

Chapter 7

Foreign Forces in Georgia: Status, Legitimacy, Prospects

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After Georgia regained her independence in 1991, the presence of foreign military forces on its territory became one of the most crucial political problems facing the young state. The foreign forces in question are of course Russian ones and the immediate question to Georgians is: when will they leave? The question remains unanswered in 2004. Negotiations over their future have been continuing for years and since the 'Rose Revolution' have moved closer to the centre of the stage. Today, when the new Georgian government is considering whether to make concessions to Moscow in terms of providing financial and technical guarantees for military withdrawal, it is appropriate to examine how far the existing legal framework legitimises Russian demands in this respect and how, on the other hand, it obliges Georgia to make any such concessions.

During the last decade the question of continued foreign military presence has been not only an issue of regional security but it has been inextricably linked with issues of national sovereignty. This Chapter will examine the deployment of foreign forces in Georgia by examining the legitimacy of their *de facto* presence, as well as their current status and prospects of presence. The legality of the deployment of foreign forces in Georgia has been repeatedly called into question by the Georgian authorities--especially by the Parliament. But Georgia's actual policy on Russian military presence or withdrawal has not always been consistent during the last decade. President Shevardnadze's tactical manoeuvres

shifted, they certainly have not been consistent, and the new Government inherited his political arrangements.

Legality in international relations must, as a rule, reflect agreed-upon national policy, in this particular and important case, towards long-term military deployments of foreign forces of one country based in the territory of another, sovereign, or the receiving state. Reviewing the legal case made by the Georgian authorities to underpin its military deployment policy would help answer not only the question of the legitimacy and the status of foreign troops. It would also shed light on the question of how consistent the Georgian government has been on the long-standing and contentious issue of Russian military bases in Georgia.

But the consistency of state policy in this regard has to be founded upon the principle of the free and full consent of the host state to foreign military presence. Inconsistencies in the state's position may have come about as the result of external factors such as the use or threat of force by a foreign power or extensive political and economic pressure. Moreover, such inconsistency may have been caused by internal factors, in particular, by the lack of political consensus-building within the state. In this respect, the exclusion of the principal security sector actors, especially the Parliament, from the formation of the nation's policy on foreign military presence, can be considered to be a reason invalidating agreements or making them questionable.

The principle of free and full consent is based on state sovereignty. A state that is able to declare and implement its full and free consent is sovereign. Therefore, the host state exercises its sovereign right, domestically and internationally, while allowing the deployment of foreign forces in accordance with the above-mentioned principle. Thus the stationing of troops without the full consent of the host state can be qualified as a violation of its sovereignty and, therefore, a breach of fundamental principles of international law.

The free and full consent of the state to the deployment of foreign forces should be declared in a treaty determining the modalities of the consent. Moreover, a bilateral or multilateral agreement has to provide the necessary guidelines for the authorities of the country where foreign forces are stationed on how to manage a foreign military presence, on how to neutralise any threat created by their presence, and the duration

of this presence. The absence of explicit consent on the part of the host state might create a legal vacuum that endangers the sovereignty of the host state. As John Woodliffe has stressed in his assessment of the former Russian military presence in the Baltic States:

It is virtually unheard-of for armed forces of one country to be stationed in another country in peacetime unless there is a status of forces agreement that prescribes, inter alia, a system of rules for allocating the respective jurisdictional competencies of the sending and the receiving states over members of the force in civil and criminal matters. In the absence of an agreement of this type, the position of a visiting force under customary international law is not wholly free from doubt¹.

Moreover, uncontrolled foreign military bases cannot jeopardize the consolidation of the security sector of the respective country under an effective central Government.

Legal framework and status of foreign forces in Georgia before 1993

The government of Zviad Gamsakhurdia considered the presence of foreign military forces in Georgia as a direct result of the occupation and annexation of Georgia by Soviet Russia in 1921. Accordingly, the Supreme Council of Georgia, elected on October 28, 1990, declared the troops of the Soviet Union deployed in Georgia as “occupant forces”². The Government was authorised by the Supreme Council to open negotiations with the Kremlin to begin their military withdrawal as soon as possible.

The government also addressed the issues of ownership of military property in Georgia and of jurisdiction over foreign forces as long as they were in the territory of a sovereign state. In November 1991, Gamsakhurdia demanded that all military property be handed over to Georgia. This was justified by Georgia’s economic contribution, in

¹ John Woodliffe, *The Peacetime Use of Foreign Military Installations Under Modern International Law*, (Dordrecht/Boston: Kluwer, 1992), p. 445.

