

Role play “Solving the Kaliningrad-Russia Transit Conundrum”

Read Part 1 of the following case and get ready to negotiate the issues of development, security and freedom of movement in Kaliningrad region. In three teams (ES, Russia, Lithuania) prepare for the negotiation. To this end each team should fill in the following table

Our interests (what we want to achieve)	Their interests (what worries our opponents, what they want to achieve)	Options (possible variants of agreement)	Legitimacy (what data, legal documents, precedents can be used as our arguments)

Solving the Kaliningrad-Russia Transit Conundrum

Adam Harrison

Introduction: the Kaliningrad Conundrum

By September 2002, with enlargement just around the corner, the EU and Russia sat down to negotiate on the issue of transit of people between Kaliningrad oblast (administrative region) and Russia ‘proper’. On the table were a variety of solutions designed to resolve the singular matter of freedom of movement between the soon-to-be Baltic Sea exclave and Russia. One such solution was to install a high-speed train line across Lithuania. At talks in Brussels in 2002, Moscow’s Special Representative on the Kaliningrad problem, Dmitry Rogozin, unhappy with the rail speed that the EU deemed necessary, declared that the proposed 60-70 kilometres per hour would be more than enough to prevent migrants leaping from the moving train. Only three people, he said, would be able to manage this: James Bond, Batman and the Terminator.

This essay examines how the EU and Russia managed to move beyond discussion of train speeds and superhero rhetoric to reach a negotiated solution to the matter of Kaliningrad-Russia transit. It locates these negotiations within the broader web of issues and themes that affected their course and outcome. The Kaliningrad negotiations can be examined by looking at how the parties diagnosed the issue to resolve, defined a formula for resolution, and decided details of the agreement itself. The essay finds that the transit issue – a rather legalistic and technical matter – was not resolved using solely legal and technical means. Political concessions and compromise remained tools used by both the EU and Russia in pursuit of good relations, but also in the interests of winning broader assurances on migration – a

promise of future visa-free travel for Moscow, and a readmission agreement for Brussels. Kaliningrad-specific matters such as socioeconomic development and cross-border trade were largely swallowed up in broader migration and security issues.

Pre-negotiation: Working out the Question

With the prospect of EU enlargement, it was clear that an answer would be needed to the 'Kaliningrad question'. But what exactly was the question? In fact, what posed itself to the EU and Russia was always more of a collection of questions, inter-related matters of a practical and technical nature, but which were far-reaching in their implications for the EU-Russia relationship. This was the first major occasion on which the EU and Russia were obliged to negotiate extensively on legal-technical matters which were not mostly economic in nature. The three key themes which concern Kaliningrad are: socio-economic development of the oblast, the construction of an Area of Freedom, Security and Justice (AFSJ) in the EU, and the principle of the freedom of movement of persons in the Schengen area and in the Russian Federation. All three could have formed part of the final negotiated package to the Kaliningrad question. However, it was freedom of movement and security matters which constituted the formula of the final agreement, with the development strand neglected.

Development

Kaliningrad has long been known to suffer from a number of problems, including an "exceptionally high level of prostitution, drug trafficking, AIDS and organised crime" in the oblast. The European Union had long been a donor to Kaliningrad, but the EU did not have a concerted strategy towards the region within the framework of EU-Russia ties. Despite enlargement looming, there was no 'pre-accession' programme for Kaliningrad, and the EU-Russia Partnership and Cooperation Agreement itself focused only on EU-Russia relations, without mentioning any specific regions, even Kaliningrad, although a 'Special Programme for the Kaliningrad Oblast' was developed post-enlargement.

There had previously been signs that Moscow recognised the need to help the oblast escape the socio-economic doldrums it drifted in. Testament to this are the capital's plans for Kaliningrad as a 'pilot project' for cooperation with the EU in its 'Mid-term Russia-EU Strategy Paper', which not only recognised the need for development, but placed the region firmly within the context of EU relations. Unfortunately, such pilot cooperation never emerged. Commenting on the subsequent transit negotiations, one analyst remarked that "many offers of turning the region into a more prosperous zone through special trade privileges or assistance by the EU were stalled in Moscow, apparently for fear of fuelling separatist tendencies". This is despite the fact that Kaliningrad separatism is and was "virtually non-existent". But, with development low on Moscow's agenda, and the transit question becoming ever more urgent, socio-economic reform did not form part of the formula of negotiations.

