the Council of Heads of Government;
- the Decision by the Council of Heads of State of the CIS to support Russia's succession to the USSR as a member of the UN, including permanent membership of the Security Council, and other international organizations; as well as to support the other States of the CIS in resolving issues of their full membership in the UN and other international organizations;
- the Agreement on joint measures with respect to nuclear weapons stipulating the parties' obligations on non-proliferation of the nuclear weapons, and saying that 'pending the complete elimination of nuclear weapons from the territories of the Republic of Belarus and Ukraine, the decision regarding the need to use such weapons shall be taken with the consent of the Heads of the participating States of the Agreement by the President of the RSFSR on the basis of procedures drawn up jointly by the participating States'.[18]

On the whole, the initial stage of the CIS formation provides reason to suppose that its founders shared no long-term plan and were therefore obliged to choose a cautious step by step approach. This was clearly seen in their attitude to the CIS institutional structure which was initially loose and lacked a clear statutory basis. The newly emerged independent States, especially Azerbaijan,[19] Moldova,[20] Turkmenistan[21] and Ukraine[22] were mindful of the experience of the Soviet Union central authorities, and were quite reluctant to create any powerful institutions which could threaten their newfound sovereignty. Instead of this, they put emphasis on the substantive, most of all economic, issues of relationships among the former members of the USSR, which urgently needed to be settled. Accordingly, during the first year of the CIS the participating States gave birth to more than 200 arrangements on economic, military, ecological, social and other matters. However, the quantity did not turn into the expected quality. Many decisions reached within the CIS did not work properly because of increasing disagreements among the members, which in turn fostered mutual distrust. Some participating States (e.g.

18 See 31 ILM (1992) 150-153.

19 The Azerbaijani Popular Front was against the Azerbaijan's membership to the CIS from the very beginning. Before his election in June 1992, the President of Azerbaijan A.Elchibey said that he did not consider Azerbaijan a CIS member (the Protocol to the Agreement Establishing the CIS was signed on behalf of Azerbaijan by his predecessor A. Mutalibiv), nor did it intend to become one. See Sheedy, 'The CIS: A Progress Report', Vol. 1 No. 38 *Radio Free Europe Radio Liberty/Research Report* (1992) 2.

20 The President of Moldova Mirtcha Snegur considered that the CIS could become a collective coordinating body. However, 'from day to day, from one meeting of Heads of State to another, the desire of the leaders of certain States to return to the organization of the former USSR is becoming more and more apparent... Moldova cannot have anything in common with such theories and will not sign the Commonwealth Charter'. See BBC Summary of World Broadcasting. Part 1. Former USSR. SU/ 1570 B13 22 December 1992.

21 For example, the President of Turkmenistan Saparmurad Niyazov said that 'Turkmenistan is interested in the CIS only as a consultative body'. See BBC Summary of World Broadcasting. Part 1. Former USSR. SU/1572 B9, 24 December 1992.

22 Thus, the President of Ukraine Leonid Kravchuk told reporters in Kiev that he 'will not allow the Commonwealth of Independent States to be turned into a supranational body subject to international law'. See *The New York Times*, 23 January 1993. In the meantime, he said after the Minsk summit of 22 January 1993 that 'if there were no CIS things would be worse'. Quoted from Solchanyk, 'Ukraine and the CIS: A Troubled Relationship' Vol. 2 No. 38 *Radio Free Europe/Radio Liberty Research Report* (1993) 23).

Ukraine) evidently gave preference to bilateral treaties, while others favoured the establishment of more compact sub-regional unions, such as the Central Asian common market which was established in early January 1993.[23]

In the meantime, the exigency of economic survival confronting all the Commonwealth members pushed them to put aside their fears and disappointments and to make new efforts to continue and improve the CIS. The hopes of active supporters of the Commonwealth (Kazakhstan, Russia) were pinned on the Minsk summit of 22 January 1993, whose key issue was the adoption of the CIS Charter.[24] But these hopes only partly materialized. The Charter was adopted by the Decision of the Council of Heads of State, but not all participating parties signed it.[25] All ten States signed a declaration reaffirming their belief in the potential of the Commonwealth and their determination to improve it. Accession to the Charter by the founding States will need to be undertaken within a year,[26] and only afterwards can the legal image of the Commonwealth be somewhat clarified.

III. The Institutional Model of the CIS

The period of early evolution of the CIS has seen the confrontation of the two approaches to its institutional framework: (1) the CIS considered as a strong decision-making entity; and (2) the CIS viewed as a loose and merely consultative forum, a sort of 'presidents' club'. In any case, the institutional developments within the Commonwealth were in line with its non-supranational coordinating status laid down by the initial founding documents. Apparently, the CIS States had too much experience of excessive 'supranationalism' within the former Soviet Union to be willing to reanimate it.

On the other hand, the deep common historical roots and the high rate of integration and inter-dependence in practically all spheres of life of the former Soviet Republics could not be ignored in order to make their 'divorce' less painful. Moreover, the intensifying integration in other regions of the world, most of all in Europe, left a hope that the contrasting disintegration process within the borders of the former Soviet Union was a temporary consequence of the political clashes and errors in the prior integration practice, rather than a long-term trend.

In that situation the most natural, although probably not the most pragmatic, development was a gradual move from the simplest bilateral and multilateral forms of consultation and cooperation to a more elaborate institutional model in keeping with current international practice. A new strong institution could not be immediately set up from the ruins of the old one. A lengthy and complicated process of building a fully-fledged Commonwealth will succeed only as a result of a great deal of work, patience and trust on the part of its members. To this point

23 See Brown, 'Regional Cooperation in Central Asia?', Vol. 2, No. 5 *Radio Free Europe/Radio Liberty Research Report* (1993) 32, 32-34.

24 The text of the draft Charter is published in Russian in *Golos Ukraini* (Voice of Ukraine), 27 January 1993, and the final text of the Charter appears in *Rossijskaya Gazeta*, 12 February 1993. A translation is provided as annex to this article. For more details on drafting the Charter see: Solchanyk, *supra* note 22 at 23-27; Sheehy, 'The CIS Charter', Vol. 2 No. 12 RFE/RL Research Report (1993) 23-27.

25 Ukraine, Turkmenistan and Moldova refrained from signing the Charter. Azerbaijan did not intend to sign it from the very beginning. See Sheehy, 'Seven States Signed Charter Strengthening CIS'. RFE/RL Vol. 2 No. 9 Research Report (1993) 10.

26 Pursuant to Article 41 of the Charter, it enters into force either for all founding States starting from the date of depositing the instruments of ratification by all the founding States, or for those founding States which deposited their instruments of ratification within a year after the adoption of the Charter.

in time, the drafters of the constituent instruments have suggested the following institutional model for the CIS.

A. Legal Nature

By the very term 'Commonwealth' the founders have brought to mind the structure of the Commonwealth of ex-British colonies, and have demonstrated their willingness to create a minimally institutionalized association with limited powers of its own as an antipode to the strongly centralized former Soviet Union. From the very beginning, the CIS has been shaped as a coordinating interstate association without any supranational powers.[27] Even the present-day institutional version of the CIS, considerably strengthened by the adoption of the Charter, along with a number of common features differs slightly from traditional intergovernmental organizations, which mirrors the legal and institutional 'incompleteness' of the Commonwealth.

