

# **THE CIS PEACE-KEEPING OPERATIONS IN THE CONTEXT OF INTERNATIONAL LEGAL ORDER**

Konstantin Korkelia

## **ABSTRACT OF THE FINAL REPORT**

The developments at the beginning of 90s, namely independence of former Soviet republics and conflicts brought to the top of the agenda problems of ensuring peace and security in the region. The creation of regional peace-keeping system has been commenced within the Commonwealth of Independent States.

The research examines the legal and political foundation of the Commonwealth of Independent States in terms of peace-keeping system. The author analyses instruments adopted within the Commonwealth of Independent States dealing with various aspects of the peace-keeping operations. The author summarizes the requirements of conducting peace-keeping operations in the CIS and highlights the basic principles elaborated within the CIS on peace-keeping activities.

The research also examines appropriate articles of the UN Charter (Arts. 52, 53 and 54) to explore whether the CIS could qualify to meet requirements of UN Charter for regional agencies. It is analysed whether the CIS also meets other criteria provided for by the UN Charter. Particular attention is drawn to the mode of interaction of the United Nations and the Commonwealth of Independent States.

The conclusion is that the CIS fully meets the requirements of regional agency under Chapter VIII of the UN Charter.

Afterwards, the research deals with the case-study examining the peace-keeping practice of the Commonwealth of Independent States with a view to its compliance with the UN Charter and legal instruments adopted within the CIS.

The research also deals with analyzing the basic principles established in regard to peace-keeping operation such as legality and impartiality. The author comes to the conclusion that there is a solid ground to doubt the impartiality of the peace-keeping operations conducted by the Commonwealth of Independent States, making it necessary for the conflicting states to seek new possibilities for conflict settlement.

At the end the research the author makes some conclusions relating to the CIS peace-keeping operations.

## **THE CIS PEACE-KEEPING OPERATIONS IN THE CONTEXT OF INTERNATIONAL LEGAL ORDER**

Konstantin Korkelia<sup>1</sup>

FINAL REPORT

### **I. Introduction**

The developments at the beginning of 90s, namely independence of the former Soviet republics and existing conflicts brought to the top of the agenda problems of ensuring peace and security in this region.

It became of particular importance to establish a new mechanism of prevention and maintenance of peace in the region. Setting up one of those mechanisms has commenced within the Commonwealth of Independent States. Although CIS has gained some experience in the field of maintaining peace and security, the peace-keeping within this international organisation is still in making.

Thus, it is of utmost importance to explore the legal and political foundation of the CIS peace-keeping operations with a view to their comparison with existing international practice. For this purpose international instruments concluded within the CIS in the field of maintaining peace and security will be examined in detail.

It is of equal importance to determine the legal status of the CIS in the meaning of Chapter VIII of the Charter of the United Nations and in this context the relationship between the UN and the CIS. Based on the existing international practice it is also examined whether the CIS meets the criteria of regional arrangements in the meaning of Chapter VIII of the UN Charter.

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<sup>1</sup> The author kindly acknowledges that this research was made possible through a NATO award.

After consideration of problems arising from Chapter VIII of the UN Charter, the practice of CIS peace-keeping operations will be examined in the context of existing conflicts in the CIS.

The key elements of the concept of traditional peace-keeping such as legality and impartiality will be also analysed. At the end of the research the implications of the CIS peace-keeping operations will be explored.

## **II. Legal and Political Foundation of the CIS Peace-Keeping Operations**

The well-known processes which started at the end of 80s and the beginning of 90s within the Soviet Union logically resulted in the dissolution of the USSR. Absolute majority of the republics strove to obtain independence and to build sovereign states. As a result, all republics proclaimed their independence. Despite the unwillingness of the republics to be part of the Soviet Union, majority took the position that their political and economic relations had to be preserved as among sovereign and independent states and not as quasi-sovereign entities. This view of the newly-born states was reflected in the Charter of the Commonwealth of Independent states - legally binding instrument founding an international organization - adopted on 22 January 1993 by the republics of the former Soviet Union (except for Baltic States).<sup>2</sup> Thus, the Soviet Empire has transformed into an international organization with the membership of the sovereign states. It is important to give a general overview of the Organization.

