

## **Contemporary Georgia: Aspects of Home and Foreign Policy**

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### **Introduction**

Georgia is situated between the Caucasian mountain chain, Turkey and Iran, a strategically very important position. From a historical point of view, it is part of the Christian world, though its contacts with Europe were interrupted in 1453 with the fall of Constantinople to the Turks, who blocked off any access to the Black Sea. The Russian conquest of Georgia, however, reactivated its cultural process of Europeanization, but brought with it the unmistakable traits of tsarist authoritarianism. Something which the Georgians have always deplored, though many admit that the Russian conquest preserved the country from forced Islamization, allowing it to reinstate cultural relations with Europe. On the basis of these historical events, today's Georgia, and in particular its governmental elite, aspire to an integration within the Western framework, and in particular within that of the European political structure, i.e. the EU, and military structure, i.e. NATO – with which the country currently cooperates as part of the Partnership for Peace (PfP), which represents the initial stage (not binding for NATO itself) of a country's membership to Atlantic structures. Obviously a rhetoric based on this alleged common civilizing base presents a few incongruities, because at present Georgia can undoubtedly be defined a European state, but not a Western one, because it lacks a political culture comparable to what has developed in Western Europe over the centuries. Currently Georgia still lacks a political culture based on abidance to the law and to procedures – in favour of a culture based on decisiveness, personalism and private relations – and a culture based on respect for its minorities, the lack of which was one of the main factors that triggered off the armed conflict in the secessionist republics of Abkhazia and South Ossetia.

The political mechanism of these armed clashes can be traced back to the Soviet period and more precisely to Soviet Ethno-federalism (1), which gave the dominant nationality the largest share of power positions and a limited autonomy following a strictly hierarchic level: Republic of the Soviet Union (RS), Autonomous Republic (ASSR), Autonomous Region (OR) (2). Its official aim was to guarantee the autonomy of the various ethnicities within the vast multi-ethnic Soviet State, but it actually served to divide populations so they could be better dominated by central power, i.e. by Moscow, according to the classic Latin concept of *divide et impera*, which one of the world's most famous Georgians, dictator Joseph Stalin, used to perfection, though notoriously with a total disregard for the most elementary human rights.

The system was therefore a complex government structure upon the aforementioned levels, all three of which were closely dependant on Moscow: a Republic of the Union answered to Moscow, an Autonomous Republic answered hierarchically to Moscow and an Autonomous Region answered hierarchically to the relevant Republic of the Union. Central power in Moscow therefore was always the ultimate arbiter in any disputes between second and third level Republics of the Union. Clashes between second and third level national communities essentially derives from the collapse of Soviet central power. In addition, when the clashes erupted in their fully-fledged drama, the ethno-federalist Soviet traditions contributed to their exacerbation, because they had contributed to

strengthening national identities, symbolically and materially (through financial means), and had hence contributed to the build-up of identities with strongly nationalist tendencies.

According to the 1989 census, South Ossetia had a population of 100,000, with only a fourth of Georgian ethnicity. Accusations of cultural genocide and forced assimilation had traditionally been directed by Ossetians to the Georgian government, without managing, however, to flare up nationalism, which had remained lethargic during the Soviet era. The hopes created by perestroika and the intolerant nationalism of Georgian President Gamsakhurdia sparked off South Ossetian nationalism once again. The discussion in the Georgian parliament in the early 90s of bills aimed at imposing the use of the Georgian language and reducing the powers of local institutions caused tensions between Ossetians and Georgians to rise, tensions that later rose even more following the refusal by Georgian authorities of accepting the request of changing the status of South Ossetia from Autonomous Region AO (*oblast*) to Autonomous Republic, ARSS, on the model of Abkhazia and Adjara (3). From that moment onwards, also following the decision by the Georgian parliament to withdraw the status of Autonomous Republic, the first armed clashes with the Tbilisi government. These attracted the attention of OSCE, the United Nations and of course Russia, which offered the opposing parties its mediation and peacekeeping services, though from an undoubtedly far from neutral position: one aimed, instead, at considerably strengthening Russian military and strategic presence in the area, in particular in view of controlling oil and gas pipelines, thus discouraging western commercial investments in the area, because considered at risk by investors, to the full advantage of Russian pipelines, seen as by far safer than those passing through Georgian territory. Another immediate motive of Russian interest in South Ossetia consisted of Russia's need to halt any further NATO expansion close to its borders and to prevent an opening of the EU, present in the area since 2008 with a Monitoring Mission (EUMM) between the belligerent parties (Russia, South Ossetians and Georgia), the only mission still operational after the forced closure in 2009, under Russian pressure, of the OSCE and UN missions. Hence the importance of the EUMM mission to the European Union as part of CFSP, the Common Foreign Security Policy, and CSDP, the Common Security and Defence Policy and to the international community as a whole. The EUMM mission in Georgia therefore represents a cornerstone of European projection ability in the sphere of External Action, which has the task to promote European foreign policy in its various political, humanitarian and economic components in function of exporting stability and security to the advantage of the international community and of the specific geopolitical interests of the European Union itself. The mission also represents the first of its kind that confronts Russia directly, considering that previous EU interventions were far more technical in nature, hence far less political: for example the EUJUST-THEMIS mission, which set out first and foremost with the objective of improving the Georgian prison and legal systems, particularly from the viewpoint of reintegrating the secessionist regions (4).

On this subject Laure Delcour writes: "In Georgia, the EU has been among the biggest contributors to efforts toward the peaceful resolution of internal conflicts by supporting confidence building measures and economic rehabilitation projects in both the Abkhazia and South Ossetia conflict zones, as well as through projects to improve the living conditions of internally displaced persons. As Popescu,(2007) notes, the EU regarded further reforms and progress in the democratisation processes prerequisites to the country's efforts for reintegrating the two breakaway regions . This approach explained the focus on rule of law, including under the European Security and Defence

Policy through the EUJUST-THEMIS mission assisting the Georgian government in drafting for the criminal justice system. In other words, the EU did not engage directly in conflict resolution, whereas Russia had been playing a major role since the collapse of the Soviet Union, either through its role in the 1990 ceasefire agreements and subsequent peacekeeping missions, through its scheme delivering passports to the citizens of the breakaway regions (the so-called *pasportizatiya policy*), or through its willingness to provide these regions with military equipment.” The EU’s approach to conflict resolutions can therefore be characterised as a “policy limbo between action and non-action”. The EU maintenance of such a low profile can also be explained by divergences among Member States with France, Germany, Italy and Belgium opposing the dispatch to Georgia of a border monitoring mission in 2005 that was backed by the UK and the Baltic States. The EU’s mediation in the 2008 conflict with Russia was its first direct engagement in conflict settlement. Even though the EU’s involvement can be considered a success to the extent that they put an end to the armed conflict, EU efforts were strongly constrained by Russia’s behaviour, as evidenced by Moscow’s non-compliance with provisions of the ceasefire agreement and by the access denied to the EUMM (European Union Monitoring Mission) observers in the breakaway regions. To sum up, while “in principle the EU and Russia share similar interests regarding the stabilisation of their neighbourhood” they pursue different approaches to regional security and this discrepancy is also a major stumbling block for the effectiveness of the EU’s neighbourhood policy. . As a result, , EU commitments and intentions, when it comes to conflict prevention, have often fallen short at the time of implementation. .While the EU has to some extent enhanced its profile in conflict resolution in the wake of the 2008 Georgia conflict, it does not still appear as a major regional player.” The Turkish-Russian rapprochement and the Turkish proposal of a stability platform for the South Caucasus, involving Ankara and Moscow , while excluding the EU and the US, are only the most recent examples of such exogenous constraint-even though the stability platform has not been constrained. As a consequence of both the role played by Russia and the different degrees of commitment and timelines played by Russia and the different degrees of commitment and timelines for policy implementation among ENP partner countries, fragmentation appears as a major risk for the ENP’s Eastern component. .Interestingly, the main amendment proposed by the EC to tackle the weaknesses noted in ENP implementation is the introduction of a multilateral dimension :< Thus far the ENP has largely been bilateral... nevertheless ,there are a number of cross –cutting themes where the EU and its ENP partners share common interests and concerns and which could usefully be addressed in a multilateral context” (5)

The EU, however, at least for now, also because of its political divisions, does not represent an alternative to NATO in terms of the degree of military security it can offer Georgia. The EU’s military component is still pending, and therefore relatively weak and absolutely unsuited to giving a military protection even remotely comparable to NATO’s. In any case, it is evident that a new EU mission, a partially military one too, would to a certain extent be acceptable to Russia, whilst a NATO contingent would not. Equally true is the fact that a gradual accession by Georgia to the European Union would be acceptable for Moscow, compared to any accession to Euro-Atlantic structures, considered by Moscow a potential military threat against Russia. The difference between Russia-US and Russia-EU relations, therefore, appears quite evident in the Georgian case too. The former still suffer to a large extent from the bitter ideological hostility and geo-strategic rivalry developed during the Cold War (starting from the encirclement imposed by Brzezinski in the Eighties of the so-called *Southern Tier*, i.e. the USSR’s southern borders, now represented by those

independent states south of Russia), and today it is of course the second element that prevails, as well as from the intrinsically very different systems of values and political culture between the United States and Russia. With this very difficult historical and political background, Georgia will necessarily have to act very cautiously to reconcile two geo-strategic alternatives that would at first sight seem worlds apart. One implies pursuing its integration with the Euro-Atlantic structures without clashing too violently with Russia, without giving the latter the sensation of encirclement – something that could reawaken its “besieged fortress” complex, still very much alive in the country’s psychology and in that of its most important political and military leaders – while at the same time not allowing it to raise its voice against its neighbours, thanks to its relatively strong economy and to residues of a desire for hegemony, or rather for a “sphere of influence”, that still partially characterizes the country, as can also be seen from the constitution of the recent Eurasian Union, a sort of work in progress for a common market between Belarus, Kazakhstan and Russia (and in the future possibly Ukraine too, which will have to necessarily choose between this union and an Association Agreement with the EU). The second alternative implies aspects of cooperation in energetic and commercial relations, and hence an “exogenous modernization” of the Russian productive system, but also an aspect of rivalry and competition from the energetic and geo-strategic points of view and from that of the exportation of a liberal-democratic European political model as opposed to the semi-authoritarian model of Vladimir Putin’s Russia (*EU as political competitor versus Russia*) in former Soviet areas such as Georgia and, above all, Ukraine, which Russia fears may end up lapping its territory too. The question of the political model that the European Union wishes to export to the post-soviet area is one of its priorities, because, as well as representing a *sine qua non* for its expansion into the post-soviet space within the next ten years, it above all represents an element of stability that would have a positive impact on the EU itself and on international stability. Russia is also interested in regional stability, but obviously it does not want it to be achieved at the expense of its influence in the region (zero-sum game) and above all at the expense of its semi-authoritarian and centralistic political model, which would be undermined by the penetration of liberal-democratic EU-inspired governments into its “area of influence”. In this sense, the conflict underway in Georgia is not only of the economic sort (the pipelines), but also of the international political sort, and it can only be solved in time and through high-level political negotiations between the main powers present in Georgia, such as the United States, the European Union and Russia. In this context, the European Union will have to make a new qualitative leap in its policies, which are currently based on *substantially technical and legal* considerations, towards more strictly *political* considerations, which would help it reach a satisfying agreement with Russia for the post-soviet area and beyond. Its relationship with Russia should hence be structured according to two distinct plans of action, which are conceptual too: 1) on the one hand the European Union must act *politically* towards Russia if it wants to face specific political problems, such as, for example, the question of the two secessionist Republics of Abkhazia and South Ossetia, without trying to solve it through exclusively technical and legal means, i.e. *apolitical* ones, because these would fail to lead to a solution for the conflict, or would lead to it too slowly compared to the pace of events on the field; 2) the second aspect, on the other hand, is that negotiations with Russia should generally avoid taking into account its *political* development model. The so-called *decoupling between internal political questions and the development of economic and trade relations* allows instead a suspension of the regulatory-legal and “pedagogical” aspects with regard to Russia and an *acceptation* of the country’s freedom to choose its own political system, however discordant from the European model. It is therefore evident that Russia’s economic strength and its

political model, alternative to the European, produce a knock-on effect that delegitimizes the European Union's political action in the entire post-soviet area, as can also be seen from the recent Georgian elections.

