

Part 6

Constitutional Models

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12. Georgia and Abkhazia: Proposals for a Constitutional Model

Introduction¹

Since the end of the Georgian-Abkhaz war of 1992-1993 and the beginning of peace negotiations under the auspices of the United Nations², two problems have been dominating the agenda of talks between the Georgian and Abkhaz representatives: the refugees issue and the constitutional arrangement between the Republic of Georgia and the *de facto* independent Republic of Abkhazia-Apsny. These unresolved and interrelated problems remain the most serious obstacles on the way of normalising the Georgian-Abkhaz relations. The present article is devoted to the discussion of a number of issues pertaining to the political aspects of the Georgian-Abkhaz conflict and of the possible constitutional arrangement between both states.

Since 1993 Abkhazia has established itself as a *de facto* independent polity, which, as I argue below, meets all requirements needed for its international recognition as a State. However, as much as Georgia failed to achieve its strategic aim to eliminate the Abkhazian state by using military force, the Abkhazian strategic goal — to achieve international recognition *de jure* of its factual independence — so far has not been attained either, thanks first of all to the Russian-Georgian blockade. Though the sides eventually came to the necessity of reaching a compromise and engaged in discussions of the possibilities and modalities of the reintegration of both polities within the framework of a common state structure, the widely divergent Georgian and Abkhaz positions on the political status of Abkhazia within this so far hypothetical structure have led the political negotiations on that crucial issue to an effective deadlock. While Georgia proposes a form of autonomy whereby Tbilisi would preserve its control over the crucial political and economic aspects of Abkhazia, Abkhazia insists on a non-hierarchical structure whereby both states will be politically equal subjects of a common union state. The state model proposed here is based on a combination of federal and confederal principles, which attempts to reconcile the widely divergent positions of the sides.

The former Georgian SSR was in reality, though not in name, a (highly centralised) federation, comprising, besides Georgia proper, also two Autonomous Republics (Abkhazia and Adjara) and one Autonomous Region (South Ossetia).³ According to the Soviet and Georgian Constitutions, the Autonomous Republics were considered as States. After the Georgian parliament unilaterally abrogated the South Ossetian autonomy in 1991, Georgia was left with two Autonomous Republics. The new Georgian leadership which came to power in January 1992 through a military coup against the politically inexperienced President Zviad Gamsakhurdia⁴, did not conceal its plans to transform the newly independent Georgia into a unitary Georgian nation-state void of any autonomies.⁵ Georgia provisionally returned to the old Menshevik Constitution of 1921, where the autonomous status of Abkhazia was only mentioned but not specified.

Anticipating, not without grounds, that after the abrogation of the South Ossetian autonomy it would be Abkhazia's turn next, the Abkhaz leadership decided to return provisionally to the old Constitution of 1925, by which Abkhazia was united with Georgia on the basis of a Union Treaty, and in which its state sovereignty was enshrined.⁶ At the same time, Abkhazia proposed a federal solution for Georgia, whereby Abkhazia would be a constituent republic within a Georgian federation with a considerable level of political autonomy. The draft of the federal treaty between Abkhazia and Georgia, worked out by Abkhaz lawyers, was published in the Abkhaz press and was sent to the Georgian leadership. The latter was, however, unwilling to discuss this solution and preferred to cut the Gordian knot by a blitz military strike.

The causes for the Abkhaz war were rather complex and still not altogether clear. Its immediate aims were manifold. One of the reasons could have been genuine Georgian fears that Abkhazia, over which territory Tbilisi had practically lost any control, was determined to secede from Georgia.⁷ "A small victorious war" in Abkhazia was seen by major power brokers in Tbilisi, Shevardnadze included, as a quick and efficient means to solve a number of political problems⁸, including, most importantly, the acute problem of the political status of Abkhazia, in a way most favourable for Tbilisi.

The views of the Georgian and Abkhaz sides on the conflict and, in particular, on the question of the introduction of Georgian troops into Abkhazia, differ quite substantially. Justifying the intervention, Shevardnadze maintained that Georgia, as a sovereign state, had a full right to move its army within its own territory. This claim was strongly supported by the Georgian community in Abkhazia and by its leaders, in particular by those of them who were in the Abkhaz government and parliament (with the exception of the Georgian Prime Minister of Abkhazia, Vazha Zarandia). Shevardnadze's explanation sounded satisfactory enough to the international community, for whom the conflict in Abkhazia was an internal Georgian matter.

However, the Abkhaz side insists that Abkhazia was not simply “a territory of Georgia”, but rather a State, without whose consent the metropolitan army had no right to be introduced into its territory. Even according to the Georgian official view, the status of Abkhazia was that of an Autonomous State, not of a usual province or district.⁹ Though Shevardnadze has disingenuously claimed that the introduction of troops was agreed in advance by the Chairman of the Abkhazian parliament Vladislav Ardzinba, Ardzinba has categorically denied this. The Abkhaz parliament in its resolution qualified the Georgian military intervention in Abkhazia as an act of aggression “of armed forces of one state on the territory of another state”.¹⁰

This war has also often been described (especially by Georgian and Western authors) as a war of secession on the part of Abkhazia. One must point out here that secession became rather the outcome of the war. The initial aim of the Abkhaz government was not to separate Abkhazia from Georgia, but to repel the attacking metropolitan army, which was threatening the very existence of the autonomous Abkhaz State. However, the conflict immediately acquired a character and dimensions of a war for national liberation, as it was indeed characterised by Khagba¹¹ and Paye & Remacle.¹²

The vision of the Georgian leadership on the future of Abkhazia, judging from various remarks made during the war by top Georgian politicians, can be reconstructed as follows: the abrogation of the Abkhaz Autonomous Republic and the granting of limited cultural autonomy to two Abkhaz-dominated enclaves in the Ochamchira and Gudauta districts. The direct aim of this policy was the elimination of Abkhazia as a distinct political entity. Shevardnadze himself declined to speak openly on the future of Abkhazia, though he ominously remarked that he did not believe in a federalisation of Georgia and that it was possible to solve the questions concerning the rights and the status of Abkhazians without the federalisation of Georgia¹³. In his address to the Georgian parliament on 17 November 1992 Shevardnadze rejected the idea of establishing federal relations between Georgia and Abkhazia and emphasised that the Georgian leadership was “prepared to consider only defining the legal status of the Abkhaz autonomous region” within Georgia.¹⁴

At the end of September 1993 the Georgian forces were defeated and fled Abkhazia. The Georgian government lost control over this territory. Since that time Abkhazia has run itself as a *de facto* independent polity. The 1994 Constitution proclaims that Abkhazia is a sovereign democratic state, though no separate declaration of secession from Georgia has been issued.

The Abkhaz victory rendered the Georgian plans to eliminate Abkhaz statehood a complete failure. The Georgian political leadership was forced to reconsider its previous negative views on federalism, realising that it had to be seen as the only realistic solution to the complicated Abkhaz problem. But the fact that

such a solution would also have to apply to South Ossetia and Adjara¹⁵ constituted a major psychological obstacle, as those two regions would ostensibly demand for themselves no less political autonomy than would be agreed for Abkhazia. In the Georgian perception, this may lead to a complete disintegration of their country. All these fears and prejudices have led the discussion on the federal restructuring of Georgia to an effective deadlock.

The current state of affairs in the relations between Georgia and Abkhazia inspires little optimism. The wartime grievances have not been forgotten and radical aspirations have not been entirely put aside. The gulf between the peoples created by the war and atrocities is very difficult to overcome, and there is no trust between the respective political élites either. The Georgian side, which is predominantly guided by feelings of revenge, searches for ways to enforce the return of Abkhazia under Tbilisi's control. Georgia receives a considerable amount of moral and political support from international organisations and individual states in its dispute with Abkhazia. But Georgia is too weak from an economic or military point of view to impose a solution by force. It is also lacking sufficient external military support to enforce its goals in Abkhazia. In addition to the obvious negative security and economic consequences of the present political impasse, the continuing suspense, combined with internal instability (manifested, in particular, by repeated assassination attempts on Shevardnadze and other political leaders, and by armed rebellions in Western Georgia), is seriously harming the international image of Georgia as a stable state.¹⁶

On the other hand, we have a *de facto* independent Abkhaz state, an Abkhaz economy which is running despite the harsh conditions of the Russo-Georgian blockade, a considerable stability in the Abkhaz government, an Abkhaz army which is capable of defending effectively the republic's territory and borders and, above all, the Abkhaz public's utter non-acceptance of any close re-integration with "hostile" Georgia.¹⁷ The majority of the Abkhazians perceive re-unification with Georgia as a most serious threat to their small nation's survival. They have no other real incentives to reunite with Georgia than harsh Russian pressure and intimidation. The current "no war, no peace" situation can, therefore, be sustained for an indefinitely long period of time, to the great detriment to the population of both states, as well as to regional stability and economic development.

Though it seems unlikely that the Tbilisi leadership still counts on a military solution in the conflict, it is obvious that it expects that the joint effects from the Russian blockade, economic deprivation and the subversive activity of its "White Legion" and "Forest Brothers" units in Abkhazia could tease out further Abkhaz concessions. These intimidating factors could, however, only bring minor additional concessions from the Abkhaz authorities. They might rather activate a radical wing in Abkhazia, which would, following the Chechen cause, insist on no less than complete independence from Georgia, whatever the exter-

nal pressure and costs to be paid. Though even in this case the chances for international recognition of Abkhazia in any near future would remain rather slim, the rise to power of this wing could seriously hamper the achievement of a comprehensive and lasting peace settlement.

Despite a rather negative background, there has, however, been since the end of the war a gradual evolution in the positions of the Georgian and Abkhaz sides towards a mutual accommodation of their political claims. Georgian representatives speak about “granting the highest form of political autonomy that exists in the world” for Abkhazia.¹⁸ Until recently Georgia’s President Shevardnadze has been speaking about a solution according to which Georgia should become an “asymmetric federation” in which Abkhazia, Adjara and South Ossetia would enjoy various degrees of autonomy.¹⁹ Within this framework, the Abkhaz President could receive the post of Vice-President of the federal state or of Deputy Speaker of the Georgian parliament. Abkhazia would be entitled to keep its own army²⁰ and to enjoy full autonomy concerning the tax system.²¹ In its turn, Abkhazia does not insist now on an overall independence, speaking about a future common state with Georgia. Actually, the main bone of contention between Abkhazia and Georgia is the level of sovereignty of the Abkhaz State within a common state with Georgia.

One has to stress that both sides are forced by objective factors to defend their claims with moderation. The Georgian decision to federalise the country and the Abkhaz agreement to give up claims to a full independence and to constitute a common state with Georgia are due to two major factors. Firstly, as said before, both sides have so far failed to achieve their strategic political goals (for Georgia: to annihilate Abkhaz statehood; for Abkhazia: to gain international recognition of its independence). Secondly, Russia, which insists on the federalisation of Georgia, at the same time prevents Abkhazia consolidating its *de facto* independence by having it subjected to a wholesale blockade. This renders the reunification of Georgia and Abkhazia under discussion rather “a marriage by convenience”, and in this respect it resembles the situation in Bosnia, where the state is being preserved exclusively by the pressure of external forces. Given such a context, it is reasonable to assert that the external factors are doomed to play a crucial role in the peace process. Under such circumstances, the role of *non-partisan* international mediators and guarantors is expected to be of the utmost importance²², at least in the first stages of the political rapprochement.

Abkhazia’s Statehood from an International Perspective

1. From the Abkhaz perspective, the statehood of Abkhazia is based on an almost uninterrupted historical tradition. Abkhazia was a Kingdom during the 8th-

10th centuries and a Principality from 13th century until 1864. Under Russian rule (1810-1917), the full internal autonomy of the Abkhaz Principality was abolished only in 1864. In the twentieth century, the statehood of Abkhazia was acknowledged in all the Constitutions of the Soviet period (1925, 1936, 1978) and has never been revoked by anybody. After the collapse of the Soviet Union in 1991, the Georgian government of Zviad Gamsakhurdia abolished the South Ossetian autonomy but did not abrogate the Abkhaz and Adjarian Autonomous Republics. After the violent deposing of President Gamsakhurdia at the end of 1991, the Georgian Military Council annulled the Soviet Constitution of Georgia, declared all laws adopted in Georgia during the Soviet period null and void and returned provisionally to the Constitution of the Georgian Democratic Republic of 1921. The Military Council declared that the 1921 Constitution was reinvoked “without changing existing borders of territorial/administrative arrangements (the status of the Abkhaz and Adjarian autonomous Republics)”.²³ This means that, regardless of any objections that Abkhazia might have as to the validity of Georgia’s 1921 claims to jurisdiction over Abkhazia as (somewhat vaguely) expressed in Georgia’s Constitution of that year, even those who seized power in Georgia in 1992 are seen to have recognised the legal status of Abkhazia as an autonomous State at that time. The Georgian Constitution of 1995 does not say anything about the future political status of Abkhazia, making the following note (Chapter 1, Article 2, § 3): “The internal territorial arrangement of Georgia is determined by the Constitution on the basis of the principle of division of power after the full restoration of the jurisdiction of Georgia over the whole territory of the country”. The official Georgian terminology in respect to Abkhazia is still “the Abkhaz Autonomous Republic”²⁴, which implies a recognition of Abkhazia’s statehood (a “republic” is by definition a state). It is not this statehood which is at stake in the dispute between Georgia and Abkhazia,²⁵ but rather the degree of sovereignty for Abkhazia within the framework of the common state.

