

**Concept on the Special Status of Abkhazia  
in the Georgian State**

(Project)

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## **Concept on the Special Status of Abkhazia in the Georgian State**

### **Reasons for the creation of a working group and the preparation of this document**

- [1] Some eleven years after the end of armed hostilities in the Georgian-Abkhazian conflict, a number of crucial questions relating to the conflict have yet to be addressed, namely, how does the Georgian government envisage the country's future state-territorial structure? What mechanisms would secure Abkhazian sovereignty within that structure? And more generally, what level of sovereignty are we talking about?
- [2] To date the central government of Georgia has not established a consistent position on these issues. A widely held view (which is incorporated into the Georgian Constitution of 1995) is that no model for the country's administrative-territorial structure can be determined before Georgia's conflicts, first and foremost that in Abkhazia, are resolved. However, this position confuses cause and effect – the conflicts cannot realistically be resolved before the Georgian government articulates a clear vision for the structure of the future Georgian state.
- [3] The absence of a consistent and both politically and legally viable stance on the issue in the Georgian government also stems from the fact that, to date, hopes for the resolution of the Georgian-Abkhazian conflict are focussed on external forces (the United Nations, Russia, the United States, the Friends of Georgia group). Of course these actors have a major influence on the current situation, but the key to resolving the conflict ultimately lies in a bilateral agreement between the Georgian and Abkhazian sides. Yet no such agreement can come into being until the Georgian government decides on what it can offer to Abkhazian society.
- [4] Furthermore, the lack of a clear position on Abkhazia's status and its guarantees within the Georgian state also creates problems for those states seeking to assist us in the resolution of the conflict. This is particularly the case with regard to the occasional voicing of aspirations for a military solution of the problem. As a result our allies have real difficulties in convincing the Abkhazian side that re-incorporation into the Georgian state is expedient or desirable, and are left with no other options bar various means of applying pressure on Abkhazia. This is not a strategy which the West is currently willing to use, nor will it be until it sees that the Georgian government is taking real, constructive steps towards the resolution of the conflict and the reconstruction of the country.
- [5] This situation has two further effects. On the one hand it allows Russia to retain its long-held position in the view of the Abkhazian side as the sole guarantor against suspected Georgian aggression. On the other, it demonstrates to the West that Georgia is not ready to resolve the conflict in a democratic and civilized way.
- [6] The presentation of a package of constructive and democratic proposals by the Georgian government would decisively undermine Russia's ability to maintain this game, and

correspondingly, would create political and moral grounds for Western states to increase their efforts to influence both Russia and Abkhazia.

- [7] The Abkhazian side sees no alternative to the current situation – the restoration of Georgian jurisdiction is perceived by the Abkhazians as a direct threat to their physical existence. They consequently see no reason why they should give up independence, albeit one that is compromised and unrecognised *de jure*, for an uncertain future within the Georgian state. This explains why Abkhazian society (at least from outside) appears to be unanimous in opting for political isolation from Georgia. However, were the Georgian side to offer the Abkhazian population valid guarantees of its rights and sovereignty within a single Georgian state, then a real choice would open up as to what is preferable: unrecognised independence and the fear of an uncertain future, or all the benefits proceeding from re-incorporation into the Georgian state.
- [8] Obviously, non-specific promises that the rights of the Abkhazian ethnic group will be safeguarded within the Georgian state and of the ‘broadest possible autonomy’ are insufficient to achieve this goal. Concrete proposals, tools and guarantees are needed. The general view of the international community on the key principles of conflict resolution is presented in the so-called ‘Boden Document’.<sup>1</sup>
- [9] The importance of this document notwithstanding, both Georgian and Abkhazian sides have significant misgivings concerning its contents. The Abkhazian side fears reintegration into the Georgian state, while the Georgian side fears the determination of Abkhazia’s sovereign status. Yet are these misgivings insurmountable? We believe not. Once the fundamental principles of the Boden Document have been buttressed by concrete, democratic, and both politically and legally valid guarantees and mechanisms, it will be possible to come to decisions acceptable to both sides. However, this needs to be achieved bilaterally between the Georgian and Abkhazian sides, since neither the United Nations nor the international community can independently determine what level of Abkhazian sovereignty will be mutually acceptable to both sides.
- [10] The intensity of feeling surrounding the Abkhazian issue is itself a major obstacle to the elaboration of a consistent position towards it within the Georgian government. Any raising of the issues of the restoration of territorial integrity or the return of the displaced population to Abkhazia results in a strong emotional response across the whole of Georgian society, let alone the reaction of the displaced population itself. This makes resolution of the conflict a highly ‘seductive’ issue for various political groups, creating incentives for them to use it for their own political purposes to maintain a presence in the political arena, and to gain popularity and public support. This accounts for the high variation in positions adopted within the government towards the conflict, ranging from calls for the use of force to resolve it to the lifting of all sanctions currently imposed on Abkhazia.
- [11] At the same time, it is evident to the larger part of Georgian society that there can be no return to the pre-1992 *status quo ante*, and thought must be given to what kind of future Georgia can have as a re-integrated state. Paradoxically, Georgia today is not ready for the restoration of its territorial integrity, since no model is currently offered for the co-existence of Georgians and Abkhazians, or for mechanisms guaranteeing the rights of both sides.

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<sup>1</sup> *Main Principles of Separation of Competencies between Tbilisi and Sukhumi*, 20 November 2001, authored by Dieter Boden, Special Representative of the United Nations Secretary-General to Georgia in cooperation with the representatives of the Friends of the Secretary-General.

Under these conditions the restoration of territorial integrity and the return of the displaced population may create greater problems than are currently posed by the non-resolution of the conflict.

[12] Proceeding from the above, the group of authors responsible for this document have sought to avoid identification with any one political position or side, and to produce an academic document offering their view of how the Georgian-Abkhazian conflict may be resolved as fairly as possible, through political and constitutional means. The present concept is an attempt to create grounds for fruitful negotiations and mutually acceptable decisions between the Georgian and Abkhazian sides on the basis of concrete mechanisms and guarantees.

[13] The document was prepared by the following group of Georgian experts: Konstantine Kublashvili, Archil Gegeshidze, Ivliane Khaindrava and Paata Zakareishvili. A significant contribution to its preparation was also made by the insightful comments of David Bakradze, Tinatin Khidasheli and David Darchiashvili, and the well-known academics Professor Thomas Fleiner (Frieburg, Switzerland) and Professor Alexander Blankenagel (Humboldt University, Berlin, Germany). We would also like to acknowledge the role of the British non-governmental organization Conciliation Resources, who contributed greatly to the regularity of working group's meetings and their production of the document.

[14] The present document consists of five parts and two appendices.

**Part 1** offers a brief overview of political-legal relations between Georgia and Abkhazia. In particular it analyses Georgian-Abkhazian relations in the period after the dissolution of the Russian Empire and during the Georgian Social-Democratic Republic (1917-21), then during the Soviet period, and finally in the period following the Soviet collapse, when the conflict entered its most critical phase.

[15] **Part 2** is devoted to the post-military phase of the Georgian-Abkhazian conflict, specifically the peace negotiations of 1994-2003; diplomatic and political initiatives from this period are also discussed.

[16] **Part 3** identifies all interested parties relevant to the conflict, and sketches out the specificities of their individual stances with regard to it. Separate segments of Georgian and the *de facto* Abkhazian government are treated as individual actors, alongside international organizations and relevant states.

[17] **Part 4** provides a description of the situation obtaining in Abkhazia at the time of the preparation of this document (December 2003), reviewing current developments in political, economic, military, social, infrastructural and religious spheres.

[18] **Part 5, the present section, comprises the fifth, final and most important component of the document.** It sets out an original concept for a special status of Abkhazia within the state of Georgia. Basing itself on current political realities and relevant international experience, and using a synthesis of the principles of regionalism and federalism, it offers a specific model for the state-territorial structure of Georgia. This model takes into account Abkhazia's specific historical and legal features relative to the cultural, political, historical and geographical features of Georgia's other regions. The concept provides a detailed outline for Abkhazia's special political-legal status within the Georgian state, and all the

rights and obligations proceeding from this status; it further specifies a range of special legal prerogatives for Abkhazia; finally it offers additional guarantees, which ensure the rights of the Abkhazian people to security and development, specifically in political, military, financial, demographic and other spheres.

- [19] The section also introduces basic provisions from draft documents relating to the resolution of the conflict: the 'Agreement on the Resolution of the Georgian-Abkhazian conflict' and the 'Federal Agreement on the Special Status of Abkhazia'. Procedures for entering these agreements into force are also prescribed.
- [20] The document also has two appendices: the text of the 1921 Treaty of Alliance signed by the Georgian Soviet Socialist Republic and the Abkhazian Soviet Socialist Republic, and statistical data showing the ethnic composition of Abkhazia 1897-1989.
- [21] If the Georgian government provides comments on the concept and expresses the desire for it to do so, the working group is ready to continue its work to refine the treatment of various issues concerning the resolution of the conflict in this document.