In this, therefore, sense Russia is not subject to *conditionalities* because it wants to negotiate with the European Union on equal terms, without interferences in the internal policies of another state, concepts (in Russian expressed respectively with the terms *ravnopravie* and *nemesciatelstvo*) that Russia itself has stressed on several occasions: the intangibility of state sovereignty (*neprikosnovennost gosudarstvennovo suvereniteta*) with regard to decisions not agreed with in advance and bilaterally with Russia. *Conditionalities* deriving from an economically strong structure such as the EU indicate a relationship characterized by a strong *relational unbalance* and can therefore only be imposed on weak or relatively weak states eager to join the EU, but not on Russia. Georgia and Ukraine represent peripheral areas of the European continent where this change was or is possible, at least until the victory of Yanukovich in Ukraine in 2010, whilst Central Asia appears too geographically and culturally distant for this change to occur within the next ten years.

The crisis has therefore a clearly regional aspect, but also an international one regarding the (power) relations between Russia and the European Union, between Russia and the United States and hence the issue of the West's energy supplies in a broader sense. The solution of the Georgian crisis within the so-called "Geneva Talks" promoted by the United Nations, i.e. the peace talks between Georgia on the one hand, and Russia and the separatist regions on the other, in a direction favourable to EU interests, therefore represents an important testing ground for the EU's External Action/diplomacy at the international level, particularly regarding its energy policy towards the Russian Federation and the energy giant Gazprom, and more generally the legal and political rules regulating the life of the international community.

### **Russian-Georgian Relations and Western Aid in Favour of Georgia to Sustain its Economy after the 2008 Russian-Georgian War**

In 2004 the EU began to include the southern Caucasus in its *European Neighbourhood Policy* (ENP), essentially aimed at reinforcing the structures of civil society and the functioning of the state as a whole. To ensure Georgia's long-term stability and economic success, the EU allocated a significant sum (around 30 million Euro) for reforming the legal and administrative systems and other state organs in way that would guarantee an effective and transparent administration. The EU therefore tried to introduce the concept of state of rights, of *cives*, as the depositary of inalienable rights regardless of ethnicity, also with the aim of changing the concept of *statehood* as a direct consequence of this ethnicity, something which characterizes many aspects of Georgian political culture and which had heavy repercussions on the international crisis Georgia went through in 2008 because of South Ossetia and Abkhazia's substantial secession, recognized at an international level only by Russia, Nicaragua and several Pacific islands. The democratization promoted and financed by the European Union therefore aims chiefly at allowing a harmonic cohabitation between the various ethnic groups living in Georgia. And hence to reinsert in the mid to long-term the two secessionist republics into a democratic and ethnically tolerant Georgia, restoring the territorial integrity of the country and its sovereignty and security, as the two republics were for several years a paradise for smugglers of all kinds – something that was tolerated also to alleviate the hardships suffered by the population (due to their undetermined legal status) – with easily imaginable

repercussions for the country's stability and security. In order to somehow annex the Georgian separatist province, Russia granted Russian citizenship to most South Ossetians. Finally, Russia is interested in certain internal areas of Georgia for reasons related to domestic security: indeed, during the war in Chechnya, groups of Chechen guerrilla fighters found refuge in the Pankisi Gorge, a Georgian territory on the Chechen border.

With its decisively pro-West decisions, Georgia has progressively found itself on a collision course with Moscow, which it sees as its ultimate enemy, a sort of Schmittian *Feindbild*, "*image of the enemy*". Georgian President Saakashvili also blames Russia for his country's internal political and economic difficulties, thus exasperating the conflict which in 2008 turned into an armed one, with the consequent loss by Georgia of a fifth of its territory. The Georgian conflict, therefore, also has important internal repercussions, because it allows governments to divert public opinion from domestic political and economic problems and direct it towards the conflict, increasing the two countries' nationalisms, which derive from two opposing myths. Russian nationalism, as well as being the product of a political, strategic and economic evaluation of the country's current and future needs, is also a cultural and psychological element rooted deeply in the national conscience and in that of the elites. Probably derived from Byzantine culture, the myth refers to Russia as a great power (*velikoderzhavnost*) that needs to preserve its hegemonic, or at least crucial, role in the post-Soviet space. The Georgian nationalistic myth is founded on an age-old desire for freedom and independence from Russia and accession to the Western world, from which it feels unjustly separated for reasons beyond its will. On the subject of Russia's historical mission and its concept of power, Edward Lucas, British journalist and author of "The New Cold War", a well-known book on the contrast between Russia and the West (in some parts written in a biased or hyperbolic manner, but which does, however, relate facts and episodes that I have seen and experienced first-hand), writes: "Take the word *gosudarstvennik*, applied approvingly to Mr Putin and most of his associates. A possible translation would be 'statist,' but that does not reflect the full meaning. Nor does the literal 'man of state' (...) *Gosudarsvennik* in Russian has a ring of patriotism about it. A *gosudarstvennik* cares about the state's prestige and strength; he believes it to be an expression, perhaps the highest expression, of society, culture, even of civilization. In other words, the Russian state exists not to serve the people, but as a project or mission with an almost supernatural basis (...) This is reflected in the idea that Moscow is a "Third Rome," inheriting the imperial, cultural, and spiritual mission of first ancient Rome and then Byzantine Constantinople. Putin's desire to restore the supremacy of the Kremlin at home, and strengthen its reach abroad, has little or nothing to do with the will or welfare of the Russian people: Their applause is welcome—and indeed expected—but the motivation is a transcendent, not a practical one. The point is to promote Russia's "*derzhavnost*"—an untranslatable word meaning, roughly, "great power status." That means the state throwing its weight about both abroad and at home, with behavior sometimes called *derzhavnichestvo* [Great-powerishness]."[6]

What we have, therefore, is a clash between two nationalisms, the Russian and the Georgian, different, but a mirror image of each other. The former is based on the concept of "great power," the latter on a system of what we might call "informal" relations, or even clan or regional relations, on a concept of the state as essentially ethnic and on the prestige of the Georgian Orthodox Church and, of course, on the desire to be free from the Russian sphere of influence. To this we must add, at a more strictly political level, Russia's fears of a "democratic revolution" or "orange revolution" at its

doorstep, something which would have a carry-over effect in the whole post-Soviet area and also heavy geopolitical consequences on Russia, as there would be a further strengthening of the tendency to exclude it from the major energy infrastructure projects, which have to inevitably cross the Caucasian region. The case in question sums up, in the Russian vision, geopolitical and strategic motives and more strictly political ones. The Georgian military undertaking was therefore the product of a deliberately venturesome political line, with an angry reaction to Moscow's provocations, along with an erroneous reliance on help from the United States, which, as we know, only came in the form of humanitarian aid. Saakashvili, the current president, failed to effectively calculate the extent to which reasons of state were to influence the United States' decision not to intervene in the Russian-Georgian conflict. Georgia failed to seriously analyse the rationality of its armed intervention, its real strategic importance in the eyes of the United States, which ultimately did not consider armed intervention in its favour to be justified. It is obvious that Georgia, by focusing solely on relations with the West and neglecting to develop policies of regional integration with other nearby states, such as Turkey and Azerbaijan, overestimated the West's interest in the country, a West that is not ready to compromise its global contacts with Russia in favour of Georgia's interests, especially if Georgia persists in trying to reclaim the enclaves it lost due to the use of force. The Russian-Georgian conflict of August 2008 has in any case highlighted the extent to which Russian or Russian-speaking minorities living in border areas of certain post-Soviet states can become a reason, or pretext, for Russian intervention and hence be potentially dangerous for the integrity of several nations in the post-Soviet area, in particular for Ukraine and its strategically important region of Crimea. For this reason both Europe and the United States are insisting on a series of reforms in the country aimed at improving its public administration and its levels of transparency and economic competitiveness, also through the "concession" of a free trade agreement with the European Union that would allow it a rapid economic take-off. This also implies an advance in Russian-Georgian relations, which in recent months have markedly improved thanks to Georgia's (however constrained) yes to Russian membership in the World Trade Organisation, desired by Russia itself, but also by Europe and the United States, who hope for a reconciliation between Georgia and Russia, especially concerning the unsolved question of the now practically independent republics of Abkhazia and South Ossetia. Europe and the United States, therefore, are not too interested in Georgia recovering the two secessionist republics, a recovery which can now be considered impossible, but rather in preventing any further expansion of Russian influence in the region, thanks to its marked military presence with four military bases in the enclaves in questions, which, though not internationally recognised, except by Russia and a few Pacific microstates, are continuing to reinforce the symbols of their statehood. But something else that stands out against this background, for both contenders, is the need to protect and guard the energy infrastructures that run through Georgia, in particular the Baku–Tbilisi–Ceyhan pipeline: Ceyhan is a Turkish port on the Black Sea that represents one of the most important energy infrastructures for transporting oil from the Azeri and Trans-Caspian fields to the West. Another important infrastructure is the Baku–Tbilisi–Erzurum gas pipeline, also known as the South Caucasus Pipeline (SCP). It supplies Europe from the Azeri gas fields, a project which Russia tries to contrast with the South Stream project, which runs through Russian territory. It is important to stress how the gas pipelines are subject to at least two types of assessment: an economic one, i.e. the degrees of profitability for the energy companies that build the pipelines, and a political one, made by governments, who have to decide whether a particular project satisfies particular political criteria, such as political and energetic autonomy, or whether it satisfies a desired political influence, and so on. Of course political and

geopolitical motives have often collided in this region with the economic rationality of the energetic projects carried out by the large national and international energy companies, often creating conflicts between the motives put forward by states and the projects carried out by the energy companies. There is no point in saying, therefore, that these gas pipelines represent in any case an important economic income and a sort of “umbilical cord” for Georgia’s safety towards its main western partners, the European Union and the United States, who try not to depend unilaterally on Russian or Middle Eastern energy supplies, especially in case of a now likely Middle Eastern conflict with Iran, which would make oil exports to Europe or the United States difficult, if not impossible. To the West, therefore, free transit through Georgia, means having free access to Caspian energy resources, hence the country’s great strategic and economic importance. And this is indeed one of the motives, together with more general or geopolitical ones, why Georgia received a substantial quantity of economic and financial aid after the 2008 war. U.S expert Thomas De Waal writes: “A third reason for the recovery of Saakashvili is that the Georgian economy was protected from the double shock of the war with Russia and the global financial crisis by a generous financial stabilization package from its Western friends. A conference of international donors held in Brussels in October 2008 resulted in a \$4.5 billion package of aid and low-interest loans from the United States, the European Union, the World Bank, the Asian Development Bank, and other donors. Much of this went toward reconstruction work and help for displaced people from the conflict two months earlier, but the sums raised exceeded expectations and helped keep the economy as a whole afloat. The United States gave \$250 million of assistance directly to the government budget. In addition to the money pledged in Brussels, the International Monetary Fund approved for Georgia a standby program of \$750 million to boost its depleted reserves. This aid and loan package cushioned Georgia from the worst effects of the global financial crisis (the GDP in neighbouring Armenia, by contrast, contracted 14 per cent in 2009). Some aid will continue. Georgia won a good rating for its implementation of the \$295 million U.S. Millennium Challenge program between 2005 and 2010, which was mainly used to build infrastructure, and it is likely to secure another Millennium Challenge compact in 2011. However, the Georgian government will not receive again the big sums it was promised in 2008 and it is possible the rescue program merely postponed difficult times for Georgia.” (7).