2. From the standpoint of international law, Abkhazia meets all the qualifications required for its characterisation as a State. According to the often cited Article 1 of the 1933 Montevideo Convention on Rights and Duties of States, “The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) a government, and (d) capacity to enter into relations with other States”.²⁶ The US State Department outlined in its statement of November 1976 its conception of statehood in the following terms: “effective control over a clearly-defined territory and population; an organized governmental administration of that territory; and a capacity to act effectively to conduct foreign relations and to fulfil international obligations”.²⁷ The Opinion No. 1 of the Badinter Arbitration Commission on Yugoslavia defines a State “as a community which consists of a territory and a

population subject to an organised political authority; that such a State is characterised by sovereignty”.²⁸

Abkhazia meets all these conditions, despite its practical difficulties over contracting normal relations with other states. It has a permanent population²⁹, a defined territory, clearly defined and undisputed borders, an elected parliament and a stable government, which exercises an effective control and administration over the whole territory of the Abkhaz Republic. Abkhazia is sovereign and is not controlled by any foreign power. It has its own Constitution, flag, national anthem and other state symbols, as well as its own army. As described by the UN Needs Assessment Mission to Abkhazia (March 1998), “The *de facto* authorities in Abkhazia refer to these [political] structures in terms of an independent state; thus, Abkhazia is headed by a president and a prime minister who is responsible for the overall conduct of government business. The government is divided into ministries, each headed by a minister. A parliament exists and consists of members who were elected in November 1996 for five-year terms. In an effort to decentralize, the government has scheduled local elections for March 1998, and it is expected that these will lead to the establishment of village-level councils, each with one representative at the *rayon* level”.³⁰

Abkhazia is capable of engaging in international relations, as enshrined in the Articles 47 (8) and 53 (4) of its Constitution.³¹ It has its own independent foreign policy and a Foreign Ministry, which is engaged in international contacts, for example with Georgia, Russia, the UN and OSCE, as well as with other international organisations (the International Committee of the Red Cross, Médecins Sans Frontières, etc.). Abkhazia is a signatory to politically binding documents and agreements signed by the afore-mentioned countries and organisations. Besides, Abkhazia has independently concluded agreements with federated republics of the Russian Federation (with the Republic of Tatarstan, the Republic of Bashkortostan, the Kabardino-Balkar Republic, and the Republic of Adyghea), with the Transdnestr Republic and Gagauzia within the Republic of Moldova, which can be regarded as international treaties. In practical terms, the capacity to engage in international relations as a trait of a State, reflected in criterion (d) of the Montevideo Convention and in the criteria of a State in the aforementioned US State Department’s statement, “is not generally accepted as necessary. Guinea-Bissau, for example, was recognized in the 1970s by the United States and by Germany on the basis of only first three elements”.³² As noted by Broms, criterion (d) is not easily definable, as the capacity to enter into treaties with other states is not dependent solely on the will of the state concerned but on decisions of other states.³³

3. One school of thought (the so-called constitutive theory) considers recognition as an important trait of a State; according to it, “the rights and duties pertaining to statehood derive from recognition only”.³⁴ However, a by far more

widely accepted approach in international law is represented by the so-called declaratory theory, according to which “recognition of a new State is a political act which is in principle independent of the existence of the new State”.³⁵ Article 3 of the Montevideo Convention, which has been laid as basis of Article 12 of the Charter of the Organisation of American States (1948), reads: “The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts”.³⁶ The definition of a state by the American Law Institute also does not include any reference to external recognition, it being “an entity that has a defined territory, and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities”.³⁷

As noted by Greig, recognition is more a political fact of international life than a fundamental legal principle.³⁸ Von Glahn also points out that “despite much reasoned argument to the effect that the recognition of new states (and new governments) is a legal matter, the majority of writers as well as the practice of states agree that it is, rather, a political act with legal consequences”.³⁹

Indeed, “A new state comes into existence when the community involved acquires the basic characteristics associated with the concept of a state: a defined territory, an operating and effective government, and independence from outside control, etc. Because all these aspects of statehood involve ascertainable facts, the dating of the beginning of a new state is mainly a question of fact and not law. The new state exists, regardless of whether it has been recognised by other states, when it has met the factual requirements of statehood”.⁴⁰ Furthermore, “in most cases the establishment (even the violent establishment) of a new state or government is not a breach of international law; there is no general rule of international law which forbids a group of people ... to break away and form a new state, if they have the strength to do so. In such cases the existence of a state or government is simply a question of fact, and recognition or non-recognition usually have no legal effects”.⁴¹ “If world-wide recognition does not exist, the seceding territory may still constitute a State in the light of international law, for recognition is generally not considered a *conditio sine qua non*”.⁴² Opinion 1 of the Badinter Commission reads: “the existence or disappearance of the State is a question of fact; that the effects of recognition by other States are purely declaratory”.⁴³ As noted in this connection by Driessen, “The recognition of a state by other states would seem to be no more than evidence that the four above-mentioned criteria are fulfilled; formal recognition by the Government of Georgia, the United Nations, or third states would not *create* the state of Abkhazia. At the

same time, non-recognition may be an expression of disapproval with some aspect pertaining to the new state".⁴⁴

4. Despite the obvious fact that, as a result of the Georgian military defeat and the subsequent secession of Abkhazia, the latter has established itself already for several years as a *de facto* independent state, the international community still regards Abkhazia as an integral part of Georgia. The UN maintains the following position on Abkhazia's recognition, as expressed in the words of the then Secretary-General Boutros Ghali: "It has been made clear to the Abkhaz side in the negotiations that independence achieved by force of arms is unacceptable to the international community".⁴⁵ Yet, despite this UN position, one can argue that the *de facto* independence of Abkhazia cannot be undermined by the fact that its secession from Georgia was the result of a military conflict with the armed forces of the former metropolis. At least three arguments can be adduced in support of this view.

Firstly, the secession of Abkhazia can be justified by "the oppression theory", according to which "the severity of a State's treatment of its minorities ... may finally involve an international legitimation of a right to secessionist self-determination, as a self-help remedy by the aggrieved group".⁴⁶

Secondly, from the Abkhaz perspective, both the Georgian government of President Gamsakhurdia and the government of the State Council of Georgia, which replaced the government of Gamsakhurdia, did not represent the Abkhaz people (and indeed other non-Georgian communities of Abkhazia). Under the Georgian election law of 1990, the participation of Abkhaz or South Ossetian political parties in the pan-Georgian elections was banned with the argument that they represented 'regional parties'. On the 17 March 1991 all-Union referendum, 52.4% of the population of Abkhazia voted in favour of a reformed Soviet Union. The Abkhaz and large sections of the remaining non-Georgian population of Abkhazia did not participate in the all-Georgian referendum on independence from the Soviet Union held on 31 March 1991. The military coup in Tbilisi, which coincided with the dissolution of the Soviet Union, deposed President Gamsakhurdia. The junta dissolved the Georgian parliament and established a Military Council, which soon gave over power to the State Council headed by Eduard Shevardnadze. All these new structures, which had no legal basis whatsoever in the Georgian Constitution, were non-representative for the population of Abkhazia. The war against Abkhazia was undertaken by these political structures.

Thirdly, as a people, the Abkhazians are entitled to the right of self-determination, including external self-determination.

One can argue that these three considerations (oppression by the majority; illegitimate authority of the Georgian leadership in 1992; right to self-determination) override the principle of 'non-use of force', adduced by the UN against

the recognition of Abkhazia. Moreover, the secession, even violent secession (i.e. with the use of force) of a part of the territory of a state aiming at establishing another state, is not prohibited by international law. The UN International Law Commission limited the principle of non-recognition of territorial acquisition by illegal force to acquisition 'by another State', but did not consider it as a valid principle in the case of secession.⁴⁷ For example, the secession in March 1971 of East Pakistan and its unilateral declaration of independence under the name of Bangladesh was recognised by February 1972 by 47 States, despite the fact that this secession was achieved 'by force of arms' and with foreign military assistance, against the background of Pakistan's protests and its claim on East Pakistan/Bangladesh as an integral part of its territory.⁴⁸ Both international law and practice prove that secession "is a domestic matter, and therefore a legally neutral act in international law". "An ethnic group in one state is at liberty, from the standpoint of international law, to secede and form its own nation-state".⁴⁹

This position is shared by a wide range of scholars. Thus, Lauterpacht emphasised that "international law does not condemn rebellion or secession aiming at the acquisition of independence".⁵⁰ Akehurst asserts that "there is no rule of international law which forbids secession from an existing state; nor is there any rule which forbids the mother-state to crush the secessionary movement, if it can. Whatever the outcome of the struggle, it will be accepted as legal in the eyes of the international law".⁵¹ Some authors point out that the international acceptance of secession is more easily obtainable if the seceding group constitutes a people, which occupies a territory already delimited by internal administrative borders. Thus, Duursma points out that "Contrary to what some distinguished writers have maintained, international State practice does accept a right of secession. Secession is inherent in the right of self-determination. It is not prohibited by international law to seek secession if one constitutes a people and/or fraction of a people and if in addition one inhabits a certain territory delimited by international and/or internal administrative borders."⁵²

Paradoxically, in the condition of absence of any rules of international law managing the balance between the right of self-determination and the principle of territorial integrity, "the present international legal situation encourages the use of force in order to make demands for secession successful".⁵³ Furthermore, "if the State authorities are the first to use violence, breaching fundamental human rights or even the prohibition of genocide, then the secessionists may offer armed resistance. In the absence of international recognition of the seceding State, the civil war, once started, will continue until a *de facto* solution has been imposed by force. Either the metropolitan State has regained control over the seceding territory, or the secessionists have stabilized their authority and have managed to secure the exercise of all elements of statehood, that is, they have created an independent State".

5. Since 1993 Georgia, Russia, the UN and the OSCE have been carrying out periodic negotiations and consultations with the Abkhaz authorities, ranging from the Abkhaz President to Foreign Minister, Prime Minister and other officials. Since 1993, the conflicting parties have signed a considerable number of politically binding documents and agreements. The Georgian and Russian Presidents received the President of Abkhazia in their official residences. The Abkhaz authorities have received the Georgian President, Foreign Ministers of Georgia and Russia and the Ambassadors to Georgia of those countries which constitute the diplomatic group "Friends of the Secretary-General on Georgia" (the US, Great Britain, Germany, France, Russia). Delegations of the Russian parliament and of the US State Department and the US Mission to the United Nations have visited Abkhazia. The official UN documents refer to the Abkhaz Government as "the Abkhaz authorities" or "the Abkhaz officials", and make a distinction between Georgia and Abkhazia by, for example, referring to the recent war as "the conflict between the Republic of Georgia and Abkhazia".⁵⁴ This implies that the Abkhaz Government and the existence of the Abkhaz State are recognised *de facto*, though not *de jure*.

Crawford points out that "As a matter of general principle, any territorial entity formally separate and possessing a certain degree of actual power is capable of being, and *ceteris paribus*, should be regarded as, a State for general international law purposes. The denomination *sui generis* often applied to entities which, for some reason, it is desired not to characterise as States is of little help".⁵⁵ He also asserts that "the criterion for statehood of seceding territories remains in substance that established in the nineteenth century: that is, the maintenance of a stable and effective government over a reasonably well defined territory, to the exclusion of the metropolitan State, in such circumstances that independence is either in fact undisputed, or manifestly indisputable".⁵⁶

An objective analysis of the current internal and international position of Abkhazia will ascertain the fact that it is a sovereign polity, which, as it is, meets all formal requirements needed for its recognition as a State. The Abkhaz Government is being treated by the Governments of Georgia and Russia, as well as by the UN and OSCE, as the *de facto* Government of Abkhazia. Its non-recognition *de jure* is used by them, as well as by other states, as a form of their disapproval of, or objection to, the existence of an independent Abkhaz State. Non-recognition, however, does not nullify the factual existence of the Abkhaz State, inasmuch as *de jure* recognition by the UN, Georgia or by any other government will not create the Abkhaz State: it exists independently of these factors.

Of course, nobody would challenge the importance of external recognition for a normal functioning of a state. In certain cases recognition can consolidate the independence of a new state, especially in doubtful, controversial, or unstable situations, whereas non-recognition can sometimes lead to the proclaimed state's failure to establish itself.

The particular character of the Abkhaz situation is manifested by the fact that its Government, while having declared Abkhazia to be 'a sovereign' State, has so far not declared its separation from Georgia. Moreover, Abkhazia has agreed to negotiate with the Republic of Georgia vis-à-vis re-establishing their interstate relations within a framework of a future common state.⁵⁷ This important circumstance can lead to the management of the Georgian-Abkhaz conflict on the basis of a union state established between the Republic of Georgia and the Republic of Abkhazia.

6. One can argue that, since its establishment as a *de facto* independent state, Abkhazia has acquired a separate international legal personality. The international legal subjecthood of Abkhazia is declared in its 1994 Constitution. The non-recognition of Abkhazia *de jure* does not change this situation. As stated by the American Law Institute, "An entity not recognized as a State, but meeting the requirements for recognition has the rights of a State under international law in relation to a non-recognizing State".⁵⁸ Crawford also points out that "States do not in practice regard unrecognized States as exempt from international law, and they do in fact carry on a certain, often quite considerable amount of informal intercourse".⁵⁹ He suggests that "The tentative conclusion is that the international status of a State 'subject to international law' is, in principle, independent of recognition".⁶⁰ Moreover, as asserted by Duursma, "If the secessionists have vanquished the central State authorities <...>, the seceded territory will have acquired an international status".⁶¹

Constitutional Relations between the Two States: Georgian and Abkhaz Perspectives

Below I will describe briefly the views of the parties on ways of solving the political conflict between Abkhazia and Georgia without, however, any assessment of their practicability, and then will present my own proposals for a new state model, which would encompass both Georgia and Abkhazia in the structure of a common state. This state model could be used as a basis for discussion of the constitutional settlement of the conflict between the two republics.

No Georgian political party or individual politician has so far expressed their readiness to envisage independent political status of Abkhazia as an option. They would all insist that Abkhazia is an integral and inseparable part of Georgia. Apart from this single position, however, opinions differ substantially, and no concerted Georgian view as to the status of Abkhazia exists. The opinions range from envisaging some degree of cultural autonomy for Abkhaz enclaves in Abkhazia to returning, in essence, to the political status of Abkhazia during Soviet

times, i.e. to an autonomous State embedded into the Georgian State and controlled by the central Georgian government. The current Constitution of Georgia adopted in 1995 is still the Constitution of a unitary state which includes several autonomous units.

So far official Tbilisi remains rather vague on concrete details concerning the federal restructuring of Georgia, which is noted also by some Georgian authors. Zaal Anjaparidze justly remarks that “the Government of President Shevardnadze has so far failed to elaborate a clear and consistent policy on the Abkhaz issue”, and that it “has not yet elaborated any formal documents that would suggest [that] its desire to establish a federation is irreversible”.⁶² Another Georgian author, Gia Tarkhan-Mouravi, points out that “the absence of a clearly formulated and widely supported strategy for the resolution of ethno-territorial conflicts is still a problem. The general unwillingness to decentralize power in Georgia proper <...> [is] causing increased suspicion among the negotiating partners as to the sincerity of the liberal and federalist statements made by the Georgian government”.⁶³

The details of Shevardnadze’s plan of “asymmetrical federation” for Georgia have not yet been made public. One can, however, surmise that, given the Soviet background of the Georgian leader, the major ideas have been borrowed from the Soviet and current Russian models, which will probably not be enough to reconcile the Abkhaz position.⁶⁴ A return to the Soviet system of Autonomous Republics is criticised even by some Georgian authors as historically futile. Thus, according to R. Klimiashvili, “the Georgian leadership does not propose anything except the status of the Autonomous Republic either, which, incidentally, showed all its lack of vitality and it is not possible to reanimate it!”.⁶⁵ The same scepticism is contained in a document prepared by the Republican Party of Georgia (“The attempts to return in Abkhazia to the pre-existing political-legal model are also futile”⁶⁶).