On the one hand, the CIS meets all the basic formal criteria of an intergovernmental organization, which are: (1) establishment on the basis of an international agreement in conformity with international law; (2) membership of sovereign States; (3) permanent functioning; (4) system of organs; (5) the objective of coordination of the Member States' cooperation in particular fields. This gave reason to some commentators to treat the CIS as an intergovernmental organization with the elements of confederation.[28]

On the other hand, it is plausible to suggest that at least at the pre-Charter stage, the Commonwealth was considered by its members merely as an international union of individual States, not as a separate legal entity. Even now, the CIS constituent instruments, including the Charter, lack any explicit provisions on the treaty-making competence of the Commonwealth, on its privileges and immunities, which might have been considered direct indicators of an international legal personality. Moreover, the modest legal practice of the CIS has not yet seen any striking examples of its independent international legal actions.

This must not, however, lead to a hasty conclusion that the Commonwealth has been intentionally deprived of the quality of an international legal person by its creators. The experience of many other international organizations shows that when a functional need for international legal action arises, the Member States can easily take an appropriate decision on the basis of the 'implied powers' concept.[29] The CIS constituent instruments do not lay down any restrictions with regard to the decisions of the Council of Heads of State as a supreme organ of the Commonwealth. Inevitably, for example, the CIS and its Member States are supposed to regulate, most likely in the form of a traditional headquarters agreement, their relationships with the Republic of Belarus as the host State for most CIS bodies. Apart from the issues of treaty-making, the Council of Heads of State is empowered to take decisions on the joint use of military forces and on the sanctions that apply if a Member State breaches the CIS Charter.

27 See the Alma-Ata Declaration, Article 1 of the Charter.

28 Thus, Professor Schweisfurth, *supra* note 1, at 701 wrote that 'the CIS, having started at Minsk as a simple "treaty community", in the ensuing four months developed into an organized community of states, into a confederation, or, to put it in more "modern" terms, into an international organization'. Pustogarov, *supra* note 1, at 29 noted that 'the confederative elements make up a peculiarity of the CIS as an international intergovernmental organization'.

29 Schermers seems to be right saying: 'At present it is generally recognized that all public international organizations have some international legal personality, limited to the fields in which they have competence to operate. In practice, virtually all international organizations perform acts under international law'. *Schermers*, 'The International Organizations', in M. Bedjaoui (ed.), *International Law: Achievements and Prospects* (1991) 74.

Therefore, from the institutional viewpoint, the present-day CIS can be considered an intergovernmental organization which may act as an international legal person in the field of its competence on the basis of appropriate decisions of the supreme organ. The past experience of intergovernmental organizations provides every reason to suggest that at least certain attributes of international legal personality will be indispensable for the CIS if it is to properly discharge its basic functions.

B. The Fundamentals of Cooperation within the Commonwealth

The constituent instruments of the Commonwealth are more concerned with the fundamentals of the Member States' cooperation, than detailed mechanisms, which will be specified in subsequent legal acts. In this respect, the CIS founding documents can hardly be compared, for example, with the detailed 1992 Treaty on European Union.

Article 3 of the Charter gives a long list of Commonwealth *principles*, which includes basic principles of international law[30] supplemented by some more specific fundamental legal rules.[31] The references to principles of international law can also be found in the Agreement Establishing the CIS and the Alma-Ata Declaration.

The *objectives* of the Commonwealth are outlined quite broadly in Article 2 of the Charter:

- cooperation in political, economic, ecological, humanitarian, cultural and other fields;
- comprehensive and well-balanced economic and social development of the Member States within the framework of common economic space, interstate cooperation and integration;
- ensuring human rights and basic freedoms in accordance with the universally recognized principles and norms of international law and the documents of the CSCE;[32]
- cooperation among the Member States in safeguarding international peace and security, implementing effective measures for the reduction of armaments and military expenditures, elimination of nuclear and other kinds of weapons of mass destruction, achievement of universal and complete disarmament;

30 These are, respect for the Member State's sovereignty, the inalienable right of peoples to self-determination and the right to determine freely their destiny without an outside intervention, the inviolability of States' boundaries, the recognition of the existing borders and refusal to recognize unlawful territorial acquisitions; the territorial integrity of States and the duty to refrain from any actions to split the territory of another subject; the non-use of force and a threat of force against political independence of a Member State; the settlement of disputes by peaceful means in order to avoid threatening international peace, security and justice; the non-intervention into internal and external affairs of each other; the ensuring of human rights and basic freedoms for all people irrespective of the distinctions in race, ethnic identity, language, religion, political and other convictions; the good faith fulfilment of the obligations accepted in accordance with the Commonwealth documents including the present Charter.

31 These are, the supremacy of international law in interstate relations, the account of the individual interests of each other and of the Commonwealth as a whole, the rendering of assistance in all fields of interrelationships on the mutual consent basis; the consolidation of efforts and rendering of mutual aid in order to create peaceful living conditions for the peoples of the Commonwealth Member States, and promoting their political, economic and social progress; the development of mutually beneficial economic, scientific and technical cooperation, broadening of the integration process; the spiritual unity of their peoples based on the respect of their distinctiveness, close cooperation in the preservation of cultural values and cultural exchange.

32 The Conference on Security and Cooperation in Europe.

- promoting free communication, contacts and movement within the Commonwealth for the citizens of the Member States;[33]
- mutual legal aid and cooperation in other spheres of legal relationships;[34]
- peaceful settlement of disputes and conflicts among the States of the Commonwealth.

Correspondingly, the main spheres of the Member States' joint activities are defined as follows: ensuring human rights and basic freedoms; coordination of foreign policy; cooperation in the development of a common economic area,[35] the Europe-wide and Eurasian markets, and customs policy; cooperation in developing transport and communication systems; protection of health and environment; social and migration policy issues; combating organized crime; cooperation in the fields of defence policy and protection of external boundaries.[36]

It can be seen that this list was somewhat extended in the Charter when a comparison is made with Article 7 of the constituent Agreement. The most important addition concerns defence policy cooperation. The fragmentary provisions of the Agreement and the Alma-Ata Declaration on the unified command of strategic military forces and joint control over nuclear weapons were supplemented by Section III of the Charter, entitled 'The Collective Security and Military and Political Cooperation'. Pursuant to the articles of this Section, the Member States conduct a coordinated policy in the field of international security, disarmament and armaments control, as well as in the building of armed forces, with the aid of groups of military observers and collective peace-keeping forces among others. In the event of a threat to the sovereignty, security and territorial integrity of a Member State or to international peace and security, the Member States should immediately put into operation a mechanism of joint consultations for coordinating their positions and should take measures to avoid the threat including instituting peace-keeping operations and resorting to armed forces in accordance with Article 51 of the UN Charter. A decision on the joint use of military forces is to be taken either by the Council of Heads of States or by the Member States concerned with the approval of their national legislature.

