

Foreign and security policies as a legal problem between center and regions

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Foreign and Security Policies as a Legal Problem between Center and Regions

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This paper examines the legal system regulating the foreign and security policy-making capacities of Russian regions and attempts to identify its most pressing needs. In particular, the study explores the constitutional laws of the federal center and the regions, instances of conflict between federal and local legislation and Moscow's attempts at harmonizing national and regional legislation governing the federal center and the regions' behavior in the international arena.

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Working Paper No. 22

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Foreword

It has now become almost commonplace to talk about the dual processes of integration and fragmentation in the context of globalization. Increasing integration into the global economy has resulted in central state authorities losing their monopoly on foreign and security policy. Progressively more and more sub-state authorities are establishing trans-boundary relations with their foreign counterparts. In Russia, where federalism is still in an embryonic phase, this poses a particular problem and development of a clear legal framework for governing the external relations of Russia's regions is becoming ever more urgent.

In this paper, Alexander Sergounin, Head of the Department of International Relations and Political Science at the Nizhnii Novgorod Linguistic University, and Mikhail Rykhtik, Associate Professor of International Relations at Nizhnii Novgorod State University, examine the legal system regulating the foreign and security policy competences of Russian regions and attempt to identify its most pressing needs. In particular, the study explores constitutional law, instances of conflict between federal and local legislation and Moscow's attempts at harmonizing national and regional legislation governing behavior in the international arena.

As the study demonstrates, the evolution of the legal framework for center-periphery relations on international issues has gone through several key phases. From 1991 to 1993, a weak center and a lack of proper legal regulations at the federal level encouraged many regions to assert their sovereignty and adopt their own legislation on external activities.

The adoption of the Russian Constitution in 1993 was aimed at curbing this development. It provided the center and regions with a general legal framework and defined the foreign policy powers of the regions. Rather than challenging regional elites by imposing more restrictive, federal legislation on them, Moscow began in 1994

to conclude bilateral treaties with the subjects of the Russian Federation. This resulted in the development of a type of asymmetrical federalism, with contradictory effects: On the one hand, it reduced tensions between Moscow and the regions. On the other hand, it built in disparities and created competition between the regions, and, in the case of some national republics, gave rise to nationalist and separatist movements, ultimately leading to further disintegration of Russian legal space regulating external relations and making a unified Russian foreign policy extremely difficult.

More recently, the federal center has tried to regain control over regional foreign policies by issuing a series of federal laws and other regulations. In particular, Moscow attempted to specify the sphere of joint authority that had been defined rather vaguely in the Russian Constitution. Through the adoption of the 1998 Federal Law on Coordinating International and Foreign Economic Relations of the Members of the Russian Federation, Moscow attempted not only to tighten its control over the region's external relations but also to harmonize federal and local legislation. The reforms initiated by Putin in 2000 reflect a further effort by the federal center to re-centralize the international activities of the members of the federation and to create a more unified legal space in this area of activity.

There now exists a delicate balance between the federal center and the regions in the realm of foreign relations. Two contradictory trends are identified by the authors: On the one hand, Moscow is trying to specify constitutional principles regarding the foreign policy prerogatives of the center and the subjects of the federation, and to tighten its control over the regions' external relations. On the other hand, the Putin administration faces numerous challenges emanating from the regions and has no desire to resort to a Soviet-style model of federalism. Whilst the future shape of federalism in Russia remains to be seen, it can be observed that conflicts between the center and the regions are increasingly resolved through legal channels. For this reason, the authors are optimistic about the prospect of a new, more adequate model of Russian federalism emerging and, with it, an improved legal framework for the international activities of the regions.

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Zurich, January 2002

Prof. Dr. Andreas Wenger

Deputy director of the Center for Security Studies
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Introduction*

Trans-regionalism results from the growth of direct trans-boundary links between sub-state authorities that have consequently taken a substantial number of policy initiatives that bypass central governments. By developing trans-boundary links with their foreign counterparts, sub-national units challenge the traditional notion of international relations as the exclusive sphere national authorities.¹ Foreign trade provides regions with arguments for greater independence. The most important driving force for economic regionalization comes from markets, from private trade and investment flows, and from the policies of companies. The main post-Cold War priority for sub-national foreign policy was trade and investment promotion. Regions began to compete with each other by offering incentives to attract foreign investment. Many regions established their own offices in foreign countries (e.g., the state of Washington in Tokyo, California in the World Trade Organization, Canadian regions were very active opening offices in the Asian capitals, and Tatarstan has representative offices in 16 foreign countries and official links to five international organizations).²

* This study was prepared with research grants from the Center for Security Studies and Conflict Research, ETH Zurich, the John D. and Catherine T. MacArthur Foundation, and the Copenhagen Peace Research Institute.

1 Makarychev, Andrei. "Russian Regions in the International Perspective." In *Region v Sostave Federatsii (The Region Within the Federation)*, ed. Andrei Makarychev, p. 205. Nizhnii Novgorod: University of Nizhnii Novgorod Press, 1999 (in Russian).

2 *Federalism: Sistema Gosudarstvennykh Organov i Prakticheskii Opyt Ikh Deiatel'nosti. Rossisko-Kanadskii-Proekt "Federalism v Sotrudnichestve" (Federalism: The System of Government and Practical Experience: The Russian-Canadian Project "Federalism through Cooperation")*. Moscow: MONE, 1998, pp. 122–124 (in Russian); Mukhametshin, F. "Kazan za Realnyi Federalizm" (Kazan Favors Real Federalism). *Nezavisimaia Gazeta*, 15 February 2000, p. 4 (in Russian).

It has become clear that in the age of “globalization” (or, as Professor James Rosenau puts it, “fragmegration”), the center is not the sole repository of foreign policy, and especially trade and economic policies. But, at the same time, an unchecked local foreign policy would develop in absurd and anarchic directions. These developments have created a real legal puzzle for many federative states. For Russia, where the democratic version of federalism is at the embryonic phase, the setting up of a proper legal framework for the external relations of regions is of paramount importance.

These developments have attracted a great deal of attention from the world’s political and research communities. Four groups of works can be distinguished: First, there are studies that depict in general terms the center-periphery relations and constitutional powers of Russia and its member states.³ Second, some scholars have examined the international activities of Russian regions, including certain legal aspects of such activities.⁴ Third, there are some analyses of regional legislation on foreign policy issues.⁵ Despite this seemingly large volume of literature, however, there are only a few comprehensive analyses of the problem that thus form a fourth group.⁶ However, even the

3 Blum, Douglas, ed. *Russia’s Future: Consolidation or Disintegration?* Boulder, Co.: Westview, 1994; Gazier, A. *Le Pouvoirs Locaux dans les Régions Russes du Centre-Terres Noires: Transition ou Opposition?* Les Cahiers du CERI, no. 5. Paris: CERI, 1993; Nicholson, M. *Towards a Russia of the Regions*. Adelphi Paper, no. 330. London: The International Institute for Strategic Studies, 1999; Sarycheva, I. A. “Dezintegratsiia Pravovoi Sistemy – Ugroza Konstitutsionnoi Bezopasnosti Rossii” (Disintegration of the Legal System Is the Threat to Russian Constitutional Security). *Federation* (Moscow), no. 4 (1997), p. 129 (in Russian); Smirniagin, Leonid. *Rossiiskii Federalizm: Paradoksy, Protivorechiia, Predrassudki* (Russian Federalism: Paradoxes, Contradictions and Prejudices). Moscow: MONE, 1998 (in Russian).

4 Kuzmin, Eduard. “Russia: The Center, the Regions, and the Outside World.” *International Affairs* (Moscow), vol. 45, no. 1 (1999), pp. 116–123; Makarychev, “Russian Regions in the International Perspective,” pp. 204–241; Matvienko, Valentina. “The Center and the Regions in Foreign Policy.” *International Affairs* (Moscow), vol. 42, no. 4 (1996), pp. 91, 92; Melvin, N. *Regional Foreign Policies in the Russian Federation*. London: Royal Institute of International Affairs, 1995; Rykhtik, Mikhail. “Regional’nyi Faktor vo Vneshnei Politike Federativnogo Gosudarstva” (Regional Factor in Foreign Policy of the Federative State). In *Region v Sostave Federatsii* (The Region Within the Federation), ed. Andrei Makarychev, pp. 150–157. Nizhnii Novgorod: University of Nizhnii Novgorod Press, 1999 (in Russian); Sergounin, Alexander. “Russia’s Regions and Foreign Policy.” *Internationale Politik*, vol. 1, no. 3 (2000), pp. 23–31.

5 Knyzkin, Sergei. “Analiz Proekta Zakona Respubliki Tatarstan ‘O Mezhdunarodnykh Dogovorakh Respubliki Tatarstan.’” (The Study of the Law of the Republic of Tatarstan “On International Treaties of the Republic of Tatarstan”). *Panorama–Forum*, no. 22 (1999), pp. 6–13 (in Russian); Kurdiukov G. “Konstitutsiia Respubliki Tatarstan i Mezhdunarodnoe Pravo” (The Constitution of the Republic of Tatarstan and International Law). *Panorama–Forum*, no. 20 (1999), pp. 12–21 (in Russian); Kurdiukov G. “Analitichesky Obzor Zakona Respubliki Tatarstan ‘O Mezhdunarodnykh Dogovorakh Respubliki Tatarstan.’” (Analytical Assessment of the Law of the Republic of Tatarstan “On International Treaties of the Republic of Tatarstan”). *Panorama–Forum*, no. 22 (1999), pp. 14–20 (in Russian); Sergounin, Alexander. *The External Relations of the Novgorod Region of the Russian Federation*. SCHIFF Texte, no. 60. Kiel: SCHIFF, 2000.