The Radical Georgian Position

The radical Georgian view on Abkhazia can be summed up as follows. Abkhazia is primordial Georgian land. The Abkhazians, actually the Apsua⁶⁷ tribe, as a “nation” are products of Russian imperialism. Russians gave them literacy and created a rift between the Georgians and formerly pro-Georgian Abkhazians. Since then the Abkhazians have always been used against Georgia. If they want to live in peace in Georgia, the Abkhazians must become loyal Georgian citizens. In exchange, they may express their ethnic identity, such as education in their native tongue, press, etc. They will not, however, be allowed to have any territorial autonomy, but could rather enjoy a local cultural autonomy in the places of

their concentration (around Gudauta, in Tqvarchal, and around Ochamchira). The rest of the territory of Abkhazia will be governed by Tbilisi as a normal Georgian province. If the Abkhazians do not accept this, they are free to leave Georgia in whatever direction they choose.⁶⁸

The Concept of “Two Abkhazias”

Abkhazia is an integral part of Georgia and Abkhazians, whether regarded as co-aboriginal (together with Georgians), or a comparatively recent population, must accept this. They will be permitted to have some territorial autonomy, which will not, however, encompass the territory of the whole of Abkhazia (i.e. between the rivers Ingur and Psou) but will cover only a part of it to the north of Sukhum, with the centre in Gudauta. This part will be called “The Abkhaz Republic”, which will be resettled predominantly by ethnic Abkhazians and which can be a self-governed entity that delegates financial and some other responsibilities to Tbilisi. What is left of Abkhazia will be called “The Abkhaz Region” (“Abkhazskiy Kray”). It will be resettled predominantly by ethnic Georgians and will enjoy the same rights as ordinary Georgian provinces. The present Abkhaz capital, Sukhum, will be divided into two parts, the Georgian and Abkhaz. All the territory of Abkhazia will be declared a demilitarised zone.⁶⁹

The Official Georgian View

Abkhazia is an integral part of Georgia, which is recognised by the UN, OSCE and the international community. Abkhazia will have its own Autonomous Republic, constitution, anthem, flag and other state symbols, parliament and excessive cultural rights. At the same time, foreign policy and foreign economic relations, defence, police, state security, monetary system, federal budget, border control, the customs service, criminal, civil and legal-procedural laws, penitentiary system, energy, transport, communications, ecology, citizenship, etc. will remain in the responsibility of the central Georgian government (sometimes called “federal government”). Abkhazia will be able to conclude international agreements provided it notifies the central government. Georgia is prepared to pledge not to station Georgian troops in Abkhazia. This model largely coincides with the political status of the Abkhaz Autonomous Soviet Socialist Republic that existed between 1931 and 1991 under the Communist regime with some elements borrowed from the current Russian federal system.

The Initial Abkhaz Proposals before August 1992

The proposal by the lawyer Taras Shamba⁷⁰ was the first Abkhaz draft project in which the political equality of the Abkhaz and Georgian States within the Republic of Georgia was envisaged. According to it, both sides would be sovereign states, full participants of international and foreign economic relations; they would independently conclude treaties and agreements with other countries, which, however, should not cause damage or be directed against the other Side. The Republic of Abkhazia of its own free will shall unite with the Republic of Georgia and shall possess all legislative, executive and judicial power on its own territory apart from those plenary powers assigned by the Constitution to the jurisdiction of the Republic of Georgia.

The Current Abkhaz Positions

Two main opinions in Abkhaz society can be singled out. A consensus exists, however, concerning the following view of Abkhaz-Georgian relations: Abkhazia has 1,200 years of statehood. It had been a Kingdom and independent Principality during the course of many centuries. Abkhazia entered the Russian Empire in 1810 independently of Georgia. It entered the Mountain Republic in 1918 even before Georgia declared its state independence. Three times in this century Georgia has presented a major threat to the existence of Abkhazia. In 1918-1921 Abkhazia was occupied by the Georgian Democratic Republic. Abkhaz intellectuals were arrested, peasants killed, villages burnt, the Georgian language was installed, and Georgian colonists were settled in Abkhazia. Under the Soviet regime, Abkhazia was forced to unite with Georgia in 1921, but it remained a Union Republic until 1931. It was incorporated into Soviet Georgia in 1931 by Stalin, a Georgian Bolshevik, against the will of the Abkhaz people. Under Beria (a Megrelian from Abkhazia) and Stalin, the majority of Abkhaz intellectuals were murdered, Abkhaz toponyms were changed into Georgian ones, the Abkhaz radio station was closed, education in Abkhaz prohibited and tens of thousands of Georgians colonised Abkhazia in order to change the demographic balance. Georgia attacked Abkhazia without warning in 1992, killed thousands of Abkhazians and other non-Georgians, deliberately burned the Abkhaz National Archive and the National Scientific Institute⁷¹, plundered museums and scientific-educational centres, and destroyed the monuments to Abkhaz intellectuals. Top Georgian military and civilian officials openly threatened the Abkhaz nation with genocide.⁷² The Abkhazians paid for their freedom with the lives of thousands of their patriots, and they earned the right freely to determine their own destiny. The return to the situation that existed before the war of 1992-

1993 is absolutely impossible. Abkhazia's subordination to Georgia would pose a threat to Abkhazians' survival as a nation.

The Radical Abkhaz Position

Abkhazia is a sovereign democratic state. It has its own constitution, parliament, flag, anthem and other state symbols, as well as an experienced army ready to defend the country and its borders. The Abkhazians are the only aboriginal population of Abkhazia. Though they were artificially made a minority on their own land due to the Tsarist Russian policy of genocide and ethnic cleansing of Abkhazia, and later to the mass population transfer policy carried out by Stalin and Beria, they should not be treated as a minority, and their right to self-determination should be respected. Even in Soviet times Abkhazia was a state. As a state, Abkhazia can freely determine its own fate, and its independence should not be considered as a violation of the territorial integrity of any other state. Georgia's war against Abkhazia aimed to destroy the statehood of Abkhazia and of the Abkhaz people itself. Having won this war, which was a national-liberation war against Georgian colonial oppression, Abkhazia has earned the legitimate right to free self-determination and the creation of an independent state. It is ready to build up good neighbourly relations with Georgia on the basis of the respect of Abkhazia's independence, sovereignty and territorial integrity. Georgia should recognise the secession of Abkhazia as a "fait accompli" and should not create difficulties on its peaceful transition to independence. It should compensate Abkhazia for all destruction it inflicted during its military aggression. Even if the existence of the Abkhaz state will not be recognised by the international community and individual governments, as an independent republic Abkhazia remains a subject of international law. Abkhazia is ready to defend its independence, dearly paid for by the blood of Abkhaz patriots, with all available means.

The Official Abkhaz Position

Abkhazia is a sovereign democratic state and a subject of international law. It has its own constitution, parliament, flag, anthem and other state symbols, as well as an army. At present Abkhazia and Georgia are not linked by any single legal document and are effectively independent of each other.⁷³ Georgia should give up its aggressive policy towards Abkhazia and compensate Abkhazia for all the destruction it inflicted during its military aggression. Abkhazia is ready to form a Federal Union with Georgia on a condition of political equality of both Georgia and Abkhazia within a common state structure. Abkhazia is not going to discuss its

internal political status, as the latter has already been determined by the new Abkhaz Constitution. What it agrees to discuss are the forms and conditions of its reintegration with Georgia within the frameworks of a common Federal Union⁷⁴, and other related issues. Abkhazia will enjoy full internal sovereignty and will be a subject of international law. It will have its own parliament, government, constitution, army and police force, flag, national anthem and other state symbols, its own civil and criminal codes, Constitutional Court, independent tax and cultural policy. Above these responsibilities, Abkhazia will delegate to the common governmental bodies such state responsibilities as foreign policy and foreign economic relations, border control and customs arrangements, international transport and communications system, energy system, ecology, protection of human rights and the rights of minorities, etc. The competences will, thus, fall into two categories: those in the joint responsibility of both Georgia and Abkhazia, and those in the exclusive jurisdiction of Abkhazia.

International Experiences

The comparison of official Georgian and Abkhaz positions proves that there is undoubtedly a certain room for compromise, as the gap between them has narrowed on several crucially important points. Both Georgia and Abkhazia agree to reintegrate into some kind of a federal state structure. Both sides recognise the existence of the Abkhaz state, though they give it a different political substance. Both sides agree to share and divide state powers. This makes the Abkhaz case technically more manageable than that of Nagorno-Karabakh or Chechnya, where the political leaderships insist on outright independence. The remaining problem, as has already been said above, is the level of internal and external sovereignty of Abkhazia that would be acceptable for both Sukhum and Tbilisi.

While one looks, from the perspectives of the Georgian-Abkhaz conflict, at the ways in which other countries solve their own inter-ethnic disputes and the issues of self-determination, one tries naturally to identify the cases most closely pertaining to the Georgian-Abkhaz situation. Some analogues are rather easy to find, but the affinities are all too relative. For instance, the situation in Denmark and Finland resembles the Georgia/Abkhazia case insofar as these countries have peripherally situated compact ethnic/linguistic minority populations. In the case of Denmark it is the Faroe Islands, populated by the Faroese, and Greenland, populated by the Inuit. In the case of Finland, it is the Åland Islands, populated by the Swedes. But Georgia is far from being ethnically so homogenous as Denmark or Finland: the ethnic Kartvelians⁷⁵ comprise some 70% of the population of the country. Besides, the difference between Abkhazia, on the one hand, and the Åland and Faroe Islands, on the other hand, is that the latter represent ethni-

cally homogenous autonomous territories outside the mainland territory, which is populated nearly exclusively by Danes or Finns, while Abkhazia itself is a multi-ethnic country, hosting, beside the indigenous Abkhazians, also a score of other nationalities: Georgians (or rather Kartvelians), Armenians, Russians, and Greeks.⁷⁶

Certain similarities can also be found with the situation in the United Kingdom, where the main part of the country is populated by the English majority, whereas its peripheral provinces Wales, Scotland, Cornwall and Northern Ireland are mainly inhabited by Celtic minorities. The Northern Ireland situation with its Protestant (pro-British) majority and Catholic (pro-Eire) minority resembles pre-war Abkhazia with its Kartvelian (relative) majority population, which was orientated towards Tbilisi, and the native pro-independence Abkhaz minority, which strove to achieve its goals in alliance with the peoples of the North Caucasus. Until very recently drawing parallels with the Northern Ireland situation would have been justified only in the sad history of inter-communal violence and failed attempts for mediation. Now, after sweeping steps in the direction of a comprehensive peace settlement undertaken by moderate leaders of both communities and by Tony Blair's government, supported by American diplomatic mediation, the Northern Irish model undoubtedly deserves serious consideration from the point of view of the Georgian-Abkhaz peace settlement.

Rather close to the Georgia/Abkhazia case is the situation in Cyprus. In 1974 this island was partitioned, after a military conflict, between the Cypriot Greek community (78%) and the Cypriot Turkish minority (18%). While the Greek Cypriot government claims sovereignty over the entire island, the Turkish Cypriots argue that they represent one of the two constituent units in a future Cypriot (con)federation.⁷⁷ Though both sides in principle have expressed commitment to a federal solution to maintain the political unity of the island, the "Greeks see federation as a code word for reasserting Greek dominance in a state with a strong central government, while the Turks see federation as a means to obtain Turkish autonomy within a confederal-style polity".⁷⁸ In 1983 the Turkish Cypriots proclaimed the independent Turkish Republic of Northern Cyprus (recognised since then only by Turkey). Their leader Rauf Denktash declared that the proclamation of a Turkish Cypriot state "will not hinder but facilitate the establishment of a genuine federation". In his view, the Greek and Turkish states should be linked to each other by a common government, and the overall federal arrangement would provide equal rights to Greek and Turkish Cypriots.⁷⁹ The UN proposal for the settlement in Cyprus, put forward by the Secretary-General, "envisions establishment of a 'bizonal and bi-communal federal republic' composed of two separate but 'politically equal' federated states, one controlled by Turkish Cypriots, the other by Greek Cypriots. Each state would have 'identical powers and functions', including 'responsibility for security, law

and order and the administration of justice in its territory'. Although they constitute less than 20 percent of the population, Turkish Cypriots would be entitled to elect half of the members of the upper house of the legislature and would possess veto power over all central government legislation".⁸⁰ The apparent similarity with the Georgian/Abkhaz case is further demonstrated by the problem of refugees, and by the fact that UN peacekeepers and observers are monitoring the separation line dividing the island into two *de facto* independent states. Like Russia in the Georgian/Abkhaz case, Turkey too has insisted on a federalisation of Cyprus as a way to solve the intercommunal conflict.⁸¹ The difference is that, unlike the unilaterally declared Turkish Republic of Northern Cyprus, Abkhazia had existed as an autonomous State even before the proclamation of its sovereignty.⁸²

A close analogue to the Georgia/Abkhazia case can be found in Bosnia-Herzegovina. Like Georgia, Bosnia-Herzegovina is a multi-ethnic state, populated by Muslims (40%), Serbs (32%) and Croats (18%). Under the peace agreement reached in December 1995, Bosnia-Herzegovina was to become a sovereign federal state composed of two sub-state polities: the Muslim-Croat Federation and the Serb Republic. The central federal government is entitled to exclusive jurisdiction in the areas of foreign policy, foreign trade, customs policy, immigration, monetary policy, international and inter-entity transportation, air traffic control, and the financing of government operations and obligations. The two separate governments have jurisdiction over all other matters. Under the agreement, the three ethnic groups are entitled to maintain their own separate armies. "The agreement thus preserved the *de jure* sovereignty and territorial integrity of Bosnia-Herzegovina, but effectively created two separate *de facto* entities".⁸³ Some elements of the political settlement in Bosnia-Herzegovina are rather close to the constitutional arrangement of the Georgian-Abkhaz conflict I am proposing here and are, therefore, of certain interest.⁸⁴

The situation in the Russian Federation resembles in some respects the Georgian/Abkhaz pattern: one has ethnic Russians, who constitute an overwhelming majority population of the country, and republics, populated by indigenous ethnic minorities, some of whom are rather independence-minded. The Russian experiment of a multi-ethnic state built upon democratic principles is still in the making, and it scores both significant successes, like the Tatarstan case, and dire setbacks, like the war in Chechnya. Though now the Georgian leadership is trying to settle its dispute with Abkhazia by imposing a Russian-type federal arrangement, the Russian model cannot be taken as a basis for such a settlement. Russia still preserves a high level of centralisation inherited from Soviet times. Its control over the component states is still quite substantial, whereas Abkhazia insists on decentralisation and full internal sovereignty within a common state with Georgia. Moreover, the Russian Federation, which is in essence a huge eth-

nic Russian state embedding different ethnically non-Russian republics in a variety of forms of dependency on the central Moscow government, represents an unstable state construct in a process of transition, whose final outcome nobody can predict. With ethnic republics (and some Russian provinces alike) striving to snatch ever more powers from the Kremlin, which has been weakened by permanent political and economical-financial crises, the Russian Federation is drifting towards a looser federation, or even a confederation. The unfortunate fate of the Soviet Union is still looming large before it as one of the worst and not entirely excluded scenarios, with some impatient individual republics like Chechnya breaking free in the first rank. However, some elements of the constitutional accommodation of “sovereign” republics within the political-economical structure of the Russian Federation may be of some interest for the Georgia/Abkhazia case.