On the whole, this section of the Charter is unlikely to be accepted by all participating States, at least at the initial stage of the CIS evolution. Its provisions might be more suitable for those Commonwealth States which signed the 1992 Treaty on Collective Security.[37] For this reason, the States founders of the CIS were allowed to make reservations and declarations to the provisions of this section at the time of ratifying the Charter.[38]

Moreover, some participating States (e.g. Ukraine) laid emphasis on economic cooperation within the CIS instead of political and military issues. Thus, the President of Ukraine Leonid Kravchuk predicted the eventual transformation of the CIS into a purely economic association

33 An important guarantee provided in Article 5 of the Agreement Establishing the CIS is the 'openness of borders, freedom of movement of citizens and freedom of transmission of information within the Commonwealth'. However, the provision on the 'openness of borders' has not appeared in the final text of the Charter.

34 This principle is expressed in Article 20 of the Charter: 'The Member States cooperate in the field of law, in particular by virtue of multilateral and bilateral treaties on legal aid, and promote the harmonization of national legislations'. In case of a conflict between the rules of national legislations of the Member States regulating relationships in the sphere of common activities, the Member States shall hold consultations and negotiations aimed at drafting proposals for the elimination of such conflicts.

35 Article 19 of the Charter specifies that the formation of a common economic space shall be based on the market economy and free movement of goods, services, capital and manpower.

36 Article 4 of the Charter.

37 These were, the Republic of Armenia, the Republic of Kazakhstan, the Russian Federation, the Republic of Tajikistan, Turkmenistan, and the Republic of Uzbekistan.

38 See Article 43 of the Charter.

similar to the European Community, while the political character of the Commonwealth would disappear after issues related to defence, boundaries, and other complex matters had been resolved.[39]

C. Membership

The Charter makes a distinction between the founding States, the Member States, the Associate Members and Observers.[40]

The founding States are those which had signed and ratified the Agreement Establishing the CIS of 8 December 1991 and the Protocol to this Agreement of 21 December 1991 by the date of the adoption of the Charter. The Member States are those founding States which accept the obligations following from the Charter within one year of its adoption. Any other State sharing the objectives and principles of the Commonwealth and accepting the obligations of the Charter may become a CIS Member State by means of accession upon the consent of all Member States. Pursuant to a decision of the Council of Heads of State, any State willing to participate in certain kinds of activities may accede to the Commonwealth as an Associate Member. The conditions of associate membership are to be specified in the relevant agreements. Finally, observer status may be granted to the representatives of non-members willing to attend the meetings of the Commonwealth bodies. Any Member State may withdraw from the Commonwealth by lodging a written notice with the depository of the Charter[41] twelve months before the date of withdrawal.[42] Article 9 of the Charter states that the obligations that arose during the CIS membership remain binding upon the relevant States (including those willing to withdraw) until their 'complete fulfilment'. Clearly problems may arise at a later stage concerning the interpretation of this article.

On the whole, the provisions on membership are in line with the existing practice of international institutions and intend to clarify a somewhat ambiguous present-day status of the participating States within the Commonwealth. The pre-Charter documents did not follow any uniform terminology with regard to membership.[43] Moreover, in fact there were and still remain different groups of CIS States: (I) the majority of the founding States which had ratified the Agreement Establishing the CIS and the Protocol to this Agreement, and (2) Azerbaijan and Moldova which had not ratified the constituent instruments but attended the CIS meetings as observers. The first group can also be subdivided into the CIS States which have signed the Charter, and those which have so far refrained from this.

Obviously, the Charter's flexible approach to membership is reasonable in view of the existing divergence in the positions of the potential members. It leaves the Commonwealth's door open both for those who strive for closer interaction and those who prefer to cooperate in a selective way.

D. The Commonwealth's Organs

Unlike its initial institutional model, which was very simple, the structure of bodies suggested by the Charter is more elaborate.

39 Quoted from Solchanyk, *supra* note 22, at 25.
40 See Articles 7 and 8 of the Charter.
41 The depository of the CIS Charter is the Government of the Republic of Belarus.
42 Article 9 of the Charter.
43 One can find the terms 'States members', 'the States participating in the Commonwealth', 'the States of the Commonwealth', 'States-participants of the Commonwealth' in various documents of the CIS.

At the top of the pyramid there are the two previously created Councils: *the Council of Heads of State* (the supreme organ) which holds its regular meetings twice a year and deals with all principal issues of the Member States' activities in the sphere of their common interests.[44] *The Council of Heads of Government* holds meetings four times a year and coordinates the cooperation of the Member States' executive organs in economic, social and other spheres of common interests.[45] The two Councils may have joint sessions, and create working and auxiliary bodies of both permanent and temporary operation.

By analogy to the above Councils, the CIS Charter provides for the establishment of some other sessional coordinating organs of the high-ranking officials of the Member States in particular fields: The Council of Ministers of Foreign Affairs, the Council of Ministers of Defence, the Council of Commanders of Border Troops.[46] All of them are subordinate to the Council of Heads of State, but the Charter does not reveal their decision-making competence, which is expected to be specified in the relevant regulations on these organs.

Along with sessional organs, a number of permanent bodies of the Commonwealth are to be set up in accordance with the Charter (some of them have already been established). These are: the Coordinating-Consultative Committee (executive organ),[47] the High Command of the United Armed Forces,[48] the Economic Court,[49] the Commission on Human Rights,[50] and the Inter-parliamentary Assembly.[51] The organs of sectoral cooperation (councils, committees)

44 Article 21 of the Charter.

45 Article 22 of the Charter.

46 See Articles 27, 30 and 31 of the Charter.

47 Pursuant to Articles 28 and 29 of the Charter, the Coordinating-Consultative Committee is a permanently operating executive and coordinating organ of the Commonwealth, which performs the following functions: execution of the decisions of the Council of Heads of State and the Council of Heads of Government, and submission of proposals on the issues of cooperation within the Commonwealth, development of social and economic ties, promotion and realization of the arrangements on the specific direction of economic relationships; arranging the meetings of representatives and experts for drafting the documents to be considered at the meetings of the Council of Heads of State and the Council of Heads of Government; arranging the meetings of the Council of Heads of State and the Council of Heads of Government, facilitation of the work of other Commonwealth organs. The Committee is composed of the permanent plenipotentiary representatives, the two from each Member State of the Commonwealth, and the Coordinator of the Committee appointed by the Council of Heads of State. The administrative and technical assistance to the Council of Heads of State, the Council of Heads of Government, and other organs of the Commonwealth is carried out by the Secretariat, headed by the Coordinator of the Committee.

48 Under Article 30 of the Charter, the High Command of the United Armed Forces 'controls the United Armed Forces, as well as the groups of military observers and collective forces for the maintenance of peace in the Commonwealth'.

49 The Economic Court is empowered to interpret economic provisions of the agreements and other acts within the Commonwealth and to resolve disputes on economic matters, as well as other disputes referred to it by the agreement of the Member States (Article 32 of the Charter).

50 The Commission on Human Rights is 'a consultative organ of the Commonwealth, and reviews compliance with the Member States' obligations on human rights accepted within the Commonwealth' (Article 33 of the Charter).