6 See, for instance, Pustogarov, V. V. “Mezhdunarodnye Sviazi Sub”ektov Rossiiskoi Federatsii i ikh Pravovoe Regulirovanie” (International Relations of the Members of the Russian Federation and Their Legal Regulation). *Gosudarstvo i Pravo* (State and Law), no. 7 (1994), pp. 131–138 (in Russian); Pustogarov, V. V. “O Kontseptsii Razvitiia Mezhdunarodnykh Sviazei Sub”ektov Rossiiskoi Federatsii” (On the Concept of Development of International Relations of the Members of the Russian Federation).

literature in this last group lacks analysis of the implications of the reform (of 2000) of the center-periphery relations instigated by President Vladimir Putin’s administration.

The aim of this study is both to examine the legal system that regulates the Russian regions’ foreign and security policies and to identify its most compelling needs. In particular, the focus will be on issues such as Russian constitutional law, collisions between federal and local legislation, and Moscow’s attempts to harmonize national and regional law.

atsii” (On the Concept of Development of International Relations of the Members of the Russian Federation). *Gosudarstvo i Pravo* (State and Law), no. 2 (1997), pp. 45–50 (in Russian); Sergounin, Alexander and Mikhail Rykhtik. “Pravovoe Regulirovanie Mezhdunarodnoi Deiatel’nosti Rossiiskikh Regionov” (Regulations on International Activities of Russian Regions). In *Rossiiskie Regiony kak Mezhdunarodnye Aktory* (Russian Regions as International Actors), ed. Andrei Makarychev. Nizhnii Novgorod: Nizhnii Novgorod Linguistic University, 2000, pp. 35–60 (in Russian); Stoliarov, Mikhail. “Mezhdunarodnaia Deiatel’nost Sub”ektov Federatsii: Interesy, Prava, Vozmozhnosti” (International Activities of Members of the Federation: Interests, Powers and Opportunities). *Panorama–Forum*, no. 16 (Summer 1997), pp. 63–80 (in Russian).

Foreign experiences

Before analyzing the Russian legal basis of regional foreign policies it is important to answer a number of preliminary questions:

- Is Russia is a unique country or do other states also have to cope with the challenge of international activism by sub-national units?
- If the latter case is true, how do other countries regulate the foreign policies of their regions?
- Is it possible to adapt their experience to Russian needs? If so, how?

By the mid-1990s it had become commonplace to describe the post-Cold War world as playing host to forces of both integration and disintegration, with globalized markets facing local nationalism and global civil society having to deal with ethnic fragmentation. Local economic units and regions may now be seen as more appropriate than national governments as the focus of power within a global economy. Foreign and domestic concerns intermix in surprising ways. According to Kenichi Ohmae, the logic of globalized interdependence is for the federal authorities to allow regions to conduct their own foreign economic relations: “For the Clinton administration, the irony is that Washington today finds itself in the same situation relative to those states that lie entirely or partially within its borders, as was London with the North American colonies centuries ago.”⁷

The most controversial legal issues arise when foreign trade and economic policies are involved. In these cases national governments face real legal difficulties when resisting local initiatives. For example, the arguments used by some American states are neither legal nor constitutional, but are generally made on the grounds of efficiency. According to this argument, the national government (especially the executive

⁷ See Ohmae, Kenichi. “The Rise of the Region State.” *Foreign Affairs*, vol. 72 (1993), pp. 78–87.

branch thereof) is often inefficient and unable to deal effectively with the concerns of sub-national communities.

There is a growing recognition among the sub-national actors that the needs of the locality cannot be satisfied without greater involvement in the international system. By the same token, national governments may seek to divert some pressures by delegating their responsibilities. This may occur in specific functional areas (e.g., encouraging local export promotion, or protecting the environment).⁸

Local governmental activism in international relations has increased considerably since the early 1980s in many countries. In the US, for example, the reason for this activism was the increased popularity of liberalism as a local opposition to the Republican foreign policy of the Reagan-Bush era. In general, the end of the Cold War leads to an increase in enthusiasm for a decentralized foreign policy. In the mid-1990s US-Cuban relations had shifted from a national to a regional stage. Florida was very interested in developing these relations, and the Floridian state government played an important role in decision-making processes during the crisis in Haiti at that time. Thousands of illegal refugees posed a threat to Florida and the governor insisted on the military intervention in Haiti. It was the first foreign policy decision made in Washington under pressure from a US state government.

As J. Goldsborough concluded in 1993: "The best hope is for California to pursue aggressively its own foreign policy. The state must rediscover its old relationship with Mexico, which offers the best means for dealing with its economic problems, as well as its immigration problem. In addition, California must also look westward, over the horizon, to the region that has become the most dynamic economic area in the world – the Pacific Rim."⁹

Regional cooperation can take a number of forms. Examples include that between the Northern Washington-British Columbia region, and at the US-Mexican border (e.g., the US and Mexican Californias and the Paso del Norte, including the cities of El Paso in Texas and Juarez in Mexico. What we are seeing is the development of new forms of "geogovernance" that are consciously influenced by trans-regional networks of a vast array of actors and social agents, designed to promote and institutionalize evolving or "imagined" communities of interest.¹⁰

The Barents-Euro-Arctic region (BEAR) cooperation system is an example of decentralization of foreign policy in Europe. The region consists of the northernmost Nordic countries (Finmark, Troms, and Nordland in Norway; Norrbotten in Sweden; and Lapland in Finland) and northwestern Russia (Murmansk, Arkhangelsk, the Nenets Autonomous Okrug, and the Republic of Karelia). The BEAR cooperation regime has a two-level decision-making structure. Strategic decisions are made at the

national level in the Barents Council, consisting of the foreign ministers (or other ministers, e.g., ministers of environment or transportation) from the four founding states (Finland, Norway, Russia, and Sweden) as well as representatives from other interested nations. The leaders of regional governments meet in the Regional Council to discuss more concrete problems. National secretariats in each state coordinate activities of these two bodies. The BEAR cooperation represents new opportunities for the Nordic countries and northern Russian regions to develop a common regional identity, which would make this vast region more secure.¹¹

Another embodiment of trans-regionalism in Europe is the EU's Northern Dimension project that involves intensive cooperation between the EU itself, candidate countries, and Russia's northwestern regions. The Northern Dimension challenges traditional meanings of national sovereignty and national boundaries by developing cross- and trans-border cooperation, and by creating an intricate nexus of sub-regional interdependency.¹² Kaliningrad is seen (in the context of the Northern Dimension) as a "pilot region" that – if successful – could serve as a model for other Russian border regions.¹³

The legal and constitutional status of the foreign policies of regions is complex. There are two main approaches to legal regulation of the international activities of sub-national units. Some states – either unitary or federative – do not provide their constituents with sovereignty in international affairs: constituents have no right to secede or conduct foreign policy of their own. Other states provide sub-national units with some limited sovereignty.

The US represents the first category. Legally there is the Constitution's supremacy in this country. The American system of government imperatively requires that federal power in the field affecting foreign relations, be left free from local interference. Although federalism (a fundamental principle of the American polity) is interpreted by the leading US specialists as a "principle that recognizes and affirms the existence – or rather coexistence – of two separate and independent sovereigns, the national government and the state governments,"¹⁴ there is no evidence that the state governments

8 Makarychev, "Russian Regions in the International Perspective," p. 206.

9 Goldsborough, J. O. "California's Foreign Policy." *Foreign Affairs*, vol. 7 (1993), pp. 88–96.

10 Makarychev, "Russian Regions in the International Perspective," p. 208.

11 Goerter-Groenvik, W. T. "History, Identity and the Barents-Euro-Arctic Region: The Case of Arkhangelsk." In *The Barents Region Revisited*, ed. Geir Flikke, pp. 95–109. Oslo: NUPI, 1998; Ojala, O. "Environmental Actions in the Barents Region." In *Europe's Northern Dimension: The BEAR Meets the South*, ed. Lassi Heininen and Richard Langlais, pp. 153–158. Rovaniemi: University of Lapland Press, 1997.

12 Joenniemi, Pertti and Alexander Sergounin. "Russia, Regionalism and the EU's Northern Dimension." In *European Security and Post-Soviet Space: Integration or Isolation?* ed. Graeme Herd, pp. 30–45. Aberdeen: Conflict Studies Research Centre, 2000.

13 Sergounin, Alexander. "Russia and the European Union: The Case of Kaliningrad." *PONARS (Program on New Approaches to Russian Security) Policy Discussion*, 8 December 2000, pp. 143–147. Washington, D.C.: Council on Foreign Relations, 2000.

14 Lowi, Theodore J. and Benjamin Ginsberg, eds. *American Government: Freedom and Power*. New York and London: W. W. Norton & Company, 1990, p. 66.

possess sovereignty in international affairs. Moreover, according to the US Constitution (which uses very strong and prohibitive language): “No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal;” “No State shall, without the consent of the Congress, lay any imposts or duties on imports and exports, except what may be absolutely necessary for executing its inspection laws;” and “No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.”¹⁵ Remarkably, these regulations are in Article I that describe the powers of Congress rather than in Article IV that is devoted to federative relations and where there is not a single word on foreign policy powers.