Finally, the Belgian federal model, which represents a rationally built state system based on power sharing and self rule of politically equal federated units, deserves a special attention. The Belgian federated states are empowered by the Constitution to quite extensive internal and external competences, which is of considerable interest from the point of view of any constitutional settlement between Georgia and Abkhazia.

Though all afore-mentioned states seek to resolve the problem of relations with independence-minded communities in their own individual way, the common feature in all these cases is a significant limitation of the sovereignty of the central government on the territory of the autonomies, and the substitution of simple majority rule by various balancing regulations.

Proposals on the Political Status of Abkhazia within a Common State with Georgia

In practical terms, no country provides an ideal model for a possible constitutional arrangement between Abkhazia and Georgia, though many elements of constitutional regimes of different federal states can be of great use while designing the common Abkhaz-Georgian state. It is justifiable, therefore, to speak in terms of a new state model, which will not coincide with any of the presently existing models, and which will be based on a combination of confederal and federal principles.

Here I will not dwell upon the theoretical discussion of the differences between federal and confederal regimes (see in this connection the chapter of Xiaokun Song in this volume). In general terms, confederation can be regarded as a form of federal alliance in the sense that it is based on a “treaty between

states, and not on a purely one-sided assertion of will".⁸⁵ One might probably point out at least two major traits which underlie the difference between a federation and confederation. Firstly, it can be the degree of decentralisation of the decision-making, which is substantially higher in a confederation than in a federation. Secondly, the hierarchically structured federation, whereby the federal government exercises power over the lower-level political units, is opposed to a non-hierarchically organised confederation with several politically equitable centres of power, by virtue of which the central government is dependent on their consensus and collective will.

All previous Abkhaz proposals based on a union of Georgian and Abkhaz states have been repeatedly rejected by the Georgian leadership as unacceptable. However, one can argue that a union state encompassing both Georgia and Abkhazia as politically equitable federated republics of a common state can be the only reasonable alternative to the dead-locked political process. The model proposed below of the future state combines confederal principles in its internal structure with federal principles in what concerns its international political and legal status. This state model would be to a certain extent comparable with the status and legal capacity of such federal states, as, for example, Belgium or Bosnia-Herzegovina. According to one of the definitions of confederation, the member-states of a confederation will not lose their *external* and *internal* sovereignty after concluding a confederal alliance.⁸⁶ Contrary to this, the following proposal conceives the Abkhaz Republic, while exercising *full sovereignty in its internal affairs*, as exercising a *certain level of independence in its external affairs*, which in this respect will resemble a federal, rather than a confederal arrangement. *Within* the proposed state structure Abkhazia will act as a sovereign republic of the common state. *Externally*, on the international stage, Abkhazia will act as a component state of an aggregate state within the limits of its agreed international competences (which can be comparable, say, with the international status of Flanders in Belgium), rather than a fully sovereign international personality. This model can form a compromise between the Georgian insistence on the territorial integrity of the Republic of Georgia and the Abkhaz insistence on building up a non-hierarchical state structure whereby Abkhazia will be a self-governed republic within a common state with Georgia.

The model proposed below presents one of the possible solutions in terms of a constitutional settlement between the Republic of Georgia and the Republic of Abkhazia, without touching upon the problem of possible arrangements for South Ossetia and Adjara. In order not to embark on the sensitive issue of the name of the future state⁸⁷, I will be calling this polity by a neutral term "the Common State". First I will speak about the major principles which should be laid as basis of the future Common State. Secondly, I will list the most important constitutional provisions pertaining to the political status of the Republic of

Abkhazia within the Common State. Finally, I will discuss the problem of the division of state powers between the Common State and the federated Abkhaz Republic. I would like to emphasise that the proposed model is the author's personal view, though admittedly it is rather close to the official Abkhaz position.

Major Principles

The relations between the Republic of Abkhazia and the Republic of Georgia within the Common State, as well as between the Common State and the federated republics shall be based on certain principles:

1. Political Equality

It would be futile to discuss a political settlement between Georgia and Abkhazia in terms of a hierarchical structure based on the principle of domination and submission, characteristic for the relations between the Georgian SSR and the Abkhaz ASSR within the Soviet system. According to the proposed constitutional model, Abkhazia will not be part of "Georgia" but of a Common State. The new state structure will encompass the Republic of Abkhazia and the Republic of Georgia as politically equal entities, which will be joined by Adjara and South Ossetia.

The relations between the federated states, Georgia and Abkhazia, will resemble the relations between member-states in such a federation as Belgium, where the Dutch-speaking Flemish region and the French-speaking Walloon region are politically equal entities, whose relations with the federal centre are also non-hierarchical. As emphasised by the Prime Minister of the Flemish Government Luc van den Brande, the policies of the Flemish Parliament or the Flemish government are "in no way subordinated to that of the federal government".⁸⁸ According to a brochure issued by the Flemish government, "The Government of Flanders and the Federal Government do in fact share the same level of authority", though they have a different set of competences.⁸⁹

2. Commitment to the Union

The federated republics must be committed to the unity of the Common State and abstain from any actions that would endanger its political unity, territorial integrity or international obligations.

3. Non-interference

The Common State must respect the republics' autonomy in their internal affairs and in their international competences to which they are entitled by the Constitution. The rule of the principle of non-interference in each other's competences can be regarded as an essential norm shaping relations between the Common State's Government and the federated states, as well as between the federated republics.

The Political Status of the Republic of Abkhazia-Apsny

1. The Republic of Abkhazia-Apsny is a democratic State based on the rule of law. It has its own Constitution, parliament, government, flag, coat of arms, anthem and other state symbols.

2. The head of the Republic of Abkhazia-Apsny is the President of Abkhazia who must speak the Abkhaz language.

3. Abkhazia is a constituent part of the Common State.⁹⁰ Abkhazia shall respect the territorial integrity of the Common State, whilst the latter shall not violate the Constitution of the Republic of Abkhazia-Apsny and does not infringe its sovereignty, territory and political status.

4. As a federated state entitled to broad international competences, Abkhazia shall be a subject of international law.

4.1. Even according to official Georgian projects on the future status of Abkhazia, "Abkhazia may enter into international agreements within the framework of its competences, while keeping the respective federal bodies informed".⁹¹ The capacity to enter into legal international relations with treaty-making powers means that Abkhazia, even in the Georgian view, shall be entitled to certain international legal rights and obligations and, therefore, shall acquire an international legal personality, or, in other words, shall become a subject of international law.

As pointed out by Akehurst, contrary to the situation in the nineteenth century, when only states were legal persons in international law, in this century also international organisations, individuals and companies have acquired some degree of international legal personality.⁹² For example, "Article 43 of the UN Charter empowers the United Nations to make certain types of treaties with member-states — a power which could not exist if the United Nations had no international personality".⁹³ Likewise, federated states, if they are empowered by the federal Constitution to become parties to bilateral and multi-lateral international agreements, are in that regard considered as subjects of international law. In its 1994 Report to the UN General Assembly, the International Law Com-

mission (ILC) stated: “Where an organ of a component state of a federal State acts in a sphere in which the component state has international obligations that are incumbent on it and not on the federal State, that component state clearly emerges at the international level, as a subject of international law separate from the federal State, and not merely as a territorial government entity subordinate to the federal State.”⁹⁴

International practice provides ample evidence of the wide range of possibilities for component states to act autonomously on the international scene. The Swiss Cantons and the German and Austrian Länder have their own foreign policy, participate in treaty-making by their Federation and have their own representations in many countries.⁹⁵ The Faroe Islands and Greenland, which are self-governing territories within Denmark, and the Åland Islands, which are a self-governing territory within Finland, are separate members of the Nordic Council, an international intergovernmental organisation which encompasses the Scandinavian countries. In 1967 the Faroe Islands joined the European Free Trade Association as a “commercially autonomous” Danish island area but left it in 1972 after Denmark decided to join the European Community. The Faroe Islands did not join the EC together with Denmark, but negotiated a number of bilateral trade agreements with EC members instead. The same happened with Greenland, which was obliged to join the EC together with Denmark but opted out of Denmark’s membership in the European Community after the 1985 referendum on that issue.⁹⁶ The Adjarian Republic within Georgia and Flanders within Belgium are members of the Assembly of European Regions. In Canada, the Francophone Quebec province has been granted a separate status in its international relations. France gave a specific form of recognition to Quebec, which maintains a large official delegation in France. In international conferences Quebec is often listed separately from Canada and in certain cases Quebec participates with full rights on its own. Besides Quebec, other Canadian provinces also expand their direct international trade and business relations and representations.⁹⁷

Even during the Soviet period, the federated Union Republics of Ukraine and Belorussia enjoyed separate UN membership and possessed formally an international legal personality. Within the current Russian Federation, the Republic of Tatarstan can officially participate in the activity of international organisations. The paragraph 11 of the Article 2 of its Treaty with the Russian Federation reads that Tatarstan “participates in external relations, establishes relations with foreign countries and concludes with them agreements, which do not contradict the Constitution and international obligations of the Russian Federation, the Constitution of the Republic of Tatarstan and the present Treaty, it takes part in the activity of corresponding international organisations”.⁹⁸ Article 62 of the Tatarstan Constitution says: “The Republic of Tatarstan enters into relations

with other countries, concludes international treaties, exchanges diplomatic, consular, business and other representations, participates in the activity of international organisations, being directed by the principles of international law". By 1995 Tatarstan has concluded more than 120 agreements with subjects of the Russian Federation (Bashkortostan, Udmurtia, Mari El, Chuvash, Komi, Kabardino-Balkaria, Kalmykia, North Ossetia, Khakasia), with all CIS countries (besides Armenia and Georgia), with the Abkhaz Republic, the Transdnestr Republic (within Moldova), the Crimean Republic (within Ukraine) and with such countries as Lithuania, Hungary, Greece, Bulgaria, Turkey, etc. Tatarstan has its own permanent economic representation offices in USA, France, Australia, Uzbekistan, Azerbaijan and Lithuania.

Though the international legal status of some of the afore-mentioned European provinces is sometimes disputed, this is not the case with the Belgian federated states. "As far as the Belgian Constitution is concerned, the Communities and Regions are fully-fledged subjects of international law".⁹⁹ According to Belgian laws (Special Act of 5 May 1993), the federated states have extensive and exclusive international competences. They can enter into fully-fledged international treaties, having exclusive treaty-making powers in matters assigned to them, and are fully involved in the activities of some international organisations. Thus, the federated state Flanders has official missions and representations in foreign countries. Bilateral economic and cultural agreements were signed with Poland, Hungary (in 1994), Estonia, Latvia, Lithuania (in 1996), Rumania (in 1997). Flanders has also entered into co-operation agreements on a whole range of issues with the German Federal Republic, St Petersburg, South Africa, the Netherlands, Chile, China, some countries of South-East Asia, USA, Japan, Austria, etc. It has its own diplomats in Belgian Embassies, taking care for *inter alia* commercial and cultural Flemish foreign policies. French-speaking Walloon has similar relations with a wide range of countries.

According to the Belgian constitutional framework, "when a treaty deals exclusively with matters within the competence of the federal authorities, their power to conclude this treaty is exclusive. Whenever the treaty deals exclusively with competences of the Communities or Regions, the competence of these authorities is exclusive: their respective Parliaments approve the treaty and the ratification is done by the respective government".¹⁰⁰ Moreover, "If a third State refuses to conclude a treaty with a Community or Region on subject-matters within their exclusive competences, that third State is unable to turn to the federal State of Belgium. The latter is indeed incompetent and unable to substitute for any of its component units. In such a situation there would be no treaty at all".¹⁰¹ For instance, the Agreements concerning the protection of the Meuse and Schelde rivers were signed by France, the Netherlands and the three Belgian Regions but not by the Belgian federal Government. Commenting on this, Alen

and Peeters suggest that the Belgian situation “might lead to a more general acceptance of member states of federations as subjects of international law”.¹⁰²

5. In matters of its own competence the Abkhaz Republic shall have a separate representation in certain international organisations and associations, including intergovernmental associations and non-governmental organisations. Abkhazia shall have its representatives within the official delegations of the Common State to the UN, OSCE, Council of Europe and some other international organisations. Besides, Abkhazia shall have its own diplomats in the Embassies of the Common State so as to take care of Abkhazia’s foreign economic and cultural interests.

6. Possible disputes between the federated republics and the Common State or between the federated republics shall be dealt with by the Constitutional Court of the Common State or/and by special Arbitration Commissions.

7. Abkhazia has seven provinces (Gal, Tqwarçal, Ochamchyra, Gulrypsh, Sukhum-Aqua, Gudauta, and Gagra). The territory of the Republic of Abkhazia-Apsny, whose borders coincide with the borders of the Abkhaz ASSR on 21 December 1991, is indivisible. The borders of Abkhazia cannot be changed without the joint consent of the Parliament and the President of Abkhazia and any such decision must gain final approval by a popular referendum.

8. All natural riches of Abkhazia, its mineral wealth, air space and littoral are in the exclusive possession and exploitation by the multi-ethnic people of Abkhazia.

9. The Republic of Abkhazia shall directly participate in law-making and in the constitutional reforms of the Common State in spheres regulating its relations with the Government of the Common State.

10. Abkhazia shall reserve a right of veto on the adoption by the Government or Parliament of the Common State of laws which would infringe Abkhazia’s sovereignty, territory, borders or constitutional rights.

11. All ethnic communities within Abkhazia are equal in their rights, they can freely manifest their ethnic, cultural and linguistic identity and organise their political, educational and cultural institutions.

12. Within the context of Georgian-Abkhaz relations within Abkhazia it is not sensible to speak about “minority rights” in respect of the Abkhaz people. The latter, as much as, for instance, Tibetans or Turkish Cypriots, do not regard themselves as a “minority”, but rather as a “people”, who, therefore, possess the right of self-determination.¹⁰³ The Abkhazians argue that they used to be a majority in Abkhazia until the end of the 19th century. They eventually became a minority due to the Tsarist Russian policy of deportation and ethnic cleansing in the 19th century and the deliberate policy of population transfer pursued by Soviet Georgian leaders. Besides, no ethnic group in Abkhazia boasted an absolute majority prior to the war of 1992-3, and even then the Abkhazians were the second largest ethnic community in Abkhazia. Therefore, in order to avoid

the use of the notion “ethnic minority” as opposed to “ethnic majority”, potentially sensitive for ethnic self-awareness, it is probably more sensible to speak instead in terms of “ethnic communities” in respect to different population groups in Abkhazia (Abkhaz, Georgian/Kartvelian, Armenian, Russian/Russian speaking, Greek).

