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FEDERALIZATION OF FOREIGN RELATIONS: DISCUSSING ALTERNATIVES FOR THE GEORGIAN- ABKHAZ CONFLICT

By Bruno Coppieters, Tamara Kovziridze, and Uwe Leonardy



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Federalization of Foreign Relations:
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Preface

Dear Colleague,

Georgia's stability and security are essential factors to the success of the east-west corridor pipeline projects and the country's economic development . Resolution of the secessionist conflicts affecting Georgia is vital to ensuring the state's security and regional prosperity. Enclosed is a Caspian Studies Program Working Paper that addresses potential models of federalization that could encompass the breakaway regions of Abkhazia and South Ossetia. **This paper focuses on the specific topic of the consequences of the various federation models for the foreign policymaking process. This paper is a very detailed study geared toward the specialist focusing on the conflicts affecting Georgia, as well as the student of conflict resolution and federation who is interested in studying the theoretical implications of the Georgian case.**

This paper is based on extensive field research conducted by the authors, **Bruno Coppieters, Tamara Kovziridze, and Uwe Leonardy**. In preparation of this paper, they discussed these federation models with Georgian and Abkhaz officials, politicians, scholars, journalists, and representatives of the nongovernmental organization (NGO) community, and this paper reflects those discussions. The paper is also intended to stimulate discussion among Georgians, Abkhaz, and South Ossetians. The results of these discussions may be helpful in optimally resolving their conflicts.

Regards,

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**Federalization of Foreign Relations:
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By Bruno Coppieters, Tamara Kovziridze, and Uwe Leonardy

Since its declaration of independence on April 1991, Georgia's sovereignty has been challenged by civil war and by secession attempts on the part of Abkhazia and South Ossetia. Negotiations on the reintegration of these two entities through federalization have failed. The Russian Federation, the United Nations (UN), and the Organisation for Security and Cooperation (OSCE) in Europe were involved in a series of negotiations on a federal division of powers between Georgia, Abkhazia, and South Ossetia, but these negotiations did not achieve practical results. The positions between the Georgian government and the Abkhaz authorities concerning the status of Abkhazia have been moving even further apart.

Negotiations between the Georgian government and the authorities of Abkhazia and South Ossetia have been focused thus far on the theoretical nature of sovereignty and the distinction between federation and confederation. They have not included any concrete views on institution building. This paper makes an attempt to go beyond these abstract discussions by presenting two possible models of a federalization of Georgia that would include Abkhazia and South Ossetia. It analyzes the practical consequences that a federal model of government would have on foreign policymaking. The authors of this paper have discussed these federation models with Georgian and Abkhaz officials, politicians, scholars, journalists, and representatives of the nongovernmental organization (NGO) community.¹ This working paper reflects some of the results of those discussions.

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¹ The first discussion took place on November 4–15, 2000. The two federal options of foreign policymaking were discussed in Tbilisi (by the three co-authors) and Sukhum(i), the capital of Abkhazia, (by Bruno Coppieters and Uwe Leonardy). Bruno Coppieters had further discussions on this paper with Georgian and Abkhaz experts on the seminar "State-Legal Aspects of the Settlement of the Conflict," organized by the United Nations Observer Mission in Georgia (UNOMIG) in Sukhum(i) on February 12–13, 2001, with the participation of the European Commission for Democracy through Law (Venice Commission). Coppieters was one of the experts for the Venice Commission.

Kovziridze and Coppieters also had the opportunity to present a summary of this paper to Georgian journalists, officials, and politicians at the conference on "Human Rights and Regional Cooperation in the Caucasus: the Role of Georgia," organized in Rome by the Istituto Affari Internazionali (Rome), the Tbilisi

The two constitutional models presented in this paper are based on the normative preference for a federation over a confederation. This preference is based on a number of observations. Conflicts within a confederation are ultimately resolved by the principle that each state retains supreme authority over its own affairs and may take decisions unilaterally, or even withdraw from the common polity. This type of institutional inflexibility makes it difficult for confederations to address severe ethno-political conflicts, including the kinds of conflicts that exist in Abkhazia or South Ossetia. Federations, on the other hand, are able to create an institutional balance between the principles of national self-determination and territorial integrity that respects the equal rights of the constituent nations. Constitutions of federations allow for the realization of the right of national self-determination on both the domestic and international levels.

The paper discusses, from these various perspectives, two models for a federalization of Georgia that would include Abkhazia and South Ossetia, and the consequences that these forms of government would have on foreign policymaking. It consists of nine sections:

- (1) Introduction
- (2) The current situation in Abkhazia and South Ossetia and the conditions put forward by Georgian, Abkhaz, and Ossetian leaders for a future peace settlement.
- (3) The current situation of local and regional self-government in Georgia.
- (4) The different mechanisms of foreign policymaking in federations and confederations.
- (5) The different types of competences that need to be taken into account when designing a federation in order to avoid conflicts between federal levels as well as an analysis of their practical consequences.
- (6) Various forms of treaty-making and cross border cooperation in the European Union.
- (7) Descriptions of both an asymmetrical and a symmetrical model of federalization for Georgia that would include Abkhazia and South Ossetia and their characteristic forms of foreign policymaking.
- (8) Georgian and Abkhaz discussions about models of federation with the authors in Tbilisi and Sukhum(i).²

School of Political Studies, and the Center for European Policy Studies (Brussels) on May 11–12, 2001. Parts of this draft have been discussed at the conference “The Development of Trans-border Cooperation Policies,” organized by the Georgian Parliament with the support of TACIS, Tbilisi, December 15, 2001, and at the conference “Federalism and Distribution of Powers in Abkhazia,” organized by the Vrije Universiteit Brussel, the Friedrich Ebert Fund in Georgia, and the Regional Institute of South Caucasus Security, Tbilisi, November 11–12, 2002.

² The capital of Abkhazia is called Sukhumi by Georgians and Sukhum by Abkhaz. We write Sukhum(i).

- (9) Conclusions and perspectives: an analysis of the opportunities that could emerge from the federalization of foreign policymaking in Georgia, including the possibilities of cross border cooperation.

The main part of the paper is devoted to a comparison between two potential models of federalization of foreign policymaking. Its aim is to stimulate discussion between Georgian and Abkhaz scholars, officials, and political representatives on institutional mechanisms and models for a future peace settlement. This paper is not an attempt to present prefabricated solutions. Rather, it goes beyond the highly abstract discussions that have taken place until now on the basic principles of common state structures and focuses on the practical consequences that various federal choices may have on concrete policy issues in the field of foreign relations.³

This paper is not designed to analyze how federations have to address the fears and uncertainties that still remain in the aftermath of a civil war. That would require a separate study of international guarantees and security policies in a federation. A study of federal stability would also have to focus on the design of electoral systems or on the functioning of particular state institutions (such as the second legislative chamber). Instead, this paper attempts to demonstrate that it is possible to find an institutional balance between the principles of national self-determination and territorial integrity, one that respects the equal rights and integrity of the constituent nations, regardless of their size or power.

Asymmetrical Model of a Federation

According to an asymmetrical model of a federation, the Georgian Federation would consist of the federated states of Abkhazia, South Ossetia, and Ajara⁴ and of the regions of Georgia (such as Imereti, Kvemo Kartli, and Kakheti).⁵ Among these federated

³ It should be noted that since this paper focuses on the federalization of foreign policies, further questions concerning the electoral system in a federation, the composition of a federal government, the functions of the first legislative chamber, or the system of representation in the second legislative chamber will not be discussed.

⁴ “Ajara” is also known by its Russian name “Adjaria.” The population of Ajara is Georgian-speaking.

⁵ It is important to notice the particular meaning of the term “region” in the Georgian context. In the European Union, this term covers political entities with a very different status. The regional level may, for instance, refer to decentralized forms of government in unitary states or to federated entities in a federation. The literature on the Russian Federation is also using the concept of a region in a very broad sense, which includes ethnically based “republics.” The terminology used in Georgia is different. In Soviet times, Abkhazia and Ajara were autonomous republics with a limited degree of statehood, and South Ossetia was an autonomous region. After their secession from Georgia, Abkhazia and South Ossetia have been *de facto* states that have not been recognized by the international community. The negotiations on their reintegration into the Georgian framework have to avoid the concept of a region to the extent that a federalization of Georgia and a transformation of Abkhazia and South Ossetia into federated states would necessarily include the acknowledgment of a certain degree of statehood. This means that the concept of a region—which does not necessarily imply a form of statehood—has to be avoided for Abkhazia, South

entities and regions, powers would be distributed in a way that gives Abkhazia and South Ossetia more competences than Ajara and the regions.

Abkhazia and South Ossetia would have the right to conclude international treaties in the field of their exclusive internal legislative competences. They would become bearers of certain rights and limited responsibilities under international law and thus possess a limited international legal personality. International treaties in fields of their exclusive competences could be concluded either separately by Abkhazia and South Ossetia or in concert with the federal government. Ajara and the regions of Georgia would either have the same competences as Abkhazia and South Ossetia or would only have the right to form partnerships and regulate cooperation with other regions on the basis of agreements that do not have the same status as treaties under international law. The last scenario seems to be more realistic.

Symmetrical Model of a Federation

According to a symmetrical model of federation, the Georgian Federation would consist of Abkhazia, South Ossetia, and Georgia as federated states. All three entities would have the same competences. Ajara and the regions of Georgia would be part of a federal state of Georgia.

The kind of competences and institutions that coordinate foreign policymaking in a federation have an influence on the stability of the federation. The experience of multinational federations suggests that the predominant use of clearly specified exclusive competences may help to prevent conflicts of hierarchy between the various levels of the federation.

In interviews with the authors, Georgian interlocutors generally expressed a preference for an asymmetrical model of a federation. Abkhaz officials, on the other hand, refused the option of a federation but acknowledged the possibility of adopting a federal model based on the sovereignty of the constituent units (a confederation or a freely associated state).

Fear—rather than hostility—largely determines the difficulties that Georgian and Abkhaz communities have had in discussing federal models of government. These fears primarily reflect the possibility that a federal model of government may exacerbate ethnic conflicts. However, a successful federal model of government—one that allows for a long-term regulation of ethno-national conflicts—may help to alleviate these fears.

1. Introduction

Ossetia, and Ajara. In the present Georgian context, the term “region” exclusively refers to decentralized forms of administration with limited forms of self-government. They were created after Georgia’s independence. In the present paper, we will use the term “region” in a restricted sense, referring exclusively to the last category.