### **Relations between Georgia and the West**

Relations between Georgia and the United States and the European Union have, however, been built according to mistaken perceptions from both the cultural and the geopolitical point of view. From the very beginning of the dissolution of the Soviet Union, Georgia and the West have tried to find a common language to deal with their common interests. In the areas of humanitarian aid and financial aid efforts have been generally successful. Other areas of cooperation, however, have been more problematic. One of the main problems is the desire of Georgian officials to obtain rapid or immediate benefits from western aid, whilst the West prefers medium or long-term development programmes. The West, openly exalting Georgia’s remarkable strategic importance, has, however unintentionally, created excessive expectations in the country. The United States are not inclined to invest in Georgia if the government is unable to change the country’s legal framework, while the European Union too requires a significant reform of Georgia’s legal framework, as well as a reinforcement of regional cooperation and stability through a gradual resolution of conflicts, something to be achieved by also reinforcing the Georgian state’s democratization – the so-called



*State building* process pursued by European Neighbourhood Policy (reform of the legal system, tax reform, reform of the laws governing the economy, public administration and constitutional law reform, and a reform of the laws governing citizenship rights in the direction of not excluding the former for non-Georgian ethnic minorities). The latter, in the mid and long-term, would be the best option for Georgia, because it would eventually provide, after a very long process, for the country's accession to the structures of the EU as a member state. The United States, on the other hand, offer the country strong financial and strategic support, including perhaps a gradual accession to NATO, but it is EU membership that would allow Georgia economic stability and political security from possible demands by its largest northern neighbour, i.e. Russia. From Georgia's point of view, the United States are perfect allies in the mid-term, but only the European Union proves to be an ally that can embrace the country in its political set-up in the long-term, after the country successfully fulfils EU membership requirements.

What is also lacking is any historic experience of cooperation between Georgia and the West, except the period 1918-1921 when Georgia was invaded by the Red Army. There is no question, therefore, of a "return" to Europe. The "Europe" issue in Georgia has therefore often been treated vaguely and in a woolly manner, because EU conditions are quite exacting. For this reason the Georgian political class has always discussed them before public opinion rhetorically or vaguely, hence inaccurately, so as not to give rise to resistances or forms of opposition in public opinion against the inevitable sacrifices necessary to implement the various reforms required by the EU. In addition, Georgians, who are used to the Soviet-style centralised decision-making mechanisms, are vexed by the slow complicated decision-making processes of the EU, which are the product of a complex triangulation between European Council, European Commission and European Parliament, each with its modes of action, interests and specificities.

Georgia is a country characterised by networks of cronies and informal practices, and this clashes with the respect of formal procedures required by international organisations. The new Georgian leadership is now trying to solve the problem, but this is something that will still take several years. (8)

Lastly, Georgia expects the West to solve its territorial problem, but the West can only, at most, help it open negotiations with Russia and also in implementing a comprehensive reform of the state. Joining NATO is also not possible until territorial problems, like South Ossetia and Abkhazia, persist in Georgia, while the EU will only be able to accept Georgia as a member when most of the procedures required by the *Community acquis* will have been completed (a period of at least ten years). This is where the so-called conditionalities come into play, i.e. requirements imposed with the use of economic or political pressure based on the Union's political and economic strength (known in EU language as *leverages*) that imply a long path of structural reforms from the political, institutional and economic point of view required by the EU before a new state can be admitted as member. This despite the fact that the EU itself declared in 2004 – at the same time as Saakashvili came to power after his victorious 2003 "Rose Revolution" and the accession to the EU of the new Eastern European states – the southern Caucasus region to be a priority strategic area for the European Union's interests. This has contributed to creating misunderstandings in Euro-Georgian relations and feelings of frustration on both sides. EU requirements would therefore involve a thorough innovation and overhaul of Georgia's current institutional set-up. The perspective of EU membership is therefore the only motivation for which the Georgian leadership would be prepared

to carry through a range of highly unpopular economic and political reforms the success of which requires the consensus of the entire population. A population that expects, first and foremost, a rapid improvement of living conditions and one that is not always ready to understand the need for processes of state reform, which would have to be gradual but still full of pitfalls.

### **Georgia, the European Union and the Free Trade Agreement**

Thomas De Waal writes: “The most important issue in EU-Georgian relations is both mundane and technical, and critical for Georgia’s development: a projected Deep and Comprehensive Free Trade Area (DCFTA) between Georgia and Brussels that promises to open up the EU market to Georgia in return for institutional and regulatory reforms. The prospect of a free trade agreement is, along with visa facilitation, the biggest carrot available to Georgia as part of continuing negotiations over an Association Agreement with the EU. A DCFTA is a new concept arising out of the European Union’s ‘neighbourhood policy’. Countries that are judged to be important neighbours but are not being offered a membership perspective are offered the prospect of eventual privileged access to the vast EU single market. In return, they are called upon to adopt regulations and standards that will bring their economy in closer harmony with the EU, a process that, as one EU official puts it, ‘creates the reality of Europe in these countries.’ An important goal of this harmonization process is that, by raising standards, it gives Georgia an increased export capacity. As noted above, Georgia has a big import-export imbalance that makes its economy very reliant on external factors, and agriculture in particular is very weak. A 2009 World Bank study notes that Georgia has also underutilized its capacity in such sectors as construction materials, apparel (clothing), and pharmaceuticals and medical devices, all of which will also create many jobs. There is a positive model here in Georgia’s neighbour Turkey, which has dramatically increased its production capacity and exports to the EU since 1996, when it began to make use of a Customs Union signed with the EU.

A feasibility study on EU-Georgia trade, carried out in 2008, argued that a simple free trade agreement would do little for Georgia, since the Georgians had already eliminated most trade tariffs with their new liberal trade policy. The study concluded that a more ambitious ‘deep and comprehensive’ agreement with the EU was the best model. It ‘would achieve a notable reduction in the perceived risk premium on investment, reflecting a sustained re-branding of Georgia as a favourable and safe place to invest’ and could provide Georgia additional annual growth of more than 6 percent. The harmonization process for a DCFTA is onerous but falls well short of demanding that a country adopt the tens of thousands of pages of *acquis communautaire* required for full membership in the EU. The process is anticipated to be long. Formal negotiations are expected to take more than two years, and then a transition phase to full implementation of the agreement could last ten years. Brussels launched negotiations for a DCFTA with Ukraine in 2008, but they have proceeded very slowly and painfully, especially since the election of a new government in Kiev in 2010. EU officials say their bad experience with the government in Kiev is a major reason that they decided to put more conditionality at the beginning of the process, demanding that Tbilisi start the process of regulatory approximation before formal negotiations on a DCFTA are even launched. ‘We want to be sure they are on a good track and that they don’t backtrack,’ says one EU official. ‘We need good insurance.’ The first ‘talks about talks’ between Brussels and Georgia took place in 2008, but for two years very little progress was made. In the meantime, Moldova proved to be more

enthusiastic and has won a reputation in Brussels as the member of the six-country Eastern Partnership most ready for EU Integration.

The requirements made by Brussels cover four main areas: technical barriers to trade; sanitary and phytosanitary measures in agriculture; competition policy; and intellectual property rights. They require the Georgian government to pass new legislation and set new regulations, all in the name of raising Georgian products to European standards and allowing them into the EU single market. For two years, almost nothing was done in these areas, but then some progress was made at the end of 2010 and the beginning of 2011. Georgia established a new food standards agency (the old one having been abolished in 2006 under the Bendukidze reforms), and the first veterinary inspections were made on farms. A new competition agency was also created, although legislation underpinning it had not been passed.

In the spring of 2011, talks were still dragging out and the two sides exchanged recriminations over why this was the case. One of the Georgian government's two main trade negotiators, Vakhtang Lezhava, expressed optimism that all differences would be overcome in 2011, but he complained that his government was being asked to hit a 'moving target.'

The Georgians complain that the EU's Directorate General for Trade does not understand their aspirations and is concerned only with big economies such as China and India. Georgian officials have also angered EU officials by suggesting publicly that Brussels may be dragging its feet because it wants to push Georgia into dropping its objections to Russia's bid to join the World Trade Organization. 'We hope that is not true, but we are worried about that,' said Bokeria. European officials express concerns that the Georgian side is only going through the motions of starting negotiations for political reasons but without wishing to make a long-term commitment. This, they say, is why they need to show more evidence of institutional reform. As one EU official put it, 'For them the start of implementation is what's important. For us it's 'first action accomplished.'" Another EU official said, 'We worry that they are just interested in starting the negotiations because it will attract FDI—but never actually concluding them.' A pro-European Georgia expert, Kakha Gogolashvili, echoes these fears, saying of the government, 'They need DCFTA more as a political label.'

A study by the Centre for European Policy Studies (CEPS) critical of Brussels's handling of the negotiations further inflamed the issue and threw down the gauntlet to the EU. The report told the EU directorates in Brussels that they were taking a 'narrow-minded approach' and applying a 'one-size-fits-all' policy by recommending a DCFTA that entails an unreasonable regulatory burden. 'Until Georgia becomes rich, its attempt to get a fast rate of growth should not be taxed or hampered,' says Michael Emerson, one of the authors of the study.

The issues raised by the CEPS study can be competently ruled on only by economists and trade professionals. Suffice it to say that EU officials respond robustly to the critique by saying that many of its assumptions are wrong. They say that the approximation process will be gradual and that the difficult regulation, which is required for the farming sector, can be implemented over years. EU officials and one of the authors of the original feasibility study also defend their data and conclusions.

More broadly, the Brussels argument is that as countries in Georgia's neighborhood, such as Ukraine and Turkey, adopt EU standards, it should, too, for its own sake, if it wants to stay competitive and gain access to the vast European market. They cite, for example, a survey of Georgian agricultural producers by the World Bank's International Finance Corporation, which found that most of the producers accepted this principle and were ready to meet improved food safety standards, even though it entailed higher costs.

Resistance to the DCFTA in Georgia comes from two main groups. Economically liberal Georgians are contemptuous of EU regulatory approximation. Libertarian thinker Kakha Bendukidze rejects the idea, saying, 'We need a simple FTA that means free movement of goods, first of all. After that we can talk about other things.' Of the negotiations over a deeper agreement, Bendukidze says, 'I think it was partially inspired by some Georgian experts and government employees who were benefiting from having negotiations with Europe and the flow of expert money coming in. They were betrayers of our interests.' Ramishvili of the Liberty Institute expresses the concern that EU regulations will re-introduce corruption into Georgia. He says, 'A corrupt system can adjust and survive inside a European envelope. The danger is that European laws will mask ugly Soviet practices.'

Opposition to closer European integration is also likely to come from another quarter that is less public and open—representatives of the 'Old Georgia' oligarchic culture who maintain business interests that have so far eluded the close attention of both local NGOs and European negotiators. One EU official says that there is a fear in all Eastern Partnership countries that closer economic integration will be a Trojan horse exposing hidden business practices to unwelcome scrutiny. This phenomenon is much more obvious in Ukraine, where one observer talks of "a small group of big businessmen in Ukraine for whom the DCFTA may pose an existential threat."