51 The Inter-parliamentary Assembly, which consists of national parliamentary delegations, is a consultative organ which works out joint proposals in the sphere of parliamentary activities. Its work is organized by the Assembly Council (Articles 36 and 37 of the Charter). The Agreement on the Inter-parliamentary Assembly was signed on 27 March 1992 in Alma-Ata by seven States of the CIS: the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Kyrgyzstan, the Russian Federation, the Republic of Tajikistan, and the Republic of Uzbekistan.

may also be set up for cooperation in particular economic, social and other matters.[52] Most of the permanent organs of the CIS will be located in Minsk, while the Inter-parliamentary Assembly has a seat in St Petersburg.

Finally, the statutory bodies of the CIS were supplemented by the Interstate Bank set up under a special Agreement signed at the Minsk summit of 22 January 1993 by all ten participating States.[53] The Interstate Bank is empowered to coordinate the credit and monetary policy of the Contracting Parties, which may be both the States of the rouble zone and States with their own national currencies.

The structure of the CIS organs presented in the Charter resembles that of a political, military and economic union of States oriented toward a relatively high level of integration. Such institutional models might be good for States which strive for this type of association, but it seems to be too rigid for those founding States of the CIS, which, at least at the first stage, prefer to see the Commonwealth as a minimally institutionalized consultative forum. In this regard, the Charter's drafters were wise to include a provision allowing the founding States to make *reservations* and *declarations* on the Articles relating to such organs as the Coordinating-Consultative Committee, the Council of Ministers of Defence and the High Command of the United Armed Forces, the Council of Commanders of Border Troops, the Economic Court, the Commission on Human Rights and the Inter-parliamentary Assembly.[54] This right to make reservations and declarations is another feature of the CIS which does not appear in traditional intergovernmental organizations. Their constituent instruments do not normally leave so much freedom for the Member States as to make reservations and declarations on the articles which lay down the very institutional framework of the organization. Obviously, such selectiveness is bad for the structural cohesiveness of the Commonwealth. But at present, it appears to be the only possible institutional scheme which could keep most of the former USSR members cooperating under the CIS 'umbrella'.

E. Decision-making Procedure

Although the principal legal basis for the interstate relationships within the Commonwealth is made up of multilateral and bilateral agreements of the Member States,[55] the CIS is supposed to rely considerably on direct decision-making by its competent organs. Article 23 of the Charter deals with the decision-making procedure of the two superior Councils. It strongly resembles that of the former CMEA[56] Charter. The decisions shall be taken by *consensus* of the members. Any Member State may declare that it is not interested in a question under consideration, but this shall not impede the decision to be taken. The restored principle of 'being interested', as a variant of contracting-out used in some international institutions,[57] has certain incontestable advantages.

Second, the consensual nature of decisions binding upon merely those Member States which state their interest in the question at issue and have a positive attitude to it, gives them a better chance of being properly implemented. No Member State which is either not interested in the issue, or does not want to participate in its regulation, can be forced by the other Member States to comply with a Council's decision. On the other hand, a Member State interested in the matter

52 See Article 34 of the Charter.

53 The text of the Agreement Establishing the Interstate Bank was published in Russian in the *Economicheskaya Gazeta* No. 4, January 1993, 6.

54 See Article 43 of the Charter.

55 See Article 5 of the Charter.

56 Council for Mutual Economic Assistance, dissolved in 1991.

57 See, e.g., Voitovich, 'Normative Acts of the International Economic Organizations in International Law-Making', 24 *J.W.T.* (1990) 21, 25-27.

can veto an unacceptable decision. Second, if a Member State declares that it has no interest in the question under consideration, this does not hinder the decision on the whole but makes it unapplicable to the non-interested Member State. In other words, the abstentions of one or a few Member States cannot invalidate the decision as a whole. For example, the very decision on the adoption of the CIS Charter was taken by seven of the ten participating States.

It should however be stressed that the CMEA experience of the application of the 'being interested' principle illustrates its potential shortcomings. First, the Member States of the CIS may face problems which need a uniform decision, and the contracting-out of one or a few Member States would thwart this decision. Second, a broad application of contracting-out will inevitably lead to the establishment of a multitude of complicated regimes among various combinations of the Member States on the basis of the adopted decisions. Third, in the case of the CMEA, some commentators pointed out that the absence of any criteria for the definition of 'the interested member' can cause an abuse of the veto right. They also suggested combining the principle of 'being interested' with an absolute unanimity rule on some fundamental issues and majority voting on the less important matters.[58] Finally, the consensual rule can hardly work if a decision is to be taken against a Member State in the cases of dispute settlement or the use of sanctions.

These considerations should be borne in mind by the CIS founders in their efforts to move towards more elaborate institutional forms. The experience of other international institutions (e.g. the EEC) demonstrates that the decision-making machinery may evolve, along with the changes and developments within the relevant institution.

F. Dispute settlement

The concept of dispute settlement has also been strongly modified. In the Charter the emphasis is put on preventing and resolving inter-nationality and inter-confessional conflicts which can entail violations of human rights. For this purpose, the Member States take all possible measures and render mutual aid, *inter alia* within the framework of international organizations.

The Member States of the Commonwealth are also obliged to refrain from actions which can be injurious for other Members and which may aggravate latent disputes. They shall make efforts for just and peaceful resolution of their disagreements by means of negotiations or agreed alternative procedures for dispute settlement. If these means do not assist, the disputing Member States may refer the matter to the Council of Heads of State.[59] The latter may also intervene on its own initiative at any stage of the dispute, when its continuation could threaten peace and security within the Commonwealth. In such case, the Council may make recommendations on appropriate procedure or methods of settling the dispute.[60]

This general scheme is supplemented by the provisions of Article 32 on the Economic Court. It stipulated that the Court can interpret the agreements and other Commonwealth acts on economic issues, and resolve the disputes arising while executing economic obligations. Article 32 also vests the Court with the authority to resolve other disputes arising from the agreements among the Member States. However, these brief provisions do not bring to the fore the status and competence of the Economic Court, which are expected to be defined more precisely in the Agreement on the Status of the Economic Court and the Regulation on it, which are to be passed by the Council of Heads of State.

58 E.T. Usenko, 'The Sovereign Statehood of the CMEA Member Countries as a Prerequisite and Factor of Their Integration', in E.T. Usenko and Y.A. Ydin (eds), *Socialist Economic Integration and State Sovereignty (Legal Aspects)*, (1987) 15-17 (in Russian).

59 See Article 17 of the Charter.

60 Article 18 of the Charter.

The drafters of the Charter tried to combine a traditional arsenal of dispute-resolving means applied in international practice with a recourse in certain cases to the supreme and the specialized judicial organs. Such an approach, although not new as a whole, has one peculiarity: the permanent judicial organ has a specialized subject-matter. Hence, apart from the disputes on economic matters falling within the jurisdiction of the Economic Court, other disagreements shall be kept under the control of the parties, since even the Council of Heads of State can only address its recommendation to the disputing parties (another variant is unlikely in view of the consensus rule applied in the Council).