² Resolution of the Supreme Council of Georgia, adopted on 15th September 1991.

terms of resources and labour, to the creating the military property in question. Secondly, until the Soviet military withdrawal was completed, foreign troops were to remain under Georgian jurisdiction. These official, unilateral actions of the Georgian government were ignored by Moscow. There were no negotiations on the issue. Georgia had not yet received international recognition, whereas the Soviet Union existed legally until the end of 1991 and the appearance of a Russian Federation. Moreover, Soviet Interior Troops were stationed in the breakaway South Ossetia region in an effort to maintain order there. When armed confrontations broke out between Gamsakhurdia and his opposition, the Russian military supplied both sides with weapons and munitions³.

After Shevardnadze came to power in March 1992, he had to surmount the political disagreements that had sprung up between Georgia and the new entity in international relations, the Russian Federation, which had emerged from the ruins of the Soviet Union. President Boris Yeltsin had remade the Soviet army into a Russian army with a decree of May 7, 1992. At this time, Shevardnadze opted for a policy of prudent tactical acceptance. He expressed a desire to cooperate with Russia on resolving outstanding issues. At the same time, he considered the presence of foreign forces in Georgia as a European security problem. The first agreement between the Defence Ministries of both countries was signed on August 25, 1992 on 'the Co-ordination of the Activities concerning the Security of Russian Military Forces in Georgia'. According to Article 2 of the agreement, the parties agreed to respect the legal status of Russian military forces in Georgia and to abstain from activities that would hinder the fulfilment of the rights granted to and the duties imposed on the military forces. The agreement, however, did not determine the status of Russian forces in Georgia or specify the rights and duties mentioned in Article 2. Thus, the agreement was aimed mainly at co-operation in police matters and the protection of foreign soldiers and their families from the threat of criminal and illegal activities. The agreement was made on a temporary basis and was to remain in force until such time as relations between the two countries on the issue of the military and the status of deployed forces had been determined. At the time the agreement was signed there was no elected

³ *Akhali 7 dge*, Georgia's weekly newspaper N3, 31st January – 7th February 1992.

parliament in Georgia and, consequently, a democratic participation in the formation of the agreement could not be provided.

The outbreak of the civil war in Abkhazia made the question of the foreign military presence in Georgia even more crucial. In the cease-fire agreement signed in Moscow on September 3, 1992, the parties agreed on the strict neutrality of foreign troops “temporarily deployed” in Georgia. As one of the military bases was located in Abkhazia, the neutrality of Russian troops in the armed conflict was questioned by the Georgian authorities, with good reason. Moreover, mercenaries from the Northern Caucasus fought on the side of the Abkhazians. There was a provision explicitly prohibiting the participation of foreign soldiers in the fighting. “All illegal armed groups” were forbidden to enter Abkhazia. After the Abkhazians broke the cease-fire agreement on October 1, 1992, the involvement of Russian soldiers and mercenaries in the conflict became obvious. In a letter to the United Nations, the Georgian Parliament stated that it considered the activities of Russian troops in Abkhazia during the conflict as aggression against Georgia⁴. Consequently, the Parliament demanded the Executive to arrange a withdrawal plan with Russia by the end of 1995. Thereupon Shevardnadze issued a decree on the military withdrawal timetable in April 1993. In 1993, the position of the Parliament and the Government seemed likely to become the same as to the fundamentals in this matter. However, Shevardnadze attempted to work with officials in Moscow and to regain Russian support in the Abkhazian conflict. In his letter to President Yeltsin, he stressed that “thousands of Russian soldiers and military commanders participated in the military activities against Georgia”. He also called on Yeltsin to desist from military intervention in Georgia⁵.

With the help of Russian mediation, another cease-fire agreement was concluded on July 27, 1993. It reiterated the neutrality and temporary nature of the Russian troop deployment⁶. However, the separatists and their supporters made use of the time after the cease-fire agreement to prepare for a final, decisive assault on the Abkhazian capital on September 27, 1993. After his return from Abkhazia,

⁴ Parliamentis Uzkebebi, 1993 N 5-8, pp. 103-104.

⁵ Archiv der Gegenwart, 1993, 37820.

⁶ Diplomaticeskij Vestnik, N 15-16 August 1993, p. 22.

Shevardnadze declared that the capture of Sukhumi had been planned by the Russian military staff⁷. The United Nations Security Council reaffirmed “its strong condemnation of the grave violation” by the Abkhaz side of the Cease-Fire Agreement of July 27, 1993 between the Republic of Georgia and forces in Abkhazia, and subsequent actions in violation of the international humanitarian law”⁸ and called on all states:

to prevent the provision from their territories or by persons under their jurisdiction of all assistance, other than humanitarian assistance, to the Abkhaz side and in particular to prevent the supply of any weapons and munitions⁹

However, Russian involvement in the Abkhaz conflict was not directly and officially condemned by the United Nations Security Council, of which Russia is a permanent member with the right of veto.