The Abkhazians would oppose attempts at marginalisation in their homeland because of their numerical weakness, which was the case in the past. They argue that, unlike Georgians, Russians, Ukrainians, Armenians, Greeks and other ethnic groups living in Abkhazia, the Abkhazians do not have any other homeland or cultural and political centre outside Abkhazia.¹⁰⁴

Even formally democratic procedures (as, for example, the organisation of a referendum), if used as a political weapon of the ethnic majority in order to establish its rule and hegemony over the indigenous minority or to impose crucial political decisions which directly effect the fate of this minority, can seriously disturb inter-ethnic consent and have a most devastating effect on the security of both minority and majority communities.¹⁰⁵

Special measures and regulations will be needed so as to create, on the one hand, a regime of balanced representation in state organs of large ethnic communities and, on the other hand, to counterbalance and compensate for the numerical weakness of the native Abkhaz community in order to preclude inter-ethnic conflict. Such balancing regulations are applied in many democratic countries of the world and are regarded as justified democratic institutions. If we take Belgium as an example, the demand of the French-speaking Walloon movement to adopt protective measures against being politically sidelined as a minority has resulted in the elimination to a great extent of the majority principle at the federal level. The Council of Ministers comprises an equal number of Dutch- and French-speaking ministers, and the same principle is being followed in the composition of the Court of Arbitration, the Council of State, etc.¹⁰⁶ As an exchange for this concession by the Flemish, who are an ethnic majority in Belgium, the Flemish minority in Brussels has received similar affirmative action-type concessions. Although the large majority of the population of Brussels, which is at the same time the capital city of Flanders and of Belgium, is comprised of its French-speaking citizens (about 80 percent), whereas the Dutch-speaking community comprises only one fifth of the city’s population, no bills can be passed by the Brussels regional Parliament without a majority consisting of both French and Dutch-speaking members. A balanced participation of Flemings and Walloons is also required for the formation of the Brussels Government.¹⁰⁷

13. The Government of the Common State shall support Abkhazia’s policy of voluntary repatriation of the diaspora Abkhazians from Turkey, Syria or elsewhere whose ancestors became refugees due to the Tsarist Russian colonial policy, and shall provide diplomatic and financial assistance to the repatriation programme.

Division of Powers between the Federated Republic of Abkhazia-Apsny and the Common State

The political formula laid at the basis of the constitutional arrangement between Abkhazia and Georgia which I propose here can be termed as “separate state entities internally, and a single aggregate state externally”. This formula has its own appeal as it attempts to form a compromise between the widely divergent Georgian and Abkhaz positions and to create a viable state model based on power sharing and division between the constituent federated Republics and the Common State.

1. The Common State

The Common State shall have its President, Parliament and Council of Ministers, its flag, coat of arms, anthem, and other state symbols. The capital of the Common State can be Tbilisi. The President of the Common State must speak the Georgian language. The President of one of the federated republics can become, if elected, at the same time the President of the Common State.

The Parliament and Council of Ministers shall comprise a proportional number of representatives from each federated state. The bi-cameral Parliament shall have the Senate, which shall be comprised of equal number of representatives of each of the federated states.

The Parliament shall issue new laws and amend already existing ones, which shall become obligatory on the territories of the federated states after their ratification by their parliaments.

The official languages of the Common State shall be Georgian, Abkhaz and Ossetian. Each minister or MP can freely use one of these official languages during the debates and speeches, or the Russian language, if (s)he so prefers. Official translation shall be provided. All official documents shall be translated into three official languages and into Russian.

In some federal states, like for instance in Germany, the federal laws have a primacy over the laws of the federated state. The Belgian model, according to which the federal and federated states' laws are on equal legal footing, seems to be more appropriate to the Georgian-Abkhaz situation. Possible contradictions shall be dealt with by the Constitutional Court of the Common State or by special Conciliatory Commissions.

International treaties concluded by the Government of the Common State which directly deal with Abkhazia (such as transit transport routes, pipelines, communications lines, ecology, etc.) shall be valid on the territory of Abkhazia after their ratification by the Abkhaz parliament.

Georgia and Abkhazia: Proposals for a Constitutional Model

Spheres of Competence of the Common State:

- Constitutional Court of the Common State;
- representation in major international organisations (UN, OSCE, Council of Europe, etc.); recognition of other states; conclusion and ratification of international treaties, agreements and international programmes pertaining to the international competences of the Common State;
- declaration of war and peace; membership in military alliances;
- jurisdiction regulating the border control and customs policies;
- federal budget;
- federal taxes;
- general co-ordination of monetary policies;
- the maintenance of relations between the federated states and general co-ordination of their policies;
- general macro-economic planning.

1. In case of declaration of war by the Common State, Abkhazia reserves the right to deliver alternatives to a full military involvement (sending of volunteers and of medical personnel, food supplies, assistance to rear services, etc.). The matters concerning the external defence and state security of the Common State, as well as concerning the co-ordination of national armed forces and security organs of the federated states, shall become the subjects of special agreements.

2. In matters of external relations the Common State shall consult with Abkhazia over issues directly concerning or affecting Abkhazia. Abkhazia shall reserve a veto right on any international agreements concluded by the Common State if they infringe Abkhazia's sovereignty, security, constitutional and legal rights, or could cause undesirable or dangerous ecological consequences.

3. Transit roads and railroads that cross the territory of the Abkhaz Republic shall be taken care of by the Abkhaz authorities with appropriate subsidies from the budget of the Common State. The same shall apply for the transit communications lines and pipelines going through Abkhazia's territory.

The spheres of competence of the Common State can be expanded on the agreement of the sides. All competences that are not listed among those pertaining to the responsibility of the Common State, shall be within the responsibility of the Republic of Abkhazia.

Spheres of Competence of the Republic of Abkhazia-Apsny:

- Abkhazia's armed forces and organs of state security;
- citizenship, immigration, emigration;

- Supreme Court;
- maintenance of Abkhazia's police force, justice and penitentiary system;
- Central Bank; Abkhazia's finance, banking, monetary, budget and tax policies;
- import and export policies, foreign trade and foreign investments;
- privatisation, trade and business activities;
- tourism;
- agriculture, industries, fisheries;
- exploitation of Abkhazia's natural resources, mineral wealth, air space and littoral;
- educational, cultural, science and technology policies;
- health care, social welfare, insurance;
- media, publishing and broadcasting;
- post, telegraph and telephone services;
- protection of environment and ecology;
- energy system;
- city planning and municipal services; housing and land ownership; public registry and statistics; employment;
- roads, railroads, airports and sea ports and infrastructure; pipelines;
- conclusion of international agreements and treaties in matters of Abkhazia's competence; foreign economic and cultural relations; participation in international organisations and programmes; maintenance of representations and missions abroad;
- declaring state of emergency and martial law.

2. Citizenship

2.1. The citizens of Abkhazia shall have double citizenship of the Common State and of the Abkhaz Republic-Apsny. Passports of the Abkhaz citizens shall include indication of both citizenships. Regulations of such type have their analogues in other countries. Thus, in the Russian Federation the citizens of Tatarstan have a double Tatar/Russian citizenship. In the autonomous Faroe Islands in Denmark passports issued to their citizens indicate the country: Denmark-Faroe, and the dual nationality of the passport holder: "Danish-Faroe". In Åland, which is a federated part of Finland, citizens also possess dual Åland and Finnish citizenship, which is indicated in their passports.¹⁰⁸

2.2. All citizens of Abkhazia, disregarding their ethnicity or declared nationality, shall enjoy equal rights and freedoms and shall have equal opportunities and responsibilities. Any persecution or discrimination based on ethnic or religious grounds, as well as the stirring up of inter-ethnic hatred, shall be illegal and punishable in accordance with Abkhaz legislation.

2.3. Only citizens of Abkhazia shall have the right to vote, to possess lands or immovable property in Abkhazia. The citizens of the other parts of the Common State cannot work in Abkhazia without a working permit issued by the authorities of Abkhazia. Such regulations are necessary to maintain the ethnic and demographic balance in Abkhazia and to regulate immigration, which is a matter of prime concern for the Abkhaz community.

Restrictions of this kind are, though exceptional, known in some other states. For example, on the territory of the autonomous Åland Islands in Finland only permanent residents have the right to vote, to possess immovable property or to trade on the islands.¹⁰⁹

3. Monetary System

Abkhazia can have its own separate currency, or, if so agreed, adopt the currency of the Common State. In the former case, on the territory of Abkhazia both currencies, of the Common State and of Abkhazia, shall be used, and the policies of the Central Bank of Abkhazia shall be co-ordinated with those of the Common State.

The analogues to this system can be found in other states. In Great Britain, Scotland has its own currency, issued by the Bank of Scotland, which is a part of the British monetary system and is kept at the same rate by convention. The autonomous Isle of Man also has formally its own pound. In Denmark, the federated Faroe Islands have their own official currency, which is used in parity with the Danish currency.

4. Defence and Security

Abkhazia shall have its own armed forces, built on a multi-ethnic basis, which shall be part of the Common State's armed forces (recently Eduard Shevardnadze also asserted that Abkhazia would be entitled to keep its own army¹¹⁰). The borders of Abkhazia, including sea borders, shall be guarded by the (multi-ethnic) Abkhaz border guards. The Georgian army can enter the territory of Abkhazia only under joint consent of the President and the Parliament of Abkhazia. The police force of Abkhazia shall also be built on a multi-ethnic basis.

5. Language policy

In the school system, pupils will be able to choose between Abkhaz, Georgian, Russian or Armenian schools. Greek, Turkish or Megrelian language schools can

also be allowed if so requested. The learning of the Abkhaz language in schools of Abkhazia shall be obligatory, and its knowledge shall be desirable, though not obligatory, for occupying governmental posts.¹¹¹

6. External Relations

6.1. Abkhazia shall inform the Government of the Common State about its international activity, about its plans on concluding international agreements, and about its participation in international organisations. International agreements concluded by Abkhazia should not contradict international obligations of the Common State or its Constitution or its membership in other international organisations.

6.2. As international tourism and export of agricultural and light industry products will be the main domains of Abkhazia's economic activities, Abkhazia shall have the right to open tourist, business and cultural centres and offices abroad. These offices can also serve as consulting and information bodies when addressed by the foreign business and investment representatives who plan engagement in economic activities in Abkhazia.

6.3. Abkhazia shall maintain special missions in the countries having a sizeable Abkhaz diaspora (such as Turkey, Syria, Germany) in order to assist the local Abkhaz communities in their cultural needs and to regulate relations between the diaspora community and Abkhazia (such as the exchange of delegations, tourist, cultural and economic activity, as well as matters concerning repatriation to Abkhazia of the members of the diaspora).

International Guarantors

Major international organisations, like the UN and OSCE, and two neighbouring countries, Russia and Turkey, could be the guarantors of the established constitutional settlement between the Republic of Abkhazia-Apsny and the Republic of Georgia.

The Pan-Caucasian Perspectives for the Political Settlement between Abkhazia and Georgia

The regionalist movement, which emerged in Western Europe in the 1960s and the 1970s, challenged the institutions of unitary European states and brought

onto the political agenda the reality of “Europe of regions”.¹¹² Decentralisation in Spain, devolution of power in Great Britain, the federalisation of Belgium, the pressure for federalisation in Italy and for decentralisation in France are being pursued in parallel with a pan-European integrationist movement. Individual States decentralise, whereas their regional associations acquire confederative and even federative traits, the most visible sign of which is the planned introduction of a single European currency. European regions and component states as parts of individual states are breaking through the inter-state barriers across already transparent borders and are striving to be directly represented in pan-European institutions. The old dream of a “United States of Europe” is steadily acquiring visible political shapes, and in this newly emerging political dimension not only individual sovereign states but their ever more independent regions or component states see themselves as fully-fledged participants or actors.

In this respect Western Europe, with all its inter-state military, political, financial, economic, cultural and ecological institutions, can serve as a model for a pan-Caucasian integrationist movement. A Caucasian Parliament, a Caucasian Common Market, a Caucasian Court and other pan-Caucasian institutions could become instruments of Caucasian regional integration and stability, which would make the Caucasus look more like an independent self-regulating economical and geopolitical reality than a peripheral battlefield of rival great powers. Within this framework both internationally recognised states and federated republics, autonomous regions or provinces could be represented as subjects of regional economic and political activity, which would freely trade and directly communicate with each other. The North Caucasian Republics of the Russian Federation, the federated Republic of Abkhazia-Apsny, South Ossetia and the Adjarian Republic, forming part of a Common State with Georgia, the Nagorno-Karabakh Republic, embedded into a Common State with Azerbaijan, could join a Caucasian Common Market and pan-Caucasian political and cultural institutions directly as individual actors and would have rights to co-decision-making.

Moreover, individual Caucasian peoples, who have no status of their own, could also be given, if they so desired, their own place within the framework of certain pan-Caucasian institutions (like a Council of the Caucasus, a Caucasian Common Market, etc.) alongside states and federated republics¹¹³, without prejudice to the sovereignty and integrity of the states in which they dwell.

Within a framework of a pan-Caucasian structure the transparent state borders, diminished sovereignty of central governments, full freedom of cultural and linguistic expression, cross-border cultural, political and economic institutions or associations would lessen the importance of being separate and independent and would enhance the sense of greater security and opportunities within a politically, economically and financially integrated democratic and pluralistic Caucasian family of nations.

The idea of pan-Caucasian political integration and pan-Caucasian security has long stirred imagination of many past and contemporary Caucasian politicians, beginning with Shamil, the leaders of the Mountain Republic and up to such modern Caucasian leaders as Dudaev, Gamsakhurdia, Ardzinba and Shevardnadze.¹¹⁴ It is conceivable that when the Caucasian peoples manage to settle their most acute disputes, the time will be ripe for the first concrete initiatives in that direction. This is, however, a topic for a separate discussion.