It is not clear from the CIS Charter if resort to the Economic Court in the event of an economic dispute is mandatory or depends on the discretion of the disputing parties. In the latter case, which is more likely, it will have to be specified whether a litigation in the Court can be initiated by a unilateral request of any of the disputants or only by their mutual consent. Finally, it is not clear what legal entities can be considered as 'disputing parties'. Are only the Member States or also their nationals directly involved in economic interactions?

It should also be borne in mind that the pattern of permanent courts has been constitutionally provided in many international economic institutions, most of all in regional economic communities.[61] However, apart from the Court of Justice of the European Communities and to a much lesser extent the Court of Justice of the Cartagena Agreement, the courts of other IEOs' have not yet had any noteworthy experience in dispute resolution, thus remaining rather a potential, than a practical tool for the settlement of disputes. A certain correlation apparently exists between the level and intensity of integration within an international institution, on the one hand, and the effectiveness of it's judicial organs, on the other.

G. Sanctions

Article 10 of the CIS Charter provides that 'the breaches by a Member State of the present Charter, the systematic non-compliance with a State's obligations following from the agreements reached within the Commonwealth or decisions of the Commonwealth organs shall be considered by the Council of Heads of State. In relation to such a State the measures allowed by international law can be applied'.

Such a wide-ranging formula can cause serious troubles in interpretation and application, most of all due to the consensual nature of the Council's decisions which can be vetoed by the target States. Hence, in order to be able to apply the Commonwealth's collective sanctions, the Member States could be expected to make an appropriate amendment to the rule of consensus in the Council of Heads of State (it might be a 'consensus minus one' rule).

61 See, e.g., the Court of Justice of the European Communities, the Court of Justice of the Cartagena Agreement, the Court of Justice of the African Economic Community, the Tribunal of the Economic Community of West African States, the Court of Justice of the Economic Community of Central African States, the Tribunal of the Preferential Trade Area for Eastern and Southern African States, the Arbitration Commission of the Economic Community of Great Lakes Countries. Pursuant to Article 108.2 of the Agreement on the European Economic Area of 1992, the EFTA countries shall establish the EFTA Court in accordance with a separate agreement between them.

IV. Conclusion

From the formal institutional viewpoint, the present-day pattern of the CIS (albeit, it is unclear how viable it will be) meets the general criteria of an intergovernmental organization. However in substance, the Commonwealth does not have exact analogies with the existing state formations or interstate unions.[62] A brief comparative analysis bears out this view.

First, the CIS cannot be classified as a federation, since the founders explicitly stated that the Commonwealth 'is neither a State nor a supra-State entity'.[63] It follows that the Commonwealth as such cannot be in any way treated as a legal successor to the former USSR.[64]

Second, in some respects the CIS resembles the British Commonwealth.[65] Both are the consequences of the break-up of fromer multinational state formations (the British Empire and the USSR). Both are associations of States, whose international legal nature is questionable. However, one can see a number of distinctions between the two Commonwealths. Unlike the British Commonwealth based on the Royal Titles Act of 1953, the CIS's legal foundation is a set of international agreements. Unlike unequal status of the British Commonwealth members (the sovereign of the United Kingdom remains 'Head of the Commonwealth', some members are dependent colonial territories), the CIS rests on the principle of sovereign equality of its members (even though, there are different categories of CIS membership). Further, compared to the British Commonwealth organizational structure (which has a Secretariat which was established in 1965 that has no executive functions), the emerging institutional model of the CIS is likely to evolve towards a more elaborate and cohesive structure.

Third, from the very beginning the CIS founders avoided the term 'confederation' with regard to the Commonwealth's status, since many of them feared the establishment of a State-like formation or even its embryo.[66] However, the suggested institutional model of the CIS, in fact, resembles a loose confederation in the sense of being a purpose-oriented union of sovereign States with coordinating organs of its own, which is not a supranational entity. The institutional structure of the CIS in the Charter's version is more ramified than that of the classical confederations,[67] but less centralized than that of the Senegambian Confederation established in

62 See the classification of unions of States in: F. Ermacora, 'Confederations and Other Unions of States', in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Instalment 10 (1987) 60-65.

63 Neither has the CIS much in common with such composite state formations as a personal union and a real union, both having more a historical than an actual importance (see Oppenheim's *International Law*, 9th ed., Vol. 1, ed. by Sir Robert Jennings and Sir Arthur Watts, 1992, p. 245-246).

64 See on international legal succession of the States within the borders of the former USSR, Michael Bothe, Christian Schmidt, 'Sur quelques questions de succession poses par la dissolution de l'URSS et celle de la Yougoslavie', *Revue Cenerale de Droit International Public*, Tome 96/1992/4, 811-842; Theodor Schweisfurth. *Op. cit.*

65 On the legal status of the British Commonwealth see: L.C.Creen, 'British Commonwealth', in R.Bernhardt (ed.), *Encyclopedia of Public International Law*, Instalment 10 (1987), 32-35; Oppenheim's *International Law, supra* note 63, 256-266.

66 Thus, the President of Ukraine L. Kravchuk stressed that 'the Ukrainian independence was endangered by attempts to drag the country into a confederation' (quoted from Roman Solchanyk. *Op. cit.*, p. 24).

67 A confederation (*Staatenbund*) is considered a union of sovereign states (remaining separate international persons) linked together by an international treaty for the maintenance of their external and internal interdependence with organs of its own which are represented by the Member State's diplomatic envoys (the examples of classical confederations were the United States of America from 1778 to 1787; Germany from 1815 to 1866, Switzerland from 1815 to 1848). More details on confederations see Oppenheim's *International Law*, 9th ed., 246-248; Rolando Quadri *Diritto Internazionale Public*, (1974) 542-543; Broms, 'States', Bedjaoui (ed.), *supra* note 29 49-50.

1982.[68] In the meantime, unlike well-known confederations, the Commonwealth does not pursue a common foreign policy.[69]

In sum, the most likely institutional development within the Commonwealth is a multitude of legal regimes among different categories of participating States, including (1) a confederation-like nucleus represented by the States striving for closer forms of cooperation, and (2) a looser structure of legal links with other participating States based on various types of membership, reservations to constituent instruments and selective participation in the Commonwealth's legal acts.

68 The joint institutions of the Senegambian Confederation comprise:
(1) The President and Vice-President which decide on the mutual agreement on the policy of the Confederation on matters of defence and security, coordinate the policies of the confederated States on matters within the responsibilities of the Confederation, make appointments to all confederal posts. The President of the Confederation commands the Armed Forces and the Security Forces of the Confederation.
(2) The Council of Ministers, whose members are appointed by the President of the Confederation in agreement with the Vice-President.
(3) The Confederal Parliament, whose members are selected among the members of the national parliaments of the confederated States. (See the texts of the founding agreements of the Senegambian Confederation in 21 ILM (1982), 44-47; 22 ILM (1983), 260-286).

69 See V.V.Pustogarov, *Op. cit.*, 30.

Annex[1]
Decision of the Council of Heads of State of the Commonwealth of Independent States

The Heads of State of the Commonwealth of Independent States have decided:

(1) To adopt the Charter of the Commonwealth of Independent States (attached) and recommend it for ratification.