Examining the legal and political foundation of the Commonwealth of Independent States it is significant to refer to the basic instruments establishing this international organization as well as the mechanism of maintenance of peace and security. Article 1 of the Charter stipulates that "the Commonwealth is based on the sovereign equality of all its members. Member-states are sovereign and equal subjects of international law". Furthermore, the same article stipulates

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<sup>2</sup> The adoption of the CIS Charter was preceded by signature of Agreement on the Establishment of Commonwealth of Independent States signed by Belarus, Russia and Ukraine on 8 December, 1991 and Adoption of Alma-Ata Declaration signed by all former Soviet Republic (except Georgia and Baltic States) on 21 December, 1991. These two instruments reflected the basic principles and spheres of cooperation within the CIS.

that the Commonwealth is not a state and does not possess the supranational power.

The membership in the Commonwealth of Independent States is 'closed' (Article 7). Any state willing to become a member of the organization, sharing the purposes and principles of the Commonwealth and accepting obligations stipulated in the CIS Charter may accede to it with the consent of all its Member-States. The necessity of preliminary consent of member-states to the admission of a 'new' state to the organization is a characteristic feature of most regional international organizations (EU, CE, OSCE, BSEC).

The CIS Charter also provides for the possibility of terminating the membership. It stipulates the mechanism of terminating the membership of the states which systematically fail to implement the obligations under the agreements adopted within the Commonwealth. It provides that appropriate measures under international law may be taken in regard to these states.

The CIS Charter stipulates the fundamental principles of international law as the basis of relations among the CIS Member-States such as respect of sovereignty, right to self-determination, inviolability of state borders, territorial integrity, non-use of force and the threat to use force against political independence of Member-States, settlement of disputes by peaceful means, supremacy of international law in international relations, non-interference in internal and external affairs of each other, protection of human rights and fundamental freedoms, faithful fulfillment of obligations.

It is noteworthy that the CIS Charter provides for associate membership of states willing to participate in specific fields of activities.

As far as decision-making within the CIS is concerned, the Charter provides that the highest decision-making body of the Commonwealth of Independent States is the Council of Heads of States which is empowered to decide the principal issues relating to the activity of the Organisation. Another permanent body of the CIS is the Council of Heads of Governments which coordinates cooperation of executive bodies of the CIS Member-States. The Decisions of the Council of Heads of States and Council of Heads of Governments are adopted on the basis of consensus of the CIS Member-States. The Council of Ministers of Foreign Affairs on the basis of decision of the Council of Heads of States

and Council of Heads of Governments is empowered to coordinate foreign policy of Member-States.<sup>3</sup>

The Charter also establishes the Council of Ministers of Defense, which is the body of Council of Heads of States on military policy and military cooperation among Member-States of the Council. The General Headquarters of the United Military Forces directs United Military Forces, as well as groups of Military Observers and collective peace-keeping forces of the Commonwealth.

It is also noteworthy that the power of the Organization is very broad. It deals with cooperation in political, economic, ecological, humanitarian, cultural, social, human rights, legal and other fields.

One of the priorities of the CIS is no doubt maintaining international peace and security in the region. The Charter of the Commonwealth of Independent States provides in the preamble ". . . developing cooperation among them [CIS Member-States-*Author*] in ensuring international peace and security . . .". Further, in Article 2 (purposes of the Organization) it is stated that the purpose of the Commonwealth is, *inter alia*, "cooperation among Member-States in ensuring international peace and security. This provision also stipulates the cooperation of CIS Member-States in the settlement of disputes and resolution of conflicts among States of the Commonwealth." Thus, the competence of the Commonwealth of Independent States varies from political and economic to legal and military cooperation.