Status of Foreign Forces Agreement of November 19, 1993

After the fall of Sukhumi, the situation worsened throughout the whole country. In November 1993, a former military commander of the ousted Gamsakhurdia regime, Eliava, rebelled in western Georgia and succeeded in bringing some of the smaller towns under his control. The state was on the brink of collapse, unable to resist further armed confrontations. Shevardnadze appealed to the peoples and governments of Russia, Armenia and Azerbaijan to help Georgia “...restore peace and order, to protect its territorial integrity and its choice – democracy and liberty”¹⁰. He suggested taking joint measures to protect the strategically important railways from western Georgia to Tbilisi and further to Yerevan and Baku, which had been paralysed by “illegal armed units”¹¹. Thereby, Shevardnadze in effect confirmed Georgia’s readiness to become a CIS member. In the suppression of the revolt, the presence of foreign soldiers played a decisive role even without the use of force. As

⁷ Archiv der Gegenwart, 1993, 38370 A.

⁸ S/RES/876 (1993).

⁹ Ibid.

¹⁰ Diplotaicheskij Vestnik, N 21-22 November 1993, p. 16.

¹¹ Ibid.; Interview with Shevardnadze, Der Spiegel, 1993 44, p. 173.

Shevardnadze later remarked: “Although they did not participate in the fighting, I cannot deny that the presence of the Russian soldiers gave us a great psychological boost”¹².

With the crisis was over, Shevardnadze was ready to compromise and accept Russian hegemonic interest in Georgia. A number of agreements were signed. Georgia became a member state of the CIS at the end of 1993, even though this move was opposed by the Georgian Parliament. A Collective Security Treaty of the CIS was also signed. Moreover, the Georgian government accepted the Russian military presence on a temporary basis. On October 9, 1993 the first “Status of Forces Agreement between Russia and Georgia” was concluded¹³, in which the temporary deployment of Russian forces in Georgia was accepted¹⁴. However, a timetable of military withdrawal was to be negotiated. The Agreement stressed a political partnership between Russia and Georgia. In return for his concessions, Shevardnadze expected a more helpful approach by Russia with regard to the Abkhazian question. The primary task of Russian forces, moreover, was to facilitate the revival of the Georgian army by assisting them in weapons-training and instructing them on military techniques. The Status of Forces Agreement included ‘Jurisdiction over Foreign Forces’, which, for the first time, determined the division of competencies in civil and criminal jurisdiction over foreign forces. The Agreement was to remain in force until the end of 1995 and could then be extended upon the respective decisions of both parties.

The Georgian Parliament was opposed to Russian troop presence before the treaty was signed and consequently, did not ratify it. Furthermore, during the negotiations, it became evident that the two delegations had differences of opinion on many substantive questions. The Georgians sought to achieve the withdrawal of foreign troops by the end of 1995 and to include this commitment in the treaty. The Russians insisted on the deployment of their troops in Georgia without any timetable for withdrawal. At the same time, Russia exerted political and economic pressure on Georgia. It refused to conclude an economic

¹² “Georgia Defends Renewed Ties to Ex- Soviet Bloc”, The New York Times, 6th March 1994.

¹³ *Diplomaicheskij Vestnik*, N 1-2 January 1994, p. 38.

¹⁴ Status of Forces Agreement, Article 6.

agreement with Georgia before the Abkhaz conflict was contained. The problem of allocating military property also remained unresolved. On the other hand, Russia insisted on formalising military co-operation via the bilateral treaties as soon as possible. Thus, the legalising of its military presence in Georgia was a top priority for Moscow officials. The main problem fuelling mutual suspicion was the situation in Abkhazia and the involvement of Russian forces in the conflict¹⁵. The Georgian delegation protested against Russian participation in the bombing of Sukhumi, the regional capital, during negotiations in Moscow¹⁶.

Despite the refusal of the Parliament to ratify the Status of Forces Agreement, Shevardnadze attempted to carry out his compliance toward Russian military presence in the country. He declared void the resolution of the Supreme Council, adopted under Gamsakhurdia in 1991, which had declared foreign forces ‘occupants’. Instead, he directed the temporary application of the Status of Forces Agreement and other treaties devised to regulate the foreign military presence in Georgia. A difficult, perplexing situation developed in which, on the one hand, the political leaders of Georgia alleged the involvement of the Russian military in armed activities against Georgia; nonetheless, on the other hand, they were compelled to recognise that there was no feasible means of resolving the conflicts in the separatist regions without the help of Moscow officialdom. A lack of effective international support at the time – in addition to Shevardnadze’s ambiguous policy – contributed to the dilemma. A hoped-for extensive United Nations role in conflict solution failed to come about. Under the circumstances, the Georgian government was left with no real political choice if it wanted to turn to dealing with the critical problems in the country and to avoid the failure of the new Georgian state. Shortly before his first state visit to Washington, Shevardnadze declared in an interview with the *New York Times* concerning the Russian military presence in Georgia:

There is no agreement signed, and we must start negotiations in good faith. But the reality is that there is no way that Georgia can

¹⁵ *Diplomaicheskij Vestnik*, N 7-8 April 1993, p. 28.