These factors act as a drag on the Georgian team negotiating with Brussels. Georgian government negotiator Vakhtang Lezhava, along with his colleague Tamara Kovziridze, is a former pupil of Bendukidze. In an interview, Lezhava said he believed in the merits of the DCFTA. 'As EU legislation is a result of consensus building, it always has room for intelligent application,' he said. 'Although the burden will increase for me, the potential benefits are higher than the burden.' He was less enthusiastic about the philosophical rationale for the regulatory demands of the EU, appearing to see them as a means to an end. Lezhava said, 'I am a pragmatist. These things are good in exchange for free trade, but not per se.'

The benefit of a DCFTA is potentially very high but in this important debate on Georgia's development model, the EU has so far done a poor job of communicating a clear and consistent message about the rewards of institutional reform, as well as explaining how the costs can be met. After the passing of the Lisbon Treaty, the EU was supposed, in theory, to acquire a more focused and holistic foreign policy, with the new External Action Service taking the lead. In Tbilisi this means that the new EU ambassador, Philip Dimitrov, a former prime minister of Bulgaria, is now 'the face of Europe' and can deliver a more coherent message. In practice, Brussels continues to emit confusing messages about its strategy toward its eastern neighbors and its overall philosophy. The abolition on March 1, 2011, of the position of European Union Special Representative for the South Caucasus, removing from his post Peter Semneby, an experienced diplomat who had a high profile in the region and a good working relationship with all its leaders, was a retrograde step,

which appeared to show less rather than more interest in the region on the part of Brussels. For all the good practical work it does and the money it spends, the EU is not delivering its message consistently or eloquently in Georgia.” (9)

### **Modernization and Europeanization**

The new Georgian elite, unlike that of most post-Soviet states, has managed to achieve some remarkable results as a consequence of several concomitant factors. These can be essentially attributed to a mix of luck, skill, public relations and to economic support by the West. These factors have enabled it to carry forward a State building process and, as a consequence, a modernization process for its institutions and society. This is reflected in a more orderly society as a whole, even though the democratization process is still pending or at its very earliest stages. Now citizens are, for example, able to purchase a house or renew their driving licence without becoming victims of harassment by corrupt officials. This unquestionable success in bringing order and legality has, however, also generated some negative aspects, like, for example, an excessive one-sided approach of police forces and the legal system in general towards citizens. These problematic aspects will have to be dealt with by the new government, and more generally by the new institutions that will come into being after the 2012 and 2013 elections. One of the most important questions for the near future is the political future of the ambitious and histrionic Mikheil Saakashvili, who during his presidency often exaggerated in promising results he could not achieve. Georgia is faced with three different and divergent development models: one we could call “old Georgia”, a model focused on the family, on nepotism, on clientelistic relationships and inscrutable profiteering practices. Such a model has no chances of success in the mid to long-term and it is a supposable model only in the case of a deterioration of the economy to the lowest levels of livelihood or with the rise to power of an extremely authoritarian political figure in conjunction with a distancing of the West from Georgia. The second model would be transforming Georgia into a sort of Singapore through hard economic and fiscal deregulation, a solution which would, however, create wealth only for a minority and would not solve the problem of poverty and mass unemployment. Finally, the European option, which would require major institutional and regulatory reforms to obtain high quality products and gain access to European markets.

This European choice, from the point of view of exports legislation, would have positive effects for Georgia not only from the economic point of view, but also from the geopolitical one, because it would protect it from harassment from Russia, giving it a geopolitical sheet anchor it would never have on its own, especially regarding the problem of the secessionist republics of Abkhazia and South Ossetia, which currently seems far from any solution. Political “anchorage” to the European Union would in turn activate a process of reinforcing economic stability, which would in turn have effects on political stability too. The only really viable route therefore remains the DCFTA, and hence a closer integration with European legislation. DCFTA works incrementally: the more progress Georgia makes, the more aid it receives from the EU and vice versa (10).

There’s a latent tension between the liberal-democratic modernization of certain Georgian elites and at the same time the need to preserve at least Georgian cultural identity and traditions, inevitably related to it. On the one hand we find the wish, however instrumental, by Georgian elites and part of the population in the broadest sense to accede to the Euro-Atlantic political community and culture, and hence move away from the Russian sphere of influence once and for all, and on the other the

wish to preserve a cultural identity and the related cultural traditions. All this contains a quite obvious oxymoron. During the phase of reform implementation it will be very difficult to avoid a clash between two opposed and antagonistic systems of values like the liberal-democratic concept of the state and the nationalistic former-Soviet practices that include, as common praxis, centralization of power, informal decision-making, a lack of checks and balances and the violation of human rights. Hence the role of Europe and its *policy guidance* for addressing Georgia towards a liberal-democratic model similar to the European.

This is why the “enlightened” political elites educated in the West will have the difficult task of bringing forward a political and economic modernization project without, however, being accused of wanting to “sell out” the Georgian cultural heritage, including the Orthodox Church and its important religious and identity-building role in a country with generally conservative tendencies, an ethnic sense of the state, nepotism, clientelism networks of acquaintances, and informal practices in the name of new values. Neglecting all this could make room for new traditionalist political oppositions that would accuse this enlightened elite of not taking into account the historical national tradition or of having a defeatist attitude towards the possibility of recovering the lost enclaves of South Ossetia and Abkhazia. Modernization within the context of tradition. This would seem to be the semantic oxymoron, and an above all political one, that the new Georgian government elected in the 2012 elections will have to try to synthesize and carry forward. An oxymoron that repeats itself in the difficult attempt to harmonize abidance to its European and Atlantic commitments and a gradual *rapprochement* to Russia, essential as the latter country can use its *leverages* against Georgia, for example by blocking exports of Georgian wine or by exploiting its advantageous strategic position in the enclaves of South Ossetia and Abkhazia, occupied by Russian military forces (11). What is then the EU’s policy towards the two secessionist republics and Georgia’s territorial integrity?

### **European Policy towards the Secessionist Republics of Abkhazia and South Ossetia**

“In the cases of Abkhazia and South Ossetia, the EU had channelled some of its assistance to these de facto states even before the events of 2008. EU donor assistance focused in particular on ameliorating the situation of internally displaced persons (IDPs) as well as on socio-economic reconstruction in the conflict-affected areas. (...) Since 2003 the EU moreover has been present in the region in the form of its Special Representative for the South Caucasus, whose mandate explicitly included engagement with the South Caucasus conflicts. While the work of the EUSR has often been carried out without much public ado, the EUSR has been crucial in maintaining links with Abkhazia and South Ossetia, not least facilitated by his not being affiliated with a European embassy or the EU delegation based in Tbilisi. EU policies as regards conflict resolution in general, however, have been assessed in rather negative terms. It was the war of 2008 as well as the partial recognition of Abkhazia and South Ossetia that marked a turning point as concerns the realities on the ground — and thus the conditions for international engagement in the region. These new conditions include an almost complete foreclosure for EU (funded) projects to South Ossetia, an increased Russian presence in the de facto states — not least in the form of thousands of Russian troops stationed there to defend the new status quo—as well as boosted self-esteem especially on the part of Abkhazia and its bid for independent statehood. It seems as if Russia’s even further increased role in the partially recognized statelets led to heightened sensitivity and necessitated a re-evaluation and re-orientation of the EU’s engagement with the conflicts. While in discussion even

before 2008 and in several regards only the formalization of assistance that the EU has already provided, the approval of what came to be known as the Non-Recognition and Engagement strategy in December 2009 nonetheless marks a certain change of approach in the EU's efforts towards conflict resolution. With this step EU policy directly addresses the de facto states of Abkhazia and South Ossetia, thus holding the potential for EU assistance that thoroughly takes into account local conditions in the de facto states and the (new) realities of the region.

THE NON-RECOGNITION AND ENGAGEMENT STRATEGY was adopted by the Political and Security Committee of the Council of the European Union and has to be considered in light of the European Commission's proposal to provide for enhanced targeting of regional conflicts within the EU's Neighborhood Policy. The strategy's essence is already given by its name. Central are two, inseparable building blocks: engagement with the de facto states while at the same time clearly stating the EU's adherence to Georgia's territorial integrity. The formula therefore reflects the difficult position the EU finds itself in where its adherence to Georgia's internationally recognized borders remains in tension with addressing the new realities. Despite the explicit bias towards an ultimate resolution of the conflicts which favors the Georgian (and Western) standpoint, the strategy seems however rather directed at countering Russia's growing influence rather than actively supporting Georgia's regaining of Abkhazia and South Ossetia. The strategy's central objective of de-isolation is thus to provide and foster, as former EU Special Representative Peter Semneby put it, 'an alternative perspective to the predominant Russian one'.

Such de-isolation is thought possible via upholding or establishing contacts on different levels—contact with the de facto authorities not explicitly excluded but practically restricted by the statement on Georgia's territorial integrity. Centrally, the strategy aims at focusing on people-to-people contacts and the implementation of projects in different realms such as rehabilitation, education, information or training. Yet, the strategy still largely waits to be animated—thus far rather than being a generator of new initiatives it constitutes rather a new umbrella label for ongoing projects.

The events of 2008 constitute a further rupture as regards relations between Tbilisi and Sukhum/i and between Sukhum/i and the international community. While in the context of the cease-fire agreement brokered by French President Nicolas Sarkozy a new negotiation format, the Geneva talks, was established, both the UN mission that monitored the Georgian–Abkhaz ceasefire and the OSCE presence in South Ossetia were disbanded in mid-2009 after Russia vetoed their extensions. The Geneva talks regularly bring together representatives of Georgia, Russia, Abkhazia, South Ossetia as well as of the UN, OSCE and the EU with the objective of arriving at conflict resolution. The latter three organizations function as the Geneva process' co-chairs with the EU being represented by its Special Representative for the Crisis in Georgia. Even though such a steady communication platform has been welcomed, critics complain that a means to an end has become an end in itself: Given a lack of tangible progress as concerns relations between Tbilisi and Tskhinval/i and Sukhum/i, mediators are forced to settle for maintaining the status-quo.

Despite such a rather bleak picture, there is also experience of engagement and mutual contact beyond the track one-level to draw upon. International organizations and NGOs have, and continue, to implement projects in Abkhazia, while communication channels between Georgia and separatist Abkhazia were never completely closed either. The administrative boundary line (ABL) between

Georgia and Abkhazia has been permeable, not least due to several thousands of ethnic Georgian IDPs who returned to their homes in Abkhaz-controlled Gal/i region and have subsequently commuted across the ABL. However, for Abkhazia's non-Georgian population, too, crossing the ABL was possible, for example in the context of medical treatment. Moreover, until the events of 2008 there even was direct, that is non-mediated, contact between Abkhazian and Georgian top-level officials. It is such fragile forms of contact and pragmatic cooperation that the EU's policy may aim to revitalize or draw upon and possibly expand. On the other hand, obstacles which were already present before 2008 have become even more critical now. These can be located on different levels: On the one side project implementers are confronted with obstacles on an operational level such as which passports to accept, where to issue necessary visas, from where to import materials, etc. On the other side, a further difficulty presents itself on the more conceptual level: commonly, in Abkhazia the EU is regarded as pro-Georgian and its new policy therefore viewed with suspicion. This, however, influences the policy's possible impact. The strategy's perceived Georgia bias is not only linked to the EU's vocal commitment to Georgia's territorial integrity, but also to its prior record of assistance. People in Abkhazia criticize the EU as well as other international organizations for having channeled their help predominantly to Gal/i region, facilitating IDP return, therefore favoring ethnic Georgians. The internationals justify their engagement by pointing to stipulations of the 1994 framework agreement and by arguing that this area in particular has been most severely affected by the persistent conflict and that it is the ethnic Georgian IDPs who are most vulnerable. Ethnic Abkhaz interlocutors, however, stress that they have likewise experienced tremendous hardships due to the war and the economic blockade, having waited in vain for help..