(2) Until entry into force of the present Charter, the Commonwealth shall function in accordance with the agreements and decisions reached within the CIS.

Done at the city of Minsk on 22 January 1993 in a single original in the Russian language. The original shall be deposited in the Archives of the Government of the Republic of Belarus, which shall transmit a duly certified copy to each of the States which have signed the present Decision.

For the Republic of Armenia: L. Ter-Petrosyan

For the Republic of Belarus: S. Shushkevitch

For the Republic of Kazakhstan: N. Nazarbaev

For the Republic of Kyrgyzstan: A. Akaev

For the Republic of Moldova

For the Russian Federation: B. Eltsin

For the Republic of Tajikistan: E. Rakhmonov

For Turkmenistan

For the Republic of Uzbekistan: I. Karimov

For Ukraine.

Charter of The Commonwealth of Independent States

The States voluntarily united into the Commonwealth of Independent States (hereinafter referred to as 'the Commonwealth'),

On the basis of the historical communality of their peoples and the ties that have been formed between them,

Acting in accordance with the universally recognized principles and norms of international law, the provisions of the Charter of the United Nations, the Helsinki Final Act, and other documents of the Conference on Security and Cooperation in Europe,

Desirous of ensuring by their common efforts the economic and social progress of their peoples,

Firmly resolved to put into practice the provisions of the Agreement Establishing the Commonwealth of Independent States and of the Protocol to this Agreement, and also the provisions of the Alma-Ata Declaration,

Promoting cooperation among themselves in the maintenance of international peace and security, and equally with an eye to supporting civil peace and inter-ethnic harmony,

Intending to create the conditions for preserving and developing the cultures of all the peoples of the Member States,

1 Translated from Russian by S.A. Voitovich, revised by Iain L. Fraser.

Desirous of improving the cooperation mechanisms within the Commonwealth and of increasing their efficiency,

Have decided to adopt the Charter of the Commonwealth and agreed the following:

Section 1
Objectives and Principles
Article 1

The Commonwealth shall be based on principles of sovereign equality of all its members.

The Member States shall be independent subjects of international law having equal rights.

The Commonwealth shall serve for the further development and strengthening of the relationships of friendship, good neighbourhood, inter-ethnic harmony, trust, mutual understanding and mutually advantageous cooperation among the Member States.

The Commonwealth shall not be a State, nor possess supranational powers.

Article 2

The objectives of the Commonwealth shall be:

- cooperation in political, economic, ecological, humanitarian, cultural and other fields;
- comprehensive and well-balanced economic and social development of the Member States within the framework of a common economic space, interstate cooperation and integration;
- ensuring human rights and fundamental freedoms in accordance with the universally recognized principles and norms of international law and the documents of the CSCE;
- cooperation among the Member States in safeguarding international peace and security;
- implementing effective measures for the reduction of armaments and military expenditures, for the elimination of nuclear and other kinds of weapons of mass destruction, and for the achievement of universal and complete disarmament;
- promoting free communication, contacts and movement within the Commonwealth for the citizens of the Member States;
- mutual judicial assistance and cooperation in other spheres of legal relationships;
- peaceful settlement of disputes and conflicts among the States of the Commonwealth.

Article 3

For the achievement of the Commonwealth's objectives, the Member States shall, proceeding from the universally recognized norms of international law and the Helsinki Final Act, organize their relationships in accordance with the following interlinked and equipollent principles:

- respect for the Member States' sovereignty, for the inalienable right of peoples to self-determination and for the right to determine their destiny freely without outside intervention;
- the inviolability of States' boundaries, recognition of existing borders and rejection of unlawful territorial acquisitions;
- the territorial integrity of States and rejection of any actions to split another's territory;
- the non-use of force or the threat of force against the political independence of a Member State;

- the settlement of disputes by peaceful means, in order to avoid threatening international peace, security and justice;
- the supremacy of international law in interstate relations;
- non-intervention in each other's internal and external affairs;
- the ensuring of human rights and fundamental freedoms for all people without distinction of race, ethnic identity, language, religion, or political or other convictions;
- bona fide fulfilment of obligations accepted in accordance with Commonwealth documents including the present Charter;
- taking account of the interests of each other and of the Commonwealth as a whole;
- and rendering assistance in all fields of their mutual relationships on a mutual consent basis;
- combined effort and mutual aid in order to create peaceful living conditions for the peoples of the Commonwealth's Member States, and ensure their political, economic and social progress;
- the development of mutually beneficial economic, scientific and technical cooperation and the broadening of the integration process;
- the spiritual unity of their peoples based on respect for their distinctiveness, close cooperation in the preservation of cultural values and cultural exchange.

Article 4

The sphere of the Member States' joint activities conducted on an equitable basis, through common coordinating institutions in conformity with the obligations undertaken by the Member States within the Commonwealth, shall embrace:

- ensuring human rights and fundamental freedoms;
- coordination of foreign policy;
- cooperation in the formation and development of a common economic space, of the Europe-wide and Eurasian markets, and of customs policy;
- cooperation in developing transport and communication systems;
- protection of health and the environment;
- social and migration policy issues;
- combating organized crime;
- cooperation in the fields of defence policy and protection of external frontiers.

The present list may be extended by the mutual consent of the Member States.

Article 5

The principal legal basis for interstate relationships within the Commonwealth shall be multilateral and bilateral agreements in various fields of the Member States' mutual relationships.

Agreements concluded in the Commonwealth framework shall conform with the objectives and principles of the Commonwealth, and the obligations of the Member States under the present Charter.

Article 6

The Member States shall promote the cooperation and development of contacts between the State organs, public units, and economic structures.

Section II
Membership
Article 7

The founding States of the Commonwealth shall be those States which had signed by the date of the adoption of the present Charter and ratified the Agreement Establishing the Commonwealth of Independent States of 8 December 1991 and the Protocol to that Agreement of 21 December 1991.

The Member States of the Commonwealth shall be those founding States which accept the obligations under the present Charter within one year of its adoption by the Council of Heads of State.

A State sharing the objectives and principles of the Commonwealth and accepting the obligations under the present Charter may become a Member of the Commonwealth through accession with the consent of all Member States.

Article 8

Pursuant to a decision of the Council of Heads of State, any State willing to participate in particular kinds of the Commonwealth's activities may accede to it as an Associate Member upon conditions to be laid down in an agreement on associate membership.

By a decision of the Council of Heads of State, representatives of other States may attend meetings of Commonwealth organs as observers.

Matters of participation by Associate Members and observers in the work of Commonwealth organs shall be regulated by the rules of procedure of such organs.

Article 9

Any Member State may withdraw from the Commonwealth. The Member State shall lodge written notice of such intention with the depository of the present Charter 12 months before the date of withdrawal.

Obligations that had arisen during the period of participation in the present Charter shall bind the relevant States until their complete fulfilment.

Article 10

Breaches of the present Charter by a Member State or systematic non-compliance with a State's obligations under agreements reached within the Commonwealth or decisions of the Commonwealth organs shall be considered by the Council of Heads of State.

The measures allowed by international law may be applied in relation to such a State.