Federalism is a tradition in constitutional thought. It is also a powerful political ideology. Despite the failures of the Soviet, Czechoslovakian, and Yugoslavian experiences in state-building on federal principles, Western governments and international organizations consider federations to be a valid state model for countries that are confronted with severe secessionist conflicts.

Federalism advocates multi-tiered forms of government. Every state level participates in the common exercise of power and enjoys a limited form of self-government.⁶ In multi-ethnic societies, the linkage between the various levels of government permits the pursuit of common political ends while at the same time respecting the identity and integrity of various ethnic communities within the society as a whole. Common institutions can mediate disputes between the different parties under a federal arrangement. If political negotiations fail to provide results that are considered to be legitimate by the parties involved, legal mechanisms may provide for arbitration. Therefore, federalism can (in theory) provide effective institutional guarantees to prevent violent ethnic conflicts. The examples of Switzerland, Spain, and Belgium are mentioned in this context.

These traditional arguments in favor of federalism are not particularly convincing to political leaders in the South Caucasus. Their experience with Soviet federalism was not positive. Under the Soviet system, some administrative competences were distributed along a federal model between the leadership in Moscow and the leaderships of the various union republics, autonomous republics, and autonomous regions. But no autonomous legislative power was devolved to the union republics, autonomous republics, or autonomous regions under this system. In practice, federal governance in the Soviet Union amounted to administrative decentralization under the control of a centralized communist party. The experience of federalism under the Soviet system left the Georgians, Abkhaz, and Ossetians deeply dissatisfied.

Leaders of the Georgian, Abkhaz, and Ossetian national movements even consider Soviet federalism to be one of the main causes of the exacerbation of ethnic conflicts in Georgia and are not eager to reinstitute a federal structure. From the Georgian perspective, the Moscow leadership used federalism as an instrument to divide and rule and weaken the Georgian movement for national independence. From the Abkhaz and South Ossetian perspectives, Soviet federalism has put the various national communities in a hierarchical relation toward each other. This kind of ethnic stratification runs contrary to the principle of national self-determination, which pre-supposes the equality of all national communities. The exacerbation of ethnic conflicts in Georgia during the first half of the 1990s and the failure of existing federal arrangements to address these problems led to war in South Ossetia and then in Abkhazia. These wars resulted in the creation of two *de facto* states in these regions.

⁶ On the following see Bruno Coppieters, *Federalism and Conflict in the Caucasus* (London: The Royal Institute of International Affairs, 2001), pp. 6–7; Xiaokun Song, “Confederalism. A Review of Recent Literature,” in *Federal Practice: Exploring Alternatives for Georgia and Abkhazia*, ed. B. Coppieters, D. Darchiashvili, and N. Akaba (Brussels, Belgium: VUB Brussels University Press, 2000), pp. 181–193 (on the Internet on <http://poli.vub.ac.be>); Preston King, *Federalism and Federation* (London & Canberra: Croom Helm, 1982), p. 67; Ronald L. Watts, *Comparing Federal Systems* (Montreal and Kingston: McGill–Queens University Press, 1999).

But the negative experience with federalism does not mean that elites in the region have abandoned the hope of overcoming their conflicts through a federal framework. In negotiations between Georgian and Abkhaz authorities, mediated by the UN and the Russian Federation, the Georgian government has argued that any federation must guarantee the principle of territorial integrity of states and the right to return of all refugees. Since the adoption of the Georgian Constitution in 1995, the Georgian leadership has conceived of a reunification with Abkhazia and South Ossetia taking place according to an asymmetrical federal model, where these two political entities—together with Ajara and the Georgian regions—would receive differing levels of autonomy.

However, an asymmetrical model of federation is unacceptable to the secessionist leaderships of Abkhazia and South Ossetia. The Abkhaz authorities consider a confederation or the status of a “free associated state” to be more appropriate than an asymmetrical federation in order to achieve their objectives. A confederation and the status of a free associated state would permit the recognition of Abkhazia as a subject of international law with a full international legal personality, sovereignty, and a unilateral right to secession. The South Ossetian leadership, meanwhile, has been making various demands since the eruption of the secessionist conflict with Tbilisi: an upgrading of its regional status to the status of a republic; reunification with the Autonomous Republic of North Ossetia (which is in the Russian Federation); and recognition of its sovereign status. The Georgian leadership has deemed the two last demands to be incompatible with the principle of territorial integrity.

Leaders in Georgia have argued that federalism may provide a means to find the right balance between the principle of territorial integrity on the one hand and the right to national self-determination on the other. For the Georgian leadership, the reunification with Abkhazia and South Ossetia would pave the way for a general process of federalization and regionalization that would include the *mkhareebi* (regional entities under the current administrative arrangement in Georgia).⁷ This arrangement would allow regional and local authorities to be more responsive to the needs of the population. A further goal of regionalization under a federal model would be to facilitate cross border cooperation. But Georgian authorities are presently unwilling to pursue the process of federalization and regionalization—no radical reforms are expected in the short term—as long as no progress is made in the reunification with Abkhazia and South Ossetia.

The problem of cross border cooperation in Georgia is directly linked to the question of the political status of Abkhazia and South Ossetia. Under pressure from the Georgian government, the Commonwealth of Independent States (CIS) implemented economic sanctions on Abkhazia in January 1996. As a result, Abkhazia faces significant obstacles in any attempt to develop trade with the regions of the North Caucasus. But even if these sanctions are only partially enforced by the Russian government, the lack of normal shipping and railway communications has prevented full cooperation between Abkhazia and neighboring regions. Since 1997, Georgian and Abkhaz authorities have taken some

⁷ *mkhareebi* is the plural form of *mkhare*.

initiatives concerning the partial resumption of trade between the two sides. These initiatives were based on the idea that trust, confidence, and political status needed to be built upon cooperation in areas of common interest. But the lack of progress in political negotiations has prevented Georgian-Abkhaz economic cooperation.

Compared to Abkhazia, South Ossetia has had a much easier time developing economic ties with the Russian Federation, since this process has been able to take place without any formal approval from Georgian authorities. In the political negotiations between South Ossetia and the central government of Georgia, the question of cross border cooperation with Russian regions and republics—primarily North Ossetia—is a prominent issue. The South Ossetian leaders' desire for cross border cooperation involves the issue of travel documents. During the Meeting of Experts in the Framework of the Political Negotiations on the Georgian-Ossetian Conflict Settlement, held in Java (South Ossetia) on September 10–11, 1999, the question of passports was one of the main points of contention. For South Ossetian authorities, this question was very important for the facilitation of communication and trade with the Russian Federation. South Ossetian leaders asked to be allowed to issue their own identity cards and legal documents. This would give South Ossetia the ability to make its own arrangements with the Russian Federation concerning the crossing of the border to North Ossetia. The Georgian government denied this request.

From the Abkhaz and South Ossetian perspectives, cross border cooperation should begin before a final political settlement is reached. According to their views, increased contacts with Russian regions in the North Caucasus and Georgian regions are not only beneficial for their economic development but would also enhance their position in future negotiations—especially in their claims for sovereign status. Abkhazia has, for instance, made agreements with Tatarstan and Bashkortostan.⁸

The future of the political negotiations with Abkhazia and South Ossetia is also central to the Georgian approach to cross border cooperation. Tensions between Georgia and the Russian Federation still persist, due to the lack of progress in the settlement of the conflicts in Abkhazia, South Ossetia, and Chechnya. Georgia considers the Russian government to be responsible for the lack of progress in the political negotiations with Abkhazia and South Ossetia. But the Russian government is blaming Georgia for its inability to control its borders with Chechnya, giving safe haven to Chechen secessionist forces. These conflicts hinder cross border cooperation between Georgia and the Russian Federation. Moreover, the lack of substantial progress in the federalization and regionalization of Georgia has led to a postponing of the question of the future political status of Javakheti, a region of Georgia that is mainly inhabited by ethnic Armenians. This delay negatively affects Georgia's relations with the neighboring Republic of Armenia.⁹

⁸ A "Treaty on Friendship and Cooperation Between the Republic of Tatarstan and the Republic of Abkhazia" was signed on August 17, 1994. See <http://www.tatar.ru/english/00000078.html>

⁹ On Javakheti see Oksana Antonenko, "Trans-Border Cooperation Policies: The Case of Samtskhe-Javakheti Region," paper prepared for the conference The Development of Trans-border Cooperation

A federation of Georgia that would include Abkhazia and South Ossetia could be an important part of the resolution of these regional conflicts in the Caucasus. During 2002, the United Nations, with the support of the Friends of the Secretary-General of the UN on Georgia (a group of countries including France, the United Kingdom, the United States, Germany, and Russia) prepared a text, in which Abkhazia is defined as a sovereign entity within the sovereign state of Georgia.¹⁰ The distinction between domestic and international sovereignty implied in this formula would pave the way for a political discussion on the distribution of powers between the federal government and the federated state of Abkhazia.

A Georgian federation would have to find the right balance between the principles of national self-determination and those of territorial integrity. An agreement between the parties according to the model of a common federal state will probably put particular emphasis on safeguarding the international legal personality of the federation as a whole.¹¹ This means that the question of the rights of the federated states to enter into international relations and have their own policies concerning cross border cooperation will be a highly sensitive one in future negotiations on the political status of Abkhazia and South Ossetia.

2. Abkhazia and South Ossetia

The political dynamics of the Georgian-Abkhaz and Georgian-Ossetian conflicts have to be understood in the context of the significant level of ethnic and cultural differentiation in the Caucasus.¹² According to the 1989 Soviet census, the Georgian Soviet Socialist Republic had a population of 5.4 million, of which 70 percent belonged to the Georgian “titular nationality.” The Georgian nationality consists of various sub-ethnic groups, including Kakhétians, Imeretians, Svans, and about 1 million Mingrelians.¹³ Armenians (437,000), Russians (341,000), and Azerbaijanis (308,000) constitute the three largest

Policies organized by the Georgian Parliament with the support of TACIS, Tbilisi, Georgia, December 15, 2001.

¹⁰ The text has not been officially published. The Russian version has been published by the Abkhaz newspaper *Aitaira*, No. 9–10, June 2002.