There are several cases when the US Supreme Court has determined the breaking points of federalism. For example, in 1968 the Supreme Court ruled that all state legislation that hinders US foreign policy must be annulled (*Sherning vs Miller*).¹⁶ In the 1980s, the Supreme Court quashed efforts by a number of states to prevent their National Guard contingents from training in Honduras. These states were seeking to avoid any possibility of their forces fighting alongside the Nicaraguan Contras.

Germany belongs to the second category. The German Constitution of 1949 acknowledged the right of the *Länder* to conduct international activities, and delineated federal and regional powers in this area. In 1988 Austria adopted a constitutional amendment that allowed the provinces to conclude agreements with foreign powers. Switzerland also granted the same power to its cantons.¹⁷

Despite the differences in their approaches, the developed democracies have much in common, in terms of regulation of international activities of sub-national units. All of them are characterized by legal unification and uniformity. Most federative states aim at uniformity of legal regulations and it is difficult to imagine that sub-national units can have different foreign policy powers in which the single legal space could be broken (as was the case with post-communist Russia in the 1990s). There are four levels of this policy: (1) broadening of the center’s jurisdiction (however, it does not contradict the decentralization of authority); (2) restriction of the constituents’ authority (with the exception of socioeconomic issues); (3) enactment by constituents of mostly unified laws and statutes; and (4) a detailed description of the constituents’

powers in the national laws. For example, the sphere of exclusive authority of the provinces is characterized by the Canadian Constitution in 16 clauses in Article 92 and four clauses in Article 92a. Sixty-six clauses of the Indian Constitution define the states’ prerogatives, and a special Annex 7 is devoted to this.¹⁸

Furthermore, both national and regional governments prefer coordination rather than confrontation on foreign policy issues. Such coordination can be conducted either formally (via constitutions and national legislation) or informally (through the dialog between economic and political elites). Coordination of the external relations of the members of the federation in the US, Germany, and Austria is a constitutional requirement, while in other countries different methods are used. For instance, some countries managed to conclude framework agreements with foreign powers that established a set of rules for the international activities of sub-national units. Given the intensive contacts between Quebec and France, Canada concluded a treaty with Paris that legally frames all potential agreements between Quebec and France (basically in the field of cultural cooperation).¹⁹ The coordination procedure used is rather simple and, to avoid bureaucracy, a single national agency (normally the Foreign Ministry) is charged with this responsibility.

There is an informal “division of labor” between the center and regions with regard to foreign policy powers. While diplomacy, defense, arms trade, currency and customs regulations, security, visa issues, and border controls are unchallenged prerogatives of the national government, areas such as the economy, trade, environment, cultural cooperation, and twin-city programs are the spheres of joint jurisdiction or even areas of a region’s exclusive authority. There are also both formal and informal understandings that sub-national units should cooperate with foreign partners of the same status rather than with state entities.

In summary, despite some collisions between central and regional authorities, developed democracies share the feeling that international activities of sub-national units should be beneficial both for regions and the state as a whole, and should reinforce the political system rather than breach the legal system and bring unilateral advantages to regions at the expense of the center.

15 “The Constitution of the United States of America.” In *American Government: Freedom and Power*, eds. Theodore J. Lowi and Benjamin Ginsberg, A18. New York/London: W. W. Norton & Company, 1990.

16 Makarychev, Andrei and Marina Makarycheva. “Mezhdunarodnaia Deiatel’nost Rossiiskikh Regionov: Prichiny, Vozmozhnosti, Prepiatsviia” (International Activities of Russian Regions: Incentives, Opportunities, Barriers). In *Sravnitel’nyi Regionalizm: Rossiia, SNG, Zapad (Comparative Regionalism: Russia, CIS and the West)*, ed. Andrei Makarychev, p. 160. Nizhnii Novgorod: University of Nizhnii Novgorod Press, 1997.

17 Pustogarov, V. V. “O Kontseptsii Razvitiia Mezhdunarodnykh Sviazei Sub’ektov Rossiiskoi Federatsii”, p. 45.

18 *Ibid.*

19 *Ibid.*

The role of the written law in Russia

Before exploring the Russian legislation on external relations of the members of the federation, it is important briefly to consider what role the written law plays in present-day Russia. This is necessary because one might imagine that in a poor and disorderly country (such as Russia) the law is only a camouflage for the ruling oligarchy (at both national and regional levels) and that few of its citizens have respect for the law. According to this pessimistic view, the study of law in such countries is useless for at least two reasons: (1) the legislation in the period of transition is unstable and often inconsistent, and (2) it does not play any meaningful role in regulating society. In these countries the law is an instrument of particular elites in the inter-group competition, rather than a means of stabilizing and developing society.

However, a contrary and more optimistic approach is also possible. The shortcomings of the current Russian legislation and the system of its implementation are obvious, but it is naturally in the early phase of democracy. Despite these problems, the law in Russia is gradually improving and acquiring the role it should play in a democratic society. To our mind, this second school of thought is more reasonable.

The study of written texts that codify almost all constitutions is associated with the early “formal-legal” approach to politics, with its well-known pitfalls. It is commonplace that the way a political system functions is only partially and conditionally described by its constitution. While a founding text is the core of a political system, it accumulates layers of interpretation, precedent, and norms over time, that help to define and elaborate the way it works in political practice. Experience shows that this “constitutional order” may take several decades to stabilize, and indeed may continue to change in the absence of formal constitutional amendments.²⁰

20 In the US, for example, the judicial review was only established by *Marbury vs. Madison* in 1803. The question of the right to secede was settled only by the American Civil War. The conflict between states’ and civil rights was only properly addressed in the 1960s.

Russia is a “child” from this viewpoint. In practice, the fundamental aspects of political life are only partially regulated by the broad definition of “constitutional order.” These “subconstitutional” issues include the electoral laws, control of the media, and foreign and security policies. They are essential to the functioning of the political system but in most cases are regulated by ordinary laws rather than constitutional principles. Russia is no exception: bilateral treaties on the limitation of powers have been concluded between the center and national republics (including some economically important regions), and these “subjects of federations” have published their own laws regulating some important elements of politics (including foreign and security policies).²¹

In Soviet times the written law played an important role and was taken seriously by all members of society. However, at that time the law was an instrument to protect the state or regime’s (i.e., the Communist party) interests rather than being a regulator of civil society. Many areas of the law were lacking or underdeveloped (e.g., commercial law, financial law, human rights, and private property protection). The members of the Russian Socialist Federative Soviet Republic (RSFSR) were not allowed to conduct international relations. Even the Soviet republics (although they had ministries of foreign relations and Belarus and Ukraine were UN members) had only nominal sovereignty in foreign affairs.

The role of the law was radically changed in the aftermath of the USSR’s collapse. On the one hand the law lost its former ideological functions, but on the other hand it did not become a foundation and an instrument of the democratic society. In the so-called anarchical period (1991–1993), for example, the constitutional law became a hostage to the struggle between the president and the parliament. The latter amended the old constitution of the RSFSR many times to undermine the presidential powers. The president also was unable to act in the legal framework and finally opted for the use of force against the Supreme Soviet (during September and October 1993).

These negative processes affected the general role of the law in Russian society. The feeling for law and order and the sense of justice were undermined in the society. Since ordinary Russian people saw that the government and elites had no respect for the law, law nihilism became widespread in the country. This was a heavy blow to democratic reforms in Russia because these reforms cannot be implemented without a proper legal system.

The lack of a clear concept of the law and the law nihilism also affected the center-periphery relations. On the one hand, some regions adopted legislation of their own in an attempt to protect law and order on their territory. On the other hand, given the relative weakness of the center, some Russian states tried to acquire more powers.

21 For more details see Perovic, Jeronim. *Internationalization of Russian Regions and Consequences for Russian Foreign and Security Policy*. Working Paper, no. 1. Zurich: Center for Security Studies and Conflict Research, 2000, pp. 28–30.

Some regions were very enthusiastic about the idea of sovereignty. For example, in August 1990 Tatarstan proclaimed its sovereignty whilst not mentioning its membership of the Russia Federation. This was a clear political decision. Nail Mukharymov concluded in 1994 that the local elite at that time did not understand the meaning of “sovereignty.”²² Tatarstan held a republican referendum on sovereignty in 1992, and did not participate in the referendums organized by the federal center in 1993. Tatarstan refused to sign the Federative Treaty of 1992 and did not elect deputies for the parliament. Chechnya also did not sign the Federative Treaty, and proclaimed itself independent. The Republic of Bashkortostan also claimed sovereignty, including in international affairs. That was a “romantic” understanding of “sovereignty,” when “new” elites made ambivalent decisions and passed controversial laws rejecting the federal constitution-making initiatives. For example, President Mintimer Shaimiev of Tatarstan even stated that the Russian Constitution of 1993 was prepared with ignorance of regions’ interests. According to Shaimiev, this constitution was imposed on the regions and did not take into consideration the existing constitutions of some republics and the statutes of some oblasts and provinces.²³

At that time, many national republics interpreted the notion of sovereignty as synonymous to being independent and subject to international law. A sovereign state is free to choose its domestic and international strategies, including the basic question of whether to join a federation or remain completely independent. Tatarstan, for example, defined itself as “a sovereign state, the subject of international law that is associated with the Russian Federation – Russia on the basis of the treaty on the mutual delegating powers and delimitation of authorities.”²⁴ According to Tatarstan’s radicals, Russia did not grant sovereignty to Kazan. But this was indicative of USSR disintegration and, from a legal point of view, Tatarstan became a member of the federation only in 1994 when the bilateral treaty with Moscow was signed.²⁵

Does this mean that from 1991 to 1994 Tatarstan was an independent state? Given the various interpretations of regional “sovereignty,” this meant a region with its own constitution, presidential system (e.g., as in The Bashkortostan, Chechnya, Ingushetiya, and Tatarstan) and/or cabinet (e.g., Ekaterinburg, Moscow, and Saratov), regional citizenship (e.g., Bashkortostan, Komi, Tatarstan, and Sakha [Yakutia]), regional “state language,” and its own relations with foreign states (e.g., Karelia signed an international agreement with Finland, Kaliningrad with Lithuania, Sakha (Yakutia) with South Korea, and Tatarstan with Turkey).