Section III
Collective Security and Military and Political Cooperation
Article 11

The Member States shall conduct a coordinated policy in the field of international security, disarmament and armaments control, as well as in the building of the Armed Forces, and

maintain security within the Commonwealth, in particular with the aid of groups of military observers and collective peace-keeping forces.

Article 12

In the event of a threat to the sovereignty, security and territorial integrity of one or several Member States, or to international peace and security, the Member States shall immediately put into operation the mechanism of joint consultations for the purpose of coordinating their positions and taking measures to avert the threat that has arisen, including peace-making operations and, in the case of necessity, the use of the Armed Forces in realization of the right to individual or collective self-defence in accordance with Article 51 of the UN Charter.

A decision on the joint use of military forces shall be taken by the Council of Heads of State of the Commonwealth or by the Member States concerned, taking their national legislation into account.

Article 13

Each Member State shall take appropriate measures to ensure stability at the external frontiers of the Commonwealth's Member States. On a basis of mutual consent, the Member States shall coordinate operations of border troops and other competent services which control and are in charge of maintaining the established order for crossing the external frontiers of the Member States.

Article 14

The supreme Commonwealth organ dealing with defence and protection of the Member States' external frontiers shall be the Council of Heads of State. Coordination of military-related economic activities of the Commonwealth shall be effected by the Council of Heads of Government.

Interaction among the Member States to implement international agreements and resolve other issues in the field of security and disarmament shall be organized through joint consultations.

Article 15

The concrete issues of military and political cooperation between the Member States shall be governed by special agreements.

Section IV
Conflict Prevention and Dispute Settlement

Article 16

The Member States shall take all possible measures to prevent conflicts, primarily those arising on an interethnic and interconfessional basis, which might entail violation of human rights.

On a basis of mutual consent, they shall render each other aid in resolving such conflicts, *inter alia* within the framework of international organizations.

Article 17

The Member States of the Commonwealth shall refrain from actions liable to injure other Member States or lead to aggravation of latent disputes.

The Member States shall make efforts, in a spirit of good faith and cooperation, towards the just and peaceful resolution of their disagreements by means of negotiations, or the reaching of an understanding on a proper alternative procedure for dispute settlement.

Should the Member States fail to resolve a dispute through the means mentioned in the second paragraph of this Article, they may refer the matter to the Council of Heads of State.

Article 18

The Council of Heads of State shall be empowered to recommend to the parties an appropriate procedure or methods for settling, at any stage of its evolution, a dispute whose continuation could threaten the maintenance of peace or security within the Commonwealth.

Section V
Cooperation in Economic, Social, and Legal Spheres

Article 19

The Member States shall cooperate in economic and social spheres in the following directions:

- formation of a common economic space on the basis of market relations and free movement of goods, services, capital and labour;
- coordination of social policy, elaboration of joint social programmes and measures on the relaxation of social tension in connection with the implementation of economic reforms;
- development of transport and communication systems, as well as energy systems;
- coordination of credit and financial policy;
- promoting the development of trade and economic relations among the Member States;
- stimulating and mutual protection of investments;
- facilitating the standardization and certification of industrial products and goods;
- legal protection of intellectual property;
- promoting the development of a common information space;
- implementation of joint environmental protection measures, rendering mutual aid in the liquidation of consequences of ecological catastrophes and other emergency situations;
- implementation of joint projects and programmes in the fields of science and technology, education, health, culture, and sports.

Article 20

The Member States shall cooperate in the field of law, in particular through multilateral and bilateral treaties on judicial assistance, and promote the harmonization of national legislations.

In the event of a conflict between provisions of national legislations of Member States regulating relationships in the spheres of common action, the Member States shall hold consultations and negotiations aimed at drafting proposals for the elimination of such conflicts.

Section VI
Organs of the Commonwealth
Council of Heads of State and Council of Heads of Government
Article 21

The supreme organ of the Commonwealth shall be the Council of Heads of State.

The Council of Heads of State, in which all the Member States are represented at the top level, shall discuss and solve all questions of principle in connection with the Member States' activities in the sphere of their common interests.

The Council of Heads of State shall hold meetings twice a year. Extraordinary meetings of the Council may be convened on the initiative of one of the Member States.

Article 22

The Council of Heads of Government shall coordinate the cooperation of the Member States' organs of executive power in the economic, social and other spheres of common interests.

The Council of Heads of Government shall hold meetings four times a year. Extraordinary meetings of the Council may be convened on the initiative of the Government of one of the Member States.

Article 23

Decisions of the Council of Heads of State and the Council of Heads of Government shall be taken by common consent – consensus. Any State may declare its not being interested in a particular question, which shall not be considered an impediment to the taking of a decision.

The Council of Heads of State and the Council of Heads of Government may hold joint sessions.

The working procedure of the Council of Heads of State and the Council of Heads of Government shall be regulated by Rules of Procedure.

Article 24

The Heads of State and the Heads of Government shall chair the meetings of the Council of Heads of State and the Council of Heads of Government in turn following the Russian alphabetical order of names of the Commonwealth Member States.

Meetings of the Council of Heads of State and the Council of Heads of Government shall be held, as a rule, in the city of Minsk.

Article 25

The Council of Heads of State and the Council of Heads of Government shall set up the working and auxiliary bodies for both permanent and temporary purposes.

These bodies shall be composed of the Member States' representatives endowed with appropriate full powers.

Experts and consultants may be invited to attend their meetings.

Article 26

Meetings of the heads of relevant State organs shall be convened to tackle matters of cooperation in particular fields and make recommendations to the Council of Heads of State and the Council of Heads of Government.

Council of Ministers of Foreign Affairs
Article 27

On the basis of the decisions of the Council of Heads of State and the Council of Heads of Government, the Council of Ministers of Foreign Affairs shall coordinate foreign-policy activities of the Member States, including their activities within international organizations, and arrange consultations on issues of world politics of common interest.

The Council of Ministers of Foreign Affairs shall operate in accordance with a Regulation to be adopted by the Council of Heads of State.

Coordinating-Consultative Committee
Article 28

The Coordinating-Consultative Committee shall be the permanently operating executive and coordinating organ of the Commonwealth.

In execution of the decisions of the Council of Heads of State and the Council of Heads of Government, the Committee shall:

- work out and submit proposals on issues of cooperation within the Commonwealth and of development of social and economic ties;
- promote the realization of agreements on the concrete directions of economic relationships;
- arrange the meetings of representatives and experts for drafting the documents to be considered at the meetings of the Council of Heads of State and the Council of Heads of Government;
- ensure the arrangements for the meetings of the Council of Heads of State and the Council of Heads of Government;
- facilitate the work of the other Commonwealth organs.

Article 29

The Coordinating-Consultative Committee shall be composed of permanent plenipotentiary representatives, two from each Member State of the Commonwealth, and the Coordinator of the Committee appointed by the Council of Heads of State.

In order to provide administrative and technical assistance to the Council of Heads of State, the Council of Heads of Government and other organs of the Commonwealth, a Secretariat of the Coordinating-Consultative Committee, headed by the Coordinator of the Committee who shall be Deputy Chairman of the Coordinating-Consultative Committee, shall be set up.