¹⁶ *Ibid.*

resist Russia. If the West does not like Russia's return to its former colonies, let the West suggest an alternative¹⁷.

Thus it is evident that the 1993 Status of Forces Agreement was concluded in an atmosphere of political and economic pressure exerted by Russia. Therefore it did not provide any proper legal basis for further military deployment in Georgia. It was, moreover, a provisional measure designed to neutralise destructive Russian influence in Georgia until 1995. The mistrust between the sides was too great to build an equal contractual relationship. Furthermore, there were many controversial questions not resolved during the negotiations and not included in the agreement.

Framework Agreement on 'Friendship and Good Neighbourhood' of February 3, 1994

The next attempt to establish a legal basis for military co-operation with Russia was made in February 1994 when a framework agreement between Russia and Georgia on 'Friendship and Good Neighbourhood'¹⁸ was concluded. However, the agreement did not directly regulate the Russian military presence in Georgia. According to it, the parties had to take appropriate measures to guarantee the effectiveness of the treaty on the "temporary" Russian military presence in Georgia. The measures, however, were not clearly stated. In addition, the Defence Ministries signed a protocol to legalise the foreign military presence beyond 1995, when the Status of Forces agreement was set to expire, in order to avoid a legal vacuum during the transition period until the new legal regulations came into effect.

According to the Friendship Agreement, Russia and Georgia undertook an obligation not to participate in military alliances that could be directed against either of the parties.¹⁹ Furthermore, Russia promised

¹⁷ "Georgia defends renewed Ties to Ex- Soviet Bloc", *The New York Times*, 6th March 1994, in Eduard Shevardnadze, "Georgia's Security Outlook", *NATO Review*, Vol. 41, No. 4, August 1993, pp. 7-10.

¹⁸ The phrase may also be translated into English as "Friendly Relations and Neighbourliness".

¹⁹ Treaty on Friendship and Good Neighbourhood, Article 4.

to help in reconstructing the Georgian army²⁰. One of the crucial problems during the negotiations was to define the status of national minorities in the framework treaty. At the time, it was an officially declared priority of Russian foreign policy to protect the interests of Russians living in neighbouring countries. In this regard, the stationing of troops was one of the policy means. This cornerstone of Russian foreign policy in relation to the states of the former Soviet bloc became clear when President Yeltsin expressed his unwillingness to allow military withdrawal from the Baltic states for as long as the rights of ethnic Russians—so he alleged--were violated in those countries. After the disaster in Abkhazia, the Georgian political leadership, especially within Parliament, was greatly concerned about the future role of Russia in Georgia. Some parliamentarians contended that the provision on the legal status of national minorities constituted a clause opening the way for intervention in the internal affairs of Georgia. Following lengthy discussions, the Georgian side succeeded in enshrining a provision in the agreement that also established a duty of national minorities to contribute to the democratic developments in Georgia.²¹

The Abkhazian problem remained a crucial factor during the negotiations. Georgia's Foreign Minister declared that the activities of Russian troops in Abkhazia made the negotiations difficult and claimed that it was hard to speak about friendship when the troops of the contracting party were carrying out acts of aggression against their counterparts²². Thus the signatories agreed that final ratification of the framework agreement should take place after the Abkhazian conflict had been resolved. The conservative-dominated Russian Parliament did not ratify the agreement, which formally stipulated the territorial integrity of Georgia; the Georgian legislature ratified it on January 17, 1996. According to parliamentarians' arguments²³ and Georgian Foreign Ministry, the ratification of the agreement had to minimise the abuse of power by Russia and to bind Russia legally, especially in order to limit

²⁰ Ibid., Article 3.

²¹ Ibid., Article 9.

²² The Speech of the Georgian Foreign Minister in the Georgian Parliament on 4th March 1993, in the stenographic protocol of the sitting of Parliament of 4th March 1993, pp. 62-65 and p. 83.

²³ Stenographic protocol of the Parliamentary sitting of 17th January 1996, pp. 23 - 25.

Russia's military potential²⁴. However, the existing controversies between the parties essentially rendered the Friendly Relations Agreements a dead letter.