## **PART 5. PROPOSALS FOR THE SPECIAL STATUS OF ABKHAZIA WITHIN THE STATE OF GEORGIA**

### **5.1 INTRODUCTION**

- [22] In spite of an extremely difficult transition period, characterised by bloody civil war, armed conflicts and a generally chaotic situation obtaining across the whole country at the beginning of the 1990s, Georgia successfully managed to adopt a new Constitution in 1995. The new Georgian Constitution laid the foundations for a new Georgian state by defining its political structure, recognizing basic human rights and freedoms, delimiting the legal authority, structure and principles of conduct of the country's highest political organs and, likewise, the relations and procedures between legislative, executive and judicial powers. This granted the fledgling state some stability based on the principles of democracy and the rule of law. However, the question of defining Georgia's state-territorial structure was not resolved at the time of the new Constitution's adoption. The Constitution provided for this question only in general terms and postponed its resolution to an unspecified future date.
- [23] The reasons for thus "resolving" this question, vital to any polity, were the above-mentioned situation in the country (unresolved conflicts, civil war and a serious criminal situation), and the urgency associated with the adoption of the Constitution. Furthermore, several political parties in the parliament deemed it inexpedient to come to a final decision on the country's territorial organization without the participation of Abkhazian and Ossetian representatives. Most experts today agree that this was the best option available at the time under the circumstances, since on the one hand it preserved the *status quo*, while on the other it enabled a new Georgian state to be established along with the process of state-legal reforms envisaged in the Constitution. Nevertheless, it is now evident that the decision to postpone resolution of the state's territorial structure has been postponed for too long, to the extent that it might even be too late to resolve it. This has recently engendered a whole range of social and political problems in Georgia. This issue therefore needs to be

urgently addressed with regard to Abkhazia in particular and to the country as a whole, and the Georgian government (together with Georgian and foreign experts) needs to elaborate a viable concept and proposals regarding the territorial organization of the state. The government's uncertain approach towards this issue is a source of concern not only within the country, but also for the international community and those international organizations that have been involved in the conflict resolution process for many years. Today, everyone is curious to know what would 'broad autonomy for Abkhazia', so frequently cited by the Georgian government and academic and social groups at negotiations and talks, actually look like? If for no other reason, the Georgian government has to define its position both with respect to Abkhazia, as well as the critically important issue of the state's future territorial-political organization in general.

## **5.2 BASIC PRINCIPLES OF THE STATE-TERRITORIAL ORGANIZATION OF GEORGIA**

- [24] Although the main subject of this work is the special status of Abkhazia, it is necessary to briefly touch upon the major principles of the territorial organization of Georgia more generally.
- [25] From the outset, it can be noted that the 1995 Constitution may be assumed to provide a basis for elaborating a concept of the country's territorial organization. In separate provisions of the Constitution its authors clearly envisage the following features: the existence of autonomous entities, the separation of powers between the centre and the regions, the granting of special rights to the central government and a range of issues subject to joint authority, and the representation of the regions in the central government (in the parliament's upper chamber, or Senate) – in short, the creation of a single state based on the principles inherent in a federal model of statehood. This is a significant foundation for the final determination of the country's state-territorial structure. As is now apparent, over recent years the Georgian government has neither carried out a detailed analysis of the provisions envisaged in the Constitution, nor any elaboration of the basic principles of a new model for Georgia's territorial structure. In official documents, as well as in academic circles and public debates, the question of federalism is raised only in relation to Abkhazia. It is evident for all that the legal basis for the resolution of the Georgian-Abkhazian conflict will play a decisive role in developing a wider concept for the state's future territorial organization. At the same time, it must be noted that the failure to address the settlement of the Abkhazian issue promptly should not obstruct indefinitely the resolution of the country's territorial organization more generally.
- [26] At present, an almost unanimous stance with relation to the problem of Abkhazia prevails among Georgia's academic, societal and political circles – the majority of scholars and politicians are inclined towards federalism as a basis for resolving the issue. At the same time, we should keep in mind that the Constitution rules in favour of a decentralized or, more forthrightly, a federal state (this becomes clear from analysis of the above-mentioned provisions of the Constitution<sup>2</sup>). It then logically follows that a concept for the country's

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<sup>2</sup> See Zurab Adeishvili, Gia Getsadze, Giorgi Gogiashvili and Konstantine Kublashvili, 'Reflections on the future State-Territorial Structure of Georgia', *Bulletin of the Georgian Centre for Strategic and Development Research*, No.4, March 1998; see also Konstantine Kublashvili, "Territorial Structure and National

future territorial organization should be premised on the decentralization of the state. Of course, the above-mentioned provisions of the Constitution will be further expanded, shaped and specified in the course of developing the concept and, later, the constitutional law regulating it. This means that the country's regions, its territorial units, will acquire a legal status, whether it is political or administrative. In the initial stage of decentralization it is reasonable to confer upon the country's regions the status of administrative-territorial entities. With regard to Abkhazia, it should be made explicit from the outset that as the only homeland of the Abkhazian nation – one of the founding nations of the Georgian state – it must have a special status differentiated from all others. Furthermore, we should take into consideration a principle confirmed by the experience of other states, namely that the constitutional and legal determination of each state's territorial model is intimately related to, and based upon, the specific features of the history and political, economic and legal development of the state in question. On the basis of this discussion, we may conclude that it would be appropriate for Georgia to give preference to the principle of asymmetric federalism.<sup>3</sup> However, conferring territorial-administrative status to Georgia's other regions at the initial stage (apart from Adjara, which should possess a level of political autonomy considerably lower than Abkhazia<sup>4</sup>) requires the introduction of elements of regionalism. Correspondingly, on the basis of a synthesis of the principles of regionalism and federalism, we shall arrive at a specific model for Georgia's territorial structure, *which will enable us to take into account the historically and legally conditioned features of Abkhazia on the one hand, and the cultural, political, historical and geographical features of Georgia's other regions on the other, together with the current realities of the situation.* We emphasise once more that the historical, political, legal, cultural and economic distinctiveness of Abkhazia needs to be explicitly acknowledged and expressed.

- [27] The experience of a number of countries around the world confirms this undeniable thesis. Analysis of the historical development of Spain and Germany clearly shows that their historical, legal, cultural, geographical and economic features have had a crucial impact upon the current territorial structure provided for in their constitutions. In *Spain*, legal and political specificities differentiated the Basque Country and Catalonia from other regions over many centuries; they enjoyed special rights and maintained their own national traits. The political leader of the Autonomous Republic of Catalonia, Jordi Pujol, has openly stated: "*Catalonia is a nation demonstrating all the basic indicators of this concept: a historical past, geographical borders, a separate language, a specific legal tradition, a different way of life, traditions and future plans*". During the short existence of the Second Republic of Spain (1931-1936), Catalonia was the first region (in 1932), and the Basque Country the second (in 1936), to gain special autonomous status. Based on these historical antecedents, both regions enjoyed special treatment during the adoption of the Spanish Constitution of 1978 and in the next stage of the country's constitutional development. From the very beginning, the Constitution stipulated the granting of an expanded political autonomy to these regions. Thus the current constitutional and legal system of Spain's

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Integration. A Comparison of Constitutional-Legal Development in Spain, Germany and Georgia", Ph.D. diss. (in German).

<sup>3</sup> The principle of asymmetric federalism means that some member states (one or more) in a federal state enjoy a different (higher) political-legal status and authority than others.

<sup>4</sup> We can here think about granting the former South Ossetian Autonomous Region a political legal status different to that of Abkhazia, Adjara and other regions of Georgia. However, this status should without any doubt be lower than those of Abkhazia and Adjara and a little higher than those of other regions (with regard to cultural and linguistic autonomy).



territorial organization, described as "asymmetric regionalism"<sup>5</sup>, is a result of specific historical features of its nationalities and regions.

- [28] In contrast to Spain, all the *Lands (Länder)* of Germany (regardless of the special political influence of Prussia) were equal in constitutional and legal terms. In 1871, prior to the establishment of the first federal state in Germany, the country entered the international political system as a decentralized state composed of equal, politically autonomous territorial entities. The German Empire of 1871-1918 was a voluntary union of equal political entities, which at the same time maintained their traditions and individual character. The same applies to the Republic of Weimar, which has continued a national tradition of federalism. The fundamental law adopted in 1949 provided for the establishment of the Federal Republic of Germany. Currently, it consists of 16 equal *Lands (Länder)*.
- [29] Proceeding from the above, we may conclude that in determining Georgia's territorial-political structure we should primarily take into consideration the relevant constitutional provisions, the political realities of the current situation, the specific features of the country's historical, political, legal, cultural and economic development, and the rich experience of federal and unitary, though decentralized, states.

### 5.3 THE SPECIAL STATUS OF ABKHAZIA

- [30] **5.3.1 The Legal Basis and Basic Principles of the Special Status of Abkhazia within the State of Georgia**

The consideration of the above basic principles of Georgia's future territorial-political structure leads us to ask: what should comprise the future status of Abkhazia within Georgia? Taking into account the analysis above, as well as the current political reality, the most reasonable answer to this question is that the special political and legal status of Abkhazia within the state of Georgia should be based on the principles of federalism, incorporating the rich experience of democratic, federal and unitary, decentralized states. In formulating a status for Abkhazia, we emphasize that we do not envisage this in terms of the delegation of rights and responsibilities by a centre to an administratively subordinate entity (this is the case in decentralized but unitary states), but in terms of *the division of state power into two, which is the defining feature of a federal relationship*. Moreover, many scholars argue that such a relationship represents not the separation of 'state power' (i.e. specific competencies) but, rather, *the distribution of "state sovereignty" between the sovereign federal state and its member-subjects*. If we explore this relationship in more specific terms, we arrive at the following:

- [31] a) Georgia is a state established on the basis of the rule of law, that is, a state founded by virtue of an adopted Constitution. Its political foundation is rooted in universal, free, direct and equal elections, or in the use of referenda, on which basis *the Georgian state derives its legitimacy, generated by the will of the majority of "people of Georgia" (the "sovereign people")*. Georgia is a sovereign state, a subject of international law. The territorial

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<sup>5</sup> The term coined by a well-known Spanish constitutionalist, Luis Lopez Guerra.

integrity of Georgia and inviolability of its borders defined as of 21 December 1991 is recognized by the world community of states and international organizations.

