

1. The Georgian denunciation of the Sochi Agreement (we have controversial information on whether such a denunciation took place).

2. The Georgian declaration that the Moscow agreement of 14 May 1994 on a ceasefire and separation of forces in Abkhazia is null and void (of 18 August 2008).

- **Georgian declaration that the Moscow Agreement of 14 May 1994 on a ceasefire and separation of forces agreement in Abkhazia is null and void**

With respect to Moscow Agreement, the Government of Georgia argues that this agreement shall not be read as an international treaty regulated by relevant rules of law of treaties. The Moscow Agreement as such represents a formalized commitment of the parties (Georgian and Abkhazian side) to the non-use of force and non-threat of use of force as expressed in respective communiqué of 13 January 1994. It formalized the separation of forces between those parties. Such agreements are being entered during or after armed conflicts (at the end of active phase of hostilities) and may contain mutual commitments of the parties to respect certain rules¹ – in case of Moscow Agreement separation of the armed forces, precise demarcation of the territory for deployment of peacekeeping forces, etc. In line with such practice, the Moscow Agreement aims to build confidence and secure protection to the population. It takes into consideration the capacity of non-actor which assumed certain commitment by the agreement.

As for the mandate of the CIS Peacekeeping Forces that have been deployed in Abkhazia, Georgia, it is regulated by the Decision of the CIS Heads of States dated August 22, 1994 (CIS Decision)². The Moscow Agreement of 1994 and Protocol appear as a reference in

¹ A. Clapham, Human Rights Obligations of non-state actors, Volume 88, No. 863 September 2006, p. 493;

² CIS Decision of 22 August 1994 determined the use of the Peacekeeping forces for period of 6 months, while the CIS Decision of 21 October 1994 determined the mandate of the Peacekeeping Forces. The mandate was extended by CIS Decision of 26 May 1995 till 31 December 1995. The CIS Decision of 16 May 1996 noted extension of the activities of the Peacekeeping Forces without noting the extension period, while the CIS Decision of 17 October 1997 extended the mandate of the Peacekeeping Forces till 31 December 1997 or till the moment when either of the parties to the conflict expresses their will to terminate the operation. Similar CIS Decisions (wording with defined term or consent/will of the party to the conflict) were adopted until the last CIS Decision of 22 March 2003 extended the mandate of the CIS Peacekeeping Forces till 30 June 2003. CIS Decision of 2003 as the previous ones also provided the second alternative to the defined mandate period “until the moment when one of the sides in the conflict demands that the

the CIS Decision of August 22, 1994. It shares the spirit of the public international law related to the peacekeeping and the relevant practice that considers the consent of the state concerned as a necessary pre-condition for the operation: paragraph 1 noted that the deployment of the Collective Peacekeeping Forces shall be *agreed with the parties* to the conflict in accordance with the requirements of the Cease-Fire Agreement. With regard to Georgian declaration of halting the Moscow Agreement, the Parliament of Georgia adopted Decree 243 (28 August 2008) regarding the Occupation of the Territory of Georgia by the Russian Federation. By this Decree, the Parliament instructed the executive branch of the Government to take relevant measures required for the termination of all relevant legal acts which provided the legal basis for the presence of the Russian Armed Forces on the territory of Georgia, as the objective of the said legal acts were abrogated by the Russian Federation itself (through its illegal acts).

Respectively, the Government of Georgia issued Decree 552 (dated 29 August 2008) in relations to the measures to be taken within the context of occupation of the territory of Georgia by the Russian Federation. The respective Decree instructed the Government of Georgia to start immediate procedure of terminating the peacekeeping operations in Abkhazia, Georgia and South Ossetia, Georgia and ensure their (peacekeeping forces) withdrawal from the Georgian territories. In this respect:

- The Minister of Foreign Affairs of Georgia was instructed to send a relevant letter to the Executive Committee of the CIS as a depository of the CIS Council of Heads Decision of 2003 – the last CIS Decision dealing with the mandate of the CIS Peacekeeping Forces in Abkhazia, Georgia³;
- The Minister of Reintegration of Georgia was instructed to prepare the relevant letters on behalf of the Prime-Minister of Georgia on the name of the respective Presidents of CIS member states, informing regarding the aforementioned decision of Georgia. Similarly, the Minister of Foreign Affairs of Georgia was

peacekeeping operation should be ceased”. This was the last CIS Decision dealing with the mandate of the Peacekeeping Forces and it represented the legal basis for the continued presence of the CIS Peacekeeping Forces in Georgia – available at http://www.rrc.ge/admn/url12subpirx.php?idstruc=63&idcat=9&lng_3=en

³ See supra note 2;

instructed to inform the Secretary Generals of the UN and CoE regarding the position of the Georgian Governments.

These measures were respectively implemented by the Ministers thus withdrawing any consent of the Government of Georgia regarding the presence of the Peacekeeping Forces in Abkhazia, Georgia.