22 For more details, see Mukharymov, Nail. “Dogovor Tatarstana s Rossiei: suzhdeniia, otsenki, komentarii” (Tatarstan-Russia Treaty: Opinions, Assessments and Comments). In *Ocherki Rossiiskoi Politiki*, pp. 112–116. Moscow: Institute for Humanitarian-Political Studies, 1994.

23 *Rossiiskaia Gazeta*, 14 February 1998.

24 *Konstitutsiia Respubliki Tatarstan (Constitution of the Republic of Tatarstan)*. Kazan, 1997, pp. 3–55 (in Russian).

25 Stoliarov, Mikhail. “Mezdunarodnaia Deiatel’nost Sub’ektov Federatsii: Interesy, Prava, Vozmozhnosti” (International Activities of Members of the Federation: Interests, Powers and Opportunities). *Panorama-Forum*, no. 16 (Summer 1997), p. 71 (in Russian).

The radical version of the “sovereignty school” did not take into account international law and foreign experiences. According to the international law doctrine, the status of international law implies not only (1) legal capacity (the ability of the entity to have rights and responsibilities) but also (2) capability (the ability of the entity to implement these rights and to carry out its duties) and (3) capacity (the ability of the entity to be responsible for its actions and conduct). The proponents of republican sovereignty aimed only at the first component of the above doctrine and forgot that the rights of a sovereign international actor are inseparable from its responsibilities. In fact, this school understood sovereignty and federalism as a one-way street: these concepts were good where they promised unilateral advantages to republics and ignored that sovereignty and independence also had disadvantages.

It took several years to understand that many sub-national units simply do not have the resources to become full-fledged international actors. For example, was unable to repay its debts on a Eurobond loan. A number of regions closed down their representative offices abroad for financial reasons (e.g., Nizhnii Novgorod in the North Rhine-Westphalia state of Germany, and Kaliningrad in Brussels).

The Putin administrative reform of 2000 aimed *inter alia* at increasing the role of the law in Russia’s social life and harmonizing federal and regional legislation. The reform is based on the principle of equality of the members of Russia, although it does not question the uniqueness of each region. Similar to the international federalist experience, the Putin administration admits that regions cannot have complete sovereignty (especially in the foreign policy domain), and that regional autonomy should not degenerate into separatism and secessionism. However, it should be noted that the role of the written law in Russian society is still far from international standards. The legal culture of Russian society has a long way to go before it can reach the level at which the law will be respected by citizens and institutions, and successfully fulfill its functions.

Constitutional principles

It is well known that a federation can be created on the basis of either a constitutional or a contractual principle. In the former case, a constitution defines prerogatives of the federal center and members of a federation (as in the US and Germany). In the latter case, bilateral or multilateral treaties between the center and regions are signed (as in the former Soviet Union). The problem today is that these two principles were mixed in the process of building post-communist Russian federalism.

Initially, President Boris Yeltsin favored the contractual principle: the Federal Treaty was concluded between Moscow and the members of the federation in 1992 (Chechnya and Tatarstan did not sign it). By contrast, the December 1993 Constitution of the Russian Federation applied the constitutional principle. However, in 1994, under pressure from the local elites, Moscow resumed signing agreements with regions by concluding a set of bilateral treaties with seven republics, the first being Tatarstan. Fifty treaties were signed by 2000.

We start from the description of the constitutional principles that define relations between the federal and regional governments in the foreign policy domain. In order to study the legal problems between the center and regions in Russia, we have to briefly outline our understanding of constitution-building in Russia in the 1990s.

According to classical constitutional law theory, the general role of a constitution is to impose limits on sovereign power. This is achieved by three kinds of provisions. First, a constitution defines the structure of government, and thus the way that collective decisions are reached. Second, a constitution defines the rights enjoyed by citizens that political decisions may not transgress, thereby determining the relationship between the public and private spheres of choice. Rights must provide citizens with a necessary sphere of autonomy and freedom to ensure a robust democratic civil society and market economy, while permitting government intervention in those areas and

under those conditions where this may be necessary for the stability (or even survival) of the democratic regime. Third, a constitution defines the procedure for amending itself, and thus the possibility of altering the structure of government and the rights of citizens.

The constitution-making process in Russia can be described as a “mixed motives” game combining cooperative and conflicting elements. This is especially true for the anarchical period between 1991–1993 when the country had to live with the old Soviet-produced Constitution of the RSFSR that had been amended many times. On the one hand, the actors participating in constitutional negotiation have all been looking to establish new political-legal “rules of the game” that would collectively bind them in future political activity. On the other hand, each actor would try to “build in” to the new constitution provisions that would tend to favor his or her narrower and more partisan preferences (e.g., Tatarstan, Sakha [Yakutia], Chechnya, and Dagestan). Every instance of constitution creation had been shaped by such paradoxes and contradictions. This is also true for the most well-known historical cases (including the US Constitution of 1787).

There are a number of reasons why constitution-making was difficult in all post-communist states and in Russia especially, which partly explains the constitutional and contractual principles of federation-building. The making of a new constitution in these systems takes place within the framework of the old. The institutional structure of the state socialist regime, which remains almost wholly intact, even after the capture of its position by democratic forces, must be dismantled as it is replaced. In contrast to the American experience, for example, post-communist regimes are necessarily confronted with a comprehensive legal and political structure, even as they try to create their own.

Furthermore, the necessary process of institutional destruction and creation is made more difficult by the absence in the communist predecessor of a meaningful distinction between state and regime (or party). This is why the local nationalist elite (mostly former communists and Soviet leaders) had played a very destructive role in political reconstruction of Russia. It was obvious that the political reconstruction had to be more fundamental, and hence the destruction and creation more complete. As a consequence, in 1990 and 1991 the regions exploited the weakness in the center in order to test the limits and possibilities for the extension on their own spheres of influence and reconstruct the existing political order. The regional elite was ready to fill the vacuum created by the destruction of the state structure. They extended their control, even over foreign policy issues. This is apparent in the constitutions of, for example, republics of Bashkortostan, Karelia, Tuva and Tatarstan.

The problems arising from this constitutional legacy were made more acute by the commitment of the new democratic elite to carry out the transformation of the system only by the methods sanctioned by existing constitutional principles. Politicians used existing constitutional norms and procedures to establish a new legal basis for the “new” country. This can be explained in part by the prudent concern (the well-

known theoretical thesis for “transition” literature) about destabilizing the process by antagonizing outgoing elites. At the beginning of the 1990s, new democratic actors in Russia have almost without exception tried hard to establish a new constitutional order for the federation, by means that do not violate the old system. A consequence of this commitment to the “fiction” of legal continuity has been the prolongation of political transformation characterized by destabilizing the country. The process of creating a new federation in Russia is made more complicated, not only by institutions but also by political actors from the old regime.

The economic dimensions along with the social context of post-Soviet transition also made constitutional creation a difficult undertaking. During 1991–1993, the executive branch had in many instances sought emergency powers or other devices to secure the rapid implementation of market reforms that bypassed the normal political processes that might have delayed or stifled them. Some regional governments moved forward and introduced their own “economic market reforms,” creating new barriers between regions.

The phenomenon of constitution creation and the building of a new federation, both in general terms and in the specific context of post-Soviet Russia’s transition, is clearly a complex one, rich in paradox and irony.

The Russian Constitution of 1993 established six types of federation members: 21 national republics, six provinces (krais), 49 regions (oblasts), one autonomous region (an avtonomnaya oblast), ten autonomous districts (okrugs), and two cities of federal subordination (Moscow and St Petersburg).

The Russian Constitution is rather vague in defining the foreign policy prerogatives of the center and regions. According to Article 71, the sphere of exclusive authority of the federal center includes diplomacy, treaty-making, declaring war and peace, foreign economic activities, defense and security, arms production and export/import, definition and protection of state borders, territorial sea and air spaces, economic zones, and the continental shelf.²⁶

The area of joint authority includes coordination of international and foreign economic relations of members of the federation, as well as implementation of international treaties (Article 72).²⁷ Clause 2 of the same article stipulates that this is equally true for all types of members of the federation.²⁸ In other words, all members of Russia have the same powers and status in the field of international affairs.