Stationing Treaty of September 15, 1995

The next and most significant effort to legalise Russian military presence in Georgia was made on September 15, 1995 when the bilateral Stationing Treaty was signed in Tbilisi by Shevardnadze and Russia's Prime Minister Chernomyrdin. This document contained far-reaching concessions to Russia from the Georgian Government. According to the treaty, foreign troops were to be stationed in four military bases located in Vasiani, Batumi, Tbilisi and Akhalkalaki, and could remain there for twenty-five years. Increasing the numerical strength of Russian troops in Georgia was not precluded under the treaty. It is worth noting that the military bases were mostly located in areas where the control of Georgian government was weak or nonexistent. The stationing treaty was an attempt by Russia to secure its strategic interests in the Southern Caucasus through the formal legitimisation of its military presence. Formally, the treaty provisions stipulated a strategic partnership between Russia and Georgia. The protection of the sovereignty and security of Georgia was declared as a primary purpose of the military bases. The treaty terms implied a potential external threat to Georgia's sovereignty from which the country had to be protected by Russian forces. Foreign troops had to guarantee peace and stability in the Southern Caucasus. Furthermore, they had to strengthen the defence capabilities of both contracting parties. In fact, this was a further stage in Shevardnadze's concessions policy which entailed the rapprochement of Georgia with the true source of recent threats to its sovereignty. It hoped for the neutralisation of this threat, and, ultimately, at possible benefits that Tbilisi might derive from Russia's eventual role in restoring the territorial integrity of Georgia.

The conclusion of the Stationing Treaty by Shevardnadze, who did not consult Parliament before it was signed, caused disagreement

²⁴ The Speech of the Foreign Minister of Georgia in the Parliament of Georgia, in: stenographic protocol of the Parliamentary sitting of 4th March 1993, p. 59; stenographic protocol of the Parliamentary sitting of 10th March 1993, p. 78

between the President and the legislature. Some parliamentarians accused the president of taking important decisions without any parliamentary consent and deliberation²⁵. The reaction of Parliament was triggered by great public anxiety about the foreign military presence, and by past experience of the Status of Forces Agreement of 1993, when the draft agreement was actively discussed in parliament before it was signed. Moreover, at the time of the treaty's conclusion, the new Georgian Constitution of August 24, 1995 had entered into force. It determined the legal status of foreign troops and entrusted the Parliament with the right of consent to the deployment of foreign forces in the country. During his presentation to Parliament, the President defended his decision by referring to the difficult situation in Abkhazia and argued that Russia had a potential role in solving the conflict. By taking this decision, he claimed, he was attempting "to save many lives in Abkhazia and to get guarantees for this purpose" from Russia. At the same time, he recognised the decisive role of the Parliament in enforcing the treaty and confirmed that the last word in this case rested with Parliament²⁶. Indeed, the enforcement of the Stationing Treaty was conditioned by an additional protocol, which was not to be made public, but according to which Moscow had to assist Georgia in strengthening its army and re-establishing Georgia's territorial integrity²⁷. But subsequent events showed that Moscow had no genuine interest in resolving the Abkhazian conflict, since the continuation of the tensions would enable Russia to be present in Georgia's frozen conflicts in the coming decades. The Georgian Parliament never ratified the Stationing Treaty.

In 1994, the Georgian government started to co-operate with NATO under the PfP programme, which opened up possibilities for military and defence co-operation with the West. At the same time, Georgia concluded strategic partnerships with certain other CIS countries in which Russia had no involvement. One example of such a partnership was GUUAM. The USA increased its military assistance to Georgia, which, in turn, enabled the country to form its own border guard. Thereupon, Russian border forces were withdrawn from Georgia

²⁵ The stenographic protocol of the sitting of Parliament of 19th September 1995, pp. 10-11.

²⁶ Ibid.

²⁷ These conditions were enshrined in the Appendix to the treaty, adopted on 25th March 1995.

in 1998. However, the foreign policy of Shevardnadze still remained unclear; he was trying to balance Russian hegemonic interests and Western support in the region. However, the first signs of the decreasing Russian hegemony had already begun to appear after 1995.

Until April 1999, Georgia was a member state of the CIS Treaty on Collective Security adopted on May 15, 1992. The bilateral Stationing Agreement signed in 1995 determined that the main tasks of foreign troops in Georgia must be based on the Collective Security Treaty. This reference, once again, implied an external threat from which Georgia had to be protected by Russia. In fact, Moscow's goal was to keep Georgia within the Russian zone of influence for as long as possible and, thereby, to guarantee Russian hegemony in the region. It soon turned out that the collective security treaty could not become an effective mechanism for Georgia to implement its national interests. The promised military aid from Russia was not delivered. There was no willingness on the part of Russia to reach an agreement on the dissolution of military property. Moreover, Russian peacekeeping forces deployed in Abkhazia from 1994 were unable to resolve the most urgent problems in the conflict zone. In the words of the Georgian Foreign Minister, "[in fact] the peacekeepers have established an artificial border between the territory controlled by separatists and the rest of Georgia"²⁸.