While in Abkhazia there have been, and still are, groups of people who adhere to a "multi-vector-foreign policy" and, in this context, welcome cooperation with the EU, the EU's offers are not able to seriously challenge Russian influence in Abkhazia. Not only is Russia militarily present in the region and seen as the protector of Abkhaz independence, it also possesses tremendous economic leverage—to name only the two most striking aspects of Abkhaz–Russian relations. Even though the Russian–Abkhaz honeymoon has likely ended, or at least has been beclouded by a couple of contested issues such as the question of real estate purchases by non-Abkhaz, the territorial dispute as regards the village Aibga or the dispute concerning the Abkhaz church, Russia's influence and elevated position will remain for the foreseeable future. Therefore, the more the Non-Recognition and Engagement policy's central objective to promote an alternative perspective is interpreted by the Abkhaz side as aimed at substituting, rather than complementing, Russia's presence, the less likely are its chances for substantial realization". (12)

The second series of tensions affecting the implementation of the neighbourhood policy stems from the influence of another major player in the former Soviet countries covered by the ENP: Russia. As shown in the previous chapter, Russia's refusal to participate in the ENP prompted the tailor-made design of a strategic partnership with the EU; however, the impact of Russia's decision has been at least as important on the European Neighbourhood Policy. Given Russia's influence in the region, security challenges in the Western NIS and the South Caucasus prompted an enhanced cooperation between the EU and Russia to enhance stability and security in their common neighbourhood. Regional security – more specifically the management of unresolved conflicts – was thus meant to become a cornerstone of the EU-Russia Common Space on External Security. Yet EU-Russia cooperation in the Western NIS and the South Caucasus countries has remained an empty shell as a



result of ‘competing rationalities’. Over the past six years, Russia has been reluctant to accept growing EU involvement in its ‘near abroad’. The EU’s increasing power to attract Western NIS was indeed perceived in Moscow as a loss of influence for Russia in its traditional backyard and a source of ‘rivalry in the post-Soviet space. With a view to accounting for such rivalry, analysts have often pointed out differences in the way in which Russia and the EU exert their influence. Russia is often presented as pursuing a realist approach and usually resorting to coercive instruments in its backyard, whereas the EU is described as a post-modern and benevolent construction relying primarily upon its soft power in the Western NIS and South Caucasus.

Yet, as convincingly put by Haukkala and Averre, the picture is much more complex. On the one hand, whereas Russia indeed resorts to coercion in its near abroad, as shown by the 2008 conflict in Georgia, it has also developed over the past few years a ‘normative agenda’ and pays increasing attention to non-military instruments likely to enhance its attraction power, such as the Russian language. On the other hand, the notion of the EU as a benevolent actor in its neighbourhood, particularly in the Eastern periphery, needs to be reviewed. As Zielonka puts it, ‘the EU’s efforts to spread its norms are truly imperial in the sense that the EU tries to impose domestic constraints on other actors through various forms of economic and political domination.’” (13)

### **The Legal and Political Question of the Secessionist Republics of Abkhazia and South Ossetia Abkhazia**

In the following paragraphs I shall quote almost in full a text by a young scholar, Marilisa Lo Russo, who describes in detail the Constitution of the two Secessionist Republics of Abkhazia and South Ossetia up until 2008, the year the article was published:

“The legal foundations of Abkhazia’s independence request are its declaration of independence, not recognised by any country, the Constitution, which came into force on 26 November 1994, the October 3 1999 referendum, the continuity with its Autonomous Republic status recognized in the Soviet period. On 18 October 2006 the People’s Assembly of the Republic voted a Resolution asking for the recognition of its independence by the Russian Federation, by international organizations and the international community.

A few historical elements: when it became independent Georgia had a population of 5.4 million, of which 30% was made up of ethnic minorities, made to flow to Georgian territory at different times in Soviet history to weaken the Republic’s strong local nationalism.

In turn, the Tbilisi authorities later programmed migratory waves to the Republic of Abkhazia, reducing the local population to a minority (around 20% of the total). As early as 1977, the time the new Soviet Constitution came into effect, the Abkhazians had demanded a split from Georgia and their integration into the Russian Socialist Soviet Republic. The application was rejected by the Moscow authorities who, as compensation, granted them an overrepresentation in the local parliament, discriminating against the other ethnicities. Georgia’s 1990 declaration of independence from the Soviet Union, was followed in August of the same year by Abkhazia’s. This political and legal act with which the Abkhazian parliament declared its new status of Republic of the Union was declared void by the Georgian authorities and it was as if it had never happened.

On 23 July 1992 the Supreme Soviet in Sukhumi, the Abkhazian capital, declared its independence and split from Georgia, reintroducing the 1925 Constitution. During the Georgian civil war between

Shevardnadze (former Soviet minister of foreign affairs at the time of Gorbachev) and his rival, the ultra-nationalist Gamsakhurdia, several Abkhazian independence leaders were kidnapped by the latter. They were later freed by the Georgian National Guard, who had to, however, bomb the Abkhazian capital Sukhumi to regain possession of it, also dissolving the Parliament that had declared independence.

On 3 September 1992, thanks to Russian mediation, a ceasefire agreement was reached in Moscow guaranteeing the protection of Georgia's territorial integrity and the re-establishment of Georgian State Authorities in the independence seeking region. On 15 December of the same year Georgia and Abkhazia signed four agreements on the end of war operations and the withdrawal of military hardware starting from the months immediately following the coming into force of the agreement. Despite the agreements, fighting between the Georgian army and the independence fighters resumed violently. The Abkhazian forces managed in September 1993 to gain control over the entire region, giving rise in the following months to authentic ethnic cleansing operations against the Georgian population living in the separatist Republic. After a Memorandum of Understanding between the belligerent parties, signed in Geneva and mediated by Russia, the Abkhazian leadership accepted the Russian proposal to deploy a Russian peacekeeping battalion in the area, thus allowing Moscow to acquire a stable position in the territory of the separatist Republic and to become a key player in the regulation and resolution process of the Abkhazian-Georgian conflict. This meant the explicit recognition by Georgia of Russia's crucial role in the post-Soviet area for the peaceful solution of ethnic and territorial conflicts.

At the start of the conflict in the early 90s the UN and OSCE were essentially the only organisations to intervene in Georgia, the former was the first to intervene in Abkhazia and the latter in South Ossetia. But negotiations immediately came to a standstill over the problem of refugees and their repatriation and also on the problem of Georgia's territorial integrity.

In 1994 Abkhazia promulgated its new Constitution, which defined Abkhazia a democratic sovereign state, also declaring its will to reach a compromise with Georgia to become a fully Confederal State, a perspective firmly rejected by the Tbilisi government, which expressed itself in favour of the institution of a Federal State where the 30,000 Georgian refugees who had fled during the conflict could return to. It appears clear that Abkhazia has two options: returning to Georgia in a regime of marked Federalism, or becoming a sort of state under the exclusive protection of Russia, with no guarantees of recognition by the international community. On this point Georgia has accused Russia of wanting to explicitly annex Abkhazia because of its strategic position that connects the Northern Russian Caucasus with the coasts of the Black Sea, the access to which has become more difficult since Ukraine and Georgia became independent. After all, it is a well-known fact that the principle of self-determination clashes with that of territorial integrity, as is clearly shown by the case of the Albanian Kosovo, recognized by the international community but not by Serbia, the territorial state it split from, and that Russia uses as an example to its advantage in the case of South Ossetia and Abkhazia, thus dismembering a sovereign state recognized by the international community, which doesn't, however, recognize *de jure* (but in some cases only *de facto*, as previously said) the two Secessionist Republics of Georgia.

The legal foundations of Abkhazia's independence request, as we've said, are its declaration of independence (not recognized by any country), the Constitution, which came into effect on 26

November 1994, the referendum of 3 October 1999, the continuity with the Autonomous Republic status granted in the Soviet period. On 18 October 2006 the People's Assembly of the Republic voted a Resolution requesting the Russian Federation, international Organisations and the international community to recognise its independence. The small region has developed a statehood of its own, facilitated by the fact that the ceasefire imposed in 1994 and guaranteed by a Commonwealth of Independent States (but mainly Russian) peacekeeping force, has guaranteed a relative political and constitutional continuity. Until 2008 the Republic of Abkhazia had two parallel governments, a de facto one based in Sukhumi, and a de jure one based, until 27 July 2007, in Tbilisi, when the "exiled" government moved back there to exercise its functions on that 13% of Abkhazian territory under Georgian control" (14).

### **The De Jure Government**

"The bicephalous situation began after 27 September 1993, when part of the Autonomous Republic of Abkhazia's Council of Ministers abandoned Sukhumi after the massacre during which the prime minister, among others, lost his life. For the following thirteen years the head of government was Tamaz Nadareishvili, who was warmly in favour of military intervention to recapture the occupied part of the country and was also suspected of links to paramilitary groups active on the border. In January 2004 the Nadareishvili government received a no-confidence vote from the Abkhazian Supreme Council and was replaced by the Malkhaz Akishbaia government.

The government's relocation followed what became known as the "Kodori crisis". The Kodori Gorge was one of the Abkhazian territories controlled by Georgia and is a sensitive area as a possible military and civil transit point. Its inhabitants are mainly Georgians of the Svan ethnic subgroup, and rather than to Tbilisi, they answered to a local warlord, Emzar Kviziani, of the fighter militia known as the Hunters. This paramilitary group had fought alongside Shevardnadze's troops, but had been disbanded after the Rose Revolution. On 22 July 2006 Emzar Kviziani rallied his men and declared an armed resistance to Tbilisi. The government responded with an ultimatum. A six-day conflict followed that risked involving the whole of Abkhazia, with the country's government de facto cautioning Georgia against the presence of its troops on its borders. Such a presence was in fact in violation of the ceasefire protocol of May 1998, which did not allow the presence of Georgian military corps. Kviziani managed to escape capture and one hypothesis is that he is hiding in Sukhumi. The de jure government does not support secessionist motions but a federalist solution, as was also suggested by president Shevardnadze, with a subdivision on a basis of equality of seven autonomous units, one of which would be a unified Abkhazia" (15).

### **The De Facto Government**

"The constitution of the de facto Republic of Abkhazia, or Apsny. Chapter I (arts 1-10) is dedicated to the bases of the constitutional order. It declares that the Republic is established historically under the right of a people to free self-determination, that it is committed to respecting international law and that its borders respect the historical provinces of Sadz, Bzyp, Guma, Dal-Tsabal, Abzhywa, Samyrzakan and that this territory is 'indivisible, inviolable and inalienable.' The official language of the Republic is Abkhazian, but the Russian language too shall be recognized as the language of the government, public and other institutions. Chapter II (arts 11-35) describe human and civil Rights and freedoms. It recognizes the rights listed in the Declaration of Human Rights and other

international covenants, but that these may be limited in the case of attempts to forcefully transform the constitutional system, undermine state security, in the case of the creation of armed groups, the incitement of social, racial, ethnic and religious discord. Among citizens' duties, the defence of the Motherland is mentioned. Legislative power is dealt with in Chapter III (arts 36-47), which prescribes the composition of Parliament and the length of a legislature. The passing of laws requires a simple majority, except those not approved by the President and impeachment.