The Committee shall operate in accordance with a Regulation to be adopted by the Council of Heads of State.

The seat of the Committee shall be the city of Minsk.

Council of Ministers of Defence
High Command of the United Armed Forces
Article 30

The Council of Ministers of Defence shall be the organ of the Council of Heads of State dealing with matters of military policy and military construction of the Member States.

The High Command of the United Armed Forces shall exercise control over the United Armed Forces, as well as over the groups of military observers and collective forces for the maintenance of peace in the Commonwealth.

The Council of Ministers of Defence and the High Command of the United Armed Forces shall operate on the basis of the relevant Regulations to be adopted by the Council of Heads of State.

Council of Commanders of Border Troops
Article 31

The Council of Commanders of Border Troops shall be the organ of the Council of Heads of State dealing with matters of protecting and ensuring the stability of the external frontiers of the Member States.

The Council of Commanders of Border Troops shall operate on the basis of the relevant Regulation to be adopted by the Council of Heads of State.

Economic Court
Article 32

The Economic Court shall act with a view to ensuring the implementation of economic obligations within the Commonwealth.

Disputes arising with regard to the implementation of economic obligations shall be within the jurisdiction of the Economic Court. The Court may also resolve other disputes referred to its jurisdiction by agreements between Member States.

The Economic Court may interpret the provisions of agreements and other acts of the Commonwealth on economic issues.

The Economic Court shall act in accordance with the Agreement on the Status of the Economic Court and the Regulation on it to be adopted by the Council of Heads of State.

The seat of the Court shall be the city of Minsk.

Commission on Human Rights
Article 33

The Commission on Human Rights shall be a consultative organ of the Commonwealth, and review compliance with Member States' obligations on human rights accepted in the Commonwealth framework.

The Commission shall be composed of representatives of the Member States of the Commonwealth and operate on the basis of a Regulation to be adopted by the Council of Heads of State.

The seat of the Commission shall be the city of Minsk.

Organs of Sectoral Cooperation
Article 34

On the basis of agreements among the Member States on cooperation in economic, social and other fields, organs of sectoral cooperation may be set up, which shall work out agreed principles and rules of sectoral cooperation and facilitate their practical realization.

The organs of sectoral cooperation (councils, committees) shall discharge the functions provided for in the present Charter and the Regulations on them, ensuring multilateral consideration and resolution of cooperation issues in the relevant fields.

The organs of sectoral cooperation shall be composed of the heads of the Member States' corresponding organs of executive power.

The organs of sectoral cooperation shall within their competence make recommendations and, if necessary, bring proposals before the Council of Heads of Government for consideration.

Working Language of the Commonwealth

Article 35

The working language of the Commonwealth shall be Russian.

Section VII
Interparliamentary Cooperation

Article 36

The Interparliamentary Assembly shall hold interparliamentary consultations, discuss matters of cooperation within the Commonwealth, and work out joint proposals in the sphere of the national parliaments' activities.

Article 37

The Interparliamentary Assembly shall consist of parliamentary delegations.

The work of the Interparliamentary Assembly shall be organized by the Assembly Council, composed of the heads of the parliamentary delegations.

Procedural questions of the Interparliamentary Assembly's activities shall be governed by its Rules of Procedure.

The seat of the Interparliamentary Assembly shall be the city of Saint Petersburg.

Section VIII
Financing

Article 38

The expenses for financing the operation of the Commonwealth's organs shall be shared among the Member States in accordance with special agreements on the budgets of the Commonwealth organs.

The budgets of the Commonwealth's organs shall be approved by the Council of Heads of State on a proposal from the Council of Heads of Government.

Article 39

Financial and economic issues of the operation of the Commonwealth organs shall be considered in the order determined by the Council of Heads of Government.

Article 40

The Member States shall bear their own expenses in connection with the participation of their representatives, and experts and consultants, in the work of the meetings of the Commonwealth organs.

Section IX
Final Provisions
Article 41

The present Charter shall be subject to ratification by the founding States in accordance with their constitutional procedures.

The instruments of ratification shall be deposited with the Government of the Republic of Belarus, which shall notify the other founding States of the depositing of each instrument of ratification.

The present Charter shall enter into force for all founding States from the date of deposition of the instruments of ratification by all the founding States, or else, for those founding States which shall have deposited instruments of ratification, within one year of the adoption of the present Charter.

Article 42

Amendments to the present Charter may be proposed by any Member State. Proposed amendments shall be considered in accordance with the Rules of Procedure of the Council of Heads of State.

Amendments to the present Charter shall be adopted by the Council of Heads of State. They shall become effective, after ratification by all the Member States in accordance with their constitutional procedures, from the date of receipt of the last instrument of ratification by the Government of the Republic of Belarus.

Article 43

The founding States of the Commonwealth may on ratification of the present Charter make reservations and declarations on Sections III, IV, and VII, and Articles 28, 30, 31, 32, 33.

Article 44

The present Charter shall be registered pursuant to Article 102 of the United Nations Charter.

Article 45

The present Charter has been made in a single original in the State languages of the founding States of the Commonwealth. The original shall be deposited in the Archives of the Government of the Republic of Belarus, which shall transmit a duly certified copy to each of the founding States.

The present Charter was adopted on 22 January 1993 at the meeting of the Council of Heads of State in the city of Minsk.

Declaration of the Council of Heads of the States-Participants of the CIS

The agreements reached in the Commonwealth framework, and the mechanisms worked out, allow the regulation by international legal means of issues of political, economic, humanitarian, military, and other kinds of cooperation.

The Heads of the States-participants of the CIS believe that the Commonwealth possesses an appropriate potential for improving its operation on the basis of the existing agreements. At the same time, all the participants in the meeting of Heads of State of the CIS at Minsk declare their

resolve to continue their efforts to increase the effectiveness of CIS action in economic and political fields.

The States which have signed and those which have not signed the Decision on the CIS Charter will concentrate their efforts first and foremost on the search for ways out of the economic crisis and for the establishment of efficient links among economic subjects in conditions of transition to market-economy relations.

The Heads of State consider it necessary successively to eliminate existing barriers in order to promote mutually beneficial economic cooperation.

The Heads of State consider that the relationships among the countries of the CIS, and especially the economic ones, will serve to ensure conditions for normal cooperation among these countries.

The Decision on the CIS Charter is open for signature by those States which are willing for it.

Done at the city of Minsk on 22 January 1993 in a single original in the Russian language.

The original shall be deposited in the Archives of the Government of the Republic of Belarus, which shall transmit a duly certified copy to each of the States which have signed the present Declaration.

For the Republic of Armenia: L. Ter-Petrosyan

For the Republic of Belarus: S. Shushkevitch

For the Republic of Kyrgyzstan: A. Akaev

For the Republic of Moldova (with the exception of political sphere): M. Snegur

For the Russian Federation: B. Eltsin

For the Republic of Tajikistan: E. Rakhmonov

For Turkmenistan: S. Nijazov

For the Republic of Uzbekistan: I. Karimov

For Ukraine: L. Kravchuk.