Furthermore, membership of the collective security system distanced Georgia from the West. This was clearly not in Georgian interest, especially throughout the second half of the 1990s, when the detrimental influence of Russia and unresolved problems within the country were growing more acute and the Georgian Government required assistance from the wider international community. In April 1999, Georgia suspended its membership of the Collective Security Treaty of the CIS. In fact, given the concessions policy of Shevardnadze, this proved a breakthrough, and signalled a shift in the mood of the Georgian political leadership.

²⁸ The Speech of Foreign Minister of Georgia at the 57th Session of the United Nations General Assembly, September 20, 2002.

Istanbul Declaration of November 17, 1999

In the context of Georgia's closer co-operation with the West, it became possible to put the question of the foreign military presence in Georgia on the international agenda in 1999. Georgia's participation in the revised treaty on Conventional Armed Forces in Europe enabled its Government to demand the partial withdrawal of foreign troops from Georgia. On November 17, 1999 the parties arrived at a consensus to withdraw two military bases from Vasiani and Gudauta by July 1, 2001. This obligation was enshrined in the common declaration of Russia and Georgia annexed to the revised treaty²⁹ and was seen as a pre-condition for the ratification of the treaty. The declaration granted Russia the right to deploy its military bases in Batumi and Akhalkalaki "temporarily"³⁰. The negotiations on the time limit of the deployment and on the status of the remaining Russian military bases in Georgia were to be completed in 2000³¹. Georgia undertook an obligation to create the pre-conditions for the military withdrawal from the country, and the OSCE were ready to help financially in this matter³².

However, the withdrawal of foreign soldiers from Gudauta was beset with problems. Russia did not meet the timetable set out in the Istanbul Declaration, which caused political tensions between the two countries. The Georgian Parliament declared that the delay in the agreed military withdrawal represented a violation of Georgian sovereignty and, in effect, support to the separatist regime of Abkhazia. Moreover, it was an attempt to legitimise *de facto* occupation and annexation of this part of Georgia³³. International pressure was also growing on this issue. Although the Russian Government declared on November 9, 2001 to have fulfilled the obligation undertaken under the Istanbul Declaration, Georgia nonetheless voiced further concerns. The Georgians were not able to control the withdrawal, while international observers were not allowed to verify whether Moscow was fulfilling the obligations it had undertaken under the treaty. Officials in Moscow justified the delay in

²⁹ <http://www.osce.org/docs/english/1990-1999/summits/istadecl99e.htm>.

³⁰ The Istanbul Declaration of 17th November 1999, Par. 3.

³¹ Ibid., Par. 5.

³² Ibid., Par. 4.

³³ The Resolution of the Parliament of Georgia, adopted on 18th July 2001 Par. 7.

the withdrawal, partly by emphasising the resistance of the local population in Abkhazia to their pulling out. Russian Defence Minister Ivanov stressed that he did not want to force the Russian withdrawal.³⁴ Moreover, Russia claimed that Georgia had failed to create the pre-conditions for military withdrawal according to the Istanbul agreement. The Georgian Ambassador to the United Nations expressed Georgian as follows:

...Russia illegally maintains military bases in Gudauta, Abkhazia that operates against the consent of Georgia and in contravention to the international commitments undertaken by the Russian Federation during the Istanbul Summit to have it dismantled in 2001. The only explanation given is that the Abkhaz opposed the dismantling of those bases and the withdrawing of their military equipment. This logic will dictate that any sizable group of people could effectively block or cease control of military, nuclear installations and armaments among them, provided they are as insistent as the Abkhaz³⁵.

Later, in July 2003, the Georgian Ambassador stated at a United Nations Conference that

...we may declare confidently that these three bases pose a major threat to the security of Georgia in terms of dissemination of arms to destabilizing forces in the country as well as in the region³⁶.

The problem of the international inspection of the military withdrawal from Gudauta still remains unresolved.

³⁴ "Ivanov speaks on Russian Military Presence in Moldova, Georgia", *Interfax News Agency*, 24th July 2001, in: Lexis, Nexis Library.

³⁵ The Statement of the Permanent Representative of Georgia to the United Nations of 31st January 2003 on the situation in Abkhazia.

³⁶ The Statement made by the Permanent Representative of Georgia to the United Nations at the First Biennial Meeting of States to consider the implementation of the UN Program of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects at the national, regional and global levels, New York July 8 2003.