[32] **b)** At the same time, *the Georgian state contains the sovereign state entity Abkhazia, which is an equal and independent partner of the state government. It follows that Abkhazia has the characteristic features of a state, i.e. it has the quality of being a state, it also has the power to found a Constitution and, correspondingly, its 'statehood' does not derive from the will of the state of Georgia. The government of Abkhazia is based on an independent source of legitimacy - its governmental structures are elected by and composed from the population of Abkhazia. It is due to its "statehood", or its quality of being a state, that Abkhazia has its own (though limited) and not externally granted sovereignty. At the same time, Abkhazia is a member (a member-state) and not a subdivision of the federal state of Georgia. Together the federal state and the state-political entity within it constitute the political system of the country.*

[33] **c)** Due to the nature of federal relationships, it is necessary *to separate state functions and corresponding rights between the federal state of Georgia and the state-political entity (member-state), so that each level of the state system should have the right to take final decisions pertinent to the scope of the special powers invested in it. Thus, by the rights invested in it Abkhazia should have the capacity to determine and realize its political will. In addition, as a subject defined by statehood it has the political institutions of representative democracy: a president (if the model of a presidential republic is chosen), a parliament, a government and judicial authorities.*

[34] In relation to this issue, we should take into account one more important factor: as a rule, to ensure a certain level of *homogeneity* and political consolidation in a state based on federal relations, the same form of a political system should obtain in both the federal state and its member-state(s). Thus, if the Federation's political system is a democratic presidential republic, the same form would be desirable in its member-state. However, there are some exceptions from this general rule in world history related to the specific experience of these cases. Taking into consideration the above, we think a parliamentary republic model would be the most appropriate in Abkhazia because it does not provide for the direct election of a president by the people, though it does allow for the institution of an indirectly elected president possessing only representative functions. This form of political system for the Abkhazian state entity would be appropriate even if the political system of the wider state took the form of a presidential republic. This option would be unlikely to preserve the above-mentioned principle of homogeneity (though the existence of a presidential institution with only representative functions means that this variant would comply at least formally with the homogeneity principle). However, it would avoid the possible complications caused by direct election of a president by the population of the member-state and thus the existence of a political leader having extensive authority. Furthermore, the existence of a presidential system may cause certain tensions as a result of the ethnic diversity of the population in Abkhazia. It is noteworthy that even in such mono-ethnic regions as Catalonia and the Basque Country a presidential system was rejected in favour of a successfully developed parliamentary system.

[35] Proceeding from the above, we can present three potential options for the resolution of this issue:

- (1) Abkhazia would be a democratic parliamentary republic. After universal, free and direct elections a political party (or coalition) having the majority of mandates in the parliament of Abkhazia creates a government (or a coalition government) from the members of parliament, which is responsible and accountable to the parliament. The government is headed by a prime minister, who represents the leading organ of executive power and the supreme level of state authority for Abkhazia in its relations with the supreme government (the Federation) of Georgia;
- (2) Abkhazia would be a democratic parliamentary republic, but together with the prime-minister and other members of government, the parliament elects a president from among its membership. Only a member of parliament and an ethnic Abkhazian possessing citizenship of Abkhazia may become president. The president has only representative functions, according to the rules and procedures established by law, s/he (together with the prime minister) signs laws (but does not have the right of veto) and promulgates them;
- (3) Abkhazia would be a democratic presidential republic, where the president is elected by universal and direct suffrage. The president is the highest official of the Abkhazian government, the supreme representative of Abkhazia and the head of executive power (this is the model of presidentialism current in Georgia). The French case may be cited as an example of this model, in which the president appoints the prime minister and approves members of the cabinet nominated by the latter.

[36] **d)** Despite the fact that both the federal state and its member-state(s) have their own legitimacy and sovereignty, i.e. their relationship is characterized by the division of sovereignty, *only one state – the sovereign state of Georgia would be a subject of international law*. The sovereignty of a member-state refers essentially to the concept of "*domestic sovereignty*" as modeled in legal science, which means that it is an equal and independent partner in relation to the supreme state authority of *Georgia (the Federation)*. Only the state of Georgia possesses the following three criteria required for a state subject in international law: "*state territory*" ("the territory of the state" as stipulated under Article 2 (i) of the Constitution), "*people of the state*" ("people of Georgia") and "*supreme state authority*" (as stipulated under Articles 3 and 5 and Sections 3, 4 and 5 of the Constitution). In addition, the state of Georgia is not established on the basis of intergovernmental agreements between the member-states, but on the basis of the constitutional power of the entire nation ("the people of the state", including the population living in Abkhazia). Precisely for this reason only a citizenship of the **federal** state, or citizenship of Georgia, exists, and not a citizenship of Georgia's constituent member-states. Moreover, *since the state of Georgia is established and legitimized by the entire people (and not by agreement among the governments of member-states), from a constitutional and legal standpoint, secession of member-states from the unified state is impossible and inadmissible*. Any attempt made in this direction would be an inadmissible secession<sup>6</sup> contravening the integral Constitution governing the country.

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<sup>6</sup> See below the sections on the special, non-dogmatic approach to the issues of the unified state's citizenship in relation to Abkhazia: Subsection 2 of *The Constitution of Abkhazia; List of Special Authorities (Subparagraph d)* and Subsection 4 - *Additional Guaranties*.

[37] e) A further basis for Abkhazia's special status should be also that in ethnic terms the Abkhazians should be considered as one of the founding nations of the federal State of Georgia, and not as a national minority. The state of Georgia should take into consideration the Abkhazians' sense of regional identity, based on the perception of Abkhazia as their only homeland and their distinctiveness from other parts of the local population. It should also be considered that the Georgians living in Abkhazia are indigenous to this political entity, and that under constitutional law on the separation of powers, all the inhabitants of Abkhazia should be politically equal.

[38] With regard to this crucial point it is interesting to discuss the experience of foreign countries, which have long-standing experience in resolving a similar problem using legal-constitutional methods. For instance, according to its fundamental law *Germany* is a federal state (Article 20 (1)) the political system of which is composed of the federation i.e. the supreme state (*Bundesstat*) and the member-states, or Lands (*Gliedstaaten, die Länder*). The Lands have the legal status of a state, and they are absolutely independent in their relationship with the federation at large. The Lands possess their own (and not externally granted) statehood, i.e. sovereignty. The same may be said about the Republic of Austria. Under Article 2 of its Constitution, Austria is a federal country consisting of nine "independent lands". The relationship between the federation (supreme state) and the Lands and their status is exactly the same as those of the subjects of Germany's political system.

[39] In this connection, some of the provisions of the federal Constitution of the *Swiss Confederation* are also worthy of note. Under Article 1 of the Constitution, the "Swiss people" and 26 cantons form the Swiss federation. Article 3 states that *the Cantons are sovereign only within the scope established by the federal Constitution*. At the same time, the cantons possess all rights which are not awarded to the Confederation by the Constitution. It would be desirable to incorporate the formulation on the separation of powers cited in the Swiss Constitution into Georgian constitutional law as opposed to the formula proposed in the Boden Document.

[40] The Spanish experience is also interesting. As we know, the territorial-political structure of this country is very specific and the relationship of the autonomous communities (*Comunidades Autonomas*) with the central state (*El Estado*) diverges from the usual features of federalism (though only because of the specificities mentioned above). Nevertheless, in one of its first decisions regarding the status of autonomous entities after reviewing the relevant articles of the Constitution, the Spanish Constitutional Court ruled that "autonomies", being public-legal territorial associations located on designated territories, are 'states' not in constitutional or legal terms, but "by virtue of their political nature", and the state of Spain is a so-called "*composite state*" (*Estado compuesto*).<sup>7</sup>

#### [41] **5.3.2 The Constitution of Abkhazia; A Specification of its Special Powers**

Proceeding from the points made above, which have established the legal basis and basic principles of Abkhazia's special status within the Georgian state, Abkhazia's internal structure and its special powers can now be discussed. Article 2 of the Georgian Constitution provides for the principle of separation of powers, which should be taken as

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<sup>7</sup> See the Decision by the Constitutional Court of Spain – STC 1/1982, 28/01/1982.

the basis for the special political-legal status of Abkhazia within the state of Georgia. On the basis of this principle and the general features of a federal framework of relations a constitutional law should be adopted, which would set out the details of Abkhazia's legal status. In concrete terms the following proposals regarding this constitutional law (or federal agreement), the Abkhazian Constitution and the separation of powers can be offered:

- [42] **a)** Scholarly theories of federalism and the experience of foreign countries demonstrate that models for the separation of powers between the federation (i.e. the supreme (federal) state authority) and its member-states vary widely. As a rule, in the process of separating powers on a federal basis it is the special competencies of the supreme state authority (federation) that are explicitly defined, while all other competencies reside under the jurisdiction of member-states. This rule is deployed, for example, in Article 70 of the German basic law, Article 42 of the Swiss Constitution, Article 15 (1) of the Austrian Constitution and the Tenth Amendment of the United States Constitution. Alternatively, only the member-states' specific competencies may be defined. *With regard to Abkhazia, it may be more expedient to utilize a "dual list", which would provide a precise specification of the powers of both the federation (the Supreme State Government) and the member-state, while all remaining competencies will be defined as 'parallel' competencies subject to joint jurisdiction.* The further possibility that all remaining competencies would be granted to Abkhazia, rather than held 'in parallel', may also be reviewed. This is the framework stipulated in the Spanish Constitution, in which Article 148 specifies the competencies of the autonomous units and Article 149 the competencies of the federal state. In contrast to the proposal above, however, the specific feature of the Spanish model is that all remaining competencies are awarded to the federal state.
- [43] If the principle outlined above is acceptable with regard to Abkhazia, the same norms could be incorporated into the Constitution of Abkhazia after the delimitation of separate competencies and other major principles. This would exclude the possibility of a unilateral amendment by the federal state of the powers already granted, that is to say, *approval of the both parties would be required to introduce any amendment to the relationship between the federal state of Georgia and Abkhazia.*
- [44] **b)** The Constitution of Abkhazia would further designate the following: the official name of Abkhazia, its borders (*subject to consultations with the federal government*), state symbols (flag, anthem, national emblem), the internal boundaries of such provinces or regions as exist on the territory of Abkhazia, and the internal political structures of Abkhazia: rules and procedures for the establishment of government organs, their responsibilities and powers, the organization of the judicial system, and the norms governing the economic system and financial structures. The form that these structures would take must be left to the discretion of the Abkhazian government. However, it may be that some general requirements would derive from the Georgian Constitution or the constitutional law on Abkhazia's status, for example the composition of the legislative on the basis of universal suffrage, in order to safeguard the participation of the entire population of Abkhazia in elections to its political organs.
- [45] **c)** With regard to the special competencies granted to Abkhazia, in addition to the standard areas of jurisdiction granted to member-states of federations, such as welfare, culture, education, science, sport and tourism, internal telecommunications and radio, transport, issues of local government and so on, Abkhazia could receive additional rights such as:

*participation in foreign relations; the concluding of agreements with foreign states in the spheres of culture, trade and commerce, science and education, sport and tourism, and social issues; participation in the activities of international regional organizations; and the creation of its own official law-enforcement agencies.* Abkhazia should also enjoy financial autonomy, have the right to raise, collect and manage taxation, tariffs and other special duties, and in case of need it should further benefit from a state system of financial equalization, a benefit integral to any federal system. (There is a further factor to be considered here: At some point after a period of time has elapsed following the resolution of the conflict and when progress has been made with political stabilization, peaceful cohabitation and economic growth, Abkhazia, as potentially one of the most prosperous, economically vibrant and wealthy regions of Georgia, should contribute to the enhancement of economically underdeveloped highland areas through the state financial equalization system. This would accord with the principle of solidarity and ensure the equality of socio-economic development across the federal state's territory. This system implies the economic improvement of the member-states of a federation both vertically – providing assistance to regions from the central budget – and horizontally – in the form of economic assistance offered by developed regions to their underdeveloped counterparts)

[46] In connection with this issue, it is worth analyzing the substantial experience of foreign states, and in particular *Spain*. As a model for discussion, we will refer to *the Statute of the Basque Country*, one of the historical regions of Spain, and its special powers.