¹¹ This problem has been central to the agreement on Bosnia and Herzegovina, where the very weakness of the links between the federated entities has forced the international community to intervene in order to safeguard its international position. See European Commission for Democracy through Law, *Opinion on Responsibilities for the Conclusion and Implementation of International Agreements under the Constitution of Bosnia and Herzegovina*, CDL-INF (99)9, Strasbourg, France, June 21, 1999, on the Internet on <http://www.venice.coe.int/site/interface/english.htm>

¹² See Graham Smith et al., *Nation-building in the Post-Soviet Borderlands. The Politics of National Identities* (Cambridge: Cambridge University Press, 1998), p. 169ff.; Jürgen Gerber, *Georgien: Nationale Opposition und kommunistische Herrschaft seit 1956* (Baden-Baden, Germany: Nomos Verlagsgesellschaft, 1997), p. 282.

¹³ The Georgian, Svanetian, and Mingrelian languages are related but mutually unintelligible.

minority groups in Georgia. According to the preliminary results of Georgia's January 2002 census—the first in Georgia's independent history—the population has shrunk by one million since 1989, and presently, there are about 4.4 million people living in Georgia. This census was not carried out in Abkhazia and South Ossetia.¹⁴

The Ossetians and the Abkhaz do not consider themselves to be “national minorities,” despite their small numbers (164,000 Ossetians and 96,000 Abkhaz in the 1989 census). In the Soviet federal tradition, they were considered to be the native population and therefore the titular nationalities of “their own” autonomous entity. In Soviet times, Abkhazia's status as an autonomous republic and South Ossetia's status as an autonomous region facilitated the legal expression of their right to national self-determination. As autonomies subordinated to the Georgian Republic, however, they lacked full sovereignty. The Soviet regime also created an autonomous republic for the mainly Muslim population of Ajara. In this particular case, the separate religious identity of the local population was cited as the main reason to create an autonomous political entity.

In 1989, Ossetians comprised 66 percent of the population of the South Ossetian region, whereas the Georgians constituted 29 percent.¹⁵ From the Georgian perspective, however, the Georgians are the only population “native” to this region, whereas the Ossetians are “latecomers” to Georgian territory, since they migrated from North Ossetia only a few centuries ago. This difference in origin would give the Georgians a greater historical claim to the region than the Ossetians. This view allows Georgians to disregard demographic data on the issue, according to which Georgians are in a minority position in the South Ossetian region. The fact that the Ossetians are also the titular nation of the Autonomous Republic of North Ossetia in the Russian Federation (which was renamed “North Ossetia–Alania” in 1994) is used by some Georgians in an attempt to prove that the Ossetians cannot base their claims for an enhanced political status on the principle of national self-determination.¹⁶

In Abkhazia, however, the Georgian authorities use a very different line of argument. In this case, it is generally not denied that the Abkhaz constitute a population native to the region of Abkhazia.¹⁷ From Georgians' perspective, the Abkhaz claim for full

¹⁴ See Liz Fuller, “Georgia Gears Up for National Census,” *Caucasus Report*, Vol. 5, No. 2, January 10, 2002, on the Internet on <http://www.rferl.org/caucasus-report/2002/01/2-100102.html>. See also Liz Fuller, “Preliminary Georgian Census Results Unveiled,” *RFE/RL Newsline*, Vol. 6, No. 22, Part 1, February 4, 2002, on the Internet at <http://www.rferl.org/newsline/2002/02/040202.asp>. The decrease in population is mainly the result of emigration in search of employment. In addition, since 1991, the death rate rose while the birth rate decreased, and life expectancy fell.

¹⁵ According to the South Ossetian authorities, South Ossetia currently has about 60,000 inhabitants.

¹⁶ Anna Matveeva, *The North Caucasus: Russia's Fragile Borderland* (London: The Royal Institute of International Affairs, 1999), p. 89.

¹⁷ There are important exceptions, however, to this view. See Bruno Coppieters, “In Defence of the Homeland: Intellectuals and the Georgian-Abkhazian Conflict,” in *Secession, History and the Social Sciences*, ed. B. Coppieters and M. Huyseune (Brussels, Belgium: VUB University Press, 2002), pp. 93–

sovereignty in name of the principle of self-determination is, however, undermined by the fact that Georgians should also be considered as native to the region of Abkhazia. Georgian politicians try to point this out by making use of demographic data. As opposed to the situation in South Ossetia, Georgians constitute a relative majority of the population of Abkhazia: in 1989, Georgians amounted to 45 percent of its population; Abkhaz, 18 percent; Armenians, 15 percent; and Russians, 14 percent. Georgian authorities believe that the Soviet type of federal stratification between Georgia and Abkhazia is justified by history. According to this line of argument, Abkhazia has always been a part of the Georgian state, and this would have paved the way for an “autonomous” Abkhazia within Georgia. But Georgian authorities also believe that the Abkhaz community should receive more than just minority rights.

Abkhaz claims for sovereignty and the right to secession are based on the principles of national self-determination and equality among nations, independent from demographic data. Abkhaz believe that their situation as a numerical minority in their republic is a result of successive waves of immigration and forced colonization under both tsarist and Soviet rule. Therefore, the Abkhaz see the numerical preponderance of the Georgian, Russian, Armenian, and other non-Abkhaz nationalities as the unjust result of the occupation of their territory.

Nationalist mobilizations led to an escalation of conflicts in South Ossetia and Abkhazia. In November 1989, the South Ossetian Parliament unilaterally upgraded the region’s status from autonomous region to autonomous republic. In September 1990, the South Ossetian Parliament appealed to the Soviet leadership to be recognized as a full member of the Soviet Federation. In December 1990, the Georgian Parliament abolished the autonomy of South Ossetia. In Abkhazia, the Georgian and Abkhaz communities failed to reach an agreement concerning power sharing. At the same time when the polarization between both communities in Abkhazia was taking place, Georgian President Zviad Gamsakhurdia was removed in December 1991 by a *coup d’état*. He was replaced in April 1992 by Eduard Shevardnadze, who agreed to a cease-fire agreement for South Ossetia in June 1992. This did not lead to a peaceful resolution of ethnic conflicts in Georgia. In August 1992, Georgian troops entered Abkhazia. Georgian troops failed to make use of their numerical superiority, due to their lack of discipline and military skills. The Abkhaz received support from Russian military stationed in the region, as well as paramilitary organizations from the North Caucasus, which forced the Georgian military, after a war which lasted for more than a year, to retreat. The Georgian civilian population fled Abkhazia in panic. A cease-fire was implemented, but, despite the mediation of the United Nations and Russia, there was no progress on the question of political status.

Abkhazia has been largely depopulated since the end of the war. According to a 1998 report on a United Nations Needs Assessment Mission to Abkhazia, its population was estimated roughly at 200,000—less than one half of the region’s prewar population.¹⁸

105, also on the Internet on <http://poli.vub.ac.be>

¹⁸ United Nations Development Programme, “United Nations Needs Assessment Mission to Abkhazia, Georgia,” March 1998, p. 9.

Only a minority of the Georgian population displaced by the civil war in Abkhazia has been able to return to the region. Abkhaz authorities refuse to admit a large number of refugees, believing that it would strip the Abkhaz government from securing one of their main political benefits from the war: the proportion of Abkhaz among the population of Abkhazia has increased significantly since the flight of most Georgian inhabitants. Restoring the prewar demographic balance would threaten the Abkhaz hegemonic position in the new state structures. But despite its short-term political advantages for the Abkhaz, this deep demographic transformation has had a negative effect on the economic and political prospects of the region. On the political level, the international community is condemning the Abkhaz leadership for ethnic cleansing, due to its unwillingness to grant the refugees the right of return. On the economic level, the disruption of transportation links with neighboring regions and countries, lack of investment, and absence of economic support from international organizations make it impossible to satisfy the basic needs of the population.

Since declaring independence in October 1999, the Abkhaz leadership has refused to discuss the option of a federation with Georgia. But it has often made it clear that it would accept a proposal of either a confederation or a free associated state. Such a status would give them international sovereignty and a unilateral right to secession. The Marshall Islands (a free associated state) is often mentioned as an example in this context. Abkhaz leaders also have put forward proposals concerning an associated status with the Russian Federation, which are based on the same principles of sovereignty and the right to national self-determination.¹⁹ They advocated that their citizens be eligible for Russian citizenship, which would increase the protection that they receive from the Russian authorities. The Georgian government has perceived this move as a further sign of Russia's unwillingness to respect Georgia's territorial integrity. In Georgian public opinion, this has been interpreted as a Russian attempt to annex Abkhazia.

Relations between Russia and the West in the Caucasus region have been gravely affected by the two Chechen wars, Western military cooperation with South Caucasus states through bilateral programs and NATO (North Atlantic Treaty Organization)'s Partnership for Peace, and Western attempts to develop export routes for Caspian energy resources that bypass Russian territory. In light of these developments, Russia's interests in the Georgian-Abkhaz and the Georgian-Ossetian conflicts—and its role as a party to the conflict, a peacekeeping force, and a mediator—cannot be dissociated from the larger geopolitical context. Moscow's military and political involvement has been decisive for the defeat of Georgian forces in both conflicts. Since the implementation of a cease-fire in these regions, the Russian government has not initiated serious political negotiations between the opposing sides. It has made clear to the Georgian authorities that Moscow would only put pressure on the Abkhaz authorities on the question of political status in exchange of concessions in other areas—for instance, increased protection of the Georgian border with Chechnya.

¹⁹ See Liz Fuller, "How Does Abkhazia Envisage Its Future Relationship with Russia?" *Caucasus Report*, Vol. 4, No. 36, October 29, 2001, on the Internet on <http://www.rferl.org/caucasus-report/2001/10/36-291001.html>

Georgia has failed to involve Russia in a productive discussion on the future of Abkhazia and South Ossetia. It has also based its policies toward Russia on a model of a balance of power, rather than on a model of regional integration of the Caucasus in cooperation with Russia. Tbilisi has not succeeded in receiving sufficient external support from the United States and the European Union (EU) to counterbalance Russia's presence and interests in the region. The cooperation between Georgian guerrilla forces and Chechen fighters in the Kodori Gorge in Abkhazia has further aggravated the situation. Moscow has accused Georgian authorities of providing undercover support to these activities, threatening Russia's peacekeeping forces in Abkhazia and its military operations in Chechnya.