Abkhazia is a Presidential Republic. The powers of the President (Chapter IV, arts 48-67) are extensive. Alongside the President, another institutional figure is the Vice-President, who is nominated during the election campaign by the presidential candidate and is hence elected simultaneously. He is delegated to carrying out on the instruction of the President his assignments and deputize in the event of the President's absence or inability to discharge duties. The cabinet of ministers is accountable to the President, by whom it is formed.

Judicial power (Chapter V, arts 68-77) is exercised through the lower and high courts and the Supreme Court, which does not, however, act as a Constitutional Court, being the control of constitutionality exercised by the President, whilst Parliament also manages the interpretation of laws. Chapter VI (arts 78-82) explains the functioning of local power, whilst Chapter VII lists procedures for amending the Constitution (arts 83-84).

The political events that characterised the independence period explain the strong Presidentialism of the Abkhazian Constitution, in the figure of the Head of State is indispensable. Towards the end of 2007 political debate was reinvigorated by the expectancy for Kosovo's declaration of independence, a historical precedent instrumental to the erosion of the principle of a country's territorial integrity. In an escalation of tension between Moscow and Tbilisi, with mutual threats on Russia's accession to the WTO and Georgia's to NATO, the Russian government cancelled military sanctions against Abkhazia, inviting all members of the Commonwealth of Independent States who signed the 1996 document, including Georgia, to do the same. On 13 December the lower house of the Duma held a special sitting to assess the possibility of recognising Abkhazia, South Ossetia and Transdniestria. The head of the Abkhazian delegation in Moscow for the Duma hearing declared to local TV networks that, while the independence of Kosovo was a crime against international law, as the country was part of historical Serbia and had never existed as an autonomous state, Abkhazia had been artificially added to the Georgian state structure by Stalin and Beria. Furthermore, its declaration of independence was made prior to the international recognition of Georgia, intended as its accession to the UN."

### **South Ossetia**

On this subject, Marilisa Lorusso continues to write: "The legal foundations of South Ossetia's independence request are its declaration of independence (not recognised by any country), the two referendums that confirmed it, the Constitution, continuity with the Autonomous Republic status granted in the Soviet period.

This small region also developed its own statehood thanks to the ceasefire imposed in 1992 and protected by a Commonwealth of Independent States (though mainly Russian) peacekeeping force which assured it relative political and institutional continuity. On 23 December 1993 a new Constitution, replacing the Soviet legislative framework, was introduced. Presidential elections

were held according to the new regulations the following year. One of the names that stood out most among the candidates was that of Lyudvig Chibirov, President of Parliament, who eventually won and took office on 17 September 1993. Chibirov was then reconfirmed for a second mandate in 1996 with 65% of the vote. Prime minister Valdislav Gabaraev, who had stood with a programme based on secession from Georgia and unification with North Ossetia, only garnered 20%. In the same year Chibirov and Shevardnadze signed the 'Memorandum on Measures to Provide Security and Strengthen Mutual Trust,' followed by two agreements, one on economic aid (1997) and one on the return of IDPs, after which negotiations on the region's status could begin. Shevardnadze proposed a federal agreement, whilst Chibirov, supported by Parliament, opted for secession and accession to the Commonwealth of Independent States.

In the May 1999 legislative elections the Communist Party obtained 39% of the vote and two years later Dimitry Sanakoyev replaced resigning Prime Minister Chigoyev. Chibirov was defeated at the 2001 elections, hardly reaching 20% of the vote, in favour of his main rival, the young candidate Eduard Kokoity, who garnered 48% of the vote in the first round and 53% at the run-off on December 6 against Stanislav Kochev (40%).

Having consolidated his power, Kokoity attempted to pursue the political project of a South Ossetia united with the North, independent from Georgia and with the status of associated member of the Russian Federation. For this reason he criticises the efforts of mediators, such as OSCE, who work to find a solution to the conflict, which has remained frozen since July 1995, accusing them of being tools in Tbilisi's hands. On 4 March the South Ossetian Parliament appealed to the Secretary General of the United Nations, the President of the Russian Federation, the Federal Council of the Federal Assembly of the Russian Federation, to the State Duma of the Russian Federation, to the heads of state and parliaments of the Commonwealth of Independent States and to the member countries of the European Union, requesting their recognition of the country's total independence, under the principle of the right of a people to self-determination, of the existence of legal foundations for the creation and development of a sovereign state and on the basis of the impossibility of South Ossetia and Georgia to coexist as a single state.

On 7 March the analogous appeal by the Parliament of the Republic of Abkhazia followed, made to the Secretary General of the United Nations, the President of the Security Council of the United Nations and to the Parliaments of all countries in the world. Neither appeal received a positive response from European countries or the UN. On the contrary, unanimous condemnation came from the European Council, OSCE, the European Union, NATO and the United States of this rapprochement between Russia and Abkhazia and between Russia and Ossetia, which implies a recognition, if not a political one, certainly a de facto one, with the legalisation of relations via cooperation in various sectors, the recognition by Russian organisms of the *lex personalis* valid in the two republics and giving consular mandate to the governmental representatives of Krasnodar and North Ossetia on the two neighbouring secessionist territories." (18)

## **Theoretical Foundations and Implementation of the European Union Common Foreign and Security Policy's Monitoring Mission**

What exactly is European Common Security Policy? Here is a brief description of it from the website of the Italian Ministry of Foreign Affairs .

Common Foreign and Security Policy (CFSP) “Informally established by the Member States in 1970, the European Political Cooperation (EPC) was institutionalised under the Single European Act of 1987, and essentially provided mechanisms for consultation among Member States on matters of general foreign policy. In the light of the geo-political changes under way in Europe the early 1990s (German reunification, the collapse of the Soviet Union, the end of the Warsaw Pact), and of intensified nationalistic tensions in the Balkans that would later lead to the dismembering of Yugoslavia, the Union’s Member States decided to establish a “common foreign policy” on the basis of the provisions of the Maastricht Treaty (1993), subsequently modified at Amsterdam and Nice and Lisbon.

Today’s European Union works to ensure a high level of cooperation in all sectors of international relations with the following aims:

- defend its values, fundamental interests, security, independence and integrity;
- consolidate and support democracy, the rule of law, human rights and the principles of international law;
- maintain peace, preventing conflicts and strengthening international security, in accordance with the objectives and principles of the UN Charter as well as the Final Helsinki Act and the goals of the Paris Charter, including those concerning external borders;
- foster sustainable development in developing countries on economic, social and environmental planes, with the main goal of eliminating poverty;
- encourage the integration of all countries into the world economy through the gradual abolition of international trade restrictions;
- contribute to the drafting of international measures aimed at protecting the environment and sustainable management of the world’s natural resources, with a view to ensuring sustainable development;
- help populations, countries and regions affected by natural or man-made disasters; and
- promote an international system based on strengthened multilateral cooperation and good world governance..

The Council identifies the Union’s interests and objectives on the basis of the principles outlined above. The Council drafts common foreign and security policies and takes decisions necessary to outline and implement them on the basis of its general stances and strategies.

As of December 1st 2009, with the entrance into force of the Treaty of Lisbon, the European Council has an appointed High Representative for Foreign Affairs and Security Policy in the person of Catherine Ashton. The High Representative, who chairs the General Affairs Council, and is at the same time Vice President of the Commission, contributes to drafting foreign and security policy and ensuring implementation of the decisions adopted by the European Council and by the Council

itself. The High Representative's tasks are underpinned by a European External Action Service, which works in collaboration with Member State diplomatic services.

**European Security Strategy**

The European Security Strategy ("A Secure Europe in a Better World") approved in December 2003, was based on a series of basic premises and went on to identify a series of threats with which Europe was being called upon to confront. Departing from the supposition that no country is capable on its own of dealing with the complex problems of today and that the EU is inevitably a global actor with its population of 450 million and a GDP equal to one quarter of that of the world, various threats to the continent were identified such as terrorism, proliferation of weapons of mass destruction, regional conflicts, failed States and organized crime. On the basis of this scenario, and with a view to the defence of its security and promotion of its values, the Union identified three strategic goals::

- To confront threats: The end of the Cold War and the new context of globalization have led to an evolution in traditional concepts of self-defence, which is no longer based on the danger of invasion, but on less visible and more distant threats mean the first line of defence often lies abroad. Conflict and threat prevention and are taking priority. Since none of the threats is any longer solely military and cannot be confronted with military means alone, there needs to be a combination of military, civilian and political instruments.
- To build security in nearby areas such as the Balkans, the Mediterranean, the Middle East and the Caucasus.
- An international order based on effective multilateralism within the fundamental framework of the Charter of the United Nations and in respect of institutions such as the WTO, NATO and OSCE.

On the occasion of the European Council of December 2007, the heads of state and government tasked then Secretary General/High Representative Javier Solana with drafting a revised European Security Strategy.

This document was presented at the GAERC of December 2008 and later approved by the European Council of 11/12 December 2008. The updated strategy, taking its cue from the previous one of 2003, more closely analysed a series of new threats that Europe is facing: the consequences of failed States, crime, piracy, widespread suffering, illegal immigration, energy vulnerability, global warming and environmental deterioration, financial crises, etc. Particular attention was given to the risks associated with the proliferation of weapons of mass destruction, terrorism and organized crime, energy security and climate change. It noted that threats associated with the proliferation of WMDs has grown over the past five years and is no longer associated only with the risk of the use of those means by governments but also by terrorist organizations. Four operational spheres for combating these risks were identified: prevention of fundamentalism and the recruitment of potential terrorists, protection of potential targets, the search for potential terrorists and reaction to eventual attacks. In the context of a modern society increasingly dependent on computer infrastructures, particular attention was also dedicated to the risk of attacks at those levels. In terms of energy security the accent was placed on the advisability of differentiating sources and developing a single European energy market, and also on the importance of adequate policies with

principal oil and gas suppliers as well as countries crossed by the infrastructures used to supply the continent. Finally, the increasingly urgent and evolving problem of climate change was addressed.

### **Common Security and Defence Policy**

The Common Security and Defence Policy (CSDP) formerly the European Security and Defence Policy (ESDP) and referred to as CSDP in the Treaty of Lisbon, is an integral part of the CFSP, i.e. an instrument of the Union's foreign policy, and is aimed at maintaining peace, preventing conflict and strengthening international security. According to the Treaty on European Union in force, it includes the gradual definition of a common Union defence policy.

In June 1999, The Cologne European Council placed crisis management at the centre of CFSP development. The Helsinki European Council in December 1999 established that by the end of 2003 Member States would have to be in a position to call up military forces of up to a maximum of 50-60,000 men within 60 days, and maintain them for at least one year, as part of voluntary cooperation in EU-led operations. These troops would be used in humanitarian and peacekeeping missions (i.e. the so-called Petersburg missions). In Helsinki it was also decided to set up new political and military bodies and formations within the Council to allow the Union to ensure the political guidance and strategic direction necessary in such operations within a single institutional framework. The December 2000 Nice European Council established the basis for the creation of various structures, including the Political and Security Committee (COPS). This Committee has the task of monitoring developments in the international situation, of helping define policies and of monitoring the implementation of those adopted. At the same time the institutional framework was adapted, with the creation of special military facilities aimed at ensuring the strategic direction of EU-led operations: a Military Command and a nucleus of the future Union Military Chief of Staff. Alongside its military apparatus, at the European Councils of Feira, Nice and Göteborg, the EU set about developing an equally efficient civilian apparatus for crisis management (police forces, civil administration, judiciary personnel, civil defence), and massive recourse was made to these, parallel to the conceptual development of the ESDP, which have given the EU growing credibility and authority in civilian crisis and post-conflict management.