26 *Konstitutsiia Rossiiskoi Federatsii (The Constitution of the Russian Federation)*. Moscow: Iuridicheskaja Literatura, 1993, pp. 27, 28 (in Russian). The Constitution can also be found at <http://www.tatar.ru/>.

27 *Ibid.*, pp. 29–30.

28 *Ibid.*

Article 76, Clause 4, envisages that members of the Russian federation can pass legislation of their own beyond the federal prerogatives.²⁹ Some constitutional law experts and regional leaders have interpreted this constitutional provision as members of the federation being able to regulate their external activities which are not otherwise defined by the federal legislation.³⁰

It should be noted that the Russian Constitution of 1993 uses a rather vague language as regards international politics. For example, it remains unclear exactly what the terms “international relations” and “foreign economic relations” mean. Are they independent of each other? Do the international relations include all areas that do not constitute “foreign economic relations,” for example cultural, environmental, and twin-city cooperation? Or is “international relations” a broader term that covers not only trade and economic cooperation but also other areas of external relations?

Equally it is unclear what the term “coordination” means. Should the regions inform Moscow about their plans in advance or *postfactum*? Do they have the right to conclude international treaties or not? Can they establish diplomatic, consular, and trade missions abroad?

There is also a clear collision between Article 72, Clause 2, that proclaims the equality of all the members of the federation and Article 5 that names national republics as “states” (in contrast with other constituents).³¹ Unfortunately, the Russian Constitution does not provide for any solutions to these obvious legal problems.

As mentioned above, Russia is not the only federation that faces these legal challenges. However, in well-established democracies, the drawbacks in the constitutional law are compensated by the national legislation that interprets and sometimes develops the fundamental law. Let us review how Russian federal and local legislation have collided and how such collisions have been resolved.

²⁹ *Ibid.*, pp. 31.

³⁰ Kurdiukov, G. “Konstitutsiia Respubliki Tatarstan i Mezhdunarodnoe Pravo” (The Constitution of the Republic of Tatarstan and International Law). *Panorama-Forum*, no. 20 (1999), p. 21; Ignatenko, G. V. “Mezhdunarodno-Pravovoi Status Sub’ektov Rossiiskoi Federatsii” (International Law Status of the Members of the Russian Federation). *Rossiiskii Iuridicheskii Zhurnal (The Russian Law Journal)*, no. 1 (1995), pp. 9, 11 (in Russian).

³¹ *Konstitutsiia Rossiiskoi Federatsii (The Constitution of the Russian Federation)*. Moscow: Iuridicheskaya Literatura, 1993, p. 25 (in Russian).

The Federative Treaty of 1992 and bilateral treaties between the center and regions

The Federative Treaty of 31 March 1992, was an embodiment of the contractual principle of federation-building. Since the Treaty was concluded at the peak of the “parade of sovereignties,” it had much in common with the most radical republican constitutions. For example, it proclaimed republics to be sovereign states associated with the Russian Federation. The Treaty also described the members of the federation as independent actors in foreign economic activities. After the adoption of the Russian Constitution of 1993, the Federative Treaty became the main legal argument for the proponents of regional sovereignty. In particular, it served as a basis for concluding a series of bilateral treaties between Moscow and the members of the federation on the division of power.

In 1994, Moscow started the process of negotiating and signing bilateral treaties with regions. The treaties were fairly general documents describing the nature of the division and sharing of powers. Each treaty differed slightly from the others, although they contained some common elements. They were accompanied by a series of agreements that could be signed at any time after the conclusion of the treaties. The agreements were far more detailed than the treaties and were, therefore, rather different for each region depending on its particular policy concerns and resource endowments.

The first treaty was concluded with Tatarstan in 1994, and it served as a model for other similar treaties. The treaty with Tatarstan and the accompanying agreements codified what was already in place in areas such as need-based social assistance, foreign trade, and external ties. In particular, Article 2 envisaged that Kazan was empowered

to establish its own relations with foreign states and conclude with them treaties that did not contradict Russia's international commitments and the constitutions of both Russia and Tatarstan. Tatarstan had a right to be a member of international organizations and to conduct foreign economic policy on an independent basis.³² It should be noted that the wording of the document was even less stringent than that used in the Tatar Constitution of 1992.

In fact, a number of the treaties either contradicted the federal constitution or went beyond what was envisioned in it. Spheres that in the constitution are ascribed to the federal center exclusively (Article 71) appeared as areas of joint jurisdiction in many documents. For example, the treaties with the Bashkortostan, Kabardino-Balkar, North Ossetia, and Tatarstan republics granted these regions the right to defend state and territorial integrity. Sverdlovsk Oblast, and the Tatarstan and Udmurt republics gained authority over the functioning of the defense industry and arms exports. For example, the treaty with Tatarstan stipulated that the center and Kazan were jointly responsible for war preparations, military research and development, and the production and export of arms.

Areas identified in the federal constitution as spheres of joint authority (Article 72) in some treaties appeared as the exclusive jurisdiction of regions, including cooperation with foreign governments and international organizations in areas such as trade, finance, investment, environmental protection, tourism, education, culture, twin-city relations, and sport (e.g., as in Bashkortostan, Karelia, Moscow, Tatarstan, and Tyva).³³ In accordance with the 1996 Ekaterinburg Treaty, that region has the right to establish its own civil service and internal legal regulation of spheres of joint regional and central jurisdiction, and even to suspend the normative acts of federal ministries and agencies.

The peace treaty with Chechnya (of 12 May 1997) was a special case. The Treaty consisted of several sentences and contained rather vague phrases on relations between Moscow and Chechnya on the basis of international law.³⁴ Although Moscow denied the independence of the breakaway republic, Chechnya was *de facto* independent during 1996–1999 period.

Because of historical traditions and confusion between constitutional and contractual principles, members of the Russian federation have different foreign policy powers and statuses. This has led to so-called asymmetric federalism in Russia.

32 *The Republic of Tatarstan: The Road to Sovereignty*, pp. 124–133. Kazan, 1999 (in Russian).

33 *Federalism: Sistema Gosudarstvennykh Organov i Prakticheckii Opyt Ikh Deiatel'nosti*, pp. 122–124.

34 "Dogovor o Mire i Printsipakh Vzaimootnoshenii mezhdu Rossiiskoi Federatsiei i Chechenskoi Respublikoi Ichkeriia" (Treaty on Peace and the Principles of Relations between the Russian Federation and the Chechen Republic of Ichkeriia). *Rossiiskaia Gazeta*, 20 May 1997, p. 3 (in Russian).

This model has rather contradictory implications. On the one hand, it appeases local elites and prevents separatist tendencies (at least temporarily). On the other hand, asymmetric federalism is not a panacea. Rather, it is only a partial solution to numerous problems faced by the Russian political leadership and the regions themselves. Moreover, the growing differences between the members of the federation are a permanent source of interregional rivalry and political instability.

Regional legislation on foreign policy and security policy issues

The contradictions in the constitutions and the many federal laws lead to the legal vacuum being filled by local legislation. There are three main areas of contradictions between center and region: legal, military, and financial.

Legal sphere

The regions adopted constitutions of their own, in the case of republics, or charters (statutes), in the case of oblasts, krajs, and other types of federation members. They also passed numerous laws and regulations on their external relations. Some of these documents were in line with the federal legislation, but many of them collided with it.

As mentioned above, Article 61 of the Constitution of Tatarstan (1992) proclaimed the republic a “sovereign state” and a “subject of international law.” Moreover, according to Article 62, “The Republic of Tatarstan establishes relations with foreign states, concludes international treaties, exchanges with other countries by diplomatic, consular, trade, and other representatives, participates in the activities of international organizations on the basis of international law.”³⁵

The Constitution of Bashkortostan also stressed its sovereignty and autonomy in international matters: “[The] Republic of Bashkortostan is a democratic and legal state that represents the will and interests of all the multinational people of the republic (...) The Republic of Bashkortostan possesses the sovereign power on its territory;

35 *Konstitutsiia Respubliki Tatarstan*, Op. cit.

it defines and conducts its domestic and foreign policies on the independent basis.”³⁶ Bashkir law, “[according to] international treaties of the Republic of Bashkortostan” (adopted on 23 December 1992), allowed the republic to conclude international agreements with foreign countries and described the procedure of treaty-making in detail.

Buryatia’s constitution attributed foreign economic relations to the exclusive competence of the republic. It also allowed the local government to conclude treaties with foreign states and intergovernmental organizations.³⁷

Tyva’s constitution envisaged the right to secede and even empowered the Supreme Khural (parliament) to declare war and peace.³⁸ The constitution of Karelia admitted that the status of the republic could be changed by a referendum.

Military sphere

The growing dependence of the so-called power structures on the local authorities presents another legal collision and at the same time a rather dangerous consequence of regionalization.

Given the lack of funds and shortage of food, energy, and accommodation, many military commanders have to apply for assistance from local governments. For example, by the end of October 1998 the Baltic fleet owed Kaliningrad US\$5 million for food supplies. As a result of this, Kaliningrad bakeries (whose “share” in the fleet’s debt was US\$330’000) refused to provide the navy with bread on a credit basis.³⁹ Local energy companies cut off the electricity supply to the Pacific fleet’s land facilities several times in 1997 and 1998 (even including early-warning systems and hospitals). Some local governments provided federal troops with basic provisions from regional budgets to help the military and to secure social stability in some regions. For example, Governor Nazdratenko paid wage arrears to the Pacific fleet from regional budgets in return for ensuring only those officers born in the region serve in the fleet. In July 1998, Krasnoyarsk governor Aleksandr Lebed’ reached an agreement with the leadership of the Siberian Military District on supplying federal military units with basic provisions from local funds.⁴⁰

36 *Prava Cheloveka i Grazhdanina v Respublike Bashkortostan (Human and Civic Rights in the Republic of Bashkortostan)*. Ufa, 1998, p. 21 (in Russian).