The complexity of secessionist conflicts, and particularly of the Georgian-Abkhaz conflict, makes it difficult to expect a lasting peace in the region without serious external military guarantees, such as the presence of sufficient peacekeeping forces. If Russia provides these guarantees, it may be dragged into a long-lasting low-intensity conflict, which would be detrimental to its own security interests in the region, especially in the North Caucasus. If these guarantees were provided by other powers, it would highlight Russia's marginal position in the European security framework. Security guarantees provided exclusively by Russia would be Moscow's preferred solution but is hardly feasible in a geopolitical environment where the United States and other Western countries are involved. Western powers want to be fully involved in any settlement.

All these elements have to be taken into account when designing political alternatives for the region. Even if a compromise solution cannot be achieved in the short term, discussions on possible institutional options may facilitate the negotiation process. It is certainly difficult to design a federal model that addresses the high level of ethnic differentiation, politicization of ethnicity, and ethnic intermixing occurring in these relatively small territories. Moreover, federations are primarily designed to prevent the eruption of violence among ethnic communities and not to address the political consequences of civil wars. Federations established after a civil war have generally been based on a decisive military victory by one of the parties or by the forceful implementation of a peace agreement by an external force. This is not the case for either the Georgian-Abkhaz or the Georgian-Ossetian conflicts, and it is unlikely that this will be the case in the foreseeable future. The destabilizing consequences of foreign intervention in the domestic affairs of a federation should not be neglected either. Some federations, such as Switzerland, have therefore built domestic stability in foreign policy based on the principle of neutrality.²⁰ The prospect of neutrality is not presently espoused by any of the parties in conflict in Georgia.

Conflicting parties' differing notions of sovereignty are one of the greatest hurdles to a federal arrangement in Georgia. Despite territorial and inclusive definitions of the source

²⁰ See David Darchiashvili, "Swiss Federalism: Lessons for Georgian-Abkhazian Relations," in *Federal Practice. Exploring Alternatives for Georgia and Abkhazia*, ed. B. Coppieters, D. Darchiashvili, and N. Akaba (Brussels, Belgium: VUB Brussels University Press, 2000), pp.61–73 (on the Internet on <http://poli.vub.ac.be>).

of sovereignty in the current Georgian and Abkhaz constitutions, many Georgians and Abkhaz defend the view that political structures should serve primarily as an instrument for national self-determination.²¹ The concept of “nation” is therefore defined primarily in ethnic terms and the state does not have a culturally or ethnically impartial role in this context. This instrumental approach to statehood is difficult to reconcile with a model of a federation that would exclude the subordination of one national community to another. Moreover, it contradicts the idea of impartial mediation procedures designed to coordinate the functioning of the various federal units.

3. Local Self-Government, Local Government, and Regions in Georgia

3.1. Local Self-Government on the Municipal Level and Local Government on the Rayon Level²²

There are two types of municipalities in Georgia: those that are incorporated into *rayons* (districts) and those that have the special status of republican cities. There are also two levels of government in *rayons*: local self-government on the municipal level and local government on the *rayon* level. The municipal level is the lowest level of governance in Georgia. It is constituted by *kalaki* (cities), *daba* (urban settlements), *temi* (big villages), and *sopeli* (small villages). Representative councils of these local entities (*sakrebulos*) are elected according to a simple majority system. If the population of an entity is less than 5,000, the chairmen of local councils become *gamgebelies* (heads of executive bodies). Municipalities with more than 5,000 residents have directly elected *gamgebelies*.

The *rayon* or district level constitutes the second lowest level of governance in Georgia. The administrative division in *rayons* is inherited from Soviet times. The chairmen of the individual municipal *sakrebulos* constitute *rayon sakrebulos*. The Georgian president appoints the *rayon gamgebelies* among the members of *rayon sakrebulos*. The *gamgebelies* can also be dismissed by the president. The *rayon gamgebelies* are directly subordinated to the central authorities.

Local self-government units, on the first level of government, are located on a territory of one or another *rayon*. They are dependent upon the *rayon* and the central authorities for two reasons. First, *rayon* executives, who are appointed by the president, have the right to dismiss municipal councils. Second, municipal councils remain financially dependent upon higher levels of government despite the fact that they have their own budgets.

²¹ Article 5 of the Georgian Constitution states that “The people are the sole source of state power in Georgia.” Article 2 of the 1994 Abkhaz Constitution defines the people of Abkhazia likewise without any distinction as to actual ethnicity as “the bearer of sovereignty and the only source of authority in the Republic of Abkhazia.”

²² The following section is based on interviews with Alexander Kukhianidze, Associate Professor at the Tbilisi State University. See also Congress of Local and Regional Authorities of Europe, Bureau of the Congress, *Report on Local Elections in Georgia* (June 2, 2002), Strasbourg, France, July 10, 2002.

According to the Organic Law of Georgia on Local Self-Government and Government, the cities of Tbilisi, Poti, Kutaisi, Rustavi, Batumi, Sukhum(i), and Tskhinvali are so-called “republican cities” and are not incorporated into *rayons*. Their mayors are directly elected, except for the mayors of Tbilisi and Poti who are appointed by the president of Georgia and directly subordinated to the central authorities. As Sukhum(i) (the capital of Abkhazia) and Tskhinvali (the capital of South Ossetia) are presently outside Georgian jurisdiction, only the republican cities of Kutaisi, Rustavi, and Batumi have directly elected mayors. All municipal councils in Georgia are elected according to a simple majority system, except for the Tbilisi Council that is elected according to a proportional system.

Since its accession to the Council of Europe on April 27, 1999, Georgia has repeatedly been criticized by the Council of Europe and the Congress of Local and Regional Authorities of Europe (CLRAE) for its legislation on local self-government.²³ The CLRAE does not consider the legislation as sufficiently democratic with respect to European standards. In particular, it has criticized the fact that the new legislation on local self-government does not give enough powers and competences to the municipal authorities and that the mayors in Tbilisi and Poti are appointed by the president.

3.2. The Regions

Georgian regional identities are very strong. Those who favor regional reforms in Georgia stress the fact that these identities have developed over a long history. The first attempts to establish regional administrations in Georgia date back to the third century B.C. when King Parnavaz created three levels of territorial division: central, regional, and municipal.²⁴ In the fifteenth century, the Georgian territory was divided into the three kingdoms of Kartli, Kakheti, and Imereti and the five counties of Samegrelo, Abkhazeti, Guria, Svaneti, and Samckhe.

This historical division of the Georgian territory in regions was abolished as a result of Georgia’s absorption into the Russian Empire during the first half of the nineteenth century. Each regional entity was then separately subordinated to Russian rule: Kartl-Kakheti in 1801, Samegrelo in 1803, Abkhazeti in 1809, Imereti in 1810, Guria in 1811, and Svaneti in 1856. These territories were all reorganized according to the Russian model of territorial division. The country was composed of the two *gubernias* (governmental areas) of Tbilisi and Kutaisi; the two *okrugs* (districts) of Sukhum(i) and Sakatala; and the *olki* (region) of Batumi. During its short period of independence (1918–

²³ Parliamentary Assembly of the Council of Europe, *Honouring of Obligations and Commitments by Georgia*. Doc. 9191, September 13, 2001, p. 15.

²⁴ There were nine regional administrations under this system—eight regions (*saeristao*) and one royal district (*asaspaspeto*). A brief historical overview on Georgian regional entities is given in Viktor Lortkipanidze, *Federal Arrangement of the State. Information for Discussion* (Tbilisi, Georgia: Budgetary Office of the Parliament, 1999).

21), Georgia was divided into two administrative entities. At present, Georgia consists of nine regions: (1) Imereti (with 743,000 inhabitants), (2) Kvemo Kartli (547,300), (3) Samegrelo and Zemo Svaneti (491,400), (4) Kakheti (400,400), (5) Shida Kartli (334,500), (6) Samckhe-Javakheti (214,500), (7) Guria (143,700), (8) Mckheta-Mtianeti (126,900), and (9) Racha-Lechkhumi and Kvemo Svaneti (50,700).²⁵

Each region includes a number of *rayons*, and the borders of the regions coincide approximately with the borders of the *rayons*. Despite strong historical regional identities in Georgia, the democratization process in the country has not yet led to the establishment of a proper constitutional status for the regions. The *presidentis rtsmunebuli* (representatives of the president of Georgia) only represent the presidential authority on the regional level. They deal with *rayon* executives and *gamgebeli* and *sakrebulo* (councils). But despite their lack of legitimation through direct elections and the absence of a constitutional framework for their regional power, the so-called “governors” wield great executive power. As representatives of the president, they even have the right to dismiss the elected *rayon* councils.

According to Article 2.3 of the Georgian Constitution, the final delineation of the country’s administrative and territorial organization has to be postponed until its “territorial integrity has been restored.” But the unresolved secessionist conflicts are only one of the various causes impeding the adoption of a clear division of powers between the central government and the regional authorities. The absence of regional self-government is one of the many legacies from Georgia’s Soviet past. Only Abkhazia, Ajara, and South Ossetia had some prerogatives of self-government under the Soviet system. During the Soviet period, regional identities did not find any further expression in the Georgian political and administrative structures. Furthermore, the present Georgian leadership does not want to lose control over lower levels of governance. Such control is thought to be central to preserving the stability of the state and even the survival of the existing political regime. The governors and the *rayon* executives, who are appointed by the president and remain accountable to him, often interfere with the organization of the elections.²⁶

We can distinguish between “regionalists” and “rayonists” in the debate on the future of the administrative-territorial arrangement of Georgia. According to the so-called “regionalists,” undemocratic electoral practices such as those described above would be more difficult to achieve once regional decentralization has taken place and local self-government is in place. The so-called “rayonists” believe that Abkhaz and South Ossetian secessionism and the threat of destabilization they present make radical reforms impossible at the present time. Both the regionalists and the rayonists are currently

²⁵ The information on population of single regions was obtained in the Georgian State Department of Statistics and is based on the data as available on January 1, 2000.

²⁶ Observers from the Georgian NGO International Society for Fair Elections and Democracy (ISFED) have many times been protesting against falsifications of the results of presidential, parliamentary, and local elections. See also “archevnebis gakalbeba gamkalbebels tsudat daubrundeba. khelisupleba archevnebshi ukheshad ereva,” *Samokalako Sazogadoeba* (Civil Society), No. 5–6 2001, p. 6.

represented in the Georgian government and parliament.