The new “2010 Headline Goals” were set in 2004, aimed at covering the entire spectrum of possible EU crisis management missions in the context of the “amplified” European Security Strategy of 2003. This project was based on a segmented approach, one of which was the creation of the European Defence Agency and Battle Groups (rapid reaction forces of 1500 men deployable within 5 to 10 days for at least 60 days with the goal of confronting contingents for a short period of time or of serving as an “entry force” for broader operations), the development of new maritime capacities and an integrated communications systems, the quantitative and qualitative increase of national armed forces and the development of adequate synergies among armed national forces. Symmetrically, the European Union also concentrated on consolidating the catalogue of non-military resources through the 2008 Civilian Headline Goals (and currently of the 2010 Civilian Headline Goals) that envisaged the identification within Member State governments of professionals in the areas of police, civil administration, civil defence and rule of law. These resources were to be potentially useable in four types of scenarios: stabilization and reconstruction, conflict prevention, institution-building and humanitarian operations for civilian support. Since January 1st 2003 The EU has launched 25 ESDP operations (both civilian and military). Current



missions are operating in the Balkans, the Caucasus, the Middle East, Africa and Asia. In just a few years ESDP has evolved significantly. From its first civilian and military missions launched in 2003 up to the present day, the EU has shown itself to be a protagonist on the international scene. To the possibility of speaking in a single voice on foreign policy it has gradually added a capacity for unified action and intervention in crisis management.

In particular, the number of missions in which the Union is able to use both military and civilian means has been expanded, and the Council has unanimously been given the possibility of entrusting them to a group of Member States. The current ban on creating strengthened cooperations has been eliminated and the possibility is being considered for Member States desiring to do so to undertake more binding commitments known as “permanent strengthened cooperation”, which is pending a qualified majority decision by the Council. In contrast to the general provisions for strengthened cooperation, the Treaty of Lisbon does not envisage a minimum number of countries participating in these. Title V (Articles 21 to 46)”(19)

### **Purpose and Forms of Action of the EUMM Mission in Georgia.**

What is the EUMM mission in Georgia and what are its legal foundations? We can begin by reading the contents of the EUMM in Georgia website before moving on to further analyses carried out by specialist institutes such as, for example, IAI in Rome and other International Policy Institutes.

### **Background**

The EU Monitoring Mission in Georgia (EUMM) is an unarmed civilian monitoring mission. It was established by the European Union on 15 September 2008.

Over 200 civilian monitors were sent by EU Member States to contribute to the stabilisation of the situation on the ground following the August 2008 conflict. They monitor compliance by all sides with the EU brokered Six-Point Agreement of 12 August, signed by both Georgia and Russia, and the Agreement on Implementing Measures of 8 September 2008.

The Mission started its monitoring activities on 1 October 2008, beginning with oversight of the withdrawal of Russian armed forces from the areas adjacent to South Ossetia and Abkhazia.

Ever since, the Mission has been patrolling day and night, particularly in the areas adjacent to the South Ossetian and Abkhazian Administrative Boundary Lines. The Mission’s efforts have been primarily directed at observing the situation on the ground, reporting on incidents, and, generally, through its presence in the relevant areas, contributing to improving the security situation..

### **Mandate**

The Mission’s mandate consists of stabilisation, normalisation and confidence building, as well as reporting to the EU in order to inform European policy-making and thus contribute to the future EU engagement in the region.

EUMM is mandated to cover the whole territory of Georgia, within the country’s internationally recognised borders, but the de facto authorities in Abkhazia and South Ossetia have so far denied

access to the territories under their control.

First and foremost, the Mission is working to prevent the renewal of an armed conflict, as well as to help make the areas adjacent to the Administrative Boundary Lines of the breakaway regions of Abkhazia and South Ossetia safe and secure for the local residents. The Mission wants to contribute to create conditions whereby civilians can cross the Administrative Boundary Lines of Abkhazia and South Ossetia in both directions without fear and obstacles, thus reducing the detrimental effects of dividing lines.

### **Implementation of the Mandate**

27 of 28 EU Member States contribute personnel, both women and men, from a variety of civilian, police and military backgrounds. This mixture of professional skills and experiences has been vital to ensure a balanced and effective approach to a complex environment.

The Mission has its Headquarters in Tbilisi and three Regional Field Offices in Mtskheta, Gori and Zugdidi.

The monitors in each Field Office are split into three teams covering:

- Confidence Building in the areas adjacent to the Abkhazian and South Ossetian Administrative Boundary Lines.
- Compliance with the Memoranda of Understanding signed between the Mission and the Georgian Ministries of Defence and Internal Affairs
- Human security aspects of conflict management

The Memorandum of Understanding signed between EUMM and the Georgian Ministry of Internal Affairs in October 2008 introduces a degree of transparency (and imposes restrictions) on the equipment used and the activities performed by the Georgian police forces in the adjacent areas.

The Memorandum of Understanding signed between EUMM and the Georgian Ministry of Defence in January 2009 and amended in July 2010 limits the Georgian Armed Forces' positioning of troops and heavy equipment in the areas adjacent to the Administrative Boundary Lines. This unilateral engagement made by the Georgian government contributes to substantiating its commitment to the principle of non-use of force, as contained in the Six-Point Agreement. Security would be further enhanced if reciprocating measures were introduced by the Russian Federation.

Under an agreement reached at the Geneva Discussions in February 2009, regular meetings between all the parties to the conflict were to take place to discuss and resolve specific incidents and issues, with the aim of developing greater confidence and co-operation between the parties. This forum, called the Incident Prevention and Response Mechanism, has held a series of meetings with participants from EUMM, UN, OSCE, Georgia, Russia, Abkhazia and South Ossetia. Attached to the Mechanism is a "hotline" telephone system working in both theatres. The hotline has proven very useful for participants to effectively establish a common understanding of events surrounding specific incidents and it has repeatedly helped to de-escalate arising tensions.

The Mission also monitors the normalisation of the situation after the 2008 war, including, inter alia, the restoration of the rule of law in the areas directly affected by the 2008 conflict and the return of normal living conditions for Internally Displaced Persons (both from the 1991 – 1993 and the 2008 wars) and local residents in areas adjacent to the Administrative Boundary Lines with Abkhazia and South Ossetia.

Thanks to its extensive presence on the ground, the Mission has the capacity to gather regular and timely information on the situation. This information is then passed on to the relevant local, national and international bodies responsible to provide concrete assistance.

## **Main**

## **Challenges**

- While results on the stabilisation component of EUMM's mandate are tangible, significant work remains to be done as far as confidence building is concerned. At the same time, the Mission insists that giving it access also to South Ossetia and Abkhazia would help increase transparency, bring clarity on incidents that have already taken place and thus decrease the risk of future destabilising incidents.
- The 2008 Six-Point Agreement, together with the Implementing Measures, remains the basis for the continued presence of EUMM on the ground and its efforts towards stabilising the situation. Point Five of the Agreement remains to be implemented, as the continued presence of Russian Federation military personnel and equipment in both South Ossetia and Abkhazia represents a violation of this part of the Agreement.

## **Progress**

- In the autumn of 2008, concerns that a resumption of hostilities was a concrete possibility, were widespread. Today, although the conflict is far from finding its solution, these fears are no more there. The sense of security among parties to the conflict and the population on the ground has increased and the process of stabilisation has consolidated
- The transparency of the activities of the Georgian police and armed forces has improved due to the two Memoranda of Understanding between EUMM and the Ministries of Defence and Internal Affairs respectively. This has helped stabilise the situation
- The Incident Prevention and Response Mechanism meetings have registered some success, especially by offering an opportunity for all participants to discuss events and incidents, raise issues of concern on the general security situation and the conditions for the civilian population. .
- EUMM is perceived by the Georgian Government as an indispensable element to ensure security and stability in the areas adjacent to the regions of Abkhazia and South Ossetia.
- EUMM also has working contacts with the security forces of the Russian Federation present in the two theatres.

## **Legal Basis of the EUMM Mission**

Official Journal of the European Union 17/09/2008

III

(Acts adopted under the EU Treaty)

## ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 and the third paragraph of Article 25 thereof,

Whereas:

- (1) On 1 September 2008, the European Council expressed its grave concern at the open conflict which had broken out in Georgia, and expressed the readiness of the European Union (EU) to commit itself to support every effort to secure a peaceful and lasting solution to the conflict.
- (2) The European Council recalled that a peaceful and lasting solution to the conflict in Georgia must be based on full respect for the principles of independence, sovereignty and territorial integrity recognised by international law, the Final Act of the Helsinki Conference on Security and Cooperation in Europe and United Nations Security Council resolutions.
- (3) The six-point Agreement achieved on 12 August 2008 on the basis of the EU's mediation efforts, as supplemented by the Agreement reached on 8 September 2008 for its implementation, remains the basis for the stabilisation process.
- (4) The European Council also recalled on 1 September 2008 that the appointment in December 2003 of an EU Special Representative (EUSR) for the South Caucasus was a further step in the deepening of relations with Georgia and the other two countries of the region (Armenia and Azerbaijan). The European Council decided that, in addition, an EUSR for the crisis in Georgia should be appointed.
- (5) On 2 September 2008, an exploratory mission was deployed to Georgia and began operating in view of gathering relevant information and preparing a possible civilian European Security and Defence Policy (ESDP) Mission. This should take full regard of and act in complementarity with the mandates of the existing presences of the Organization for Security and Cooperation in Europe and the United Nations in Georgia.
- (6) On 3 September 2008, the Council approved a preparatory measure for a possible future ESDP Mission in Georgia.
- (7) In a letter dated 11 September 2008, the Government of Georgia invited the EU to deploy an ESDP civilian monitoring mission in Georgia.
- (8) Any third State's participation in the Mission should be in accordance with the general guidelines defined by the European Council.

(9) The command and control structure of the Mission should be without prejudice to the contractual responsibility of the Head of Mission towards the Commission for implementing the budget of the Mission.

(10) The Watch-Keeping Capability established within the General Secretariat of the Council should be activated for this Mission.

(11) The ESDP Mission will be conducted in the context of a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy as set out in Article 11 of the Treaty,

HAS ADOPTED THIS JOINT ACTION:

#### Article 1

##### The Mission

1. The European Union (EU) hereby establishes a European Union Monitoring Mission in Georgia, hereinafter referred to as EUMM Georgia

EUMM Georgia shall be deployed in phases, with deployment beginning in September 2008 and the operational phase beginning no later than 1 October 2008.

2. EUMM Georgia shall operate in accordance with the mission statement as set out in Article 2 and shall carry out the tasks as set out in Article 3.

#### Article 2

##### Mission statement

1. EUMM Georgia shall provide civilian monitoring of Parties' actions, including full compliance with the six-point Agreement and subsequent implementing measures throughout Georgia, working in close coordination with partners, particularly the United Nations (UN) and the Organisation for Security and Cooperation in Europe (OSCE), and consistent with other EU activity, in order to contribute to stabilisation, normalisation and confidence building whilst also contributing to informing European policy in support of a durable political solution for Georgia.

2. The particular objectives of the Mission shall be:

(a) to contribute to long-term stability throughout Georgia and the surrounding region;

(b) in the short term, the stabilisation of the situation with a reduced risk of a resumption of hostilities, in full compliance with the six-point Agreement and the subsequent implementing measures.

#### Article 3

##### Mission tasks

In order to achieve the Mission, the tasks of EUMM Georgia shall be to:

### 1. Stabilisation:

Monitor, analyse and report on the situation pertaining to the stabilisation process, centred on full compliance with the six-point Agreement, including troop withdrawals, and on freedom of movement and actions by spoilers, as well as on violations of human rights and international humanitarian law.