37 Amelin, Venalii. “Ustav Regiona Kak Garant Sokhraneniia Tselostnosti Rossii” [The Statute of the Region as a Guarantee of Russia’s Integrity]. Paper presented at the seminar “The Impact of the Legislation of the Members of the Russian Federation on Its Federalization,” 5 October 1999. Available at <http://federalmcart.ksu.ru/conference/seminar1/amelin.htm> (in Russian).

38 Sarycheva. “Dezintegratsiia Pravovoi Sistemy – Ugroza Konstitutsionnoi Bezopasnosti Rossii”, p. 129.

39 *Rossiiskaia Gazeta*, 31 October 1998, p. 3 (in Russian).

40 *ITAR-TASS News Agency*, Moscow, 28 July 1998.

New types of relationships between the local military commanders and politicians emerged in post-communist Russia. Some of them were based on dependency, others looked like alliances. Nonetheless, these processes broke traditional loyalty within the federal security structures and made them more fragmented and less manageable. As the post-Soviet developments in the Caucasian region demonstrated, political instability or civil or ethnic war can easily transform regional military commanders into local warlords who supply the warring parties with arms and implement the famous imperialist principle of “divide and rule.” Moreover, the question inevitably arises of the reliability of a centralized control over nuclear weapons being scattered around Russia.

Other security structures, such as the Ministry of Interior forces, the Federal Security Service (FSS), tax collection agencies, and the local police, were even more susceptible to regionalization than the armed forces. On the one hand, they always were more dependent on local authorities in terms of basic provisions than the military. On the other hand, regional elites traditionally regarded them as a valuable asset in building a power base and, for this reason, were interested in cooperation with local organs of the militia or the KGB/FSS. In fact, many of the security services have been well integrated into the regional power structures since the late Soviet period. However, it took some time to replace the old party nomenclature with the new regional elites. For example, on his way to power in Novgorod, Boris Nemtsov portrayed himself as a person that was prosecuted by the KGB and the police. However, when he became head of the regional administration after the August 1991 aborted coup he forgot about his conflicts with the security services and, moreover, extensively used them against his local political rivals (such as Andrei Klimentiev, a famous Nizhnii Novgorod businessman and politician).

It should be noted that the “union” of security services and the local elites used to be rather detrimental for democracy in a region. Local politicians used the power structures to consolidate their positions rather than to fight organized crime or secure democratic reforms. For example, President Murtaza Rakhimov of Bashkortostan urged the local FSS station to gather sensitive information and discredit his rivals during the presidential election in June 1998. The same “election technology” was then exported to the Udmurt Republic. The Dagestani leadership repeatedly used police forces to quell ethnic and religious uprisings in the republic. The use of non-peaceful methods of conflict resolution at the port of Makhachkala brought Dagestan to the brink of the civil war.

Some regional leaders use security services not only against their domestic enemies but also to confront other regions. For example, both the Ingushetian and North Ossetian republics used police units to fight each other during the border conflicts. The local security services were also alleged to be involved in kidnapping, terrorist operations, and smuggling.

Initially, Moscow was unable to stop regionalization of security services. Moreover, the federal center allowed local elites to control the power structures in return for their (rather questionable) loyalty to Moscow. For instance, Moscow signed an agreement with Ingushetia in February 1999, which subordinated the local police to President Ruslan Aushev and enabled the republic to form a militia “in accordance with local traditions

and norms.” In the early 1990s Chechnya and Ingushetia in fact created armies of their own (the so-called presidential guard).

Moscow had to compromise with the local elites even under Putin. For example, the federal center had to sanction the creation of the local militia to stop the Chechen invasion of Dagestan during August and September 1999. Moscow ignored the armed units led by the loyal Chechen leaders (e.g., Beslan Gantamirov and Akhmad Kadyrov) during the second Chechen war.

It should be noted that the attempts by regional leaders to control “power structures” is an obvious encroachment on the exclusive authority of the federal center that is defined in Article 71 of the Russian Constitution.

Financial sphere

Some regional governments had become financial actors on the world stage by the mid-1990s by borrowing money from international financial institutions, thereby contributing to the globalization of the funds. Some regions had amassed investment portfolios and were selling bonds on the world markets (e.g., Bashkortostan, Moscow, Novgorod, Sakha [Yakutia], St Petersburg, and Tatarstan). Several border cities and regions of Russia also actively participated in cross- and trans-border cooperation (e.g., Archangelsk, Kaliningrad, Karelia, Moscow, Murmansk, Novgorod, the Russian Far East, Samara, St Petersburg, and Tatarstan).

However, the 1998 financial crisis proved that some Russian regions were bluffing and unprepared to play by international norms and rules. As a consequence the federal center had to help regional governments to conduct negotiations in order to restructure their debts. Some regions were close to defaulting or had defaulted (e.g. Novgorod), and hence had to postpone any development plans.⁴¹ This meant that many regions were unable to implement policies that they adopted in the sphere of foreign economic policy. This also cast doubt on the regions’ ability to ensure their proclaimed sovereignty in both domestic and international affairs.

It should be noted, however, that not all regional laws were inadequate by definition. Some local laws were much more progressive than the federal legislation and forestalled the latter. For example, no federal law on private ownership of farmland existed in the 1990s, and some members of the federation (e.g., Saratov and Novgorod) have passed legislation of their own and even provided foreigners with some limited land rights.

41 Korotkin, Evgenii R. “Vzaimodeistvie Rossii s Mezhdunarodnymi Finansovymi Institutami: Nizhegorodskii Regional’nyi Kontekst” (Russia’s Interaction with International Financial Institutions: the Nizhnii Novgorod Regional Context). In *Mezhdunarodnye Otnosheniia v XXI Veke: Regional’noe v Global’nom, Global’noe v Regional’nom (International Relations in the 21st Century: Regional in Global, Global in Regional)*, ed. Andrei Makarychev, pp. 160–164. Nizhnii Novgorod: Nizhnii Novgorod Linguistic University Press, 2000 (in Russian).

Moscow, Novgorod, Saratov, Samara, St Petersburg, and Tatarstan have passed legislation on foreign investments so as to provide investors with a favorable environment, including tax privileges.⁴² This legislation was obviously quite helpful in attracting foreign investment and technical assistance. In turn, international cooperation has assisted in developing the local economy and easing the implications of the 1998 financial meltdown. For example, foreign investment enabled Novgorod, poor in natural resources and heavily militarized in the Soviet period, to not just survive but to modernize its economy. Total foreign direct investment in the region increased from US\$153 million to US\$600 million between 1994 and 1999.⁴³ According to some accounts, 29 investment projects worth US\$1.5 billion are under consideration.⁴⁴ According to Novgorod governor Mikhail Prusak, 49 % of the oblast’s GDP is derived from foreign investment. In terms of investment dollars per capita, Novgorod is second only to Moscow, and is rated third for its economic development over the past six years.⁴⁵

Approximately 200 foreign or joint-venture enterprises play a major economic role in the Novgorod. They provide 20’000 jobs and account for 62 % of the regional industrial output and 32 % of the local pension fund.⁴⁶ Firms with foreign capital provide half the taxes paid in the region.⁴⁷

The impact of economic reforms on living standards in Novgorod has been dramatic. Between 1995 and 1997, real incomes in the region grew by 70 %. They continued to rise by 6.6 % for the January–April period between 1997 and 1998. By contrast, average incomes in Russia fell by 7.2 % during this period, and in the northwest, excluding Novgorod, they fell by nearly 8 %.⁴⁸ In 1997, the average family income in Novgorod exceeded the living wage more than twofold, and the region was rated

42 See, for example, the Novgorod legislation: *O Nalogovykh Lgotakh Predpriatiim i Organizatsiiam, Raspolozhennym na territorii Novgorodskoi Oblasti (On Tax Privileges to Enterprises and Organizations That Are Located on the Territory of the Novgorod Oblast)*. Novgorod: The Novgorod Oblast Duma, 1994 (in Russian); *Postanovlenie o Zonakh Ekonomicheskogo Blagopriiatstvovaniia (Regulations on Favored Economic Zones)*, 27 December 1996. Novgorod: The Novgorod Oblast Duma, 1996 (in Russian); *Investment Climate of Novgorod Oblast*. Novgorod: Novgorod Oblast Administration, 1999.

43 *Informatsiia ob Investitsionnoi Deiatel’nosti v Novgorodskoi Oblasti (Information on Investment Activities in the Novgorod Region)*. The Economic Committee of the Novgorod Regional Administration Data Base, as at 6 September 1999.

44 Troianovskii, Viktor. “Investory Snimaiut Shliapu pered Velikim Novgorodom” (Investors Take Off Their Hats to Praise Novgorod the Great). *Rossiiskaia Gazeta*, 6 November 1999, p. 5; *Rossiiskaia Federatsiia*, no. 26 (1999), p. 6 (in Russian).