Notes

- ¹ I would like to thank Chris Deschouwer, Bart Driessen, Theo Jans, George Hewitt and Charlotte Hille for their comments on the preliminary versions of this article.
- ² The Russian Federation acts at these talks as “facilitator”, and the OSCE is present in the capacity of observer.
- ³ According to the Article 2 of its 1927 Constitution, the Georgian SSR was a federative state (cf. G. Amkuab (ed.), *Abkhazia: khronika neobjavlennoj vojny. Chast' II. 15 sentiabria - 15 oktiabria 1992 goda*, Moskva, 1993, p. 9).
- ⁴ Allegedly with clandestine Russian military support, cf. Spartak Zhidkov, *Brosok maloj imperii*, Majkop, 1996, p. 142.
- ⁵ As pointed out by Duursma, the Soviet law on secession (by which the author meant the Soviet law adopted on 3rd April 1990 “On the procedure of settlement of questions connected with the withdrawal of a union republic from the USSR”) allowed the Autonomous Republics and Autonomous Regions to decide independently whether or not to join the secession of the Union Republic in which they were situated. However, “In the end, this right could not be exercised by the autonomous republics of Abkhazia and Checheno-Ingushetia, or by the autonomous region of South Ossetia”, as only Union Republics were recognised by the international community as eligible to separate statehood. Cf. Jorri Duursma, *Fragmentation and the International Relations of Micro-States. Self-Determination and Statehood*, Cambridge, Cambridge University Press, 1996, p. 98.
- ⁶ The Soviet Union was made up of 15 Union Republics, some of which (like Russia, or Georgia) comprised also lower-level autonomous political units called Autonomous Republics and (lower still) Autonomous Regions and Districts. Until 1931 Abkhazia formally had the same status as Georgia — both were Socialist Soviet Republics (SSR). In 1922 Abkhazia was united with the Georgian SSR effectively on confederal principles (as a “Treaty Union Republic”), and after 1931, on federal principles (as an “Autonomous Soviet Socialist Republic”). Chapter 2, Article 5 of the 1925 Constitution of the Abkhaz SSR stated: “The SSR Abkhazia is a sovereign state exercising state power on its territory on its own and independently from any other power. The sovereignty of the SSR Abkhazia, given its voluntary entrance into the ZSFSR [Transcaucasian Socialist Federative Soviet Republic] and the Union of SSR, — is limited only in the boundaries and on the matters designated in the Constitutions of these Unions. The citizens of the SSR Abkhazia, retaining their republican citizenship, are citizens of the ZSFSR and the Union of SSR [i.e. USSR]. The SSR Abkhazia reserves for itself a right of a free secession both from the ZSFSR and from the Union of SSR. The territory of the SSR Abkhazia cannot be changed without its consent”.
- ⁷ Cf. about the internal Georgian-Abkhaz confrontation in Abkhazia during the time that immediately preceded the conflict Ennals et al., ‘Report of a UNPO Mission to Abkhazia, Geor-

Georgia and Abkhazia: Proposals for a Constitutional Model

gia, and the Northern Caucasus', in: *Central Asian Survey*, Vol. 12, No. 3, 1993, pp. 325-345; Vitalij Sharia, *Abkhazkaja tragedija, Sochi*, 1994 and Zhidkov, op. cit.

- ⁸ One can surmise that among the reasons why Shevardnadze gave his consent to the military operation in Abkhazia was that he desperately lacked a power basis in the conditions when his old Communist-time clientele has been discredited and pushed aside during Gamsakhurdia's rule. A quick and successful war in Abkhazia could boost his personal popularity as "the fighter against separatism" and "the protector of the territorial integrity of Georgia", and recruit for him new supporters, strengthening his power. More importantly still, such a war could unite the Georgians, deeply and tragically divided in their pro- and anti-Gamsakhurdia passions in a fratricidal civil war, by confronting them with an image of a common enemy, "Abkhaz separatism".
- ⁹ Neither Gamsakhurdia, nor Shevardnadze abrogated "the Abkhaz Autonomous Republic", which in theory was entitled to rather broad plenary powers.
- ¹⁰ Cf. Amkuab, op. cit., p. 10.
- ¹¹ Vakhtang Khagba, *Agressija Gruzii i mezhdunarodnoe pravo*, Gagra, 1995, p. 5.
- ¹² Olivier Paye and Eric Remacle, 'UN and CSCE Policies in Transcaucasia', in: Bruno Coppieters (ed.), *Contested Borders in the Caucasus*, Brussels, VUBPRESS, 1996, p. 105.
- ¹³ Cf. Shevardnadze's interview with the Russian newspaper "Izvestija" quoted in "Belaja Kniga Abkhazii. Dokumenty, materialy, svidetel'stva". Moskva, 1993, p. 65.
- ¹⁴ "Svobodnaja Gruzija", 20 November 1992.
- ¹⁵ The dispute between Tbilisi and Adjara, an Autonomous Republic within Georgia, which is populated by Muslim Georgians who are determined to maintain their political autonomy, suggests that the conflicts with ethnically non-Georgian Abkhazia and South Ossetia were also more of a political than of an ethnic nature. The seriousness of the Adjarian problem for Tbilisi should not be underestimated. In his speech at a three-day congress of the Union for Revival Party, held in the Adjarian capital city Batumi (with participation of some Georgian opposition parties), the Adjarian President Aslan Abashidze demanded broader autonomy for Adjara, including the right to control the border independently. He also spoke about the "autocracy" of the central Georgian government. (As reported by the Georgian paper "Resonansi", No. 169, June 24, cf. "Annotated Daily Headlines Of The Georgian Press. Compiled by the Caucasian Institute for Peace, Democracy and Development (CIPDD)", June 24, 1998).
- ¹⁶ This is underlined by Georgian authors as well: "Georgia is an obvious failure. It does not have any control over about 15% of its territory (Abkhazia, South Ossetia), and its effective control is questionable in some other provinces, such as Adjara. And this is not only that the central government is challenged by separatists or local autocrats: the issue of territorial arrangement of state power is missed out in the constitution, which means that there is no consensus within the political elite how the country should be territorially governed"; cf. Ghia Nodia, 'Georgian Security in the Regional Context', in: *The Army and Society in Georgia*, October 1998. Published by the Center for Civil-Military Relations and Security Studies of The Caucasian Institute for Peace, Democracy and Development.
- ¹⁷ These feelings are shared by the majority of Abkhazians and, to a greater or less extent, by the major part of Abkhazia's Armenian, Russian and Greek communities.
- ¹⁸ A close examination of such proposals usually reveals that they actually imply a limited form of political autonomy, which will not be accepted by Abkhazia. It is worthwhile mentioning that the Abkhazians criticise the word "granting" (arguing that they do not "ask" anything from Tbilisi, and speak only of re-integration of Abkhazia on equal footing with Georgia) and do not accept the term "autonomy", which is explained by the negative connotation which this term acquired during the Soviet period.

- ¹⁹ According to the Georgian press, the South Ossetian President Lyudvig Chibirov, after a meeting on 20 June 1998 in Borjomi with Eduard Shevardnadze, declared — for the first time in the history of the Georgian-Ossetian negotiations — that he approved of asymmetric federalism (cf. “Sakartvelos Gazeti”, No. 25, June 21).
- ²⁰ Cf. Liz Fuller. Conflict Resolution (1): Ideology vs. Pragmatism. In: Radio Free Europe / Radio Liberty, Prague, Czech Republic. RFE/RL Caucasus Report Vol. 1, No. 17, 23 June 1998. A Weekly Review of Political Developments in the North Caucasus and Transcaucasia from Radio Free Europe/Radio Liberty.
- ²¹ Cf. Shevardnadze’s interview in “Le Monde Diplomatique”, 1 July 1998.
- ²² Both the Georgian and Abkhaz sides often accuse Russia of assisting the other party, while it is obvious that Russia regards this conflict, and, consequently, its mediation in it, through the prism of its own political interests in the area. The other mediators (both the UN and OSCE, as well as the so-called “Friends of Georgia” diplomatic group) have so far demonstrated even less impartiality, strongly advocating, as firmly believed by the Abkhaz side, the interests of the Georgian side alone.
- ²³ Cf. Ghia Nodia, ‘The Conflict in Abkhazia: National Projects and Political Circumstances’, in: Bruno Coppieters, Ghia Nodia, Yuri Anchabadze (eds), op. cit., p.33.
- ²⁴ Despite usual attempts to portray Abkhazia as a mere province, or at best a “region” of Georgia, some Georgian political authors adhere to the official Georgian position (e.g.: “Abkhazia has the status of an autonomous republic. It has its own constitution, parliament and government”; cf. L. Varshalomidze, ‘Current Issues Relating to Minorities and the Principle of Self-Determination in International Law with Respect to the Republic of Georgia’, in: *Thesaurus Agroasicum of the Institute of Public International Law and International Relations of Thessaloniki*, UN Peace Messenger Award, Vol. XXIII, Thessaloniki, 1998 p. 523).
- ²⁵ The fact that the Abkhazians had maintained their statehood throughout their history, renders their situation quite different from those in which certain peoples are striving to *create* their national state.
- ²⁶ Quoted from D.W. Greig, *International Law*, London, Butterworths, 1976, p. 93.
- ²⁷ Quoted from Gerhard von Glahn, *Law Among Nations. An Introduction to Public International Law*, Boston – London -Toronto, Allyn and Bacon, 1996, p. 69.
- ²⁸ “International Legal Materials”, 31 (1992), pp. 1494-1497.
- ²⁹ Though a large section of Abkhazia’s population was displaced or fled the country as a result of the Georgian military intervention and the ensuing war, this “does not mean that the population of Abkhazia is not broadly determinable” (Driessen, op. cit., p. 6). A phased repatriation programme is envisaged under the “Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons” signed by the sides, Russia, the UN and OSCE on 4 April 1994 in Moscow.
- ³⁰ UNDP, *UN Needs Assessment Mission to Abkhazia (March 1998)*, pp. 7-8.
- ³¹ *Constitution of the Republic of Abkhazia (Apsny)*. Adopted by the 12-th session of the Supreme Council of the Republic of Abkhazia. 26 November 1994, Sukhum, 1994 (in Abkhaz and English), p. 35, 37.
- ³² Peter Malanczuk, *Akehurst’s Modern Introduction to International Law*, London and New York, Routledge, 1997, p. 79.
- ³³ Bengt Broms, ‘States’, in: Mohammed Bedjaoui (ed.), *International Law: Achievements and Prospects*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1991, p. 45.
- ³⁴ Cf. James Crawford, *The Creation of States in International Law*, Oxford, Clarendon Press, 1979, p. 4.
- ³⁵ *Ibid.*, p. 20.

Georgia and Abkhazia: Proposals for a Constitutional Model

- ³⁶ Cf. P.J.G. Kapteyn, et al., *International Organization and Integration*, Documentenverzamel-
ing, betrekking hebbende op de Verenigde Naties, de aan haar gelieerde organisaties en andere
internationale organisaties en overeenkomsten, Studenteneditie, 2e druk, 's Gravenhage:
Interuniversitair Instituut voor Internationaal Recht, T.M.C. Asser Instituut, 1984, p. 188.
- ³⁷ Quoted from Gidon Gotlieb, *Nation Against State. A New Approach to Ethnic Conflicts and the
Decline of Sovereignty*, New York, Council of Foreign Relations Press, 1993, p. 131.
- ³⁸ Greig, op. cit., p. 97, 122.
- ³⁹ von Glahn, op. cit., p. 66.
- ⁴⁰ Ibid., pp. 68-69.
- ⁴¹ Malanczuk, op. cit., p. 84.
- ⁴² Duursma, op. cit., p. 92.
- ⁴³ "International Legal Materials", 31, 1488 (1992); quoted from Driessen, op. cit., p. 6, fn 12.
- ⁴⁴ Driessen, op. cit., p. 6.
- ⁴⁵ S/1994/253, p. 6.
- ⁴⁶ Cf. Lee C. Buchheit, *Secession*, New Haven, Yale University Press, 1978, p. 222.
- ⁴⁷ Cf. Crawford, op. cit., p. 267.
- ⁴⁸ Among the reasoning for the recognition of Bangladesh were named the geographical separa-
tion of East and West Pakistan, as well as the linguistic, cultural and ethnic differences between
the two parts of the country. The other, more obvious reasons were, on the one hand, the fail-
ure of Pakistan (UN member since 1947) to suppress the secessionist movement, which estab-
lished effective control over the proclaimed state's territory (largely due to the military assis-
tance given to the rebels by India), and, on the other hand, the lobbying activity of such
influential sponsors of Bangladesh's independence as India and the Soviet Union (cf. John
Dugard, *Recognition and the United Nations*, University of Cambridge Research Centre for
International Law, Hersch Lauterpacht Memorial Lectures, Cambridge, Grotius Publications
Limited, 1987, pp. 75-76).
- ⁴⁹ Thomas D. Musgrave, *Self-Determination and National Minorities*, Oxford, Clarendon Press,
1997, pp. 210-211.
- ⁵⁰ Hersch Lauterpacht, *Recognition in International Law*, London, 1948, p. 8.
- ⁵¹ Akehurst, op. cit., p. 53.
- ⁵² Duursma, op. cit., pp. 99-100.
- ⁵³ Ibid., pp. 104, 426.
- ⁵⁴ Cf. the report of the UN Secretary-General, S/26250, p. 2.
- ⁵⁵ Crawford, op. cit., p. 70.
- ⁵⁶ Ibid., p. 266.
- ⁵⁷ One might suggest that this situation somehow resembles that of Taiwan, insofar as the latter
also did not declare its separation from China, although, even not being a UN member, it main-
tains an international legal status of its own, being a party to various internationally binding
conventions. However, here the similarities end, because Taiwan *does not claim* to be a separate
state, but rather a part of a single Chinese State (which is the position of the Peoples Republic
of China as well). This, of course, does not mean that all sections of the Taiwan society support
the official position, as indicated by the programme of the Democratic Progressive Party of Tai-
wan, which advocates the right to self-determination and a separate statehood for the people of
Taiwan. As concluded by Crawford, op. cit., p. 151, "Statehood is a claim of right, and in the
absence of any claim to secession the status of Taiwan can only be that of a part of the State of
China under separate administration". By contrast, the Abkhaz government regards its 1994
Constitution as an actual proclamation of a separate statehood. Abkhazia claims to be, and
insists on being treated as, a fully independent state. On 15 April 1998 the National Assembly