The CIS Charter draws a particular attention to the issues of collective security and military and political cooperation. The prevention, localization and settlement of conflicts on the territory of the CIS Member-States became a priority of the Organization from the outset. Pursuant to Article 12 of the CIS Charter, in case of danger to sovereignty, security and territorial integrity of one or several Member-States or international peace and security Member-States immediately set into operation mechanism of joint consultation to coordinate their positions and take measures to prevent the danger, including peace-keeping operations and application, if necessary, armed forces to exercise their right to individual or collective self-defense in accordance with Article 51 of the UN Charter.<sup>4</sup>

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<sup>3</sup> The Permanent Consultative Commission on peace-keeping operations has been set up within the Council of Ministers of Foreign Affairs of the Commonwealth of Independent States.

<sup>4</sup> Importantly, on 15 May, 1992 CIS Member-States adopted the Treaty on Collective Security. *Deistvuuschee mezhdunarodnoe pravo*, vol. 2. M. 1997. 269-272. See also

Two significant elements of Article 12 of the CIS Charter require a particular attention. It expressly differentiates on the one hand between *sovereignty, security and territorial integrity of one or several Member-States* and *international peace and security* on the other hand. Thus, the distinction between these two notions is to be made, firstly on the basis of Article 39 of the UN Charter as a threat to the international peace and security when Article 53 of the UN Charter is applicable from conflicts which endanger sovereignty, security and territorial integrity of the CIS Member-State.

It is important to note that the decision on the use of military force as well as decision on the other issues of collective security, military and political cooperation among the CIS Member-States is adopted by the highest political body of the CIS - Council of Head of States of the Commonwealth. As the highest decision-making body of the CIS it also has the power to recommend to the parties of the dispute the procedures and methods of conflict resolution, if the continuation of conflict could threaten the peace and security in the Commonwealth.

After the general overview of the institutional framework of the CIS, it is necessary to examine in-depth the specific instruments regulating peace-keeping operations within the Organization.

The most important instruments specifically regulating peace-keeping operations within the CIS are as follows:

1. Agreement on Groups of Military Observers and Collective Peace-Keeping Forces in the CIS (20 March, 1992);
2. Protocol to the Agreement of 20 March, 1992 on Status of Groups of Military Observers and Collective Peace-keeping Forces in the CIS (15 May, 1992);
3. Protocol on Recruitment, Structure, Material, Technical and Financial Provision of Groups of Military Observes and Collective Peace-Keeping Forces for Maintenance of Peace in the CIS (15 May, 1992);
4. Protocol on Temporary Rule of Setting up and Operation and Groups of Military Observers and Collective Peace-Keeping Forces in the Zones of Conflicts among States and in the States of Member-States of CIS (16 August, 1992);
5. Agreement on Collective Peace-Keeping Forces and Joint Measures for their Material and Technical Provision (24 October, 1993).

On 19 January, 1996 at the Council of Heads of States of the CIS the Regulation on Collective Peace-Keeping Forces in the

Commonwealth of Independent States was adopted. As a new development of peace-keeping operations within CIS one can consider the Concept of Prevention and Resolution of Conflicts on the Territory of Member-States of the Commonwealth of Independent States adopted on 19 January, 1996.

It is worth highlighting the main features of these international instruments.

1. Agreement on Groups of Military Observers and Collective Peace-Keeping Forces in the CIS was adopted on 20 March, 1992 in Kiev. Article 1 of the Agreement states that Groups of Military Observers and Collective Peace-Keeping forces of the Members of the Commonwealth (as referred 'Peace-Keeping Groups') are established in order to render assistance to each other on the basis of mutual consent to solve and prevent conflict of interethnic, interconfessional and political character on the territories of any member of the Commonwealth which may bring about human rights violations. Furthermore, Article 2 stipulates that Peace-Keeping Groups carry out those functions and tasks which are entrusted upon it by the decision of the Council of Head of States adopted by common consent. This decision is adopted only in the case of submission of request on the part of all conflicting sides, as well as under the circumstances of reaching an agreement on cease-fire and other hostile actions.