The amendments to the Organic Law on Local Self-Government and Government—which were adopted by the Georgian Parliament on August 2, 2001—reflected the struggle between these two currents of thought. On the one hand, the newly amended Organic Law maintained the status quo by stating that the president has the power to appoint all *rayon* executives as well as the mayors of the cities of Tbilisi and Poti. The legislation also confirmed the right of the “governors” to dismiss the *rayon* councils, while the *rayon gamgebelies* have the right to dismiss councils of self-government. On the other hand, Article 48.2 of this law says that the “State Program on Reform of Administrative and Territorial Arrangement of Georgia” should be adopted until December 15, 2002. This paved the way for the regionalists to start a debate on the future of regionalization in Georgia. The regionalists proposed that regional councils and governors should be elected.²⁷

3.3. The Autonomous Republic of Ajara

Ajara, mainly populated by Muslim Georgians, represents the only former Soviet autonomous entity that currently remains under the formal jurisdiction of the central government of Georgia.²⁸ The constitutional links between the central government and this autonomous republic have not yet been fully defined. Discussions leading up to the 1995 Georgian Constitution introduced the prospect of federalization, but the discussion on the status of Ajara has been postponed until further progress is achieved in determining the federal status of Abkhazia and South Ossetia. However, in April 2000, Ajara received the constitutional status of an autonomous republic (as was the case during the Soviet period) and adopted its own constitution in Summer 2000. Ajara has a number of exclusive legislative and administrative competences and can implement many of its own internal administrative arrangements.

Although the relationship between the Georgian central government and Ajaran authorities is relatively tense, Ajaran leaders have never put forward secessionist claims. They do not assert that their population has a separate ethnic identity from the Georgians. The political tensions between Tbilisi and Batumi (the capital of the Ajaran republic) find their expression primarily in power struggles between the central authorities and those of the autonomous republic—struggles which have a highly personalized character. All attempts to normalize the relations between Tbilisi and Batumi—for instance, in respect to fiscal policies—have failed thus far. The Georgian and Ajaran leaders have nevertheless managed to come to agreements on different occasions, including Ajaran Supreme Council Head Aslan Abashidze’s support for Eduard Shevardnadze in the presidential elections of April 9, 2000.²⁹ The introduction of the name “Ajaran

²⁷ This reform does not exclude the possibility of having a presidential representative on the regional level.

²⁸ According to the Georgian State Department of Statistics, in January 2000, the total population of Ajara amounted 366,600.

²⁹ The Ajaran Supreme Council Chairman Aslan Abashidze is considered to be Shevardnadze’s political opponent. However, on November 5, 2001, Georgian President Shevardnadze appointed Abashidze as the

Autonomous Republic” in the Georgian Constitution in April 2000 was granted in exchange for Aslan Abashidze stepping down as a presidential candidate. This means that the only substantial step in the federalization of Georgia since independence was the result of a *quid pro quo* electoral agreement.

The presence of an Ajaran Autonomous Republic representation in Tbilisi plays an important role in regulating the relationships between the Georgian and Ajaran governments. This representation is a novelty in the history of relations between the central government and the Autonomous Republic of Ajara—until 1998, the Ajaran representative in Tbilisi only had an office (and no staff) in the Georgian State Chancellery. The Ajaran representative’s main task is to develop cooperative ties with the central authorities, attend meetings of the central government, and express his position. The representative is at the same time the vice-chairman of the Ajaran Supreme Council. These activities are meant to facilitate the exchange of information between the central and regional levels of government.

The CLRAE election observation mission that monitored the parliamentary elections and the elections for Head of the Autonomous Republic, held in Ajara on November 4, 2001, noted that the elections were well organized, as compared to the rest of Georgia, but regretted the lack of political pluralism. Political life in Ajara is entirely dominated by the Revival Union Party. The lack of political opposition was also the main reason why the CLRAE refused to send an observation mission to the Ajarian local elections of June 2002.³⁰

3.4. Ajara and the Assembly of European Regions (AER)

Ajara has signed bilateral agreements with regions in the Russian Federation. However, the development of interregional ties is still in an embryonic state and depends largely on personal diplomacy by the Head of the Ajaran Autonomous Republic, Aslan Abashidze. As a member of the Assembly of European Regions (AER), Ajara has developed bilateral ties with a number of regions in the European Union. Created in 1985, the AER is a forum that facilitates cooperation among 300 regions of 25 different European countries.³¹ It stimulates interregional cooperation on all levels and promotes cultural, economic, and social partnerships on the basis of the principle of complementarity among the regional, national, and European levels of governance. Regions from countries that want to be admitted into the European Union are represented in this organization. The AER has initiated some programs in the development of regional democracy and administration, and it has established long-term cooperation and partnership links between Eastern and Western Europe. In 1996, Ajara was the first

president’s representative in negotiations on a solution to the Georgian-Abkhaz conflict.

³⁰ See Congress of Local and Regional Authorities of Europe, Bureau of the Congress, *Report on Local Elections in Georgia* (June 2, 2002), Strasbourg, France, July 10, 2002, p. 16. The local elections in Ajara were organized on June 16, 2002, two weeks later than the local elections in Georgia.

³¹ See <http://www.are-regions-europe.org/>

region of the Caucasus to join this organization. For the AER, the membership of Georgian regions in the organization is consistent with its goal of constructing a “Greater Europe of the Regions.”³²

For Ajarian leader Abashidze, integration into a pan-European structure strengthens his local political legitimacy. Ajara’s membership in the AER was followed by the Georgian region of Imereti (administrative center: Kutaisi). Imereti’s membership in the AER serves long-term political purposes for the Georgian government. Georgia has hardly any realistic prospect of being incorporated into plans for European Union or NATO enlargement in the foreseeable future, but the participation of its regions in interregional cooperation networks such as the AER may promote Georgia’s long-term integration into European political structures.

However, this kind of political integration is not an easy task. The development of regional cooperation still depends on the further development of democratic self-government. Neither the Ajaran Republic nor the Georgian regions conform to the European standards in this respect. Political pluralism does not yet exist in Ajara, and Georgian governors are not elected politicians, but officials appointed by the Georgian president. Moreover, the personal conflicts and political rivalry between the governor of Imereti and the Ajaran leader hinder cooperation with other AER members, who generally do not want to be involved in such conflicts. Moreover, Georgia’s image as a society plagued by high levels of corruption also interferes with its attempts to coordinate more closely with European regions.

4. Foreign Policymaking in Federations and Confederations

The distinction between federations and confederations is crucial to the political disputes between the Georgian, Abkhaz, and South Ossetian authorities. Each of these two constitutional options would have very different consequences on a state’s foreign policy structures. Both federations and confederations are federal structures characterized by multi-tiered forms of governance in which powers and competences are shared by at least two levels of government. The major differences between federations and confederations are as follows:

Sovereignty: Whereas a federation is a state that is internationally recognized as sovereign and independent, a confederation is a union of states that are recognized individually by the international community as sovereign states. A confederation is a loose structure created for limited purposes and often for restricted duration. In a federation, federated entities may possess certain sovereign rights such as exclusive legislative competences and particular features of statehood such as a constitution, a flag, and different tiers of government. They may have so-called domestic sovereignty (internal sovereignty within the limits of their competences), as it is the case for the Swiss cantons, but even under these circumstances, they are not independent entities on the international scene.

³² At present, regions from the other two states of the South Caucasus (Armenia and Azerbaijan) are not represented in the AER.

Constitution versus treaty: The state-quality of a federation is expressed in a constitution, from which each level of government derives its rights and competences. In a federation, no level of authority is “constitutionally subordinate” to the other.³³ In a confederation, equality between the constituent states is enshrined in an international treaty, which further regulates limited spheres of shared competences.

Right to secession: In a confederation, every single state retains a unilateral right to secede. Such a unilateral right is not generally acknowledged in a federation. In a federation, constitutional or other formal rules may, however, be implemented to regulate the right to secede, but this right cannot be invoked unilaterally.

This paper is based on a preference for the model of a federation over a confederation. This choice is based on two considerations that require further explanation. First, regional integration and multi-ethnic coexistence are difficult to achieve in a political framework that is based on the conception of sovereignty as being indivisible, as it is in a confederation. Under such an arrangement, no exclusive (or sovereign) competences can be transferred to a higher level. Conflicts in a confederation are ultimately resolved by the principle that each state retains its own supreme authority and may unilaterally withdraw from the common polity. This principle and lack of institutional flexibility make it difficult for confederations to address severe ethno-political conflicts effectively. Seen from this perspective, the choice for a confederation does not usually facilitate the coexistence of ethnic groups.

The normative choice for a federation may also be defended as being in the interest of the international community. To the extent that national sovereignty remains the cornerstone of international order, the proliferation of independent states—which would be facilitated by the multiplication of confederations—has to be considered as a serious long-term threat to international stability.

In addition, the states that make up a confederation are recognized as subjects of international law and possess the status of full international legal personality. They delegate the right to exercise some competences on the international level to a common body. In a federation, the federated units may have internal sovereignty, but they may never be considered sovereign on the international level. However, as we will demonstrate, federated units may possess a limited international personality in their fields of competence. This may give a limited expression of their right to national self-determination. In the case of a federalization of Georgia that would include Abkhazia and South Ossetia, the field of competences of the federated states may even be larger than the one attributed to the federal government.

The proposals made by the Yugoslav President Vojislav Kostunica in the discussions with Montenegro on the future of the Yugoslav Federation in January 2001 may be relevant to Georgia’s current situation. Kostunica suggested that “the number of

³³ Watts, p. 7.

functions to be performed at the federal level should be minimal, basically defined by the federal units' need for the joint and effective resolution of issues of common interests."³⁴ The 'Constitutional Charter of the State Union of Serbia and Montenegro', adopted by the National Assembly of the Republic of Serbia, the Assembly of the Republic of Montenegro, and the Federal Assembly in January and February 2003 provides for a limited list of goals of the new federation, such as the respect for human rights, the integration into European structures, and the harmonization of its legislation and practices with European and international standards.³⁵

It may be concluded from this brief analysis that there are substantial differences between federations and confederations in terms of the sovereignty of their constituent parts, but that federations and confederations are similar in other respects. Federations, however, are superior to confederations in respect to their ability to address ethnic conflicts and to provide political stability in particular contexts, such as the ethno-national conflicts between Georgians, Abkhaz, and Ossetians.

5. Types of Competences

The relationship between the levels of government in a federation depends to a large extent on legislative and administrative competences that they possess. What matters most is not the number of competences allocated to each level but the type of competence that each level possesses.³⁶ Therefore, the question of the qualitative distribution of competences on the internal level is essential to federal systems.