- (parliament) of the Republic of Abkhazia appealed to the Georgian Parliament to recognise the sovereignty and independence of the Republic of Abkhazia.
- ⁵⁸ Quoted from Crawford, op. cit., p. 74.
- ⁵⁹ Thus, “Non-recognition of North Korea and of Israel was not regarded as precluding the application of international law to the Korean and Middle East wars” (Crawford, op. cit., p. 23). The same is true vis-à-vis Abkhazia during the recent Georgian-Abkhaz war.
- ⁶⁰ Ibid., p. 24.
- ⁶¹ Duursma, op. cit., p. 101.
- ⁶² Zaal Anjaparidze, ‘Negotiability versus Negotiations: Georgia and the Abkhaz Question’, in: *The Jamestown Foundation Prism. A Bi-Weekly On The Post-Soviet States*, Vol. IV, 1998, No. 6, part 4.
- ⁶³ Gia Tarkhan-Mouravi, ‘The Georgian-Abkhaz Conflict in a Regional Context’, in: Bruno Coppieters, Ghia Nodia, Yuri Anchabadze (eds), op. cit., p. 101.
- ⁶⁴ According to Anjaparidze (op. cit., p. 3), Shevardnadze indeed referred to the Russian federal model with its sovereign Tatarstan Republic as a possible example for Georgia and Abkhazia.
- ⁶⁵ Ramaz Klimiashvili, *Kontseptsiya “Dvukh Abkhazij”* [manuscript, without date], p. 2.
- ⁶⁶ *Conflict in Abkhazia and a Possible Way to its Settlement. The Republican Party of Georgia Proposes to the Georgians and Abkhaz a New Model of Cohabitation: Unity by Means of Division* (ms. in Russian) [1997], p. 3.
- ⁶⁷ *Apswa* is the self-designation of the Abkhazians. Some Georgian historians have been defending the thesis, which was widely publicised in the Georgian media before the war, that attributed the “appearance” of Abkhazians in Abkhazia to the 17th century, when the barbaric Apsua tribes, allegedly arriving from the North Caucasian mountains, conquered “Georgian Abkhazia” and assimilated the “genuine Abkhazians”, who were allegedly “true Georgians”, appropriating their name. It is needless to say that this “theory”, which was finally shaped in the time of Stalin’s and Beria’s persecutions of the Abkhazians and their culture, is based on no scientific grounds whatsoever. Cf. on this topic Ketevan Lomtadze, ‘Concerning some Questions on the Identity and Location of the Abkhaz’, in: *Mnatobi*, Tbilisi, No. 12, December, 1956, p. 132-139 (in Georgian); George B. Hewitt (ed.), *The Abkhazians. A Handbook*, London, Curzon Press, 1999. On the origin of the Abkhazians, cf. Stanislav Lakoba (ed.), *Istoriya Abkhazii*, Gudauta, Alashara, 1993, pp. 5-12; Viacheslav Chirikba, ‘The Origin of the Abkhazian People’, in: George B. Hewitt (ed.), *The Abkhazians. A Handbook*, London, Curzon Press, 1999, pp. 37-47.
- ⁶⁸ Interestingly, this same idea was expressed by both Gamsakhurdia and Shevardnadze (though only the former is known as openly advocating the radical nationalist views), which might indicate that their vision of Abkhazia and Abkhazians did not differ much after all. As “Gamsakhurdia said at rallies, the Abkhaz claims to self-determination were justified, but the territory was wrong: let them return to the North Caucasus and we will support their struggle there” (Nodia, op. cit., p. 26). In his own turn, Shevardnadze, addressing the Abkhaz people in a radio interview, said: “Once and for all ... one must forget the opinion that somebody wants to leave, [wants] to enter another country. I want to say that the Georgian land is single and indivisible. As long as at least one Georgian is alive, not a bit of the land will be torn away from Georgia. If somebody wants to leave — whether he is Georgian, Abkhaz, Russian, etc. — we will wish him farewell — live where you wish, in happiness and prosperity” (Georgian radio, 4.09.1992; quoted from Khagba, op. cit., p. 77).
- ⁶⁹ The concept of “Two Abkhazias”, which envisages the dismembering of Abkhazia, was proposed by the Georgian Republican Party (under the leadership of Ivlian Khaindrava), though similar ideas have been brewing already for some time in Georgian political circles (cf., for

Georgia and Abkhazia: Proposals for a Constitutional Model

- example, the plan to partition Abkhazia according to the “Cyprus scenario”, advocated by some Georgian politicians during the war). The same plan under the analogous name (“Kontseptsija dvukh Abkhazij”) can be found also in Ramaz Klimiashvili’s 3-page pamphlet.
- ⁷⁰ Cf. its English translation in Hewitt, op. cit., pp. 264-266.
- ⁷¹ Both the National Archive and the Scientific Institute were burned by the Georgian KGB and army on 22 October 1992, cf. Amkuab, op. cit., pp. 68, 108.
- ⁷² Cf. about the threats of genocide made by the commander of Georgian troops in Abkhazia G. Karkarashvili and the Head of the Georgian civilian administration in the occupied Abkhazia G. Khaindrava in G. Amkuab (ed.), *Abkhazia: khronika neobjavlennoj vojny. Chast’ I. 14 avgusta - 14 sentiabria 1992 goda*, Moskva, 1993, pp. 127-128 and Viacheslav Chirikba, ‘The Georgian-Abkhaz Conflict: In Search for Ways out’, in: Bruno Coppieters, Ghia Nodia, Yuri Anchabadze (eds), *Georgians and Abkhazians. The Search for a Peace Settlement*, Bundesinstitut für ostwissenschaftliche und internationale Studien, Sonderveröffentlichung Oktober 1998, Köln, p. 50.
- ⁷³ Abkhaz politicians maintain that this fact has been indirectly acknowledged in the Moscow Agreement of 4 April 1994 signed by Georgia, Abkhazia, Russia, the UN and OSCE “Declaration on Measures for a Political Settlement of the Georgian/Abkhaz Conflict”, whose Article 8 reads: “A phased action programme will be worked out and proposals on the *reestablishment* of state- and legal relations will be elaborated” (italics added; cf. the English text in Hewitt, op. cit., p. 267). They point out that the need “to *reestablish* state- and legal relations” can mean only one thing: that such relations at present are non-existent.
- ⁷⁴ Murray Forsyth (*Union of States: the Theory and Practice of Confederation*, New York, Leicester University Press, 1981, p.10) defines “Federal Union” as a state structure representing an intermediary stage between normal intrastate relations and normal interstate relations.
- ⁷⁵ “Kartvelian(s)” is a common term used to designate the distantly related Georgians, Megrelians, Laz (who live mostly in Turkey) and Svans, who all possess their own distinct languages and cultures (only Megrelian and Laz are mutually intelligible), but are officially styled in Georgia as “Georgians”.
- ⁷⁶ All these groups began settling in Abkhazia following the mass deportations of the Abkhazians to the Ottoman Empire by the Tsarist Russia in the middle of the 19th century (mainly after 1864). Only in parts of the marchland Gal region of Abkhazia (bordering with Megrelia) is the Megrelian population old. The population of the rest of Abkhazia before the expulsion was homogenous Abkhaz (cf. Lakoba, op. cit., pp. 162-164, 190, 205-217; Hewitt, op. cit., pp. 83-88, 219-220).
- ⁷⁷ The Greek Cypriots argue that only their community, as an ethnic majority, is entitled to self-determination, whereas the Turkish Cypriots are an ethnic minority only and, therefore, could not exercise this right. On their part, the Turkish Cypriots maintain that they are not a minority but a people, who possess distinct traditions, language, religion and political aspirations, and that, as such, they are entitled to self-determination.
- ⁷⁸ Daniel J. Elazar, *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomy Arrangements*, Essex, Longman Current Affairs, 1991, p. 80; cf. also Musgrave, op. cit., pp. 222-229.
- ⁷⁹ Cf. Elazar, op. cit., p. 85.
- ⁸⁰ David Wippman, ‘Practical and Legal Constraints on Internal Power Sharing’, in: David Wippman (ed.), *International Law and Ethnic Conflict*, Ithaca and London, Cornell University Press, 1998, p. 217.
- ⁸¹ Cf. Musgrave, op. cit., p. 227.
- ⁸² Commenting upon conceptual similarities between the settlement proposals put forward for the Georgian-Abkhaz and Cyprus conflicts, as reflected in the “Declaration on Measures for a

Political Settlement of the Georgian/Abkhaz Conflict” (S/1994/253) and “Set of Ideas on an Overall Framework Agreement on Cyprus” (S/24472), Wippman (op. cit., p. 217) emphasises that each of these proposals “seeks to replace simple majority rule with various techniques of achieving political consensus among ethnic groups, at least on issues of vital importance to those groups that would otherwise feel threatened by straight majority rule”.

⁸³ Musgrave, op. cit., pp. 116-121.

⁸⁴ Recently the Georgian leader Shevardnadze has also been advocating the “Bosnian model” as a way to solve the problem of Abkhazia. It is necessary to emphasise here that what he, and other Georgian politicians, mean by applying the “Bosnian model” is not the concrete constitutional arrangement reached in Bosnia, but rather the “Bosnian-type” military coercion of Abkhazia in order to enforce it to capitulate to Tbilisi’s demands. To his disappointment, Shevardnadze’s appeals to usually sympathetic Western leaders to apply the “Bosnian model”, in the way he understands it, in Abkhazia have not yielded any positive response. Quite obviously, the situations and conditions in wartime Bosnia and post-war Abkhazia are different. The enforcement to peace in Bosnia was used by NATO in order *to stop* the war and brutalities and to endorse the cease-fire, which eventually led to a political settlement acceptable to all the warring parties. By contrast, there have been no major hostilities in Abkhazia since 1993, the cease-fire is firmly in force, CIS peacekeepers and UN military observers are separating the former belligerents, and, moreover, both sides have been engaged already for several years in UN-led negotiations aimed at a peaceful settlement of the conflict.

⁸⁵ Cf. Forsyth, op. cit., p. 1. According to him (p. 7), “Federal Union’ — as the spectrum between interstate and intrastate relations — and ‘federal state’ — as the spectrum between federal union and the unitary state — would seem to be the two critical categories of federalism when it is differentiated in this way”. Elazar (op. cit, p. xv) also regards confederation as a subtype of federal arrangement. Crawford (op. cit., p. 292 (fn 26) thinks that a better view of the distinction between confederation and federation is that in the former “the local units remain States in the general sense, having merely delegated certain competences to the central organs, whereas in a federation there is only one State in that sense, even if local units retain some degree of international competence”.

⁸⁶ Cf. Bross, op. cit., p. 49.

⁸⁷ The name of the future common state might become a problem of a prime political significance for both parties. This is a particular problem, which does not exist in countries like Great Britain, Belgium, or Switzerland, whose names are different from those of the major population groups. It is quite probable that the name of the future state will not necessarily coincide with the current name of Georgia (“Republic of Georgia”). Such names as “The United Republic of Georgia” (proposed by Tim Potier (Tim Potier, *The “Potier” Proposals For A Constitutional Settlement In Georgia*, 20th December (ms), 1997, 16 pp.), “The Union Republic of Georgia”, or “The Federal Union of Georgia and Abkhazia” can be discussed.

⁸⁸ Cf. Luc Van den Brande, ‘Voorwoord’, in *Vlaanderen*, De Vlaamse Regering, Ministerie van de Vlaamse Gemeenschap, Departement Coördinatie Administratie Buitenlands Beleid, Brussel, 1997, p. 3.

⁸⁹ Cf. *Flanders. A State of Federal Belgium*, Ministry of Flanders, Coordination Department, Administration of Foreign Affairs, Brussels, 1997, p. 6.

⁹⁰ Cf. the report of the UN Secretary-General of 3 May 1994: “Abkhazia would be a subject with sovereign rights within the framework of a union State to be established as a result of negotiations after issues of dispute have been settled” (S/1994/529, p. 3).

⁹¹ Cf. *Proposals of Georgia for Conflict Settlement in Abkhazia, Georgia*, Received by the author courtesy of Mr. Giorgi Badridze, the Georgian Foreign Ministry, in June 1997. Also available

Georgia and Abkhazia: Proposals for a Constitutional Model

on the Internet under the title 'Proposals of Georgia on the Status of Abkhazia, Georgia', cf. <http://www.steele.com/GeorgAssoc/>.

⁹² Akehurst, op. cit., p. 70.

⁹³ Ibid., p. 71.

⁹⁴ Yearbook ILC, 1994, vol. II, Part I, p. 281 (quoted from Luc Van den Brande, 'The International Legal Position of Flanders: Some Considerations', in: K. Wellens (ed.), *International Law: Theory and Practice*, Kluwer Law International, 1998, p. 154). Probably it is opportune to distinguish between a recognised sovereign state as possessor of a "fully-fledged international legal personality" and a component (or federated) state as possessor of a "separate international legal personality". The latter can enjoy rather substantial international competences, yet falling short of being considered as a fully sovereign international person. Nonetheless, both polities can be equally considered as subjects of international law.

⁹⁵ Ibid., p. 146.

⁹⁶ Elazar op. cit., pp. 95, 96.

⁹⁷ Ibid., p. 64.

⁹⁸ Cf. Rafael Khakimov, (ed.) 'Rossija i Tatarstan: problemy asimetrichnykh otnoshenij', in *Panorama-Forum*, No. 2, Kazan', 1995, p. 9.

⁹⁹ André Alen and Patrick Peeters, 'Federal Belgium within the international legal order: theory and practice', in: K. Wellens (ed.), *International Law: Theory and Practice*, Kluwer Law International, The Hague, 1998, p. 139.

¹⁰⁰ Van den Brande, 'The International Legal Position of Flanders: Some Considerations', op. cit., p. 147.

¹⁰¹ Ibid., p. 152.

¹⁰² Alen and Peeters (op. cit., p. 140). According to Luc Van den Brande ('Policy Priorities 1995-1999', in: *Flanders International*, Brussels, 1995, p. 11), "Flanders has acquired extensive international possibilities not shared by any other non-Belgian federated state in the world up to now". "In theory ... Flanders has constitutionally determined and nearly unlimited possibilities regarding foreign policies. Some interfederal balances and constitutional agreements guarantee that the foreign policy of the federated states and that of the federal level are complementary, even without a hierarchy present. The Interministerial Foreign Policy Committee is deliberating in order to align the foreign policy of the federal authorities and that of the federated states to each other".

¹⁰³ Cf. Khagba, op. cit., pp. 9, 29, 54-55. Under contemporary international law, only 'peoples' are entitled to self-determination, including external self-determination, whereas 'minorities' are entitled to autonomy, i.e. to internal self-determination only. The UN recognised the Tibetans as constituting a 'people' and asserted their right to self-determination (cf. Musgrave, op. cit., p. 157), whereas such recognition was denied to Turkish Cypriots. In relation to the Abkhazians, the official UN parlance cautiously avoids referring to them as a 'people', using instead such terms as 'the Abkhaz side (authority, officials, etc.)'. Other UN documents, however, do speak about the Abkhazians as a 'people', as for example in the "Report of the Secretary-General's fact-finding mission to investigate human rights violations in Abkhazia, Republic of Georgia" (S/26795, 17 November 1993, p. 3), or in the 1998 United Nations Needs Assessment Mission to Abkhazia (p. 2, 54).