Thus, three elements characterizing peace-keeping machinery within the Commonwealth of Independent States are to be mentioned. Firstly, the decision of the Council of Heads of States may be taken only if appropriate request of the conflicting parties is made. Secondly, the decision on commencing peace-keeping operation is adopted by the Members States of the CIS by reaching a consensus.

Thirdly, one of the preconditions to carry out a peace-keeping operation is the existence of agreement reached between conflicting parties on cease-fire and other hostile actions.

As far as functions of the Peace-Keeping Groups are concerned, they are determined as follows: separation of conflicting parties, monitoring over implementation of agreements on cease-fire and armistice, control over implementation of agreements on disarmament, creation of conditions for peaceful settlement of disputes and conflicts, promotion of securing of human rights protection, humanitarian assistance, including in the case of ecological catastrophes or emergency. At the same time, the Agreement explicitly states that peace-keeping groups cannot be used to participate in military actions.

The Agreement on Groups of Military Observers and Collective Peace-Keeping Forces in the CIS provides that the composition of Peace-Keeping Groups is formed on a voluntary basis by the State-Parties of the Agreement, except for conflicting parties, through representation of military contingents, military or civil observers or other civil personnel, as well as assistance in providing appropriate means of service.

Pursuant to Article 5 of the Agreement on Groups of Military Observers and Collective Peace-Keeping Forces in the CIS the State-parties are obliged to provide neutral, impartial status of Peace-Keeping Groups and not to allow participation of its personnel in military conflicts in the interests of one of the conflicting parties, refrain from promotion or commission of actions which could fail or prevent carrying out the functions of the Peace-Keeping Groups and take all necessary measures to provide security and protection from endangering the life and health of the personnel.

It is also significant that the Agreement provides for the possibility of participation of the personnel of Peace-Keeping Groups in peace-keeping operations outside of the CIS area. Namely, Article 6 of the Agreement states that State-Parties of the Agreement in accordance with their obligations under the UN Charter, other international agreements and under consensus may give consent upon participation of military and civil personnel of Peace-Keeping Groups in peace-keeping operations under the aegis of OSCE and UN.

2. Another important instrument regulating peace-keeping operations is the Protocol to Agreement on Groups of Military Observers and Collective Peace-Keeping Forces in the CIS adopted on 15 May, 1992. The protocol specifies most of the provisions of the Agreement.

As defined in the Protocol Groups of military observers and collective peace-keeping forces (Peace-Keeping Group) are set up on a temporarily basis by the decision of the Council of Heads of States and may be brought into the zone of conflict only after reaching agreement on cease-fire and armistice.

Peace-Keeping Group does not take part in military actions and does not use arms, except for cases of self-defense. Peace-Keeping Group refrains from any action, incompatible with the impartial and neutral nature of their duties or contrary to the spirit of the present Protocol. The Protocol similarly to the Agreement defines the basic principles of introduction of peace-keeping operation into the zone of conflict such as cease-fire agreement between conflicting parties and impartial and neutral nature of peace-keepers.

The Protocol among other practical matters regulates issues such as the right to use a flag of the Peace-Keeping Groups, freedom to use various means of communication, right to movement, exemption from taxes, domestic rules of peace-keeping Group as well as issues of cooperation between Peace-Keeping Groups and receiving States.

Significantly, the Protocol to Agreement on Groups of Military Observers and Collective Peace-Keeping Forces in the CIS provides for that Peace-Keeping Groups have status, privileges and immunities usually accorded to the UN peace-keeping personnel in accordance with the Convention on Privileges and Immunities adopted by the General Assembly on 13 February, 1946. Thus, the personnel of the Peace-Keeping Groups have immunity from criminal, civil and administrative responsibility.