[47] The status of the Basque Country (*País Vasco* in Spanish; *Euskadi* in Basque) was set out in the 'Statute of Autonomy of the Basque Country', enacted as an organic law by the General Cortes of Spain in December 1979. The draft statute was drawn up by the supreme body of the provisional autonomous government (the so-called "pre-autonomous government") of that period – the General Council of the Basque Country (*Consejo General del País Vasco*). The final wording of the statute was drafted as a result of joint work and consultations between the representatives of the Basque Country's 'pre-autonomous' government and the central government of Spain (members of the Cortes and the cabinet). This statute designates the official name of the country, its territorial borders, official symbols, the rules and procedures for forming autonomous representative and executive bodies, their structure, functions and authority, and the issues subject to special jurisdiction of the autonomy.

[48] According to Article 1 of the Statute, "*the Basque people or Euskal-Herria, as an established nation, shall institute a regional autonomous unit in Spain named Euskadi or the Basque Country, for the purposes of self-government in accordance with its Constitution and Statute. The Statute represents the fundamental law of the Basque Country*".

[49] Article 10 of the Statute provides for the special competencies of the Basque Country, which consists of a list of 39 items including the following:

1. *Designation of the borders of municipalities reflecting the boundaries of the country's historical provinces (Alava, Gipuskoa, Biskaia);*
2. *Organizational structure and procedures of the autonomous institutions;*
3. *Local electoral legislation governing the formation of the Basque Country's parliament, general councils, general and local assemblies of representatives;*

4. *Local governance and the status of the public servants and administration of the Basque Country;*
5. *Development, maintenance, modification and renewal of special and local civil law, and written and unwritten norms;*
6. *Procedural norms, norms of administrative and financial-administrative law, which have developed as a result of the centuries-long experience of a local legal tradition in the Basque Country, and which represent the organizational norms of the Basque Country;*
7. *Public property and historical heritage of the Basque Country;*
8. *Mountains, forests, pastureland and cattle tracks; agriculture and animal husbandry;*
9. *Internal waters, water storage sites, canals and irrigation systems, fish farms, water management systems;*
10. *Social welfare, culture, science, tourism and sport.*

[50] In addition, according to Article 11, the jurisdiction of the regional autonomous entity encompasses the development of the country's basic legislation and its enforcement on the territory of the autonomy in the following fields:

- a) Environmental protection and ecology;
- b) Confiscation, administrative contracts and trade concessions within the autonomy's jurisdiction and responsibility of the administration of the Country of Basques;
- c) Regulation of the fisheries of the Basque Country;
- d) Regulations governing credit, banking and insurance systems;
- e) Regulations governing mining and energy sectors and geothermal resources;

[51] Also noteworthy is the provision in Article 17 of the Statute that the authorities of the Basque Country will establish the autonomy's police force, the major purpose of which is to protect the specific traditional legal norms of the region, and its individuals, their property and public order.

[52] d) Within the framework of a federal agreement and the Constitution of Abkhazia, it would be possible to elaborate a staged identity system, according to which an individual would consider him/herself first as a subject of the member-state and only then as a citizen of the wider state. In this connection Article 6 of the Constitution of *Austria* is noteworthy, according to which uniform citizenship is practiced in the Republic of Austria but, at the same time, citizens having permanent residence on the territory of a certain Land are considered as the citizens of this Land. Moreover, the supreme representative body of the Land may pass a law granting the citizenship of this Land to a temporary resident in its territory.

[53] Proceeding from the above, the constitutional law and the Constitution of Abkhazia may stipulate that *permanent residents of Abkhazia hold Abkhazian citizenship and have a document identifying their citizenship – a personal identity card. At the same time citizens of Abkhazia would automatically also be citizens of the federal state of Georgia.*

[54] e) In all instances, one point should be clear: *only the relevant state bodies of Abkhazia should have the right to take final decisions concerning matters pertaining to the areas of Abkhazia's special jurisdiction.* This would not create any problem of contradiction within the hierarchy of statutory norms versus federal legal norms: none of the supreme state bodies would be able to interfere with the special competencies held by Abkhazia. The Supreme and Constitutional Courts of Georgia would be the sole defenders and, to some

extent, monitors of the integral constitutional order and legal system of the state of Georgia. In the eventuality of one of the parties adopting any normative act within an area belonging to the special jurisdiction of the other party (thereby perpetrating an infringement of the constitutional principle of the separation of powers), the latter would have the right to challenge the act in question at the Constitutional Court of Georgia. Where the Court recognizes the validity of the claim, the legal force of the contested act would immediately be suspended. The Constitutional Court would hear such cases in a prompt manner, as a matter of urgency, in the shortest possible time for considering a case. The ruling of the Constitutional Court in any such case of contestation over the separation of powers would be final. All claims contesting the separation of powers would be resolved through this civil-legal framework (and not by means of political confrontation or backstage talks). This would facilitate the consolidation of a modern political culture, and both the federal state and the member-states would abide by “ground rules” laid down in the Constitution when pursuing their interests. The Constitutional Court would further act as the highest legal authority in instances where a question arises as to the compliance of normative acts passed by the state bodies of Abkhazia with the Georgian Constitution. (*Note: We should note that in a further contrast with Abkhazia, the President of Georgia may under exceptional circumstances be given authority to impose certain legal and mandatory measures with regard to other autonomous units, in order to safeguard national sovereignty, constitutional order and territorial integrity*).

[55] **f)** And finally: *the Constitution of Abkhazia should necessarily comply with the principles of democracy, the rule of law and republicanism entrenched in the federal Constitution of Georgia.*

[56] We believe that the establishment of the framework outlined above would fully meet the interests of the indigenous Abkhazian and Georgian populations of Abkhazia, as well as other ethnic groups. Given the specific nature of the problem of Abkhazia, however, it may be necessary to create additional guarantees for the Abkhazian population. This issue is not touched upon in the Boden Document, which comprises its main shortcoming, and therefore warrants serious consideration and the development of a position mutually acceptable to both sides. We set out our suggestions on this question below.

#### [57] **5.4 ADDITIONAL GUARANTEES**

In conceptualizing additional guarantees for the national interests and secure development of the Abkhazian population, it is inadequate to approach the question only from the prospective of universal legal principles or standard practices. We need also to consider the particularities of the situation, using an approach that is neither dogmatic nor stereotypical. The very specificities of the situation confronting us may very well bring us to the point where it is impossible to resolve the issues concerned through the application of universal legal principles. In this instance, it is essential to come to the issue free of dogmas and stereotypes and to search with an open mind for an original model that may diverge from standard practices, but which is adequately sensitive to the specificity of the case in hand.

[58] *a) Guarantees in the Parliament of Georgia*

The above point notwithstanding, we deem it initially appropriate to analyze methods tried and tested by various other states across the world. On the basis of this analysis, we will



demonstrate that the additional guarantees for the Abkhazian population could be expressed first and foremost through the participation of Abkhazia in the formation of the common political will of the federal state, in the upper chamber of the parliament, the Senate. Abkhazian representatives could be assigned special powers in the Senate. We could here diverge from classical schemas of this arrangement to suggest the incorporation of the following provision in the Constitutions of both the federal state of Georgia and Abkhazia: from the outset, a specific quota of places in the Abkhazian delegation to the Georgian Senate would be reserved for representatives of Abkhazian nationality (this may be achieved on the basis of an appropriate electoral system<sup>8</sup>). Furthermore, this delegation would have a special, decisive vote on any question concerning Abkhazia, implemented in such a way that given the high quorum necessary for the resolution of such issues the agreement of the ethnic Abkhazian representatives of the delegation would be required. For example, suppose that decisions on making amendments or addenda to the Constitution of Georgia (or the constitutional law on the federal agreement with Abkhazia) could be taken by the Georgian parliament by a majority of two-thirds of total seats of the parliament of Georgia. This decision would have to be supported by at least two thirds of total seats allocated to the Abkhazian delegation elected to the Parliament of Georgia. Any other decision concerning Abkhazia could be passed by the parliament if supported by a majority of the total number of listed members of Parliament (or those in attendance, being at least one third of the total seats of Parliament); likewise, it would have to be supported by a majority of the listed members of the Republic of Abkhazia elected to the Parliament of Georgia (or by the majority of those present, provided that this is not less than one third of total seats of the Abkhazian delegation). The adoption of such a system would ensure both the election of Abkhazian representatives to the Senate on the basis of universal, free and equal suffrage, and the provision of additional guarantees to ethnic Abkhazians. A further option open to discussion is the reservation of the post of Chairman of the Senate to ethnic Abkhazians.