Enlargement presented a challenge to the EU in the form of the contradiction in the Union's professed desire for new neighbours to share in the benefits of

enlargement by ensuring borders did not serve to exclude. In fact, the encirclement by Schengen posed two problems for Kaliningrad. First, the loss of small cross-border trade into Lithuania and Poland, on which much of the local economy depended. Second, actual transit of persons between Kaliningrad and the rest of Russia. As will become clear, the final negotiated arrangement made provisions for the latter, but not the former. This too marked a sidelining of local development issues in favour of the more big ticket gains of facilitated travel for Russian citizens in general. For the EU's part it did little to live up to its desire to avoid new dividing lines, nor to reconcile the tension between its emerging concepts of 'Freedom' and 'Security', to which this article now turns.

Security and Freedom of Movement of Persons

The prospect of Kaliningrad acting as a 'Trojan Horse' for Russian citizens to enter the Schengen Area illegally was an evident concern, particularly since the EU continued to harbour concerns about Russia, and Kaliningrad in particular, as a source of criminality and potential immigration impacting on the 'Security' plank of the emergent AFSJ. Potemkina notes that the EU's view of Russia as a "potentially unstable regional power" raised the prospect that the Union's internal and external goals come into conflict with each other, in terms of finding a satisfactory solution with Russia but also maintaining the integrity of the AFSJ. Meanwhile, the 'Freedom' plank of the AFSJ aimed at the freedom of movement of persons across the Schengen space. At the same time, however, the Russian Federation's Constitution guaranteed freedom of movement to its citizens across the federal territory. Another conflict therefore emerges: that the Schengen visa requirements would require Russian citizens to obtain visas from a foreign authority to travel within their own country. The need to find a workable solution for freedom of movement of Russian citizens sat uncomfortably with the EU's heavily securitised discourse of 'illegal immigration' (the only major international organisation to do so) and its transfer of control of the movement of persons to its external frontier. The impending negotiations therefore shone the spotlight on a number of issues that were tricky and still in a state of development themselves within the EU.

Part 2 of the case "Solving the Kaliningrad-Russia Transit Conundrum" and compare the results of your negotiation with the actual course of action and comment on them.

Getting to the Table

Although three issue areas – development, security and freedom of movement of persons – impinged upon the EU-Russia relationship, these did not neatly resolve themselves into a single negotiating package. A clear diagnosis of what should be discussed emerged only gradually. At a 1998 Ministerial meeting between the EU and Eastern candidate countries it was made clear that full implementation of the Schengen provisions was envisaged for all candidates. This would naturally impact on Kaliningrad, but there had still been no official move to discuss the region in depth.

At the EU Troika-Russia meeting in June 1999 Russia finally proposed that discussions take place regarding Kaliningrad within the framework of the PCA, a move which apparently took the Union by surprise. It does not appear that the various matters swirling around the Kaliningrad question prompted the EU to form a coherent position on what issues to discuss. The Commission “did not yet recognise the need to make special arrangements for the movement of people in and out of the Kaliningrad Region”, which was clear from the Commission’s Communication on ‘The EU and Kaliningrad’ as late as 2001. Third-party commentators at that stage felt it clear that the question of transit would be central, and also “the most likely to create tensions”. Russia, too, had already devised a policy position, opting in 2001 for “facilitated cross-border regime [...] so that people could maintain their economic and social contacts”. Moreover, the role of then accession state Lithuania deserves mention as crucial third party to the talks. Nyberg believes that Lithuania played a key role in persuading Russia to discuss Kaliningrad. Indeed, as an immediate neighbour Lithuania had a crucial interest in the oblast, both in ensuring the matter of freedom of movement did not interfere with its EU accession or eventual entry into the Schengen zone, and as a country interested in the economic welfare of its near neighbour. It might also be added here that the Kaliningrad authorities do not appear to have played a key role in the transit negotiations, the lead negotiator coming from Moscow.

