

Question #4: Please explain Russian Troop movements before and during the conflict in August 2008. How does it relate to the amended Treaty on Conventional Forces in Europe and the Russian practice during most of the time preceding the conflict? Please explain Georgian military posture and the troop movement before and during the conflict.

The Adapted Treaty on Conventional Forces in Europe (A-CFE), signed on November 19, 1999 has been ratified only by four countries, including Russia. The Adapted Treaty will enter into force when all 30 states/parties have ratified the agreement. At the time the Adapted Treaty was signed at the 1999 OSCE Summit in Istanbul, Russia agreed on a number of commitments related to the withdrawal of forces and facilities in Georgia, in accordance with the core principle of host-country consent regarding the stationing of foreign forces, also enshrined in the 1990 CFE Treaty. These Istanbul Commitments¹ form an integral part of the CFE Final Act, and the latter forms an integral part of the Adapted Treaty.

The 1990 CFE Treaty allows for the stationing of conventional ground and air forces on the territory of another state with the condition that “no State Party stations conventional armed forces on the territory of another State Party without the agreement of that State Party” (Article IV, paragraph 5). By continuing to station forces on the territory of Georgia without Georgia’s consent, Russia has been in gross violation of the host-nation consent principle, a fundamental principle of the CFE Treaty.

Delays in ratification of the A-CFE have been triggered by the continuous violation by Russia of the 1990 CFE undertakings, as well as Istanbul Commitments in general, including the particular part of commitments on Georgia. The adoption of the Istanbul Commitments at the 1999 OSCE Istanbul Summit was yet another confirmation that Russia, for years before 1999, has been in continuous violation of the provisions of the CFE agreement, often referred to as the “cornerstone of European security”.

The importance of the Article IV, paragraph 5, violated by Russia, was once again underlined by “the final document of the first conference to review the operation of the Treaty on Conventional Armed Forces in Europe and the concluding act of the negotiation of personnel strength” (Vienna, 15-31 May 1996), Article II, paragraph 13, which stressed “the importance of full and continuous respect for the provisions of Article IV, paragraph 5, in the context of maintaining the viability of the Treaty, as well as for the sovereignty of the States Parties involved.”

On July 14, 2007, the President of Russia issued a decree intended to suspend the observance of treaty obligations, effective 150 days later, stating that it was the result of "extraordinary circumstances (...) which affect the security of the Russian Federation and require immediate measures". Notifications to that effect have been issued to all the States Parties to the CFE agreement. It must be mentioned that there is no provision in the Treaty that would allow for a unilateral moratorium on implementation of the Treaty: the decree issued by the President of Russia intended to impose a moratorium on the application of the treaty was done in violation of international law and Article XIX of the Treaty in particular, which does not envisage the notion of “suspension” or the possibility of imposing a “unilateral moratorium” on the implementation

¹ See Reference 1 of the Answer to the Question # 2 of the First Set of Legal Questions.

of the obligations under CFE Treaty. Furthermore, “suspension” or any other act having effect similar to suspension goes against the object and purpose of the Treaty itself (2). Accordingly, suspension of the implementation of Treaty obligations constitutes a direct and gross violation of the Treaty and international law.

One of the guiding principles of the Treaty on Conventional Armed Forces written in the preamble clearly states that the States Parties recall “their obligation to refrain in their mutual relations, as well as in their international relations in general, from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes and principles of the Charter of the United Nations” (Treaty Preamble, paragraph 4). It is also stressed in the preamble that the States Parties are “conscious of the need to prevent any military conflict in Europe,” and “striving to develop further and consolidate a new pattern of security relations among all the States Parties based on peaceful cooperation and thereby to contribute to establishing a common and indivisible security space in Europe.” Russia’s invasion of Georgia’s sovereign territory in August 2008 is a clear violation of the abovementioned principles.

Similar wording is used also in the Adapted CFE Treaty, paragraph 3 of the Article 2 which states that “Conventional armaments and equipment of a State Party in the categories limited by the Treaty shall only be present on the territory of another State Party in conformity with international law, the explicit consent of the host State Party, or a relevant resolution of the United Nations Security Council. Explicit consent must be provided in advance, and must continue to be in effect as provided for in Article XIII, paragraph 1 bis”. Here one should underline that despite the fact that the Adapted CFE has not yet entered into force, State signatories are obliged to act in a manner consistent with the object and purpose of the Adapted Treaty until it enters into force.

By launching direct military aggression against Georgia in August 2008, Russia acted against the object and purpose of the CFE agreement, not to mention the breach of the fundamental principle of host nation consent.

Article 2, paragraph 2 of Joint Statement of the Russian Federation and Georgia of the FINAL ACT OF THE CONFERENCE OF THE STATES PARTIES TO THE TREATY (Istanbul, November 1999) stresses that “the Russian military bases at Gudauta and Vaziani will be disbanded and withdrawn by 1 July 2001.” The Russian side never fulfilled its commitment regarding the withdrawal of the Gudauta military base and continues to violate this obligation. Moreover, since the August aggression it has started to reinforce old and to build new military bases in Abkhazia, Georgia and the Tskhinvali Region/South Ossetia regions, and without host state consent has deployed in the occupied territories a large number of additional treaty limited equipment.

² “Striving to replace military confrontation with a new pattern of security relations among all the States Parties based on peaceful cooperation” ... “Committed to the objectives of establishing a secure and stable balance of conventional armed forces in Europe at lower levels than heretofore, of eliminating disparities prejudicial to stability and security and of eliminating, as a matter of high priority, the capability for launching surprise attack and for initiating large-scale offensive action in Europe...”, Preamble, Treaty On Conventional Armed Forces In Europe, 1990.

The Russian refusal to accept international inspections on its territory within the area of application of the Treaty is also a violation of Article 14, paragraph 1 of the Adapted CFE, according to which “for the purpose of ensuring verification of compliance with the provisions of this Treaty, each State Party shall have the right to conduct, and the obligation to accept, within the area of application, inspections in accordance with the provisions of the Protocol on Inspection.”

By ceasing the provisions of the information stipulated by the relevant provisions of the Treaty Russia also blatantly violates the “PROTOCOL ON NOTIFICATION AND EXCHANGE OF INFORMATION,” by which the parties agreed on procedures and provisions regarding notification and exchange of information pursuant to Article XIII of the CFE Treaty, according to the paragraph.1 of which “for the purpose of ensuring verification of compliance with the provisions of this Treaty, each State Party shall provide notifications and exchange information pertaining to its conventional armaments and equipment in accordance with the Protocol on Information Exchange.”

Georgia was and continues to be in full compliance with all CFE Treaty requirements, including the ceilings established for the relevant categories of the Treaty Limited Equipment (TLE).

Before the Georgian-Russian War the Georgian Armed Forces units were stationed in the places of their dislocation, functioning in usual mode and carrying out planned activities (please see attached the schedule of the exercises of the Georgian Armed Forces units from January 1, 2008 till August 7, 2008).

On August 7, 14:30, the Georgian Armed Forces were mobilized (for information about the rationale of the mobilization please find the answer on the second question of the “First set of questions to the Government of Georgia related to military issues”) and the units started movement towards their indicated places of dislocation.

The information about the movements of the Georgian Armed Forces units during the war is given in the answer on the second question of the “First set of questions to the Government of Georgia related to military issues”.