3. Another agreement concluded within the Commonwealth of Independent States on peace-keeping operations is the Protocol on Recruitment, Structure, Material, Technical and Financial Provision of Groups of Military Observers and Collective Peace-Keeping Forces for Maintenance of Peace in the CIS (15 May, 1992). This Protocol according to the preamble is based on the positive experience of the United Nations on recruitment, material and technical provision as well as financing peace-keeping operations.

The composition of the Peace-Keeping Group is formed on a voluntary basis. As regards the funding of Peace-Keeping Groups the Protocol provides that the expenses associated with peace-keeping operations are covered by the State-Parties of the Agreement.

4. Protocol on Temporary Rule of Setting up and Operation and Groups of Military Observers and Collective Peace-Keeping Forces in the Zones of Conflicts among States and in the CIS Member-States (16 July, 1992) is also a significant instrument dealing with peace-keeping operations in the Commonwealth.

Article 1 of the Protocol states that principal political decision on carrying out operation by the Peace-Keeping Group is adopted by the Council of Heads of States of Commonwealth by consensus on the basis of application of one or several Member-States of the Commonwealth and with the consent of all conflicting parties.

Furthermore, it is stipulated that the Council of Heads of States of the Commonwealth immediately informs the UN Security Council and the Chairman-in-office of the OSCE regarding the decision taken on carrying out such an operation.

Pursuant to Article 5 of the Protocol on Temporary Rule of Setting up and Operation and Groups of Military Observers and Collective Peace-Keeping Forces in the Zones of Conflicts among States and in the CIS Member-States Peace-Keeping Group is entrusted to carry out the following tasks:

1. monitoring over implementation of the conditions of armistice and cease-fire agreement;

2. marking the zones of responsibility, separation of the conflicting parties, creation of demilitarized zones, zones of responsibility and the zones of separation, humanitarian corridors, promotion of deconcentration of the forces of the conflicting parties, prevention of their movement and conflicts in the region;

3. creation of conditions for negotiations and other activities on peaceful conflict resolution, restoration of legality and order and normal functioning of public and states institutions in the zone of responsibility;

4. finding facts of violation of agreements on cease-fire and armistice and investigating them;

5. control of places and actions in zones of responsibility, promotion of securing human rights protection;

6. protection of important objects in the zones of responsibility;

7. taking measures to secure communication between conflicting parties, providing security of official meetings between parties at all levels;

8. control over transportation, prevention of illegal trafficking of military equipment, arms, ammunition etc. in the zones of responsibility;

9. provision of safe transit of all means of transport and functioning of communication in the zones of responsibility;

10. humanitarian assistance of the civil personnel, securing safe transportation of humanitarian aid.

Furthermore, similar to the instruments already examined, Article 6 provides that while carrying out its functions Peace-Keeping Group as an exception can use arms to provide security and protection of the peace-keeping personnel, rebutting military attacks and providing protection of civil population, etc.

5. Agreement on Collective Peace-Keeping Forces and Joint Measures for their Material and Technical Provision (24 September, 1993) also regulates peace-keeping operations in the Commonwealth of Independent States.

Despite the adoption of the above-mentioned CIS instruments relating to peace-keeping operations, the necessity to improve CIS peace-keeping mechanism became vivid. That is why in the beginning of 1996 two principal regional instruments were adopted by the Council of Heads of States: Regulation on Collective Peace-Keeping Forces in the Commonwealth of Independent States and Concept of Prevention and Resolution of Conflicts in the Territory of Member-States of the Commonwealth of Independent States.

Regulation on Collective Peace-keeping Forces in the Commonwealth of Independent States stipulates that Collective Peace-Keeping Forces in the Commonwealth of Independent States is a temporary coalitional formation established during the period of conducting peace-keeping operations in order to promote conflict resolution in the territories of any Member-State of the Commonwealth of Independent States.