Political versus Legal Solutions

One apparent tension that would mark the progress of talks was that between the exigencies of the law on the one hand, and the scope for political compromise on the other. In its 2001 Communication, the Commission made clear its insistence on full implementation of the *acquis* without exception. However, at the EU-Russia summit in Moscow in May 2002 it became clear that the Russians would insist on actually retaining visa-free travel to the exclave. Former Foreign Minister Kozyrev stated that “[w]hat the president has said is that not only will we keep Kaliningrad, but we will continue to go there freely”. Russia thereby abandoned the policy it had held in 2001 for a “facilitated cross-border regime”. The Russian shift meant that transit was still at the heart of the matter, but that Moscow had widened the package by proposing privileged rights for Kaliningraders to travel freely through future EU and Schengen territory which, given other concerns about the construction of an AFSJ, the EU was highly unlikely to concede on. The two sides thus moved further apart.

Reviewing the situation, Makarychev argues that “the Russian government insisted on a predominantly political – as opposed to technical – solution, presuming that the EU should make a number of exceptions from the existing rules regulating border-crossing procedures”. This is further evident in a 2001 Russian document which envisaged that for Community policies on visas and on external borders “we rather need the principal political decision, while technicalities may be settled later on”. Some, including several Russian analysts, doubted whether Moscow understood the legalistic nature of the matter at hand: “the problem is that up to the present time

there are few politicians in Russia who know what the Schengen *acquis* is”.³⁵ Whether true or not, by 2002 negotiations had become highly politicised. President Putin declared at the Moscow summit that with regard to the Kaliningrad transit “[i]t is no exaggeration to say that our overall relations with the European Union depend on how this issue, of vital importance to Russians, is resolved”.³⁶ In the meantime Lithuania and Poland had begun to tighten up on requirements for entry in preparation for EU accession, which no doubt sharpened Moscow’s attention on the issue. Kaliningrad residents were due to lose the right to enter Lithuanian territory visa-free from the start of 2003. Bearing in mind the differing political and technical approaches, at that summit the EU did attempt to create a workable political package by placing recognition of Russia as a market economy on the table.³⁷ This was unsuccessful, and the rift between the two sides remained. Commissioner Patten declared in a face-to-face meeting with the Russian Prime Minister and Foreign Minister that the EU was not going to “override its basic rules here, including Schengen, nor undermine the enlargement negotiations themselves”.

Russian Prime Minister Kasyanov continued to push hard publicly for an entirely visa-free regime for Kaliningrad residents. Nevertheless, as Jönsson remarks, one “common understanding of negotiations is that the parties initially ask for more than they expect to get”. It may appear that the EU, in sticking to a purely legalistic approach, had not followed this standard procedure. However, it soon brought to the table other issues related to migration and the AFSJ. The Union managed to persuade Russia to look into concluding a readmission agreement. This had been one of the “unresolved issues in EU-Russia relations for some time”, and was a link made by the EU to a central concern of AFSJ construction. One analyst believes that the issuing of the ‘Facilitated Transit Document’ (FTD – the eventual cornerstone of the transit agreement), “was dependent on the results of the talks on readmission”. Indeed, this was unusual, since readmission agreements had previously been signed only by partner countries receiving visa-free provisions in return. Consequently, in a reciprocal bid, Russia proposed it join the EU’s ‘visa-free list’, a somewhat surprising development. In 2001 the Centre for European Policy Studies (CEPS) had designated Russia as the country most unlikely to receive visa-free status out of all eastern

European countries, but the prospect for which found its way into the final negotiated agreement.

In the second half of 2002 these issues began to be hammered out in a package which had now gone beyond a mere transit agreement. Furthermore, over negotiations in the latter half of that year hung the threat communicated from Moscow that the scheduled November EU-Russia talks would be boycotted by President Putin in the absence of an agreement. Incidentally, the EU accepted in principle the idea of a Schengen-compliant fast rail link, but said that its feasibility could only be assessed after Lithuania’s accession to the EU. In fact, the compromise reached at the November 2002 meeting gave grounds to observers to remark that the “EU uses ‘technical’ and ‘political’ approaches selectively, and Russia may do either too.” The Commission’s September Communication, whose