45 *Johnson’s Russia List*, no. 1380 (20 November 1997); and no. 2183 (18 May 1998).

46 Troianovskii, Viktor. “Gubernator” (Governor). *Dom i Otechestvo*, special issue (August 1999), p. 7 (in Russian); *Johnson’s Russia List*, no. 3310 (28 May 1999).

47 *Johnson’s Russia List*, no. 1380 (20 November 1997).

48 See Petro, Nicolai N. *Creating Social Capital in Russia: The Novgorod Model*. Washington, D.C.: The National Council for Eurasian and East European Research, 1999.

21st among the 89 members of the Russian federation.⁴⁹ Even after the 1998 financial meltdown the index stood at the level of 1.24 and the region occupied the 25th position in the all-Russia rating.⁵⁰ The first seven months of 1998 also saw a 5.2 % increase in industrial production in the oblast compared with the same period in 1997, while industrial production in Russia as a whole fell.⁵¹ Foreign investment was also helpful in recovering the local economy after the 1998 crisis.

Another example of the progressive local legislation is the Novgorod's Law on International and Interregional Agreements (1995). The law contains an original solution to the constitutional problems as regards the powers of regions in the field of foreign policy. Specifically, it specified Article 72 of the Russian Constitution (on coordination of international and foreign economic activities of the members of the federation). In contrast with the Tatar and Bashkir constitutions, the Nizhnii Novgorod law suggested that the regions should deal in the international arena with sub-national units and/or non-governmental actors rather than with national entities. Again, contrary to many regional normative acts, the law also envisaged that the status of regions' international agreements must be defined as "agreements" rather than "treaties." The latter term should be applied only to international agreements on the federal level. The law also specified the areas where the oblast should coordinate its activities with the federal center: science, education, culture, tourism, twin-city relations, environment protection, religion, and humanitarianism.⁵² The Nizhnii Novgorod law was very helpful in drafting the federal law on coordination of international activities of the Russian regions that was adopted only in 1998.

Orenburg's Law on the Regime of the Border Territory included many innovations on cross-border cooperation (with Kazakhstan) and the participation of local governments in the protection of the Russian-Kazakh frontier.⁵³

Rather than taking the lead in defining and limiting what regions have the right to do, Moscow initially either took a wait-and-see attitude or simply reacted to regions' demands. As a result of this, numerous collisions between the federal and local legislation had amassed by the late 1990s. According to the Ministry of Justice, half the 44'000 regional normative acts audited in 1999 collided with federal legislation.⁵⁴ For

instance, the Tyvinian Constitution had 60 collisions with the Russian Constitution,⁵⁵ and the Volga Federal District had 324 normative acts contradicting the federal law. Almost all republican constitutions and some statutes (e.g., the Kirov, Samara, Orenburg, and Ulyanovsk oblasts) collided with the federal legislation. Bashkortostan and Tatarstan had the most conflicting legislation: in each republic 68 documents (including constitutions) contradicted the Russian Constitution. The Tatar Constitution had 42 articles that collided with the federal law,⁵⁶ the Novgorod had 27 controversial documents, Kirov had 24, Orenburg and the Republic of Mordovia had 23 each, and the Republic of Marii El had 22.⁵⁷ According to Alexander Zvyagintsev, the Prosecutor General of Russia, the number of controversial normative acts in the Volga Federal District was more than 1000.⁵⁸ Most of the regional laws violated Article 71 of the federal constitution that describes the exclusive powers of the federal center. The most problematic realms were foreign economic policy, citizenship, and regulations of the activity of the federal institutions (e.g., Ministry of Interior, courts, and the office of public prosecutor).

49 *Izvestiia*, 25 October 1997, p. 5 (in Russian).

50 *Argumenty i F акты*, no. 50 (1998), p. 12 (in Russian).

51 Petro, *Creating Social Capital in Russia: The Novgorod Model*.

52 *On International and Inter-regional Agreements of the Nizhnii Novgorod Oblast*. Nizhnii Novgorod: The Nizhnii Novgorod Oblast Legislative Assembly, 1995 (in Russian).

53 Amelin, "Ustav Regiona Kak Garant Sokhraneniia Tselostnosti Rossii."

54 Stoner-Weiss, Kathryn. "Central Weakness and Provincial Autonomy: the Process of Devolution in Russia." In *PONARS Policy Discussion*, 4 December 1998, Washington, D.C. Conference Briefing Book, ed. Erin Powers. Cambridge, MA: Harvard University, 1998, p. 25 (Policy Memo Series, no. 39).

55 Kushtapin, Mikhail. "Pochemu Tyva Khotela Vyiti iz Rossii?" (Why Did Tyva Want to Secede from Russia?). *Rossiiskaia Gazeta*, 23 June 2001, p. 6 (in Russian).

56 Klimov, Vladimir. "Provintsializm – Ne Forma Zhizni, a Forma Myshleniia" (Provincialism Is a Way of Thinking Rather Than a Way of Life). *Parlamentskaia Gazeta*, 19 June 2001, p. 3 (in Russian).

57 Rykhtik, Mikhail. *Constitutional Framework for Inter-Regional Cooperation in Russia: Theoretical Aspects*. Paper presented at the Nizhnii Novgorod PONARS Academic Conference, 30 May – 2 June 2001. Washington, D.C.: Council on International Relations, 2001, p. 4.

58 Klimov, "Provintsializm – Ne Forma Zhizni, a Forma Myshleniia," p. 3.

The federal legislation of 1995–2000: the politics of revanchism?

Moscow passed a number of federal laws regulating international activities of the regions to improve their legal basis and to remove numerous collisions between the Russian Constitution and regional legislation. The Law on International Treaties of the Russian Federation (15 July 1995) stipulates that members of the federation should participate in negotiating and drafting international treaties that concern the regions' interests and competencies. The federation members may also recommend to the center to conclude, suspend, or abrogate treaties.⁵⁹ This law, however, did not clarify the status of international agreements signed by the regions.

The Law on State Regulation of Foreign Trade (13 October 1995) included in the sphere of joint authority (1) coordination of regions' foreign trade, (2) adoption and execution of regional and interregional foreign trade programs, (3) receipt of foreign loans under the regions' guarantees, (4) regulation of free economic zones and cross-border trade, and (5) providing regions with information.⁶⁰

The law granted the members of the federation the rights (1) to trade with foreign partners on the region's territory, (2) to control the trade activities of Russian citizens and foreigners, (3) to adopt regional foreign trade programs, (4) to provide traders with additional guarantees and privileges, (5) to sign trade agreements with foreign

59 Romanova, Olga Y. "Regional'nye Interesy v Kontekste Natsionalnykh" (Regional Interests in the Context of National Interests). In *Region v Sostave Federatsii (The Region Within the Federation)*, ed. Andrei Makarychev, p. 149. Nizhnii Novgorod: University of Nizhnii Novgorod Press, 1999 (in Russian).

60 *Rossiiskaia Gazeta*, 24 October 1995, p. 4.

partners (only with regional or local authorities), and (6) to establish trade missions abroad (under the auspices of Russian official trade missions) at the regions' expense. Members of the federation received the law positively because it provided them with both a proper legal basis and broader powers.⁶¹

Presidential Decree no. 370 (12 March 1996) stipulated that the treaties between Moscow and the regions and accompanying agreements are not to violate the Russian Constitution and must respect its supremacy. They also cannot change the status of a member of the federation and add to or change what is enumerated in Articles 71 and 72 of the constitution that assign federal and joint authority, respectively. The same day Yeltsin signed Decree no. 375 "on coordinating the role of the Ministry of Foreign Affairs in conducting a single foreign policy course." The decree instructed the regions to inform the Russian Foreign Ministry about their foreign policy activities, including foreign trips and statements by regional leaders.

The Federal Law on Coordinating International and Foreign Economic Relations of the Members of the Russian Federation (2 December 1998) elaborated on Article 72 of the constitution. The law limits the ability of Russian regions to trade and conduct scientific, ecological, humanitarian, and cultural cooperation with foreign partners. They are allowed to cooperate only with regional and local governments of foreign states; they can deal with central authorities of foreign countries only via Moscow. The law prevents regions from providing their missions abroad with diplomatic status. According to this legislation, regions' agreements with foreign partners do not enjoy the status of international treaties. The law, together with the law on delimitation of powers of the federal center and the subjects of the federation (24 June 1999), stipulated that the regions should modify their legislation in accordance with federal law.⁶²

Interpretation of the above-mentioned law issued by the Russian government in June 2001 clarifies the process of registration of the agreements between Russian regions and Moscow. First of all, all agreements must be registered by the federal center (the Ministry of Foreign Affairs).⁶³ But before this the agreements have to be approved by the appropriate federal ministry; without an official approval letter the region cannot obtain registration of the signed agreement with the foreign state. It has become clear that "coordination" means not just information about the plans but also obtaining an official approval of the draft of agreement from the appropriate ministry. Regions do not have the rights to conclude international treaties and establish para-diplomatic relations. There is only one exception: the law does not prohibit establishment of foreign trade missions.

These laws aggrieved regions such as Tatarstan and Bashkortostan, with regional leaders complaining that the federal legislation conflicted with the regions'

61 *Ibid.*

62 *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* 1999, p. 231.