[59] *b) The System of High Quorums*

In addition, a system of high quorums required for decisions made in the Abkhazian Parliament can be considered. The advantage and distinction of this system is that it avoids the option of elections to the representative body on the principle of ethnicity. A situation where 20% of the population has more representatives in parliament than the remaining 80% would contradict the principle of universal, equal and free suffrage guaranteed in the Constitution. The inequality and unfairness inherent in this system would not help to defuse the situation; on the contrary, it might create unpredictable political and legal problems. Unfortunately we have already experienced problems of this sort, with tragic consequences. However, given extraordinary circumstances and provided that there are additional guarantees, and on the basis of the non-dogmatic approach we have suggested above, we could resort to this extreme alternative. In the light of previous experiences there should, however, be no doubt that the ethnic principle cannot be used as a guarantee for any ethnic group. A system of this sort may yield a result for a certain period, but would not be a sustainable long-term solution to the problem.

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<sup>8</sup> Here we do not imply an electoral system based on the ethnic principle (like the one adopted in 1991). We mean only a democratic, free and universal electoral system according to which, for instance, from each polling district of Abkhazia, an equal number of MPs will be elected regardless of the size of the constituency to ensure the representation of ethnic Abkhazians among the parliamentary delegation.

[60] For these reasons, we believe that preference should be given to the system of high quorums, which is no less effective a mechanism in terms of the guarantees it offers. In this variant important decisions taken by the parliament would require the approval of nationalities with less demographic weight in order to come into effect. This would mean that despite the small number of the Abkhazian deputies elected to the parliament on the basis of general, equal and free elections, they would nonetheless be able to wield a decisive vote granted to them by the Constitution and procedural practice.

[61] *c) Guarantees related to Military Service*

Further to the above, as an additional guarantee for the Abkhaz population the constitutional law of Georgia on the federal agreement and the Constitution of Abkhazia may stipulate *for a certain period* (approximately 3-5 years following the settlement of the conflict) the release of Abkhazian conscripts from mandatory conscription (if mandatory conscription is retained in Georgia over that period). However, they will be able to serve in the armed forces on a voluntary and contractual basis in Georgian military units stationed on the territory of Abkhazia. At the same time, service in the police force of Abkhazia could be considered an alternative to mandatory conscription for ethnic Abkhazians.

[62] *d) Guarantees related to a National Currency*

The government of Abkhazia could also enjoy the right to release national coins and banknotes under the supervision of the National Bank of Georgia. This does not mean the right to release its own monetary unit. These coins and banknotes may depict Abkhazian historical personalities, public figures, the national emblem, local historical monuments, and so on. They would be circulated all over Georgia and would have the same value and purchasing power as any coin and banknote released by the National Bank of Georgia. A similar practice obtains in the United Kingdom, where Scotland and Northern Ireland enjoy this right. Similarly, the reverse (non-title) side of **euro** banknotes (the unified monetary unit of the states of the European Union) depict the national symbols, historical figures and cultural monuments of each state of the EU.

[63] *e) Restrictions on the Purchase of Real Estate in Abkhazia*

One more important guarantee for the Abkhazian people could be an agreement between the parties to prohibit the receipt of permanent residence (domicile) status in Abkhazia, for instance by purchasing a flat, house or land, by other citizens of Georgia (or foreign citizens) during a given period (say, 2-3 years) after the return of the displaced population, stabilization of situation and new parliamentary elections. It should be noted that this restriction may concern only individuals and not companies, i.e. legal entities. In order to avoid any restriction of investments in Abkhazia, legal entities should have the right to purchase businesses, other real estate property and make investments in the Abkhazian republic. The restriction could come into effect for individuals over a given period and then be replaced by the following rule on the right to receive permanent residence in Abkhazia: the total number of new (individual) residents should not exceed 2% of the total population of Abkhazia. This mechanism would partially allay Abkhazian fears of Georgian demographic expansion and aggravation of the demographic situation.

[64] *g) Issues of Property Restitution*

The experience of conflict settlement in a number of countries throughout the world demonstrates that one of the most important elements for the comprehensive and final resolution of conflicts is dealing with the issue of property restitution. It is therefore evident that the comprehensive settlement of the Georgian-Abkhazian conflict cannot be achieved if principles of property restitution and corresponding legal norms are not developed. The existing conflict settlement documents of a number of countries (for example, Bosnia-Herzegovina and Cyprus) can be taken as a basis for developing these acts in the Abkhazian case. At the same time, we must consider the peculiarities of the Abkhazian conflict, which may have a specific impact on the question of property restitution. On this basis, we offer the following model for property restitution:

[65] First of all, a special body (for example, a Special Provisional Commission for the Consideration of Applications on Restitution) would have to be created with the remit of implementing restitution. This body would receive applications on property restitution from eligible persons, register them, collect all necessary evidence for deciding the outcome of applications, publish and circulate decisions, implement those decisions, and monitor their implementation. Only internally displaced persons (IDPs) from the 1992-1993 armed conflict and refugees, that is, those persons who had to leave both Abkhazia and the rest of the territory of Georgia as a result of the conflict would be eligible to submit an application for restitution. At the same time, successful applicants should have the right to choose the form of restitution at their own discretion. This means that they would have right to file requests to the Commission: (a) to guarantee the exercise of their right to possession of a specific property (restitution); (b) to guarantee their right to property ownership, which right can be exercised at the discretion of the individual applicant; or (c) to transfer the title of a given property to the Commission itself or to a third party, in exchange for appropriate compensation awarded to the applicant. Decisions on restitution claims should be made within one month of receipt of an application. In special cases (where additional evidence and/or authentication is required) the final decision should be made within one additional month.

[66] With the aim of the comprehensive and unimpeded implementation of the above-mentioned rights the Provisional Commission should ensure the establishment of local offices in Georgian towns and regions where IDPs currently reside and, in addition, in those states where refugees have their temporary place of residence.

[67] **Note:** In order to secure the process of the efficient coordination and implementation of property restitution, it would be appropriate to establish the Provisional Commission under the "Provisional Coordinating Council" defined in the draft document below *Agreement on the Resolution of the Georgian-Abkhazian conflict*, which would manage, organize and monitor the implementation of all necessary measures for the settlement of the conflict.<sup>9</sup>

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<sup>9</sup> See Part 5 *Basic Provisions of the Documents concerning the Settlement of the Georgian-Abkhazian conflict*, Subsection a) - *Agreement on the Resolution of the Georgian-Abkhazian conflict*.

## 5.5 BASIC PROVISIONS OF DOCUMENTS CONCERNING THE SETTLEMENT OF THE GEORGIAN-ABKHAZIAN CONFLICT

### [68] *a) Agreement on the Resolution of the Georgian-Abkhazian conflict*

Proceeding from the above analysis, some basic provisions for documents concerning the resolution of the Georgian-Abkhazian conflict may be proposed. These are designed to define the special status of Abkhazia within Georgia and to help create a legislative base for future relations between the supreme state power of Georgia and the Abkhazian state entity rooted in federal principles.

[69] Before formulating specific provisions it must once again be remembered that there is no universal or standard model for the resolution of violent ethno-political conflicts. This is natural since all conflicts in the world differ from one another in their particularities. Therefore a specific political and legal system must be tailor-made for each conflict that is sensitive to its specific features. At the same time, there are a number of general principles and rules, implementation of which provides us with greater assurance of achieving peace and stability. Federalism is a form of territorial and state arrangement that is based on the principles discussed above, and proceeding from these principles it is possible to resolve armed conflicts in a civilized, peaceful and legal way. Although forms of federal systems vary according to the historical, political, economic and cultural features of different states, federal territorial-political systems are the most appropriate for preserving “variety in unity” and “unity in variety”. Thus, a system rooted in the principles of federalism is the most appropriate given the historical, economic and cultural features of territorial and political arrangements in Georgia with regard to Abkhazia and the specificities of the Abkhazian conflict itself, and to the needs for a peaceful settlement of the conflict and its legal regulation.

[70] Proceeding from the above, it would be appropriate to take the *Agreement on the Resolution of the Georgian-Abkhazian conflict* as the main foundation for the solution of the Georgian-Abkhazian conflict, since this document defines basic principles of political and legal regulation. In more specific terms this means the following:

[71] *“The Parties to the Georgian-Abkhazian conflict – the Georgian Supreme State Government and the Abkhazian Government (hereafter, the Parties),*

- **rejecting violence and the use of force, and willing the final, comprehensive and legal resolution of the conflict, the restoration of traditional, peaceful relations between the Georgian and Abkhazian peoples, the establishment of civil peace, and assurance of democratic development, provision of safety and prosperity,**
- **considering that the establishment of civil peace and the securing of democratic development is possible only through the peaceful cohabitation of Georgians and Abkhazians, and by the preservation and strengthening of the centuries-old state traditions of the Georgian and Abkhazian nations,**

- **confirming their adherence to the universally recognized principles of international law, democratic principles and norms, and the rule of law,**
- **recognizing fundamental human rights and freedoms as both permanent and the highest of human values,**

**Have agreed on the following:**

[72] **Article 1.** The Parties confirm that historically Georgia is a State formed by both the Abkhazian and Georgian peoples and it is their common homeland, while Abkhazia is the homeland of the Abkhazian people, where together with the Abkhazian people Georgians have lived permanently over the course of many centuries.

[73] **Article 2.** Based on centuries-old traditions of statehood of the Georgian and Abkhazian peoples, the Parties express their firm will to revive and strengthen the historical, cultural, economic and political-legal ties broken off as a result of the 1992-1993 armed conflict.

[74] **Article 3.** The new legal relations between the State of Georgia and the State Entity of Abkhazia are based on:

- a) Principles of democracy, the rule of law, the provision of welfare, and economic freedom;
- b) Respect for and protection of fundamental human rights and freedoms;
- c) Respect for and protection of human dignity as the highest value, freedom and equality before the law, and respect for differences between peoples in national, ethnic, religious, social and cultural spheres;
- d) Principles of a federal territorial and political framework, including the principle of the separation of powers;
- e) Universally adopted principles and norms of international law;
- f) Peaceful relations with neighboring states and other states of the world and respect for their interests.