### 2. Normalisation:

Monitor, analyse and report on the situation pertaining to the normalisation process of civil governance, focusing on rule of law, effective law enforcement structures and adequate public order. The Mission will also monitor the security of transport links, energy infrastructures and utilities, as well as the political and security aspects of the return of internally displaced persons and refugees.

### 3. Confidence building:

Contribute to the reduction of tensions through liaison, facilitation of contacts between parties and other confidence building measures.

### 4. Contribute to informing European policy and to future EU engagement.

## Article 4

### Structure of the Mission

#### 1. EUMM Georgia shall be structured as follows:

(a) Headquarters (HQ). The HQ shall consist of the Office of the Head of Mission and the HQ Staff, providing all necessary functions of command and control and mission support. The HQ shall be located in Tbilisi.

(b) Field Offices. Geographically distributed Field Offices shall conduct monitoring tasks and provide necessary functions of mission support.

(c) Support Element. The Support Element shall be located within the General Secretariat of the Council in Brussels.

2. As an initial enabling capability, monitoring teams of preequipped components provided by the Member States shall be established within EUMM Georgia.

3. The above elements shall be subject to further detailed arrangements in the Operation Plan (OPLAN).

## Article 5

### Civilian Operation Commander

1. The Civilian Planning and Conduct Capability (CPCC) Director shall be the Civilian Operation Commander for EUMM Georgia.

2. The Civilian Operation Commander, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the Secretary-General/High Representative (SG/HR), shall exercise command and control of EUMM Georgia at the strategic level.
3. The Civilian Operation Commander shall ensure proper and effective implementation of the Council's decisions as well as the PSC's decisions, including by issuing instructions at the strategic level as required to the Head of Mission and providing him with advice and technical support.
4. All seconded staff shall remain under the full command of the national authorities of the seconding State or EU institution concerned. National authorities shall transfer Operational Control (OPCON) of their personnel, teams and units to the Civilian Operation Commander.
5. The Civilian Operation Commander shall have overall responsibility for ensuring that the EU's duty of care is properly discharged.
6. The Civilian Operation Commander and the EU Special Representative (EUSR) shall consult each other as required.

## Article 6

### Head of Mission

1. The Head of Mission shall assume responsibility for and exercise command and control of the Mission at theatre level.
2. The Head of Mission shall exercise command and control over personnel, teams and units from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility including over assets, resources and information placed at the disposal of the Mission.
3. The Head of Mission shall issue instructions to all Mission staff, including in this case the support element in Brussels, for the effective conduct of EUMM Georgia in theatre, assuming its coordination and day-to-day management, and following the instructions at the strategic level of the Civilian Operation  
Commander.
4. The Head of Mission shall be responsible for the implementation of the Mission's budget. For this purpose, the Head of Mission shall sign a contract with the Commission.
5. The Head of Mission shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national or EU authority concerned.
6. The Head of Mission shall represent EUMM Georgia in the operations area and shall ensure appropriate visibility of the Mission.
7. The Head of Mission shall coordinate, as appropriate, with other EU actors on the ground. The Head of Mission shall, without prejudice to the chain of command, receive local political guidance from the EUSR.

8. The Head of Mission shall draw up the OPLAN for the Mission so that it may be submitted for approval by the Council. The Head of Mission shall be assisted in this task by the General Secretariat of the Council.

## Article 7

### Staff

1. EUMM Georgia shall consist primarily of staff seconded by Member States or EU institutions. Each Member State or EU institution shall bear the costs related to any of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances other than applicable daily allowances, as well as hardship and risk allowances.

2. International civilian staff and local staff shall be recruited on a contractual basis by the Mission if the functions required are not provided by personnel seconded by Member States. Exceptionally, in duly justified cases, where no qualified applications from Member States are available, nationals from participating third States may be recruited on a contractual basis, as appropriate.

3. All staff shall abide by the Mission-specific minimum security operating standards and the Mission security plan supporting the EU field security policy. As regards the protection of EU classified information with which staff are entrusted in the course of their duties, all staff shall respect the security principles and minimum standards established by the Council's Security Regulations.

## Article 8

### Status of Mission and staff

1. The status of the Mission and its staff, including where appropriate the privileges, immunities and further guarantees necessary for the completion and smooth functioning of the Mission, shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty. The SG/HR, assisting the Presidency, may negotiate such an agreement on its behalf.

2. The State or EU institution having seconded a member of staff shall be responsible for answering any claims linked to the secondment, from or concerning the member of staff. The State or EU institution in question shall be responsible for bringing any action against the seconded person.

3. The conditions of employment and the rights and obligations of international and local civilian staff shall be laid down in the contracts between the Head of Mission and the members of staff.

## Article 9

### Chain of command

1. EUMM Georgia shall have a unified chain of command, as a crisis management operation.

2. Under the responsibility of the Council, the PSC shall exercise political control and strategic direction of EUMM Georgia.



3. The Civilian Operation Commander, under the political control and strategic direction of the PSC and the overall authority of the SG/HR, shall be the commander of EUMM Georgia at the strategic level and, as such, shall issue the Head of Mission with instructions and provide him with advice and technical support.

4. The Civilian Operation Commander shall report to the Council through the SG/HR.

5. The Head of Mission shall exercise command and control of EUMM Georgia at theatre level and shall be directly responsible to the Civilian Operation Commander.

## Article 10

### Political control and strategic direction

1. The PSC shall exercise, under the responsibility of the Council, political control and strategic direction of the Mission. The Council hereby authorises the PSC to take the relevant decisions in accordance with the third paragraph of Article 25 of the Treaty. This authorisation shall include the powers to appoint a Head of Mission, upon a proposal of the SG/HR, and to amend the Concept of Operations (CONOPS) and the OPLAN. The powers of decision with respect to the objectives and termination of the Mission shall remain vested in the Council.

2. The PSC shall report to the Council at regular intervals.

3. The PSC shall receive, on a regular basis and as required, reports by the Civilian Operation Commander and the Head of Mission on issues within their areas of responsibility.

## Article 11

### Participation of third States

1. Without prejudice to the decision-making autonomy of the EU and its single institutional framework, third States may be invited to contribute to the Mission, provided that they bear the cost of the staff seconded by them, including salaries, all risk insurance cover, daily subsistence allowances and travel expenses to and from Georgia, and that they contribute to the running costs of the Mission, as appropriate.

2. Third States contributing to the Mission shall have the same rights and obligations in terms of day-to-day management of the Mission as EU Member States.

3. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the proposed contributions and to establish a Committee of Contributors.

4. Detailed arrangements regarding the participation of third States shall be covered by agreements concluded in accordance with Article 24 of the Treaty. The SG/HR, assisting the Presidency, may negotiate such agreements on its behalf. Where the EU and a third State conclude an agreement establishing a framework for the participation of that third State in EU crisis-management operations, the provisions of that agreement shall apply in the context of the Mission.

## Article 12

## Security

1. The Civilian Operation Commander shall direct the Head of Mission's planning of security measures and ensure their proper and effective implementation for EUMM Georgia in accordance with Articles 5 and 9, in coordination with the Council Security Office.
2. The Head of Mission shall be responsible for the security of the Mission and for ensuring compliance with minimum security requirements applicable to the Mission, in line with the policy of the EU on the security of personnel deployed outside the EU in an operational capacity under Title V of the Treaty, and its supporting instruments.
3. The Head of Mission shall be assisted by a Mission Security Officer (MSO), who shall report to the Head of Mission and also maintain a close functional relationship with the Council Security Office.
4. EUMM Georgia staff shall undergo mandatory security training before taking up their duties, in accordance with the OPLAN. They shall also receive regular in-theatre refresher training organised by the MSO.
5. The Head of Mission shall ensure the protection of EU classified information in accordance with the Council's Security Regulations.

## Article 13

### Watch-keeping Capability

The Watch-keeping Capability shall be activated for EUMM Georgia.

## Article 14

### Financial arrangements

1. The financial reference amount intended to cover the expenditure related to the Mission shall be EUR 31,000,000.
2. All expenditure shall be managed in accordance with the Community rules and procedures applicable to the general budget of the EU. Subject to the Commission's approval, the Head of Mission may conclude technical arrangements with EU Member States, participating third States, and other international actors regarding the provision of equipment, services and premises to EUMM Georgia. Nationals of third States shall be allowed to tender for contracts.
3. The Head of Mission shall report fully to, and be supervised by, the Commission regarding the activities undertaken in the framework of his contract.
4. The financial arrangements shall respect the operational requirements of the Mission including compatibility of equipment and interoperability of its teams.

5. The expenditure connected with the Mission shall be eligible as of the date of entry into force of this Joint Action.

## Article 15

### Coordination

1. Without prejudice to the chain of command, the Head of Mission shall act in close coordination with the Commission delegation to ensure the consistency of EU action in support of Georgia.
2. The Head of Mission shall coordinate closely with the local EU Presidency and other EU Heads of Missions.
3. The Head of Mission shall cooperate with the other international actors present in the country, in particular the UN and the OSCE.

## Article 16

### Release of classified information

1. The SG/HR shall be authorised to release to the third States associated with this Joint Action, as appropriate and in accordance with the needs of the Mission, EU classified information and documents up to CONFIDENTIEL UE level generated for the purposes of the Mission, in accordance with the Council's Security Regulations.
2. The SG/HR shall also be authorised to release to the UN and OSCE, in accordance with the operational needs of the Mission, EU classified information and documents up to RESTREINT UE level which are generated for the purposes of the Mission, in accordance with the Council's Security Regulations. Local arrangements shall be drawn up for this purpose.
3. In the event of a specific and immediate operational need, the SG/HR shall also be authorised to release to the host State any EU classified information and documents up to RESTREINT UE level which are generated for the purposes of the Mission, in accordance with the Council's Security Regulations. In all other cases, such information and documents shall be released to the host State in accordance with the appropriate procedures for cooperation by the host State with the EU.
4. The SG/HR shall be authorised to release to the third States associated with this Joint Action any EU non-classified documents connected with the deliberations of the Council relating to the Mission and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure.

## Article 17

### Review of the Mission

A Mission review shall be presented to the PSC six months after the beginning of the Mission, on the basis of a report by the Head of Mission and the General Secretariat of the Council.

## Article 18

## Entry into force and duration

This Joint Action shall enter into force on the date of its adoption and its duration shall be for a period of 12 months.

## Article 19

### Publication

1. This Joint Action shall be published in the Official Journal of the European Union.
2. Decisions of the PSC pursuant to Article 10(1) regarding the appointment of the Head of Mission shall also be published in the Official Journal of the European Union.

Done at Brussels, 15 September 2008.

For the Council

The President

B. KOUCHNER

## NOTES

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4 Laure Delcour, *Shaping the Post-Soviet Space. EU Policies and Approaches to Region Building*. Ashgate, Farnham, Great Britain, 2011, p. 82

5 Ibid.

6 Edward Lucas, *The New Cold War, Putin's Russia and the Threat to the West*, Macmillan, New York, 2008, p. 120.

7 Thomas de Waal, *Georgia's choices. Charting a future in uncertain times*. Carnegie Endowment for international Peace. Washington, 2011, p. 9

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9 Thomas de Waal, *Georgia's choices. Charting a future in uncertain times*. Carnegie Endowment for International Peace. Washington, 2011, pp. 35-38

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12 Franziska Smolnik, in "Lessons Learned? The EU and the South Caucasus De Facto States" in CAUCASUS ANALYTICAL DIGEST No. 35–36, 15 February 2012, pp. 2-5

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