The following types of competences have to be taken into consideration when contemplating a possible federal arrangement in Georgia that would include both Abkhazia and South Ossetia:

³⁴ *Yugoslav President's Proposal for Reconstruction of Yugoslavia*, Tanjug, Belgrade, Serbia, January 10, 2001.

³⁵ English translations of the Constitutional Charter of the State Union of Serbia and Montenegro and the law of its implementation can be found on the Internet on http://www.mfa.gov.yu/Facts/charter_e1.html and http://www.mfa.gov.yu/Facts/law_implementation_e1.html

³⁶ Article 3.1 of the Georgian Constitution lists 18 competences, which belong exclusively to the central government. Article 2.2 of the constitution of the Autonomous Republic of Ajara, on the other hand, lists 28 fields of competence regulated exclusively by the government and parliament of Ajara. These figures, however, do not say much about the established relationship structure between the two governmental levels.

Table 1. Types of Competences and their Functions

	Exclusive Competences	Shared Competences	Concurrent Competences	Framework Legislation
FEDERATION	Each level of governance has an exclusive legislative and/or administrative responsibility for a field of competence and regulates it alone.	Several levels share the legislative and/or administrative competences in such a way that each of them can regulate certain subject matters but not the field of competence as a whole.	The federated states can legislate, as long as the federal level has not made use of its legislative competences.	Federal law provides the framework that needs to be filled in by the legislation of the federated states. Thus, both levels can legislate and administer in the same policy fields.

	Exclusive Competences	Shared Competences	Concurrent Competences	Framework Legislation
Consequences	Facilitates independent policies of federal levels. A choice for this type of system may help prevent conflicts between government levels in an <i>ethnofederation</i> .	Joint action is necessary and coordination and cooperation are promoted.	Leads to hierarchical ties between the levels of government in as far as the federal law, once enacted, excludes legislation of the federated states.	Leads to hierarchy and dependency between the levels of government, as the federated entities have to adapt their legislation to that of the federal level.

5.1. Exclusive Competences

A considerable number (perhaps even a majority) of legislative and administrative competences in a Georgian federation could be allocated to Abkhazia and South Ossetia according to the principle of exclusivity. This would mean that the federal government as well as the federated units would have exclusive legislative and administrative responsibility for certain competences. In Georgian-Abkhaz negotiations, exclusive competences have been referred to as “sovereign rights.” The fact that different levels of government would not be allowed to intervene in each other’s fields of exclusive competence would facilitate each level of government’s ability to act independently. This kind of arrangement could help to prevent conflict and enhance overall stability.

It should be emphasized that it would be appropriate to avoid a so-called functional division of powers in Abkhazia or South Ossetia. Under such a scenario, the legislative and the administrative prerogatives would be split among the different levels of government, which may lead to complicated political negotiations and consequently increase tensions between them.

5.2. Shared Competences

When competences are shared by the different levels of government, each level can only regulate certain subject matters within a single field of competence. Such a type of division of competences requires a high degree of coordination and cooperation, which increases the risks of conflict. Close ties and conflict-solving mechanisms between the different levels of government have to be developed and maintained in order to achieve a sufficient degree of coherence in policymaking. In certain *ethnofederations*, it may be recommended that shared competences be divided into narrower sub-competences and allocate them exclusively to one level of government.

5.3. Concurrent Competences

The nature of concurrent competences is such that the federated entities can legislate on issues where the federal government has not exercised its legislative competences. Under this arrangement, the regional government has “potential authority in a particular field until it becomes a matter of federal importance.”³⁷ Concurrent jurisdiction aims at the creation of legal homogeneity over the whole territory of a federation. This leads to a hierarchy of legal norms in so far as the federal laws prevail over the laws of the federated entities. Such a hierarchical model may lead to conflicts in an *ethnofederation*—where the existence of federated entities is based on ethnic, national, and/or linguistic characteristics—to the extent that a hierarchy between state structures may then be perceived as establishing hierarchical relations between national communities.³⁸ In order to avoid hierarchies and competence conflicts between the governmental levels in such federations, the number of concurrent competences should therefore be kept as low as possible. In the case of certain federated entities in asymmetrical federal structures—and Abkhazia and South Ossetia may be such examples—concurrent competences may be excluded entirely.

5.4. Framework Legislation

A federation can create framework legislation to help it regulate certain competences, so that federated units have some freedom of implementation. In the German federation, for example, the question of university diplomas (which belongs to the field of higher education) is regulated by federal framework legislation and implemented by the *Länder*. Like concurrent competences, framework legislation is aimed at guaranteeing a certain degree of legal homogeneity, but in contrast to the former, a framework law does not prevail over or abolish the law of the federated entities. Instead, it provides some room for both legal orders to function and gives the federated entities some degree of liberty in legislative and administrative fields.

6. Types of External Political Activities: Treaty-Making and Cross Border Cooperation

Different types of legal instruments, such as international treaties and agreements, may play a role in determining a federation’s external political activities. The international legal system differentiates between international treaties and agreements. The following table summarizes the differences in the nature between these two types of legal arrangements.

³⁷ Watts, p. 38.

³⁸ In the Belgian ethno-territorial federation, the number of concurrent fields is reduced to the minimum and is restricted practically to one policy field, taxation. On the other hand, in the German Federation, which is based on the territorial principle, a broad number of legislative fields have concurrent nature.

Table 2. International Treaty *versus* Agreement

	Parties	Legal Status
International Treaty	Concluded between subjects of international law	Governed by international law
Agreement	Concluded between subjects of domestic law	Governed by domestic law

The concept of “subject of international law” is central to this distinction. The power of a political unit to conclude an international treaty in a respective field of competence takes its source from the principle of an international legal personality. Possessing an international legal personality means having the status of a subject of international law. The right of sovereign states to conclude treaties is determined by international law. The right of federated entities of a number of federal states such as Germany, Belgium, and (to a very limited extent) Austria to conclude international treaties is granted to them by their constitutions. In this case, this right is the expression of an internal division of power within a state. The treaty-making powers of federated entities are, as a rule, restricted to all or to parts of their legislative competences on the internal level. These powers may have an exclusive character, as in Belgium. But they may also have a concurrent character if the federal government is not excluded from treaty-making in federated entities’ fields of competence, as is the case in Germany and Austria.³⁹

Federated states may enjoy the status of “international legal persons” in so far as they become bearers of certain rights and limited responsibilities under international law. Regulations concerning the exclusivity of treaty-making competence vary from federation to federation. In some federations, entities may only conclude agreements that do not create any rights and responsibilities for the parties on the international legal level.

The Belgian and German federal models of foreign policymaking grant more powers to the federated entities than do most other federations. In Belgium, the federal government cannot interfere with the treaty-making powers of the federated entities. In Germany, the federal government’s treaty-making competence is all-encompassing, although consultation with the *Länder* is required. Federated entities in Germany also possess the right to conclude international treaties in limited areas with third parties and therefore the treaty-making competence of the German federated units has a concurrent character.

In federal polities that grant their federated entities certain treaty-making powers, the federated entities may develop cross border ties by either treaty or agreement. In these instances, a federation’s constitution and legislation usually regulate the mechanisms of

³⁹ Although the German *Länder* possess certain treaty-making powers according to Article 32 of the Basic Law, it is normally the federal government that concludes international treaties for the *Länder*. However, the treaty procedure is accompanied by intensive consultation and cooperation between the Federation and the *Länder*.

internal coordination and the federated entities' degree of involvement in the process of treaty negotiation. On the basis of a constitutional innovation of December 1992, the German *Länder* can now transfer sovereign powers to cross border institutions (*grenznachbarschaftliche Einrichtungen*), insofar as the *Länder* "are competent to exercise state powers and to perform state functions." In order to do so, however, they need the consent of the federal government.⁴⁰

The constitutions of unitary states, on the other hand, do not grant treaty-making competences to a state's regions. As far as cross border activities are concerned, the regional entities of unitary states have to restrict themselves to transnational agreements, utilizing domestic law mechanisms if necessary.⁴¹ These regional entities may only become parties to bilateral or multilateral international treaties when the central government acts for them. The same can be said about the federated entities, which do not possess legally guaranteed treaty-making competences. In this case of federated entities, foreign policymaking remains the sole responsibility of the federal government.

In any future federalization of Georgia, its federal government, federated entities, and regional governments would have the opportunity to develop cross border ties. The federal constitution would determine the way that cross border relations would be established. Regional entities that were not granted treaty-making powers in the federal constitution would rely on the central government to negotiate, sign, and ratify treaties for them. As for the federated entities with treaty-making powers, they would have the right to enter the treaties either alone or together with the federal government, if the subject of the treaty touches upon the competences of both entities.

Cross border cooperation activities are bottom-up initiatives that serve the aim of fostering cultural, economic, or political ties among the regional entities. A European example that is relevant to the conflict in South Ossetia is the cross border working group known as *Arge Alp*. The *Arbeitsgemeinschaft Alpenländer* or "Working Community of the Alpine Countries," which was founded in 1972, consists of 11 German, Austrian, Italian, and Swiss regional entities. The *Arge Alp* does not have a legal personality, and its decisions are not binding for its members. The *Arge Alp* serves the common interests of both the Austrian Tyrol and the Italian South Tyrol. The establishment of the working group facilitated the reopening of the border dividing the

⁴⁰ See new section 1a in Article 24 of the Basic Law.

⁴¹ On cross border cooperation in Europe see Matthew Cannon, "The Emergence of the Transmanche Euroregion Policy Networks and Meso-level Development," paper presented at the conference "Regionalism in the European Union," Georgia State University, Atlanta, Georgia, April 2001; Nicola Catellani, "The Emergence of Multilevel Institutional Structures at the Borders of the European Union," paper presented at the conference Multi-Level Governance: Interdisciplinary Perspectives, University of Sheffield, Sheffield, UK, June 2001; Brigid Laffan and Diane Payne, *Creating Living Institutions. EU Cross-Border Cooperation after the Good Friday Agreement*. A Report for the Centre for Cross Border Studies, Institute for British-Irish Studies, UCD, 2001 (can be downloaded from <http://www.qub.ac.uk/ccbc/PRcreatingliving.htm>); John Loughlin, "Regional Autonomy and State Paradigm Shifts in Western Europe," *Regional and Federal Studies* XLIII (2000), p. 15–36.

historical province of Tyrol and fostered cross border cooperation in fields such as culture and journalism.⁴²

To summarize, cross border cooperation represents a flexible method for regional governments to deal with common issues and can take place within different types of institutional structures and legal frameworks. Fostering top-down and bottom-up initiatives for cross border cooperation may strengthen regional contacts and identities, as well as promote the development of internal relationship structures between central and regional government authorities.