[75] **Article 4.** The Parties confirm that within the framework of legal relations between the State of Georgia and the State Entity of Abkhazia established on the basis of the above principles, Abkhazia will have a special political and legal status, which will provide for the existence of Abkhazia within the State of Georgia as a sovereign territorial entity with attributes of a State, preserving and enhancing all of its cultural and statehood traditions, political stability, and the social and economic welfare of the population of Abkhazia.

[76] **Article 5.** The Parties consider that the renewal of relations and the practical implementation of the legal principles mentioned in the above clauses is possible through the drawing up of a Federal Agreement. To this end, the Parties will effect the establishment of a Joint Provisional Committee (Task Group) on the basis of parity, in which international experts will also participate.

[77] **Article 6.** The Parties shall ensure that within one month of the entering into force of the present agreement the Joint Provisional Committee will begin work on a Draft Federal Agreement, which, based on the separation of powers, will determine the division of competencies between the special jurisdictions of the supreme State bodies of the Government of Georgia and the supreme bodies of Abkhazian Government, the assignment

of competences to be assigned to joint jurisdiction, the basic principles of financial autonomy in Abkhazia, mechanisms for the legal resolution of disputes between the supreme Georgian State authorities and Abkhazian State authorities, and other important issues.

- [78] **Article 7.** The Parties confirm that the Federal Agreement will be binding for both Parties; it will have the force of a constitutional law and will become an integral part of the Constitutions of the State of Georgia and State Entity of Abkhazia.
- [79] **Article 8.** In conjunction with the above, the Parties consider that for the realistic implementation of legal relations a whole range of concrete measures is required, including the improvement of the economic situation of the population of Abkhazia with the help of international organizations and the Friends of Georgia group of states to the United Nations Secretary General; the rehabilitation of air and rail communications; the implementation of property restitution; the registration of IDPs and refugees<sup>10</sup> displaced from Abkhazia during the 1992-1993 armed conflict, and their voluntary return to Abkhazia; humanitarian aid for returning IDPs and the local population, and the provision of secure and stable conditions for their return and re-integration.
- [80] **Article 9.** The Parties agree that the Joint Provisional Committee stipulated in Article 5 of the present Agreement will develop in conjunction with the Federal Agreement *Regulations for the Processing of Applications for Property Restitution Among the Internally Displaced and Refugee Population*, and that on the basis of these regulations, the process of restitution will be implemented.
- [81] **Article 10.** The Parties recognize the right of IDPs and refugees to return voluntarily to the places of their prior permanent residence. The Parties guarantee that within a period of three years subsequent to the enactment of the present Agreement, all IDPs and refugees displaced as a result of the 1992-1993 conflict will be accurately registered, and according to a jointly agreed detailed timetable, will return voluntarily to their place of permanent residence in Abkhazia. This process will be implemented under joint supervision (and also will involve international observers and the Provisional Coordinating Council provided for in Article 12 of the present Agreement), and in accordance with the process of property restitution.
- [82] **Article 11.** The Parties recognize a special role to be played by the United Nations (UN), the Organization for Security and Cooperation in Europe and other international organizations, as well as the Friends of Georgia group of states to the UN Secretary General (among them the United States and the Russian Federation) in the process of conflict settlement, and confirm that they will continue to cooperate with them until the final and full resolution of the conflict.
- [83] **Article 12.** The Parties, as agreed with the Special Representative of the UN Secretary General and authorized representatives of the Friends of Georgia group of states to the UN Secretary General, declare that within one month of the signing of the present Agreement, a Provisional Coordinating Council (hereafter, Council) will be established with the assistance of the Parties and the Friends of Georgia group of states on the basis of parity

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<sup>10</sup> We refer to refugees as persons who had to cross an international boundary, i.e. those who left both Abkhazia and the territory of the rest of Georgia, during the 1992-1993 armed conflict and subsequent to it.

between the Parties. The Chairperson of the Council will be a Special Representative of the UN Secretary General. The Council will manage, organize and control the implementation of measures necessary for the settlement of the conflict: the restoration of rail and air communications, the implementation of property restitution, the registering of IDPs and refugees resulting from the armed conflict in Abkhazia in 1992-3, the elaboration of a detailed timetable for their return to Abkhazia, the provision of guarantees for their voluntary return, the provision of humanitarian aid for the returnees and the local population, and the provision of security and stability.

- [84] **Article 13.** The Council approves the final version of the text on *Regulations on the Processing of Applications for Property Restitution Among the Internally Displaced and Refugee Population* developed by the Joint Provisional Committee provided for in Article 5 of the present Agreement, and on the basis of the latter document ensures the processing of applications for property restitution, the collection of all necessary evidence for evaluating applications, the making of decisions in respect of applications, the publishing and circulation of decisions made, the implementation of decisions, and the monitoring of their implementation.
- [85] **Article 14.** After the enactment of the measures stipulated in Article 12 of the present Agreement, the Council effects a census of population of Abkhazia. All persons with the right of permanent residence at that time will be included in the census, including those IDPs and refugees displaced as result of the armed conflict in 1992-1993 who, having received a confirmed date for their return to their place of permanent residence from the Council, have not yet done so. The Council publishes the results of the census in the Georgian and Abkhazian languages, and determines the exact number of citizens possessing the right to vote.
- [86] **Article 15.** The Council affirms the final version of the text on the Federal Agreement developed by the Joint Provisional Committee provided for in Article 5 of the present Agreement. Within two weeks of the confirmation of the final text the Council publishes it in the Georgian and Abkhazian languages in the official printed media of the State of Georgia and Abkhazia. Within one month of the publication of the Federal Agreement, the Parliament of Georgia passes the Agreement in accordance with the procedure for passing constitutional laws provided for in the Georgian Constitution. After the passing of the Federal Agreement in the Parliament of Georgia, the Council will conduct a referendum in Abkhazia on approval of the Federal Agreement.
- [87] **Article 16.** In accordance with the results of the population census, any person living on the territory of Abkhazia, or any person from the internally displaced or refugee population who has had a date for their return to Abkhazia confirmed by the Council, and who has attained the age of 18, has the right to participate in the referendum.
- [88] **Article 17.** Proceeding from the results of the referendum and after the implementation of the specific measures provided for in Article 12 of the present Agreement, the Council fixes a date for the conducting of parliamentary elections, and guarantees to hold universal, free, fair and direct elections.
- [89] **Article 18.** The parliamentary elections in Abkhazia are held according to the electoral regulations provided for in the transitional provisions of the Federal Agreement.

[90] **Article 19.** The present Agreement will enter into immediate force after it is signed by the authorized representatives of the Parties, and the Special Representative of the UN Secretary General and authorized representatives of the Friends of Georgia to the UN Secretary General.

[91] ***b) Federal Agreement on the Special Status of Abkhazia***

The *Federal Agreement* cited in the text of the above *Agreement on the Resolution of the Georgian-Abkhazian conflict* may be formulated as follows:

**The Abkhazian and Georgian Peoples,**

- [92] – **whose firm will it is to live together on the basis of the principles of respect for their historical and cultural identities, freedom, justice and equality, in a democratic state respecting the rule of law and the provision of welfare,**
- [93] – **desiring the preservation and strengthening of their centuries-old traditions of statehood, the safeguarding of democratic development, peaceful relations with other peoples, security and economic prosperity,**
- [94] – **confirming their adherence to the universally recognized principles and norms of international law,**
- [95] – **recognizing fundamental human rights and freedoms as both permanent and the highest of human values,**
- [96] – **enjoying their sovereign right to found a unified State, exercising the government of the People, by the People, for the People,**
- [97] – **pledging allegiance to European integration and Atlantic solidarity,**
- [98] – **upholding the basic principle of ‘unity in diversity’ as the foundation for the existence of their unified State,**
- [99] – **taking into consideration their responsibility to each other and future generations,**

**have agreed as follows:**

[100] **Article 1. General Provisions**

1. Georgia is an independent sovereign federal State, and a subject of international law, the State territory of which has been delimited as of December 21, 1991. The political regime of the State of Georgia is a democratic republic.
2. Abkhazia is a sovereign state entity within the boundaries delimited by the present Federal Agreement. Abkhazia, as one of the historical founding subjects of the State of Georgia, enjoys a special status defined by the present Federal



Agreement. The relations between Abkhazia and the Supreme Federal State Authority of Georgia are based on the principles of a federal State, among them the principle of separation of powers.

3. The political system of Abkhazia is that of a democratic republic. The territorial integrity of the Republic of Abkhazia shall be secured within the boundaries of former autonomous Republic of Abkhazia as of 21 December, 1991.
4. Georgia, being a democratic State defined by the rule of law, recognizes human dignity, human rights and freedoms, justice, equality, the provision of welfare and political pluralism as the supreme values of its legal system.

[101] **Article 2. Special Powers of the Supreme State Bodies of Georgia**

1. The State of Georgia protects the liberty of people, fundamental human rights and freedoms, and assures the independence and national security of the State.

2. The Supreme Federal State Authority of Georgia ensures the prosperity of the entire country, its sustainable development, integrity and cultural diversity.

3. According to the principle of the separation of powers between the Republic of Abkhazia and the Supreme State Government of Georgia, and to secure the implementation of provisions of the present Article (1, 2), the Supreme State Bodies of Georgia will exercise special legislative and executive powers in the following fields:

- a) The status, control and securing of the borders of the State; the status and protection of territorial waters, airspace, continental shelf and special economic zones;
- b) State defence and security, armed forces, military production and arms trade;
- c) Issues of war and peace, regulations governing the declaration and procedures for states of emergency and martial law;
- d) Foreign policy and international relations;
- e) Foreign trade, customs and tariff regimes;
- f) State finances and government borrowing; minting of currency;
- g) State statistics; time adjustment and standardisation;
- h) Federal railways and highways;
- i) State-wide integrated energy systems and their control; communications and mail services;
- j) National ports, airports and aerodromes; control of airspace, transit and air transport;
- k) Pardons and amnesties;
- l) Combating terrorism, drug trafficking, organized crime and money laundering; law enforcement and criminal investigation agencies.