provisions were adopted at the imminent summit, had already made a step-change from the previous year in recognising that the “impact on the population [of Kaliningrad] may be greater [...] than in other parts of Russia”. It put forward a number of suggestions, including the development of a Facilitated Transit Document, which was to be “deemed equivalent to a multiple-entry transit visa”. Thus, a formula was found which satisfied both the EU and Russia, but also Lithuania which, as a candidate country, participated in the talks. It supported the EU in its insistence on maintaining the integrity of future Schengen implementation, but eventually also agreed to the EU’s FTD compromise, satisfied that this would not relegate the country to a “third- or second-tier member”.⁴⁹ Finally, agreement was formally reached when the EU and Russia signed the ‘Joint Statement on Transit between the Kaliningrad Region and the Rest of the Russian Federation’ in November 2002. Negotiations on the details of the agreement continued on into the spring of 2003, though with the larger political issues agreed upon, the discussion concentrated on who would foot the bill of the issuance of FTDs on the Lithuanian side; the EU eventually agreed to fund the full costs.

Assessment

It did not go unnoticed by onlookers that the FTD bore a close resemblance to the old visa; President Lukashenko of Belarus weighed in on the debate with a swipe at Russia: “A visa was pink, and now it will be blue and a bit cheaper – what success is Russia speaking about?” Nevertheless, the deal permitted the EU to uphold the principles of the *acquis*, reassured Lithuania that its position regarding enlargement would not be undermined, and provided Russia with a *de facto*, rather than a *de jure*, visa, which would allow the government to claim a victory back home.

One essential and much-criticised weakness of the package, however, was that it left open-ended the future of the agreement in the light of anticipated expansion of the Schengen area to encompass Lithuania. Although other issues, such as a fully visa-free regime for all Russians at an unspecified point in the future, were brought into play at the negotiations in order to reach a compromise, other matters were put to one side, but have reared their head again in current EU-Russia relations. For example, the matter of small border traffic in the context of the Schengen visa regime, for which Russia and Lithuania currently would both like to introduce provisions, was not tackled. The extent of this small tolerance zone into both EU and Kaliningrad territory remains disputed. Meanwhile, the FTD operates to this day, but the somewhat exceptional nature of this measure within the Schengen zone has not gone unnoticed by Russian negotiators who are attempting to win free Schengen visas for Kaliningrad residents, making open reference to the exception that the FTD appears to constitute in order to bolster their case.

Much has been made of the Russians’ desire for a ‘political’ solution and the resultant clash with the EU’s ‘legal-technical’ position. However, the division was never as clear-cut as this, as evidenced by the outcome and concessions made by both sides. The EU maintained the integrity of the freedom and security elements of the Schengen system by finding a legally and politically acceptable

compromise, and Russia had a valid cause in defending the freedom of movement of persons on its own territory. Politically, it could not succeed in achieving exceptions from the EU on transit, nor for winning visa-free travel outright, though the inclusion of this demand broadened the negotiating zone considerably, giving it greater leeway for later compromise. The negotiations should also be understood as the prelude to a more long-term, evolving relationship between the EU and Russia encompassing questions of the relationship between territory, freedom of movement and migration. Other issues were left unresolved by the 2003 deal and left to fester, while matters of economic and social reform for the oblast were sidelined. These will not disappear.

Kaliningrad recently hit the international headlines again thanks to Russia's proposed deployment of Iskander missiles there. From Russia's perspective this is part of a much broader interplay between Russia, the US and NATO. With the US more tightly involved and keen on a resolution of the matter, and with discussion on a 'new security architecture for Europe', dealings around this patch of land on the Baltic may yet grow more intricate. From the EU's point of view, the migration and crime challenges from Kaliningrad remain issues more firmly within its competence. Referring to the original round of negotiations on Kaliningrad transit, Finnish Prime Minister Paavo Lipponen had concluded that the Kaliningrad question would be solvable "if it doesn't get linked in with larger complex of problems". In fact, the 2003 agreement was reached by moving away from a purely technical approach, and was reached by issue linkage to related areas. The Kaliningrad question indeed – perhaps inevitably – grew beyond the question of mere transit. The region became the scene of a host of internal security concerns and external security challenges thanks to the sad state of Kaliningrad itself and its usefulness to Moscow on a broader scale. Its Trojan Horse-like nature within the EU's Troy may yet facilitate further issue linkage, whether involving the aforementioned issues that remain unresolved, or broader issues of bilateral or multilateral concern.