Treaty-making power is not a necessary condition for a regional entity to enter into cross border partnerships. Cross border cooperation can take place within a variety of legal frameworks. The difference between treaties and agreements does not affect the contents or efficiency of regional cooperation.⁴³ In certain cases, it may even be more difficult for regions with treaty-making power to cooperate with neighboring countries. In the case of Belgium, for instance, France has traditionally not been eager to sign bilateral treaties with Belgian federated entities. The Belgian government has had to intervene in such cases in order to have the rights of their federated entities acknowledged on the international level.

But the case of Belgium also demonstrates that treaty-making power may help a national community receive international recognition of a limited external right of national self-determination. This process is conducted in accordance with the federal principle that the identities and integrity of the constituent nations have to be respected. For this reason, the 60,000-member German-speaking community in Belgium (which is smaller than the Abkhaz or Ossetian community in Georgia) has received wide-ranging treaty-making powers.⁴⁴ For regions that are not striving for an expression of a right of national self-

⁴² The institutional structure of the working community consists of the conference of the heads of governments, four specialized commissions, a number of working groups, a leading committee, and a secretariat. The conference of regional governments takes place once a year, its location rotating among the member-regions according to alphabetical order. On the Working Community of the Alpine Countries and other cross border establishments see Peter Schmitt-Egner, *Handbuch der Europäischen Regionalorganisationen* (Baden-Baden, Germany: Nomos Verlagsgesellschaft, 2000).

⁴³ The Austrian *Länder*, for example, have possessed limited treaty-making powers in fields of their legislative and administrative competences since 1988. According to Article 16 of the Constitution, they may conclude international treaties only with neighboring states or parts of states. Due to the complicated formal requirements of the treaty-making procedure and the possibility of involvement in various cross border establishments, the Austrian *Länder* never made use of their treaty-making competence but have developed intensive cross border ties on an agreement basis.

⁴⁴ The highly complex Belgian Federation is composed of the following federated entities: the Flemish Region, the Walloon Region, the Region of Brussels Capital, the Flemish Community, the French Community, and the German-Speaking Community. Regions are responsible for territorial matters. Extraterritorial or personalized matters, such as culture and education, belong to the competences of the Communities. The governments, parliaments, and administrations of the Flemish Region and the Flemish Community have been merged so that there is only one Flemish government, parliament, and administration.

determination, it may actually be preferable (for reasons of efficiency) to sign simple agreements, rather than treaties, with European states or regions.

7. Two Possible Models of a Federal State

The distribution of competences in a federation may either be asymmetrical or symmetrical. The following section examines the main characteristics of both models and how they would play out if applied to Georgia, Abkhazia, and South Ossetia. Three options are possible within the two federation models:

Option A: The internal organization of federated states is defined by the federal constitution.

Option B: The internal organization of federated states is not addressed in the federal constitution.

Option C: The federal constitution includes only some guiding principles that have to be respected in each federated unit's own constitution.

Option A and Option B would have different consequences for certain aspects of the federal system—including the design of the Second Legislative Chamber. Option C would leave more freedom than Option A for federated states to elaborate a system that takes into account the specificities of the region.

7.1. An Asymmetrical Model of Distribution of Powers

As a federation, Georgia (henceforth “the Federation”) would consist of Abkhazia, South Ossetia, Ajara, and the regions of Georgia. Among these federated entities, powers would be distributed in a way that would give Abkhazia and South Ossetia stronger positions than those of other federated entities. In foreign policy, Abkhazia and South Ossetia would have exclusive competences, to which the principle *in foro interno, in foro externo* would apply. This principle means that the constitution would grant the two entities a right to conclude international treaties in fields of their exclusive legislative and administrative competence. This right would represent the legal reflection on the external level of the competence to legislate and administer on the internal level.

In this respect, Abkhazia and South Ossetia could be subjects of international law and possess limited international legal personality. This means that they would bear certain rights and limited responsibilities under international law when signing international treaties. South Ossetia and Abkhazia could conclude their own treaties either in fields of their exclusive competences or in cooperation with the federal government if the treaty touches upon the competences of both levels.

In the cases of Ajara and the regions of Georgia, there are two options:

Option A: Ajara and possibly also the regions of Georgia would have the right to conclude international treaties in their fields of competence provided that they receive the consent of the federal government.

Option B: Ajara and possibly the regions of Georgia would only have the right to exchange partnerships and regulate cooperation with other regions on the basis of agreements, and these agreements would not have the quality of treaties under international law.

In the cases of Abkhazia and South Ossetia, the federated government's intention to conclude an international treaty would have to be communicated to the federal government. The federal government would be able to raise objections in the following five cases:

1. The intention of the treaty clearly goes against formulated foreign policy principles of the Federation;
2. The other party to the treaty is not recognized by the Federation;
3. The Federation no longer has any diplomatic relations with the other party to the treaty;
4. Diplomatic relations between the Federation and the other party to the treaty are seriously damaged;
5. The treaty is contrary to the international obligations of the Federation, if these are formulated in an official document or belong to the generally recognized principles of international law.

If objections arise, the treaty must be provisionally suspended, and a mediation process must take place with the federal and federated units' governments participating on an equal basis. This may happen within specific institutional structures. If no agreement can be reached within these institutions, a mediation procedure involving international organizations (such as the Council of Europe, the Organisation for Security and Cooperation in Europe, or institutions linked to these organizations) should take place.

Mechanisms for mediation have to ensure the coherence of foreign policymaking. The mediation procedures should also prevent relations between federal levels and the internal stability of the Federation from being disturbed by an international diplomatic crisis. As far as the international treaties concluded by the federal government are concerned, the second chamber of the legislature—which represents the federated entities—would have to consent to their ratification. This would also apply to mixed treaties, i.e. treaties that concern fields of competence of both levels. In the field of ratification of international treaties concluded by the Federation, Abkhazia, and South Ossetia would have the right either to veto or to opt out if such treaties touch upon their exclusive competences. This right could only be used after a preliminary consultation process with the federal government.⁴⁵

⁴⁵ It should be considered, however, that the territorial exception where a federated state does not accept being part of an international treaty that is ratified by the federation is not regarded as normal practice yet. Territorial exceptions are not forbidden, but they have to be considered as an exception, which states and

7.2. A Symmetrical Model of Distribution of Competences

The second model, suggesting a symmetrical distribution of competences, is similar to the first one with the following exceptions: (1) There would be three federated states on the present territory of Georgia: Abkhazia, South Ossetia, and Georgia, and (2) Ajara would be an autonomous republic in the territory of the federated state of Georgia. A symmetrical distribution of competences may be based on an asymmetrical distribution of population and economic resources: Georgia has a far larger population than Abkhazia and South Ossetia. It may also lead to an asymmetrical power structure, where the weaker entities have few opportunities to counterbalance the dominance of the stronger party.

In order to avoid hierarchical relationships between the federal government and the federated units, concurrent competences would generally not be used in this model. The principle of *in foro interno, in foro externo* would be applied to each federated unit. The federal government would have no right to enter into international treaties in fields of exclusive legislative competences of the federated states. Moreover, the mechanism for ensuring the coherence of foreign policymaking, as described in the asymmetrical model, would apply to all three federated states.

To summarize the features of the two models described, Model 1 (7.1) is asymmetrical concerning the institutional structure and more symmetrical than Model 2 (7.2), if we take the geographical-territorial principle into account. For its part, Model 2 is symmetrical as far as the institutional structure and the division of competences are concerned and asymmetrical according to the territorial size of the federated entities.

7.3. Applying the Two Federal Models: The Interaction with the European Union

The Partnership and Cooperation Agreement (PCA) between the European Union (European Communities and their member states) and Georgia came into force on July 1, 1999. It institutionalizes the “political dialogue” between the signatories and creates a legal framework for all spheres of cooperation. It covers most domains of policymaking—including energy, environment, education, agriculture, consumer protection, and transportation. Defense is not mentioned in the agreement. The main institutions are the Cooperation Council, the EU-Georgia Joint Cooperation Committee, and the Parliamentary Cooperation Committee. The Cooperation Council supervises the implementation of the PCA agreement, examines issues of common interest, and makes recommendations if necessary. In the Cooperation Council, members of the Georgian government, the Presidency of the European Union, the two other members of the EU troika, and the European Commission meet on a yearly basis. The EU-Georgia Joint Cooperation Committee ensures the continuation of dialogue between Georgia and the

international organizations may only accept under certain conditions or even refuse. This means that the UN would have to search for ways to facilitate the application of such an option and make it generally acceptable, in case peace agreements between Georgia, Abkhazia, and South Ossetia would provide for it.

EU and the implementation of the agreements. It is made up of high- and middle-level civil servants of the European Commission and Georgia.

The application of the two models of a federation described above to the interaction between the Federation and the European Union would have significant consequences for the functioning of the PCA. Some issues regulated by the PCA would probably fall within the exclusive competences of the federated states of Abkhazia and South Ossetia. If a new PCA agreement were signed, negotiation and ratification procedures in the Federation would have to take place according to the constitutional distribution of competences. In the field of their exclusive competences, the federated states would be full partners in the negotiations on the PCA, on an equal level with the federal authorities. But the Federation would have to speak with “one voice” to the European Union, which means that the various entities of the Federation would have to coordinate their positions in advance. This holds also in the case of their participation in the yearly meetings of the Cooperation Council.

8. Discussing the Two Federal Models: Georgian and Abkhaz Reactions

A brief description of the two models of foreign policymaking was discussed in Tbilisi and Sukhum(i) with Georgian and Abkhaz officials, parliamentarians, researchers, journalists, and members of the NGO community.

8.1. Georgian Reactions ⁴⁶

Despite the fact that the Georgian authorities, parliamentarians, researchers, and NGO members are generally in favor of a federal solution to the conflict in Abkhazia, this issue is seldom discussed in terms of its consequences for foreign policymaking. This is because any discussion on concrete options necessarily involves a discussion of compromises. Consequently, it is difficult for officials and Georgian MPs to give detailed opinions on federal models of government. It seems that researchers, independent media, and members of opposition parties are more open to these kinds of discussions.