[102] **Article 3. Issues Assigned to Joint Jurisdiction**

1. In the fields below, which are assigned to joint jurisdiction, the Supreme State Bodies of Georgia shall exercise special legislative powers, and the relevant State Bodies of the Government of the Abkhazian Republic shall exercise special executive powers:
  - a) Georgian citizenship, fundamental human rights and freedoms, emigration and immigration, entry into and exit from the territory of the State, temporary or permanent residence of foreign citizens in Georgia;
  - b) Banking, credit, insurance and taxation;
  - c) Standardization of measures; geodesy and cartography;
  - d) Fishing in the ocean and high seas;
  - e) Border-sanitary cordons;
  - f) Attestation and accreditation of secondary and higher education institutions; academic, scientific and professional titles and degrees;
  - g) Intellectual property;
  - h) Commercial, criminal, civil and administrative law; legislation governing the implementation and procedures for administering justice;
  - i) Land, mineral wealth and natural resources;
  - j) Pharmaceutical preparations.
  
2. In the fields assigned to joint jurisdiction set out in the present Article (1), the relevant Government Bodies of Abkhazia are entitled to adopt appropriate legislative or subordinate legislative acts, to expand and specify the legislative acts adopted by the Supreme State Government of Georgia. In cases of contradictions between the above acts, the **courts** shall settle any dispute.

[103] **Article 4. Issues Assigned to the Special Jurisdiction of Abkhazia**

1. The relevant Government Bodies of Abkhazia exercise special powers in all fields not listed in the present Article (2,3), among them the following:
  - a) Education, culture and sciences;
  - b) Labor and social welfare;
  - c) Health protection, tobacco and alcohol controls, sanitary services and pharmaceutical outlets, orphanages and institutions for the disabled;
  - d) Ecology and the environment;
  - e) Industry, entrepreneurship and artisanship, consumer protection and professional unions;
  - f) Urban construction and house building, architecture, planning and design;
  - g) Agriculture, farming, animal husbandry and veterinary services; forests, forestry and pastures and hunting;
  - h) Internal waters, hydroelectric installations, canals and irrigation systems, installations and resources for water management, fishing in rivers and lakes;

- i) Family and commercial law;
- j) Preservation, renewal and development of the written and unwritten norms and rules of Abkhazian customary law;
- k) The Abkhazian Republic's internal highways and railways;
- l) The Abkhazian Republic's internal telecommunications and radio, transport and communications;
- m) The Abkhazian Republic's domestic airports and aerodromes;
- n) Sports and tourism; resorts, national parks and municipal parks;
- o) Statistics of the Republic of Abkhazia;
- p) Sites and materials pertaining to the historical, archeological and scientific heritage of the Republic of Abkhazia;
- q) Archives, libraries and museums, publishing houses and publishing activities;
- r) Market places, exhibitions, casinos, lotteries and bookmakers;
- s) Public order and traffic police;
- t) Pardons and amnesties for those prisoners within the territory of Abkhazia sentenced for a period of not more than 5 years of imprisonment;
- u) Traditional and public holidays of the Republic of Abkhazia;
- v) Government awards, honorary titles and ranks of the Republic of Abkhazia;

2. The following spheres are assigned to the special jurisdiction of the relevant State Bodies of the Republic of Abkhazia and can be defined only by the Constitution and legislation of Abkhazia:

- a) The official title of the sovereign State entity of Abkhazia;
- b) The administrative boundaries of the territory of the Republic of Abkhazia;
- c) The State symbols of the Republic of Abkhazia – flag, emblem, anthem;
- d) Rules and procedures for the creation of the supreme legislative bodies of the Republic of Abkhazia, their structure, powers and operational procedures;
- e) Delimitation of the boundaries of provinces, districts, cities, towns and villages within the territory of the Republic of Abkhazia;
- f) Organizational structure, functions, rights and operational procedures of local government bodies within the Republic of Abkhazia;
- g) Electoral legislation governing the formation of the highest governmental organs of the Republic of Abkhazia (the parliament, the presidency), as well as representative local government bodies of the provinces, districts, cities, towns and villages of the Republic of Abkhazia;
- h) Issues of citizenship of the Republic of Abkhazia;
- i) The status of public servants of the Republic of Abkhazia;
- j) The central banking, financial and budgetary systems, internal taxation and duties, and property and revenues of the Republic of Abkhazia;

[104] **Article 5. The Principle of Adherence to Federal State Interests**

In the implementation of the powers set out in Articles 2-4 of the present Agreement, the Supreme State Government of Georgia and the Government of the Republic of Abkhazia are obliged to act on the basis of adherence to the principle of federal State interests. In making any specific decision on the basis of the powers granted them, the Parties must take into account first and foremost the unified federal State's interests as well as those of their partners and their own interests, in order to avoid any compromising of democratic norms, the State's independence and security, public order, or the well-being and health of the population.

[105] **Article 6. Powers of the Republic of Abkhazia in the Spheres of Foreign Relations and the Protection of Public Order**

1. As a sovereign State formation the Republic of Abkhazia has the right to establish cultural and trade-economic relations with foreign States and their regions, to conclude agreements in the spheres of culture, social relations, education, science, health, sports and tourism, and to become a member of and participate in the activities of international regional organizations.
2. If requested by the Government of the Republic of Abkhazia, the relevant authorities of the Supreme State of Georgia provide it with the necessary legal assistance and counsel on issues of developing of foreign relations, organizing and conducting negotiations and talks, and concluding agreements.
3. The relevant Authorities of the Republic of Abkhazia advise the corresponding Supreme State Bodies of Georgia of the preparation and conclusion of agreements between the Republic of Abkhazia and foreign States and regions, and supply them with an official text of any agreements made. Agreements may not contradict the Constitution of Georgia, universally recognized principles and norms of international law, international treaties and covenants signed by the State of Georgia, or the terms of the present Federal Agreement.
4. The supreme State Bodies of the Republic of Abkhazia have the right to establish official law enforcement agencies to protect public order over the whole territory of Abkhazia. They further have the right to guarantee the observance of the written and unwritten norms and rules of the Abkhazian customary law, taking into account fundamental human rights and freedoms as the highest value enshrined in the Constitutions of Georgia and the Republic of Abkhazia.

[106] **Article 7. Finances and Revenues of the Republic of Abkhazia**

1. The Republic of Abkhazia has its own financial and budgetary system. The financial and budgetary resources of the Republic consist of:

- a) Taxation and duties paid either in whole or in part to the Government of Abkhazia, subject to agreement with the Supreme State Government;
  - b) Internal taxation, duties and special contributions collected by the Republic of Abkhazia;
  - c) Subsidies transferred from the Central State fund for financial and economic equalization and other direct assignments;
  - d) Revenue accruing from the property owned by the Republic of Abkhazia;
  - e) Revenue accruing from loan operations.
2. Pending a decision by the relevant organs of the Government of the Republic of Abkhazia, and on the basis of an agreement between the Central Bank of the Republic of Abkhazia and the National Bank of Georgia, a certain share of the national currency (coins and banknotes) may bear images of Abkhazian historical and public figures, the national emblem and flag of Abkhazia, Abkhazian historical and cultural monuments, and other objects of State significance, determined in Abkhazian legislation. These banknotes and coins will be circulated over the entire territory of Georgia and will have the same monetary value and purchasing power as other coins and banknotes of the national currency emitted by the National Bank of Georgia.

[107] **Article 8. Citizenship**

Individuals residing permanently on the territory of the Republic of Abkhazia are citizens of Abkhazia, and possess a document confirming their citizenship in the form of a personal identity card. At the same time, all citizens of the Republic of Abkhazia are automatically citizens of Georgia. All citizens of Georgia have equal rights. Unlike other citizens of Georgia, only citizens of the Republic of Abkhazia have the right to vote in elections to the supreme Government Bodies of the Republic of Abkhazia. Other issues connected with the citizenship of Abkhazia are provided for in the Constitution of the Republic of Abkhazia.

[108] **Article 9. Fundamental Human Rights and Freedoms**

1. Every citizen of Georgia is free and enjoys equal rights without discrimination on the basis of race, colour, language, gender, religion, political or other views, national, ethnic or social origins, economic or social status, or place of residence.
2. The Government of Georgia recognizes and protects universally adopted human rights and freedoms as the highest value. The People and the Government are restricted in the course of exercising their powers by these rights and freedoms, which have direct legal force.
3. The Republic of Abkhazia recognizes and protects the fundamental human rights and freedoms provided for in the present Article (2) as the highest permanent values. In exercising its power, the Republic of Abkhazia is limited by these rights and freedoms, which have direct legal force.

[109] **Article 10. The Right of Appeal to the Constitutional Court**

1. Every citizen of Georgia has the right to appeal to the Constitutional Court of Georgia if s/he considers that his/her fundamental rights and freedoms granted by Chapter 2 of the Constitution of Georgia have been violated by a normative act.
2. A citizen of the Republic of Abkhazia has the right to appeal to the Constitutional Court of the Republic of Abkhazia if s/he considers that his/her fundamental rights and freedoms granted by the Abkhaz Constitution have been violated by a normative act adopted in Abkhazia.
3. Every citizen of Republic of Abkhazia, as a citizen of Georgia, has the right to appeal to the Constitutional Court of Georgia if s/he considers that his/her fundamental rights and freedoms granted by Chapter 2 of the Constitution of Georgia have been violated by a normative act adopted in Georgia or in Abkhazia.
4. If a general Court on the territory of Abkhazia hears a case and rules that there is legal justification for regarding an adopted law or normative act as failing to comply, in whole or in part, with the Constitution of the Republic of Abkhazia or the Constitution of Georgia, it suspends adjudication of the case and appeals as appropriate to the Constitutional Court of the Republic of Abkhazia or the Constitutional Court of Georgia. General Courts on the territory of Abkhazia shall likewise appeal to the Constitutional Court of Georgia in cases where any law of Abkhazia does not comply with a law enacted by the Supreme State (federal) Authority of Georgia.