Negotiations on the “temporary deployment” of Russian military bases in Georgia, which have lasted over eight rounds of talks, are going nowhere. While Georgia demands the closure of military bases and withdrawal of troops within three years, Russia views Georgia’s plans as impracticable and insists on eleven years for the withdrawal³⁷. Yet there has been a negative international reaction to the Russian military bases policy in Georgia. The American Ambassador at the OSCE stated:

Within the OSCE, it is essential that we uphold the principle that military forces can only remain on the territory of another participating State under arrangements which have the complete consent of the host country³⁸.

Other states share this position³⁹. However, Russia demands further political, financial and technical guarantees to moderate its position on military withdrawal. On this issue Georgia depends greatly on the support of its Western partners. One of the Russian fears is that Russian troops could be replaced by US military forces. The Russian reaction towards the improving American-Georgian military co-operation has also been negative. According to the Russian Parliament, Russia would co-operate with the separatist regions of Georgia if the US military involvement in Georgia were to continue⁴⁰. The Russian Foreign Minister declared in an interview with *The Times* that:

...if the US is making arrangements with sovereign Georgia about the dispatch of military instructors there to combat terrorism, then, taking into account the proximity of that state to Russia and the fact that from the territory of Georgia terrorists are operating against Russia, they should let us know and consult us⁴¹.

³⁷ Bilateral talks held recently on 8th January 2004 brought no results (Georgian broadcasting company Rustavi 2, 8 January 2004).

³⁸ Web page of the Parliament of Georgia, <http://www.parliament.ge>.

³⁹ Recently, the German Chancellor also confirmed Russia’s obligation to withdraw during the first visit of the newly-elected Georgian President to Germany.

⁴⁰ Resolution of the Russian Parliament, 6th March 2002.

⁴¹ *The Times*, 13th March 2002.

The Russian Defence Minister has alleged that the deployment of the US military personnel in Georgia would have a bearing on the pre-conditions for Russian military withdrawal from Georgia⁴². This approach concerned not only the “Train and Equip” programme, but also the American-Georgian military agreement concluded in March 2003⁴³. It is obvious that the foreign military presence has been misused; it is a means of implementing a destructive hegemonic policy, which, in its turn, has had deleterious consequences for the consolidation of the Georgian state during the last decade.

Conclusion

The Georgian Constitution, as discussed in the Chapter on the legal foundations of security sector governance in Georgia, provides the legal conditions for the deployment of foreign military forces in the country in Article 100 paragraph 2 and Article 65, according to which Parliament plays the decisive role in legalising deployments of foreign troops in the country. The constitutional provisions mentioned above establish an essential sovereignty right of Georgia to grant complete consent to foreign military deployments freely and in accordance with the country’s independence, territorial integrity and stability interests. In this respect, Parliament, as an indicator of public support for foreign military deployments, plays a crucial role in forming the country’s consolidated security interests and legally binding agreements in respect of the stationing of foreign forces.

Some observers regard the issue of military withdrawal as a “litmus test for Georgian-Russian relations”⁴⁴. Therefore, it is important to place these relations on a proper legal footing, where the law does not become a refuge for the smaller country but a means of equality in their relationships. Even in the first mutual agreements regulating the foreign military presence in Georgia, it was stressed explicitly that foreign

⁴² The Statement of the Ministry of Foreign Affairs of Georgia, adopted in response on 29th March 2002.

⁴³ “Russia concerned over US-Georgian Military Accord”, *Civil Georgia*, 11th April 2003. Available at: <http://www.civil.ge/eng/article.php?id=4031>; also referred to in television broadcast on *Rustavi 2*, 16th April 2003.

⁴⁴ Igor Torbakov, Moscow views military withdrawal as litmus test for Georgian-Russian relations, in: http://www.eurasianet.org/departments/insight/articles/eav012804_pr.shtml.

forces could be deployed in the Georgian territory only temporarily. After the separatist regime established its control in Abkhazia in 1993, the Georgian Government was compelled to make concessions and to allow a Russian military presence in the country.

According to Article 100 Par. 2 of the Constitution, for the purpose of state defence, in special cases, or cases envisaged by law, the decision to permit entry into and the use and movement of military forces of other countries on Georgian territory is taken by the President. The decision is immediately submitted to Parliament for approval and enters into force upon its consent. The Constitution does not differentiate between the interventions of foreign troops upon invitation, time-limited interventions, (for example, rescue operations), interventions on the basis of restoring legal order, counter-terrorist operations and the stationing of foreign military bases on Georgian soil for a relatively long time aiming at, for instance, the strengthening of a strategic and defence partnership. There is no special law on the stationing of foreign troops in Georgia by means of which this issue might be regulated. Therefore, in all cases of foreign deployment or transit in Georgia, parliamentary approval would be necessary. Because this provision was based on the historical experience that Georgia has had with regard to the stationing of Russian troops in the country, the Constitution provided for an explicit parliamentary agreement *a priori*. However, the foreign troops were already deployed in Georgia when the Constitution was adopted in August 1995. With respect to time-limited foreign interventions upon invitation, the same problematic rule can arise with regard to *a priori* consent, as already discussed above.