Notably, this process took place in parallel with Georgia's decision to withdraw from the Commonwealth of Independent States (See Note Verbale No.7/228-10 and No.7/229-10) and should be considered separately from the withdrawal of the consent on deployment of the CIS peacekeeping forces in the Georgian territories. The Ministry of Foreign Affairs of Georgia withdrew its consent to the CIS Decision of 2003 thus, even the hypothetical justification for the deployment of the Russian peacekeepers in Georgia has been abolished (see enclosed the Note Verbale No. 7/244-10 addressed to the CIS Executive Committee of 1 September 2008)⁴.

Both decisions of Georgia have not been met with any objection either by Commonwealth of Independent States⁵ or by the Russian Federation, who has dominance in the organization. Interestingly enough, the Ministry of Foreign Affairs of Russian Federation expressly supported the position to terminate the mandate of the Peacekeeping forces in Abkhazia, Georgia⁶. He further defined the withdrawal as an “unfortunate” decision of Georgia⁷.

⁴ The Statement of the Ministry of Foreign Affairs of Georgia on withdrawal from CIS is available at http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=36&info_id=7526

⁵ CIS Decision of the Minister of Foreign Affairs of 9 October 2008 regarding the CIS membership of Georgia noted that in accordance with the CIS Charter the date from which the 12 month period shall be considered is 18 August 2008 available in Russian language at <http://www.cis.minsk.by/webnpa/text.aspx?RN=N90800548>

With regard to withdrawal of CIS Peacekeeping Forces from Abkhazia, Georgia, the CIS Decision of Head of States of 10 October 2008 declared the mandate of the Peacekeeping Forces terminated/ceased and the CIS Executive Committee had been instructed to inform regarding the aforementioned the Secretariat of the United Nations – available in English language at <http://www.cis.minsk.by/webnpa/text.aspx?RN=N90800581>

⁶ Minister of Foreign Affairs of Russian Federation stated “A technical decision was taken to terminate Georgia's membership in the CIS in accordance with its request. This termination will occur a year after

Consequently, the CIS Peacekeeping Forces mandate had been terminated by CIS Decision of Head of States of 10 October 2008, while the CIS Decision of the Ministers of Foreign Affairs of 9 October 2008 ruled over the termination of Georgia's membership⁸. However, it is Georgia's position that these declarations and the subsequent decisions are necessary formalities and the Russian troops lost legitimacy immediately after Russia invaded Georgia.

The Government of Georgia takes note of the operative paragraph 2 in UN Security Council Resolution 1866 (2009) which *'calls for the provision that were set in paragraph 2(a) of the Agreement on a Ceasefire and Separation of Force signed in Moscow on 14 May 1994(S/1994/583) to be respected, pending consultations and agreement on a revised security regime'* and notes that it would respect the aforementioned provision in good faith in line with the spirit of the UN Charter as a member of the United Nations⁹.

• **Georgia's Denunciation of the Sochi Agreement**¹⁰

On 27 August 2008, the Parliament of Georgia issued Decree 243 and subsequently on 29 August 2008, the Government of Georgia issued Decree 552 regarding termination of all relevant legal acts which provided legal basis for the presence of the Russian Armed

the receipt of the respective application, that is in August 2009. It was decided to instruct the Executive Committee to take stock of the agreements under which Georgia still has some obligations to the Commonwealth of Independent States. Upon our proposal a formal technical decision was also made to terminate the activities of the Collective Peacekeeping Force in Abkhazia, which was set up in the past by decision of the CIS heads of state" available at http://www.mid.ru/brp_4.nsf/e78a48070f128a7b43256999005bcbb3/f8239318a64b3edac32574de00287b06?OpenDocument

⁷ Ibid;

⁸ See supra note 5;

⁹ It is the legal understanding of the Government of Georgia that the construed wording of the operative paragraph 2 of the UN SC Res. 1866 does not entail its application in context of the obligation as defined in article 25 of the UN Charter. In addition, the UN SC Res. 1866 or the respective resolutions mentioned within it (resolutions 1808 and 1839) were not adopted by the UN SC under Chapter VII of the UN Charter which would create a prevailing obligation with respect to all states/parties to the conflict unequivocally obligating to respect paragraph 2(a) of Moscow Agreement as part of UN SC Res. 1866;

¹⁰ http://www.rrc.ge/law/xels_1992_06_24_e.htm?lawid=368&lng_3=en

Forces on the territory of Georgia, respectively, of the Sochi Agreement of 24 June 1992 (see *infra* detail information regarding the aforementioned Decrees). Georgia considers that unlawful intervention of the Russian Federation into the territories of Georgia which resulted into the military aggression of the Russian Federation, represented material breach of the objectives set forth within the Sochi Agreement regulating respective peacekeeping formats (Here, the Government of Georgia relies on the customary rule of international law allowing the state to terminate a treaty for breach)¹¹.

In this respect, the Ministry of Foreign Affairs of Georgia has officially announced regarding Georgia's position to the Ministry of Foreign Affairs of Russian Federation via the Diplomatic Note No.6/4141-10 of 1 September 2008, which further requested the immediate withdrawal of Russian "peacekeeping forces" present on the territory of Georgia under the Sochi Agreement mandate.

¹¹ Gabcikovo Case, ICJ Reports 1997, p. 3, para. 46;