[110] **Article 11. The Principle of Solidarity**

1. The Government of Georgia ensures the principle of solidarity by providing conditions for even social and economic development over the whole territory of Georgia, and controls the appropriate and equitable operation of a system of economic equality over the territory of Abkhazia, as well as over the whole territory of Georgia, at the same time paying special attention to the requirements of highland regions.
2. An integrated economic space shall be ensured across Georgia. The adoption of legislative acts or implementation of measures that directly or indirectly impede the free movement of citizens, goods, capital or services over the whole territory of Georgia shall be inadmissible and considered a violation of the integrated economic space, with the exception of the circumstances specified in Article 16 of the present Agreement.

[111] **Article 12. Military Forces Stationed in Abkhazia**

For a period of three years after the present Federal Agreement enters into force, Georgian armed forces deployed in Abkhazia shall be staffed according to the following territorial principle: citizens of Abkhazia will serve in military units deployed within the territory of the Republic of Abkhazia. This term may be extended by an agreement signed between the relevant State Bodies of the Republic of Abkhazia and the Supreme State Government of Georgia. The citizens of Abkhazia have the right to serve in armed forces in other regions of Georgia on a voluntary basis.

[112] **Article 13. The Hierarchy of Norms**

1. The Constitution of Georgia and the present Federal Agreement represent the highest law of the State. Any other legal act, including the legislation of the Republic of Abkhazia, must conform with the Constitution of Georgia and the present Federal Agreement. The legislation of Georgia and Abkhazia must comply with universally recognized principles and norms of international law. Any international agreement or covenant concluded by Georgia has higher status in relation to normative acts of Georgia and Abkhazia, provided it complies with the Georgian Constitution and the present Federal Agreement.
2. In the fields assigned to the special jurisdiction of the Republic of Abkhazia as defined in Article 4 of the present Agreement, legal acts of the Republic of Abkhazia have higher status in relation to the legal regulations of the Supreme State Government (the Federation) of Georgia. In cases of the infringement of the principle of the separation of powers by either the Supreme State Government or by the Republic of Abkhazia, the other party has the right to appeal the litigious act at the Constitutional Court of Georgia. As soon as the Constitutional Court accepts the appeal for consideration, the implementation of the litigious act shall be suspended. The Court shall consider complaints on the infringement of the principle of the separation of powers out of turn and in the shortest possible time specified by federal law for the hearing of a case. Decisions of the Constitutional Court of Georgia are final.
3. In the fields assigned to the Supreme State Bodies of Georgia and to joint jurisdiction as defined in Articles 2 and 3 of the present Agreement, acts of federal law have higher status in relation to the legal acts of the Republic of Abkhazia.

[113] **Article 14. Rules and Procedures For Amending the Federal Agreement**

1. The present Federal Agreement has the force of law and represents an indivisible part of the Constitutions of Georgia and Abkhazia. It may be amended only on the basis of a mutual agreement of the Parties in accordance with the procedures prescribed for amending the Constitutions of Georgia and the Republic of Abkhazia.

2. The Parliament of Georgia shall accept the present Federal Agreement as a constitutional law. A decision on amending the Federal Agreement can be made by the Parliament of Georgia by a majority of two-thirds of the total seats of the Parliament (i.e. not of those in attendance at a given seating). The decision must be supported by at least two thirds of the total seats allocated to the Abkhazian delegation elected to the Parliament of Georgia. Any other decision relating to the Republic of Abkhazia can be made by a majority of the total number of listed members of Parliament (or those in attendance, being at least one third of the total seats of Parliament); it must also be supported by a majority of the listed members of the Republic of Abkhazia elected to the Parliament of Georgia (or by the majority of those present, being not less than one third of the total seats of the delegation of the Republic of Abkhazia to the Georgian Parliament).

[114] **Article 15. Transitional Provisions**

1. After the return of internally displaced persons and refugees displaced as a result of the 1992-1993 armed conflict to Abkhazia, and after the securing of their safety and appropriate political stabilization, on the basis of Article 12 of the *Agreement on the Resolution of the Georgian-Abkhazian conflict*, the Provisional Coordinating Council shall appoint the date of parliamentary elections.
2. The Parliament of Abkhazia shall consist of 65(?) members elected for a term of 4 years on the basis of universal, equal and direct suffrage and the principle of the secret ballot.
3. A citizen of Abkhazia with the right to permanent residence in Abkhazia is eligible to be elected as a Member of Parliament. Any citizen of Georgia, who has the right to permanent residence in Abkhazia at the date of the appointment of election day, as determined by the census held by the Provisional Coordinating Council, is considered to be a citizen of Abkhazia.
4. The first session of the newly elected Parliament shall be held not later than 20 days after the conducting of elections. The Chairperson of the Special Provisional Commission appoints the date of the first session. The Parliament shall begin work once the legal eligibility of not less than two thirds of its members has been confirmed.
5. Within two years of the confirmation of the legal eligibility of two-thirds of the MPs, the Parliament of Abkhazia shall guarantee the compliance of enacted statutory acts with the Federal Agreement; it shall adopt a new Constitution of Abkhazia, and the legislative acts provided for in the Constitution.

[115] **Article 16. Restrictions on the Purchase of Real Estate in Abkhazia**

1. Article 15 of the present Federal Agreement prohibits for a period of three years subsequent to the parliamentary elections immigration to Abkhazia by citizens of Georgia, as well as by foreign citizens and stateless persons for purposes of permanent residence, or the purchase of real estate or land.



2. Once a period of three years has elapsed as specified in the present Article (1), citizens of Georgia moving to Abkhazia for permanent residence have the same rights (including the right to purchase real estate) as citizens of Abkhazia, but the total number of these individuals may not exceed 2% of the entire population of Abkhazia.

[116] **Article 17. Concluding Clauses**

1. Within one year of the enactment of the present Federal Agreement, the compliance of the Constitutions, legislative acts and subordinate legislation of the Georgian and Abkhazian republics with the present Federal Agreement should be secured.
2. The present Federal Agreement comes into effect simultaneous to the publication of the results of the referendum on the Federal Agreement.

[117] **5.6 PROCEDURE FOR BRINGING THE FEDERAL AGREEMENT INTO FORCE**

It is safe to assume that the most complicated and laborious part of the ongoing process of resolving the Georgian-Abkhazian conflict will not be the securing of an agreement between the Parties on the basic principles set out above, but the actual implementation of the provisions of the agreed documents. However, based on the provisions of the agreements above, we may present a realistic timetable for their implementation:

- [118] There are two documents agreed between the Parties for the legal settlement of the Georgian-Abkhazian conflict: the first is the *Agreement on the Resolution of the Georgian-Abkhazian conflict*, the second the Draft Law of the Georgian Constitution *Federal Agreement On the Special Status of Abkhazia*. (1) The first document comes into force immediately after being signed by the authorized representatives of the UN and the UN Secretary General and the Friends of Georgia group of states to the UN Secretary General. On one hand, this document briefly and specifically defines the basic legal principles of conflict settlement (*the Parties reject violence and the use of force, desire the final, comprehensive and legal resolution of the conflict, recognize the centuries-old traditions of statehood of the Georgian and Abkhazian Peoples, new legal relations between the State of Georgia and the Abkhazian Government are based on universally recognized principles and norms of international law, democratic principles and the rule of law, provision of welfare, economic freedom, principles of a federal state-territorial arrangement and the principle of the separation of powers between them, etc.*), on the other hand it establishes the obligations of the Parties with regard to the entering into force of the second document (the Federal Agreement) and the adoption of measures for its implementation; (2) These measures are: first of all, the accurate registration of the displaced populations arising as a result of the conflict and their voluntary return to Abkhazia to their prior places of permanent residence; and in parallel to this process, intensive economic aid, the rehabilitation of railway communications, the provision of security to returnees and a stabilization of the situation are necessary; (3) once this is achieved a public referendum on the other document, the draft constitutional law *Federal Agreement on the Special Status of*

*Abkhazia* will take place in Abkhazia; (4) once the results of the referendum are published in accordance with all rules and procedures, this constitutional law comes into force, defining in detail the political and legal status of Abkhazia, its special jurisdiction, corresponding amendments to the Constitution of Georgia and the rules and terms of free general elections in Abkhazia. *(Note: Over the first four stages described above, it will be necessary to establish a Provisional Coordinating Body (called here the 'Provisional Coordinating Council') combining representatives of international organizations participating in the conflict settlement, representatives of the UN Secretary General and the Friends of Georgia group of states to the UN Secretary General, together with representatives of the Georgian and Abkhazian Parties appointed on the basis of parity, which will coordinate the activities to be carried out at each stage, the preparation and holding of the referendum and elections, the official announcement of the results and the transfer of power to the legitimate representative bodies);* (5) After holding the elections and announcing the results the newly elected bodies – the parliament and *(if this is envisaged by the constitutional law)* the president – shall ensure the drafting and entering into force of the new Constitution of Abkhazia, which will be based on the provisions of the *Federal Agreement on the Special Status of Abkhazia*; (6) Once all of the above have been brought into effect, the process of settling the Abkhazian problem may be considered complete and the implementation of state legal reforms defined by the new state constitutional law of Georgia and Constitution of Abkhazia can begin.

## Conclusions

- [119] This work has presented a concept for the basic principles of a special status for Abkhazia within the State of Georgia. Naturally, in the course of the development of this concept among scholarly, political and public circles, we expect the reviewing of innumerable further unresolved problems, their more precise specification, and the proposal of more definitive solutions to them. Given the current urgency of the problems associated with the Georgian-Abkhazian conflict and the state-territorial structure of the state more generally, we consider it a matter of priority that a working group or state commission be immediately created that will develop the concept and present concrete proposals to the Georgian Government. At the same time it must be borne in mind by all that any resolution to the issue must be grounded in the good will of the participants to the process, political and legal foresight, and a desire for the civilized and just settlement of the conflict.