Many Georgian officials who we interviewed had positive reactions to our federal model

⁴⁶ In Georgia, these two alternatives were discussed in November 2000 with members of parliament (V. Gelbachiani, Deputy Chairman of the Regional Committee of the Georgian Parliament and other MPs); members of the NGO community (Ghia Nodia and David Darchiashvili of the Caucasian Institute for Peace, Democracy and Development, George Khutishvili and other members of the International Centre on Conflict and Negotiation, Alexander Kukhianidze from the International Society for Fair Elections); experts in conflict resolution and federalism (Levan Alexidze, Chief Advisor to the President of Georgia on International Law Issues; Ambassador Alexander Rondeli, head of the Foreign Policy Research and Analysis Centre, and his researchers; George Khubua and other researchers of the Institute for State and Law at the Academy of Sciences of Georgia). We have also made presentations to Ambassador Dieter Boden (Special Representative of the UN Secretary-General in Georgia), Ambassador Kenneth Spencer Yalovitz (United States), Ambassador Wolf-Dietrich Vogel (Germany), Ambassador Musset (France), and Mr. Ivar Vikki, Deputy Head of the OSCE Mission to Georgia. Written comments have been received from Georgia, from Minister Malkhaz Kakabadze, and from research assistants of the parliamentary Temporary Commission on Problems Connected with Abkhazia.

of foreign policymaking. They realized the difference between this model—which is based largely on Western European experiences in overcoming severe ethnic conflicts—and their experience under the Soviet model, where federalism (over the long term) exacerbated ethnic conflicts. They agreed that federations do not necessarily have to be considered stepping-stones to secession. Mechanisms can be designed to prevent conflicts between the various levels of governance in a federation. The choice between various types of competence in foreign policymaking is particularly important in this respect. Many Georgian officials saw no problem in granting treaty-making powers to Abkhazia—to the extent that the exercise of these powers would not contradict federal foreign policymaking. However, some Georgian interlocutors wanted to implement strong guarantees in this respect, such as requiring the federal government's approval of any treaty contracted by a federated entity.

As far as the structural characteristics of the two models are concerned, the asymmetrical model found support in Georgia whereas the symmetrical model faced significant opposition. There are a number of reasons for this. The first model favors the inclusion of Georgia's regions in the federalization process, thereby acknowledging their political relevance and separate identities. Additionally, the federalization process should not be restricted to the problems of unification and conflict management only. Apart from that, a large number of federated units would facilitate alliances among those units and contribute to the stability of the federal system over the long term. However, an asymmetrical federal system may lead to difficult negotiations between the federal government and the federated entities (as illustrated by the examples of the Russian Federation and Spain).

Moreover, the symmetrical model met opposition from the Georgian side for reasons of principle. Most Georgian officials rejected a symmetrical distribution of competences between three federated entities. They argued that the three national communities (Georgians, Abkhaz, and Ossetians) differ greatly in terms of their population and therefore would not be accurately represented in a symmetrical federation. In addition, there would be no need, according to some Georgian officials, for symmetry between Abkhazia and South Ossetia. Whereas the Abkhaz have to be considered as autochthonous to the region of Abkhazia, so the argument goes, the Ossetians would not be autochthonous to South Ossetia. Some argue that the Ossetians should therefore get no more than cultural autonomy in the region of Shida Kartli. A less radical position envisages a status for South Ossetia that would be higher than the status of an autonomous region (which is what South Ossetia was within the Soviet Socialist Republic of Georgia) but lower than the status that Abkhazia would have.

Georgian officials did not address the question of how the constitutions of Abkhazia and of South Ossetia should be reconciled with the Constitution of the Georgian Federation (according to the three options described above).⁴⁷ This illustrates the lack of concrete thought on matters that are essential to the functioning of a future Federation that

⁴⁷ The constitutions of those two federated states may either be of no concern to the constitution of the federation, or the constitution of the federation may include some guiding principles for the internal organization of the federated states even fully determine its internal structures.

includes those two entities. During our discussions in Georgia, we also raised the problem of devolution that is encountered in the United Kingdom according to an asymmetrical pattern, where separate institutions were created for Scotland and Wales, but not for England. Georgia could encounter similar problems if its federalization takes place according to the asymmetrical model. It seems that neither of these kinds of problems has been discussed in Georgia.

One of the main concerns has to do with the name of the proposed Federation. The ethnic Georgian population represents about 70 percent of Georgia's total population, but almost all key positions in the Georgian state are occupied by ethnic Georgians. A federation would necessarily require a redistribution of state posts according to ethnic criteria, which would include the establishment of certain parity principles. This means that the language barrier, which limits participation of non-ethnic Georgians in public life, would need to be addressed.

Fear is the main reason for many Georgian leaders' reluctance to discuss the concrete consequences of a federalization process. Some officials fear that such a process could weaken the Georgian nation still further or even lead to the complete dissolution of the Georgian state. Some interlocutors expressed the fear, for instance, that federalization may lead to secessionist claims in regions such as Javakheti, which is mainly populated by ethnic Armenians. These officials worry that granting treaty-making power to federated units such as Abkhazia or South Ossetia would allow for "proto-diplomacy" (diplomatic activity that prepares the ground for full independence, contradicting the foreign policies of the federal government). This would be contrary to the goal of federalizing foreign policymaking, which is to favor the "para-diplomacy" of the federated entities (diplomatic activities in parallel with those of the federal government, without contradicting them).

There is also a fear that strong competences in the hands of the federated entities, such as a treaty-making power, would make it easier for outside powers, such as Russia and Armenia, to take advantage of Georgia. Some of the politicians and scholars that we interviewed in Georgia did not share these fears and expressed their hope that the regionalization and federalization of Georgia could start soon. This may provide Abkhazia and South Ossetia with a concrete example of self-government on various state levels.

8.2. Abkhaz Reactions⁴⁸

After Abkhazia's declaration of independence in October 1999, federal alternatives became anathema in the region. This represented a significant shift from the previous period when Abkhaz leaders were ready to discuss the option of a confederal "common

⁴⁸ In Abkhazia, the authors conducted discussions with President Vladislav Ardzinba, Minister of Foreign Affairs Sergej Shamba, and Deputy Minister of Foreign Affairs Georgii Otyrba and members of the NGO community. Mr. Tamas Ketsba, chairman of the Legal Committee of the Abkhaz Parliament, Mrs. Leila Tania, Natella Akaba, Batal Kobakhia, and others. A short report of our discussion with Minister of Foreign Affairs Shamba has been published in *Alia*, November 14, 2000.

state” with Georgia. Under the present circumstances, discussing alternatives to independence involves the question of personal loyalty to the Abkhaz national community, which constitutes an apparently insurmountable hurdle for productive discussions on the issue. There was also a broad consensus among Abkhaz interlocutors that a federation is not economically or politically attractive to them. Some Abkhaz expressed the opinion that democratization—not reunification with Georgia—was the first priority for Abkhazia. Such a reunification was viewed as rendering the task of democratization more difficult.

Strong opposition among Abkhaz to our models of a federation does not mean that discussions on this issue were entirely impossible or that our interlocutors excluded all kinds of federal models from consideration. Some Abkhaz officials have acknowledged that our model of a federation in many ways corresponds to Abkhaz proposals for self-government made before and after the war. But Georgia was said to have refused systematically to engage in a productive discussion on this issue, forcing the Abkhaz side to declare independence as a “last resort.” It was also stated that Georgian officials would still not be ready to accept the type of federal relations expressed in our model. Interlocutors defending this position did not exclude the possibility that federalism may be discussed again at a later date. If this were to happen, the ideas expressed in our paper may be relevant to the debates in Abkhazia. But under present circumstances, after Abkhazia’s declaration of independence, any discussion on the option of a federation would be considered by the Abkhaz to be a return to the past.

Despite its refusal to enter into political negotiations on this subject, the Abkhaz side does not refuse all versions of a federal model. Abkhaz leaders express their preference for a model of distribution of competences based on the sovereignty of the units. The institution of sovereignty enshrined in the constitutions of confederated and freely associated states is considered to provide a stronger guarantee for safeguarding the rights of the smaller units than a symmetrical model of a federation or the possibility of alliances with other constituent units in an asymmetrical federation.⁴⁹ The model of a “free associated state” is an example of a federal arrangement that is acceptable to the Abkhaz authorities. Such a model, which can be found in the association of the Marshall Islands with the United States, would provide Abkhazia with a full international legal personality and the right to unilateral secession.

It was also evident in our discussions in Abkhazia that the memory of war with Georgia represents a major hurdle in the process of a peace settlement. Strong feelings of hostility are still present on both sides. The Georgian government’s blockade of Abkhazia has increased such feelings among the Abkhaz political elite and the population as a whole. But as in Georgia, the Abkhaz fear that radical compromises in designing federal solutions would endanger the survival of their own national community is far stronger there than feelings of hostility.

⁴⁹ Even if none of our Abkhaz interlocutors wanted to make a choice between the two models of a federation, it is clear that the symmetrical model is closer to a confederation than the asymmetrical model. The asymmetrical model is closer to a free associated state than the symmetrical model.

9. Conclusions and Perspectives

Hostility due to the experience of war and feelings of fear due to the unknown consequences of federal arrangements dominate the discussions of a peace settlement between Georgia and Abkhazia. This makes it difficult to discuss concrete aspects of federal alternatives for Georgians, Abkhaz, and Ossetians. Georgian authorities' fears regarding the possible consequences of federalization and regionalization of the state also make it difficult to develop institutions and legal mechanisms that could facilitate cross border cooperation between Georgian regions and neighboring countries, such as the Russian Federation and Armenia.

This paper was not designed to analyze how federations have to address the fears and uncertainties that still remain in the aftermath of a civil war. This would require a separate study of international guarantees and security policies in a federation. A study on federal stability would also have to focus on the design of electoral systems or on the functioning of particular state institutions (such as the second legislative chamber). Instead, this paper has attempted to demonstrate that it is possible to find an institutional balance between the principles of national self-determination and territorial integrity, one that respects the equal rights and integrity of the constituent nations, regardless of their size or power.

Federations do allow for the equality of nations on the domestic level. One of the main aims of this paper has been to demonstrate that a federation not only permits the expression of national self-determination on the domestic front, but also on the international level. Depending on the federal constitution, federated states may have a limited legal personality and be considered subjects of international law. This challenges the rigid traditional dichotomy between an external right and internal right to self-determination posed in the literature on federalism. It is not true that federations only permit an internal right to self-determination. A constitution may, as shown, permit the expression of an external right to national self-determination through treaty-making.

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