Further, the Regulations likewise the earlier documents provides that principal political decisions to conduct operations by the Collective Peace-Keeping Forces is adopted by the Council of Heads of States of the Commonwealth of Independent States by consensus on the basis of application of one or several Member-States of the Commonwealth, upon request or with the consent of all conflicting parties, as well as under the condition of reaching agreements among them on cease-fire and other hostile actions. This provisions of the Regulations makes it clear that even non-state actors involved in the conflict is to give their consent to commencing peace-keeping operations.

Mandate on each peace-keeping operation is confirmed by the Council of Heads of States.

It is also stated that the UN Security Council and OSCE Chairman-in-office are immediately informed about the decision to conduct peace-keeping operations. Further, depending on the circumstances, scale of conflict and in accordance with the UN Charter, Council of Heads of States may request authorization (mandate) and financial means of the UN Security Council to conduct a peace-keeping operation. The notion 'depending on the circumstances' seems to be quite vague since Chapter VIII of the UN Charter does not define the specific circumstances and scale of conflict necessary to request UN Security Council authorization. As known, UN Security Council authorization is required to conduct coercive measures under Chapter VII of the UN Charter.

The Regulation also states the functions of the CIS United Headquarters, rules of appointments of Head of the CIS United Headquarters, training of peace-keeping personnel, etc.

It is significant that the Concept explicitly stipulates the basic principles of Collective Peace-Keeping Forces. Those principles are as follows:

- a). impartiality and neutrality;
- b). observance of law of the receiving states;
- c). observance of customs and traditions of local population;
- d). non-participation in military operations;
- e). non-use of arm, except for certain cases (self-defense, protection of peaceful populations, etc.);
- f). transparency of activity.

Chapter VII of the Regulations provides that personnel of the Collective Peace-Keeping Forces have status, privileges and immunities which are granted to UN personnel while carrying out peace-keeping operation under the UN Convention on Privileges and Immunities of 13 February, 1946 and Convention on Safety of UN and its personnel adopted by the General Assembly on 9 December, 1994. Thus, CIS peace-keepers have status defined not only by 1946 UN Convention but also 1994 Convention specifically regulating international status of peace-keepers.

As a new development of peace-keeping operations within CIS one can consider Concept of Prevention and Resolution of Conflicts on the Territory of Member-States of the Commonwealth of Independent States adopted on 19 January, 1996. Although not legally binding upon its States-Parties, this instrument stipulates political approach of Member-States of the Commonwealth of Independent States. It provides for not only conflict prevention and resolution measures, but also post-conflict peace-building and interaction of the CIS with the United Nations and Organization for Security and Cooperation in Europe.

The Concept in the preamble states that unresolved conflicts and contradiction emerged on the basis of military conflicts undermine the existence of the Commonwealth of Independent States and is the real threat to the international peace and security.

The Concept provides for three basic directions in which peace-keeping operation and conflict resolution can be taken:

1. conflict prevention (measures to prevent conflicts);
2. resolution of military conflicts;
3. post-conflict peace-building.

a). As provided for in the Concept the most favorable means of dispute settlement is 'conflict prevention'. Preventive diplomacy may include measures to clarify the causes of disagreement and prevention of its development into conflicts, including good offices and mediation in organizing consultations, and negotiations between the parties to the dispute, assistance in seeking mutual understanding and reaching agreements on dispute settlement, confidence measures, promotion in reaching agreement on non-use of force, threat of its use, exchange of information on issues of common concern, sending special representatives, mediators, observers of neutral and parties of the disputes, use of economic sanctions, establishment of delimitation zones.

Preventive diplomacy measures also provide for participation of police officers, civil and military personnel of the states of the CIS in prevention of possible conflicts of the parties in dispute.

b) 'Resolution of military conflicts' under the Concept is understood as a complex of measures of political, social, legal, economic and military nature aimed at resolving conflicts. Conflict resolution may include: attempts to reach immediate cease of hostilities, control and monitoring over the implementation of agreements on cease-fire or armistice, separation of conflicting parties, etc.