¹⁰⁴ It is probably worth mentioning that in Abkhazia only Abkhazians claim to be a separate people. All other ethnic groups (Kartvelians/Georgians, Armenians, Russians, Ukrainians, Greeks, etc.) consider themselves as being parts of their respective nations, whose central ethnic territories are situated beyond the borders of Abkhazia. This could lead to the conclusion that these ethnic groups in Abkhazia can be considered, without giving to it a value judgement and without prejudice to their rights, as minorities *par excellence*, because they live outside the central ethnic territory on which they constitute a separate people in its own right (Georgia proper,

Armenia, Russia, Ukraine, Greece), and because they do not claim to be a separate people as opposed to the ethnic groups corresponding to them in the afore-mentioned states. Consequently, even being a minority, the Abkhazians are at the same time 'a people' and, as such, they are entitled to self-determination (including external self-determination). As pointed out by Duursma (op. cit., p. 41), "minorities do not have the right of self-determination, unless they are also peoples", adding that the concept of minorities is inherently a relative one. Besides, "The right of self-determination has to do not with the choice of nationality, but rather with the choice of peoplehood" (ibid., p. 71). Speaking about the entire population of Abkhazia as representing 'the people of Abkhazia' (cf. Article 2 of the Abkhaz Constitution, which reads: "The bearer of sovereignty and the only source of authority in the Republic of Abkhazia shall be its people — the citizens of the Republic of Abkhazia"), it is worth noting that only its Kartvelian part is in the main critical of the secession of Abkhazia, all other ethnic groups being in the main supportive of, or sympathetic to, Abkhazia's pro-independence stance.

¹⁰⁵ As noted in this respect by Gidon Gotlieb (op. cit., p. 23), "Democratic rule may be a necessary but not a sufficient condition for the respect of human rights. The authors of the American Bill of Rights fully recognized that the rights of minorities and of individuals require protection from democratically elected governments". Cf. the discussion of liberal and regulated views on democracy in respect to the Belgian ethnic situation in Ruth van Dyck, 'Regionalizm, federalizm i prava men'shinstv v Bel'gii', in: B. Koppiters, E. Remakl' & A. Zverev, *Etnicheskie i regional'nye konflikty v Evrazii. Kniga 3. Mezhdunarodnyj opyt razreshenija etniceskix konfliktov*, Moskva: Ves' Mir, 1997, pp. 262-267.

¹⁰⁶ Working Paper for a Further State Reform. Adopted by the Government of Flanders on February 29, 1996, Brussels, Ministerie van de Vlaamse Gemeenschap, Departement Coördinatie, p. 10.

¹⁰⁷ Flanders. A State of Federal Belgium. Ministry of Flanders. Coördination Department. Administration of Foreign Affairs. Brussels, 1997, p. 13.

¹⁰⁸ Cf. Driessen, op. cit., pp. 4, 11; Elazar, op. cit., p. 100.

¹⁰⁹ Driessen, op. cit., p. 10.

¹¹⁰ Cf. Fuller, op. cit..

¹¹¹ Except for the post of the President of Abkhazia, who must speak the Abkhaz language, as a symbol of Abkhaz statehood.

¹¹² Yves Mény, *Government and Politics in Western Europe*. Britain, France, Italy, West Germany, New York, Oxford University Press, 1991, p. 10.

¹¹³ On such a basis the Confederation of the Peoples of the Caucasus has been built.

¹¹⁴ Cf. Stanislav Lakoba, *Kollektivnaja bezopasnost' i uregulirovanie konfliktov na Kavkaze* (ms.), p. 5; 1998; Rafiq Aliev, "'Kavkazskij dom": vzgliad iz Azerbajdzhana', in: A. Malashenko, B. Koppiters, D. Trenin, *Etnicheskie i regional'nye konflikty v Evrazii. Kniga 1. Central'naja Azija i Kavkaz*, Moskva, Ves' Mir, 1997, pp. 159-169. Cf. also David Atkinson, *Peace Plan for the Caucasus. A Paper for Discussion*, House of Commons (ms), 1997, 2 pp.; Potier, op. cit.; Khagba, op. cit., pp. 62-66.

References

Michael Akehurst, *A Modern Introduction to International Law*, London, Allen and Unwin, 1987

Rafiq Aliev, "'Kavkazskij dom": vzgliad iz Azerbajdzhana', in: A. Malashenko, B. Koppiters, D. Trenin, *Etnicheskie i regional'nye konflikty v Evrazii. Kniga 1. Central'naja Azija i Kavkaz*, Moskva, Ves' Mir, 1997, pp. 159-169.

Georgia and Abkhazia: Proposals for a Constitutional Model

- André Alen and Patrick Peeters, 'Federal Belgium within the international legal order: theory and practice', in: K. Wellens (ed.), *International Law: Theory and Practice*, Kluwer Law International, The Hague, 1998, pp. 123-143.
- G. Amkuab (ed.), *Abkhazia: khronika neobjavlennoj vojny. Chast' I. 14 avgusta - 14 sentiabria 1992 goda*, Moskva, 1992.
- G. Amkuab (ed.), *Abkhazia: khronika neobjavlennoj vojny. Chast' II: 15 sentiabria - 15 oktiabria 1992 goda*, Moskva, 1993.
- G. Amkuab (ed.), *Abkhazia: khronika neobjavlennoj vojny. Chast' III: 16 oktiabria - 16 nojabria 1992 goda*, Moskva, 1993.
- Zaal Anjaparidze, 'Negotiability versus Negotiations: Georgia and the Abkhaz Question', in: *The Jamestown Foundation Prism. A Bi-Weekly On The Post-Soviet States*, Vol. IV, 1998, No. 6, part 4.
- David Atkinson, *Peace Plan for the Caucasus. A Paper for Discussion*, House of Commons (ms), 1997, 2 pp.
- Bengt Broms, 'States', in: Mohammed Bedjaoui (ed.), *International Law: Achievements and Prospects*, Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1991.
- Lee C. Buchheit, *Secession*, New Haven, Yale University Press, 1978.
- Viacheslav Chirikba, 'The Georgian-Abkhaz Conflict: In Search for Ways out', in: Bruno Coppeters, Ghia Nodia, Yuri Anchabadze (eds), *Georgians and Abkhazians. The Search for a Peace Settlement*, Bundesinstitut für ost-wissenschaftliche und internationale Studien, Sonderveröffentlichung Oktober 1998, Köln, pp. 49-61.
- Viacheslav Chirikba, 'The Origin of the Abkhazian People', in: George Hewitt (ed.), *The Abkhazians. A Handbook*, London, Curzon Press, 1999, pp. 37-47.
- Conflict in Abkhazia and a Possible Way to its Settlement. The Republican Party of Georgia Proposes to the Georgians and Abkhaz a New Model of Cohabitation: *Unity by Means of Division* (ms. in Russian) [1997], 6 pp. with map.
- Constitution of the Republic of Abkhazia (Apsny)*. Adopted by the 12-th session of the Supreme Council of the Republic of Abkhazia. 26 November 1994, Sukhum, 1994 (in Abkhaz and English).
- James Crawford, *The Creation of States in International Law*, Oxford, Clarendon Press, 1979.
- Bart Driessen, *Background Briefing for the Government of Abkhazia on Types of Autonomy, Federation and Confederation* (ms), 1994, 24 pp.
- Bart Driessen, *Legal Opinion on The Validity And Interpretation of the 4 April 1994 Georgian-Abkhaz Agreements* (ms), 1997, 15 pp.
- John Dugard, *Recognition and the United Nations*, University of Cambridge Research Centre for International Law, Hersch Lauterpacht Memorial Lectures, Cambridge, Grotius Publications Limited, 1987.

- Jorri Duursma, *Fragmentation and the International Relations of Micro-States. Self-Determination and Statehood*, Cambridge, Cambridge University Press, 1996.
- Daniel J. Elazar, *Federal Systems of the World: A Handbook of Federal, Confederal and Autonomy Arrangements*, Essex, Longman Current Affairs, 1991.
- Ennals et al., 'Report of a UNPO Mission to Abkhazia, Georgia, and the Northern Caucasus', in: *Central Asian Survey*, Vol. 12, No. 3, 1993, pp. 325-345.
- Flanders. A State of Federal Belgium*, Ministry of Flanders, Coordination Department, Administration of Foreign Affairs, Brussels, 1997.
- Murray Forsyth, *Union of States: the Theory and Practice of Confederation*, New York, Leicester University Press, 1981.
- Liz Fuller, 'Conflict Resolution (1): Ideology vs. Pragmatism', in: *RFE/RL Caucasus Report*, Vol. 1, No. 17, 23 June 1998.
- Gerhard von Glahn, *Law Among Nations. An Introduction to Public International Law*, Boston – London - Toronto, Allyn and Bacon, 1996.
- Gidon Gotlieb, *Nation Against State. A New Approach to Ethnic Conflicts and the Decline of Sovereignty*, New York, Council of Foreign Relations Press, 1993.
- D.W. Greig, *International Law*, London, Butterworths, 1976.
- George B. Hewitt, 'The Role of Scholars in the Abkhazians' Loss of Trust in the Georgians and How to Remedy the Situation', in: Mehmet Tütüncü (ed.), *Caucasus: War and Peace. The New World Disorder and Caspasia*, Haarlem: SOTA, 1998, pp. 115-125.
- George B. Hewitt (ed.), *The Abkhazians. A Handbook*, London, Curzon Press, 1999.
- P.J.G. Kapteyn, et al., *International Organization and Integration*, Documentenverzameling, betrekking hebbende op de Verenigde Naties, de aan haar gelieerde organisaties en andere internationale organisaties en overeenkomsten, Studenteneditie, 2e druk, 's Gravenhage: Interuniversitair Instituut voor Internationaal Recht, T.M.C. Asser Instituut, 1984.
- Vakhtang Khagba, *Osnovnye elementy razreshenija gruzino-abkhazkogo konflikta (ms)*, 1995, 12 pp.
- Vakhtang Khagba, *Agressija Gruzii i mezhdunarodnoe pravo*, Gagra, 1995.
- Rafael Khakimov, (ed.) 'Rossija i Tatarstan: problemy assimetrichnykh otnoshenij', in *Panorama-Forum*, No. 2, Kazan', 1995.
- Ramaz Klimiashvili, *Koncepcija "Dvux Abxazij"* [without date] (ms, 3 pp.).
- Stanislav Lakoba, *Kollektivnaja bezopasnost' i uregulirovanie konfliktov na Kavkaze. Sovremennye realii uregulirovanija gruzino-abkhazkogo konflikta*, (ms.), 9 pp.
- Stanislav Lakoba (ed.), *Istorija Abkhazii*, Gudauta, Alashara, 1993.
- Stanislav Lakoba, 'Abkhazia, Georgia and the Caucasus Confederation' in: Bruno Coppieters, Ghia Nodia, Yuri Anchabadze (eds), *Georgians and Abk-*

Georgia and Abkhazia: Proposals for a Constitutional Model

- hazians. The Search for a Peace Settlement*, Bundesinstitut für ostwissenschaftliche und internationale Studien, Sonderveröffentlichung, Oktober 1998, Köln, p. 113-121.
- Hersch Lauterpacht, *Recognition in International Law*, London, 1948.
- Ketevan Lomtadze, 'Concerning some Questions on the Identity and Location of the Abkhaz', in: *Mnatobi*, Tbilisi, No. 12, December, 1956, p. 132-139 (in Georgian).
- Irakli Machavariani, *O politicheskom statuse Abkhazii v sostave Gruzii (ms.)*, 1995.
- Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, London and New York, Routledge, 1997.
- Yves Mény, *Government and Politics in Western Europe. Britain, France, Italy, West Germany*, New York, Oxford University Press, 1991.
- Thomas D. Musgrave, *Self-Determination and National Minorities*, Oxford, Clarendon Press, 1997.
- Ghia Nodia, 'The Conflict in Abkhazia: National Projects and Political Circumstances', in: Bruno Coppieters, Ghia Nodia, Yuri Anchabadze (eds), op. cit., pp. 14-48.
- Olivier Paye and Eric Remacle, 'UN and CSCE Policies in Transcaucasia', in: Bruno Coppieters (ed.), *Contested Borders in the Caucasus*, Brussels, VUB-Press, 1996, pp. 103-136.
- Tim Potier, *The "Potier" Proposals for A Constitutional Settlement In Georgia*, 20th December (ms), 1997, 16 pp.
- Tim Potier, *Towards the Establishment of International Organisations/Conferences of Peace and Security in the Caucasus*, 26th January (ms), 1998, 12 pp.
- Proposals of Georgia for Conflict Settlement in Abkhazia, Georgia*, Received by the author courtesy of Mr. G. Badridze, the Georgian Foreign Ministry, in June 1997. Also available on the Internet under the title 'Proposals of Georgia on the Status of Abkhazia, Georgia', cf. <http://www.steele.com/GeorgAssoc/>
- Vitalij Sharia, *Abkhazkaya tragedija, Sochi*, 1994.
- Xiaokun Song, 'Confederalism - A Review of Recent Literature', in this volume.
- Gia Tarkhan-Mouravi, 'The Georgian-Abkhaz Conflict in a Regional Context', in: Bruno Coppieters, Ghia Nodia, Yuri Anchabadze (eds), op. cit., pp. 90-112.
- United Nations Development Programme, *United Nations Needs Assessment Mission to Abkhazia, Georgia*, March 1998.
- Luc Van den Brande, 'Policy Priorities 1995-1999', in: *Flanders International*, Brussels, 1995.
- Luc Van den Brande, 'The International Legal Position of Flanders: Some Considerations', in: K. Wellens (ed.), *International Law: Theory and Practice*, Kluwer Law International, 1998, pp. 145-158.
- Ruth van Dyck, 'Regionalizm, federalizm i prava men'shinstv v Bel'gii', in: B. Koppiters, E. Remakl' & A. Zverev, *Etnicheskie i regional'nye konflikty v*

- Evrazii, Kniga 3. Mezhdunarodnyj opyt razreshenija etnicheskix konfliktov*, Moskva, Ves' Mir, 1997, pp. 251-268.
- L. Varshalomidze, 'Current Issues Relating to Minorities and the Principle of Self-Determination in International Law with Respect to the Republic of Georgia', in: *Thesaurus Agroasicum of the Institute of Public International Law and International Relations of Thessaloniki*, UN Peace Messenger Award, Vol. XXIII, Thessaloniki, 1998 pp. 519-527.
- Vlaanderen*, De Vlaamse regering, Ministerie van de Vlaamse Gemeenschap, Departement Coördinatie Administratie Buitenlands Beleid, Brussel, 1997.
- David Wippman, 'Practical and Legal Constraints on Internal Power Sharing', in: David Wippman (ed.), *International Law and Ethnic Conflict*, Ithaca and London, Cornell University Press, 1998, pp. 211-241.
- Working Paper for a Further State Reform. Adopted by the Government of Flanders on February 29, 1996*, Brussels, Ministerie van de Vlaamse Gemeenschap, Departement Coördinatie.
- Spartak Zhidkov, *Brosok maloï imperii*, Majkop, 1996.