Furthermore, the Constitution determines the form of parliamentary authorisation. According to the Constitution⁴⁵, international treaties with any military content must be ratified by Parliament. Thus, entrance into and use of foreign armed forces within the country also must be regulated by an international treaty ratified by Parliament. There are various international military agreements – from important military arrangements to treaties that regulate technical issues of military co-operation. The Georgian Constitution does not differentiate between them. The Parliament ratifies treaties, concluded in

⁴⁵ Article 65.

different forms: agreements, mutual understanding memorandums, note exchanges. Thus, the scope of the international treaty on military issues, which must gain parliamentary approval, seems to be open to broad interpretation within the Georgian legal system. In addition, it must be stressed that international treaties involving Georgia, if they do not contravene the Constitution, prevail over domestic laws and other normative acts.

However, the Status of Forces Agreement concluded in 1993--not ratified by the Parliament of Georgia--envisaged only a temporary deployment of Russian troops until the end of 1995. The Stationing Treaty concluded on September 15, 1995 was constructed around long-term Russian strategic interests. The final ratification of the treaty was qualified on the termination of the conflict in Abkhazia in which Russia was to act as a mediator. The further pre-condition for ratification that Russia had to meet was its commitment to render assistance in the rebuilding of the Georgian army. The last attempt to clarify the legal status of foreign forces in Georgia was made in Istanbul in November 1999 when the parties signed a declaration in which partial military withdrawal was agreed. The Georgian side still harbours misgivings about the complete withdrawal of Russian soldiers from Abkhazia, where it itself has no control. Equally, the fate of other military bases in Batumi and Akhalkalaki remains unclear. The sides continue to negotiate without producing any definitive outcome. Russia attempts to retain its decreasing political influence in Georgia for as long as possible by keeping its troops in the country. However, given the growing international concern, this policy is not likely to be successful in the future.

The legal requirements for foreign military deployment in Georgia, internationally and domestically, are not fulfilled. In looking at the external influence exerted upon Georgia, we must conclude that there is no free consent on the part of the receiving state. On the other hand, if we examine the exclusion of Parliament from the formation of the deployment policy, which, in effect, ignores the sovereignty of the people, we must likewise conclude that there is no full consent of the receiving state to the stationing of foreign forces. Once again, this makes the legal effect of such consent questionable. There is no explicit consent by the state to the deployments of foreign forces. Moreover, there is no

consent by action, or by silence, which could justify the temporary presence of Russian troops. Georgia drew none of the benefits from the presence of troops that it had expected. None of those conditions outlined in bilateral agreements were fulfilled. The mission of foreign troops is still not determined. The foreign forces, moreover, did not enjoy public support, and are seen as a threat to the national security interests of Georgia. They are supported only by those destructive elements working to undermine Georgian sovereignty. Moreover, soldiers and weapons belonging to the military bases remain outside the control of the Georgian administration. Consequently, foreign military bases could yet become a source of instability in the country. Indeed, they are not legitimate in the context of Georgian national security interests. They should be regarded merely as the basis for the waning, but destructive, Russian hegemony in Georgia.

The circumstances under which Shevardnadze declared in 1995 that the presence of foreign troops in Georgia was in the national interest of Georgians⁴⁶ have changed. Georgia is not alone vis-à-vis Russia in this matter. After the revolutionary change of November 2003, the new political elite of Georgia made its position clear that it will not tolerate the presence of foreign troops for an unlimited time. This position was, however, moderated by a constructive approach by the Georgian Government towards Russian security interests. The visit of the newly-elected Georgian President to Moscow on February 11, 2004 shed no light on the future status of the military bases and the modalities of the withdrawal of the troops from Georgia.

After the sweeping political change that occurred in Georgia in November 2003, the international community is now paying more heed to developments in Georgia. Therefore, the new Georgian leadership has an excellent opportunity to mobilise international support on the question of Russian troops on its territory. The presence of Russian troops in Georgia will be regarded by other nations as a violation of an international commitment. Under these circumstances, the task facing the new Georgian leadership, which will have to consolidate the security sector of the country, is to elaborate a consistent position with regard to the inadmissibility of the Russian military presence in Georgia.

⁴⁶ *Archiv der Gegenwart*, 1995, 40445.

International support and a consistent position by the Georgian Government might lead to a successful solution to this much-discussed problem, which is hindering the improvement of Russian-Georgian relations and the consolidation of security sector governance in Georgia under an effective and democratically-elected government.