63 *Rossiiskaia Gazeta*, 3 July 2001, p. 3

international commitments. They also believed that the term of twelve months set by this legislation for harmonizing federal and local legislation was insufficient. Some regions even continued to pass legislation that contradicted the federal law. For example, Tatarstan passed a Law on International Treaties of the Republic of Tatarstan (14 July 1999) despite its collision with federal legislation.⁶⁴

After assuming the post of president in the aftermath of the spring 2000 election, Putin started an administrative reform, particularly by introducing seven federal districts led by presidential envoys and reforming the upper house of the Russian parliament (the Council of the federation). Both initiatives aimed at undermining gubernatorial powers because now governors were under the control of presidential envoys and lost their seats in the parliament upon completion of the gubernatorial term. It still remains unclear what powers the envoys received in the foreign policy area (to date they were focused mainly on domestic issues), but some of their prerogatives will definitely affect the foreign policies of the regions. For example, Putin entrusted them with monitoring of local legislation and coordination of activities of the federal bodies in the regions such as Foreign Ministry's and Ministry of Commerce and Economic Development's representative offices, and military, customs, border guards, procurators, police, and security services.

There was a difference of opinion among Russian experts and politicians regarding the nature and implications of the Putin's administrative reforms. Some analysts believe that this reform will lead to re-centralization of Russian domestic and foreign policies, and even to the end of real federalism in Russia.⁶⁵ Thus, for instance, the border regions will have less opportunity for cross- and trans-border cooperation with foreign partners. Any cooperative schemes (such as cooperation under the auspices of the EU's Northern Dimension or the BEAR council) will hardly become realistic.

However, other specialists argue that Putin's reforms are not aimed at undermining authority and powers of the regions. Rather, they simply aim at harmonizing federal and local legislation, making Russia more coherent and manageable, and fighting corruption, bureaucracy, and organized crime. These changes do not prevent Russian regions from effective cooperation with foreign countries and taking part in various collaborative projects. On the contrary, Moscow repeatedly emphasizes the need for cooperation with foreign countries and promises its help to regional authorities. According to this school of thought, Moscow aims to prevent Russia's growing isolation from the outside world.⁶⁶ However, it is unlikely that creating new bureaucracy is the most effective way of fighting corruption and bureaucracy.

64 Kniiazkin 1999, pp. 6–13.

65 Petrov, Nikolai. "Russia's Regions: Post-Soviet Transit, 1991–2001." Program on New Approaches to Russian Security, Nizhnii Novgorod Academic Conference, 30 May – 2 June 2001. Cambridge, MA: Harvard University, 2001; Romanova, Liudmila. "Konets Dogovornoii Federatsii?" (The End of the Contractual Federation?). *Nezavisimaia Gazeta*, 9 September 2000, p. 3 (in Russian).

66 Council on Foreign and Defense Policy. *Baltiia – Transevropeskii Koridor v XXI Vek (Baltics as a Trans-European Corridor to the 21st Century)*. Moscow: Council on Foreign and Defence Policy, 2000, p. 36 (in Russian).

Some specialists are inclined to see presidential representatives as not only Moscow's eyes and ears but also as lobbyists of regional interests in the central government. According to some accounts, in January 2001 the presidential envoy to the Northwestern Federal District, Viktor Cherkosov, supported the Kaliningrad authorities in their campaign against the State Customs Committee's decision to abolish Kaliningrad's tax privileges. Cherkosov also protected Kaliningrad's interests in the federal government during work on the new governmental strategy for the region.⁶⁷

It is too early to estimate the effects of Putin's reforms. In order to understand them correctly one has to know their real purpose. What was the purpose of creating seven districts and new bureaucracy? There is no doubt that the federal center was rather efficient in terms of unifying the regional legislation. The federal district looks like a "geopolitical" unit rather than an "administrative" one. There were many questions about districts' borders at the beginning of the reforms, but this is not important since the line could be drawn anywhere. The purpose was harmonization of legislation. By the end of 2000, almost all regional normative acts that collided with the federal law were revised or repealed. However, some regions still resist. For example, Bashkortostan and Tatarstan did not revise all controversial provisions of their constitutions in accordance with Moscow's recommendations:⁶⁸ both constitutions still insist on the republics' sovereignty and their special rights in the field of external relations.

The real result of the activities of the presidential envoys is the list of normative acts that collide with federal legislation. Thus far they have failed to harmonize local and federal legislation, but they have changed the political climate in the regions and have forced many local leaders to limit their ambitions. A surprisingly large number of respected and well-known governors officially support Putin's reform aimed at restricting local sovereignty. This reform has ended the "governors' separatism:" they are not powerful senators any more. Governors are losing popularity and influence at the federal level, which is another result of administrative reform of 2000.

It is also interesting that these envoys have not become strong and popular politicians capable of competing with local leaders in the regions. They were unsuccessful at interfering in the local election campaigns (e.g., in Vladivostok, Nizhnii Novgorod, and Kursk). Presidential envoys either lost the election (in that supported candidates did not win sufficient votes), or they were involved in electoral scandals (as in Kursk). The administrations of many of the envoys lack professionals who are trained and experienced in government. Many federal inspectors (subordinated to envoys) have been changed during the past year due to the low level of professionalism.

⁶⁷ Pipiia, Besik. "Viktor Cherkosov Reshaet Vse" (Viktor Cherkosov Decides Everything). *Nezavisimaya Gazeta*, 11 April 2001, p. 4 (in Russian).

⁶⁸ Klimov, "Provintsializm – Ne Forma Zhizni, a Forma Myshleniia." p. 3.

Conclusion

There were several phases in the development of the legal framework for the center-periphery relations on international issues:

1. The first, anarchical period (1991–1993) was characterized by the weakness of the center and the lack of proper legal regulations at the federal level. As a result of this, many regions tried to assert themselves as sovereign actors and to adopt their own legislation on external activities.
2. The adoption of the Russian Constitution in December 1993 marked the beginning of a new period (1993–1995). Although the language of this document was rather vague, the constitution provided the center and regions with a general legal framework and defined their powers in the foreign policy area. At the same time, Moscow did not take the risk of challenging the regional elites by imposing on them new, more restrictive, federal legislation. Rather, in 1994 Moscow began the process of concluding bilateral treaties with the subjects of the Russian federation, which was a measure aimed at appeasing the most radical regional elites and preventing further disintegration of the country.

Since each region has obtained different powers (in accordance with the bilateral treaties and accompanying agreements) from these developments, this inevitably led to asymmetrical federalism in Russia. In turn, this model had contradictory implications. On the one hand, asymmetry made the foreign policies of the regions more diverse and interesting; it also eased tensions between Moscow and the members of the federation. However, asymmetric federalism also had a number of negative implications, including disparities and unhealthy competition between the regions, the rise of nationalism and

separatism in some national republics, further disintegration of the legal space, and a real cacophony in Russia's foreign policy.

3. During the third period (1995-2000) the federal center tried to reestablish its control over regional foreign policies by issuing a series of federal laws and other regulations. In particular, Moscow aimed at specifying the sphere of joint authority that was defined rather vaguely in the Russian Constitution.
4. The adoption of the 1998 federal Law on Coordinating International and Foreign Economic Relations of the Members of the Russian Federation began a new phase in center-periphery relations. At this stage Moscow wanted not only to tighten its control over the region's external relations but also to harmonize the federal and local legislation.
5. Putin's reforms of 2000 reflected further attempts by the federal center to re-centralize international activities of the members of the federation and to form a unified legal space in this area. By 2001, Moscow succeeded (with rare exceptions) in bringing the local normative acts into line with federal legislation.

However, it is premature to make any categorical judgments. Currently there is a fragile equilibrium between the federal center and regions in the realm of foreign policy powers. Two contradictory tendencies can be identified. On the one hand, Moscow tries to specify constitutional principles regarding foreign policy prerogatives of the center and the subjects of the federation, and tighten its control over the regions' external relations. On the other hand, Moscow is unable to restore the Soviet-like centralized model of federalism and must cope with numerous challenges emanating from the regions. The result of such a tug-of-war between Moscow and the regions remains to be seen. Russia is at the beginning of the extremely complicated process of creating a coherent legal basis for international activities by the regions, but the Kremlin definitely wants to forget the principles of "contractual federalism" and thus create a coherent constitutional basis for center-periphery relations.

The first ten years of post-communist development provided Russia with valuable experience in democracy and federalism. During this relatively short historical period Russia was transformed from a highly centralized, *de facto* unitary state into a real federation (albeit with numerous problems and inconsistencies). It should be noted that neither the center nor the members of the Russian federation were prepared for the "trial of democracy." The regions often abused their powers and the regional autocrats became a serious barrier to further democratic reforms and an effective Russian foreign policy. Moscow also hesitated between the polarized methods of its regional policies: the pendulum oscillated between the tactics of appeasing the regional elites and restoration of the centralized vertical power structure.

However, all actors and institutions are now more mature and skillful. Both Moscow and the regions understand that federalism is a two-way rather than one-way street, and both the balance of interests and the balance of power should be found. With the

exception of Chechnya, Russia managed to solve difficult problems that emerged in center-periphery relations without the use of the military force. The legal instruments (e.g., courts, arbitration, negotiations, and mediation) are increasingly becoming the main tool of conflict resolution in Russian. For this reason, it is safe to assume that in the foreseeable future a new, more adequate, model of Russian federalism will be found, and the legal framework for the international activities of the regions will be improved.

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