Peace-keeping operations is interpreted by the Concept as political action limited in time on peace-keeping operation between the parties in conflict with use of specially trained military, police and civil personnel.

c) The Concept of 'Post-conflict peace-building' means carrying out measures of political, social, economic and legal nature to be taken after the settlement of military conflicts in order to render assistance to rehabilitation of reliance, common relations and cooperation between conflicting sides, prevention of the conflict repetition.

These measures may include:

1. promotion of rehabilitation of state authority institutions;
2. promotion of return of refugees and displaced persons;
3. assistance in anti-mining work on the territories and rehabilitation of elements of infrastructure of states;
4. humanitarian and other assistance to the population;
5. assistance in reintegration of former participants of military formations in civil life;

6. securing conditions for holding free election in representative bodies of civil authority;

7. assistance in promotion of human rights protection;

After a thorough examination of all these instruments relating to the CIS peace-keeping operations several basic principles characterizing CIS peace-keeping operations and well as the preconditions to carry out peace-keeping operations may be summarized.

The following most important preconditions to carry out peace-keeping operation within the CIS may be inferred:

a) conclusion of an agreement between conflicting parties on cease-fire and express political will to solve conflict by political means;

b) request on the part of all conflicting parties or their consent to conduct peace-keeping operation. It is important to note that the consent of all conflicting parties is an important element characterising peace-keeping character of dispute settlement, unlike conflict resolution by enforcement which is coercive in nature and therefore does not require the consent of the parties to the conflict.<sup>5</sup>

Thus, if no agreement is reached between the conflicting parties on cease-fire the CIS Peace-Keeping Group is not in a position to carry out their peace-keeping mission. Political decision to conduct peace-keeping operation is taken by the Council of Heads of States of the CIS. The Council of Heads of States of the Commonwealth immediately informs the UN Security Council and Chairman-in-office of the OSCE regarding the decision taken on carrying out such operations.

c) acceptance by the conflicting parties of obligations to respect international status, neutrality, privileges and immunities of the peace-keeping personnel. The CIS peace-keepers are accorded status, privileges and immunities usually granted to the UN peace-keeping personnel in accordance with the Convention on Privileges and Immunities adopted by the General Assembly on 13 February, 1946 and Convention Safety of UN and its personnel adopted by the General Assembly on 9 December, 1994 which, *inter alia*, stipulate exemption from criminal, civil and administrative responsibility of the receiving state. The right to flag and exemption from local taxes are also confirmation of international status of the peace-keeping forces of the CIS.

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<sup>5</sup> UN Department of Peace-Keeping Operations, General Guidelines for Peace-Keeping Operations, October, 1995. p. 12.

Functions of the CIS peace-keeping operations, although not exhaustively can be summarized as follows: monitoring over implementation of cease-fire agreement; promotion in defining the zones of responsibility, separation of the conflicting parties, creation of demilitarized zones, zones of responsibility and the zones of separation, securing humanitarian corridors, promotion of deconcentration of the forces of the conflicting sides, prevention of their movement and conflicts in the region; creation of conditions for negotiations and other activities on peaceful conflict resolution, restoration of legality and order and normal functioning of public and states institutions in the zone of responsibility; finding facts of violation of agreements on cease-fire and investigating them; control of places and actions of populations in zones of responsibility, promotion of provision of human rights protection; protection of important objects in the zones of responsibility; taking measures to secure communication between conflicting sides, providing security of official meetings between them at all levels; control of transportation, prevention of illegal movement of military techniques, arms, ammunition etc in the zones of responsibility; provision of safe transit of all means of transport and functioning of communication in the zones of responsibility; humanitarian assistance of the civil personnel, securing safe transportation of humanitarian aid.<sup>6</sup>

As for the other principles the CIS peace-keeping, the following conclusion can be inferred from the instruments examined:

1. Special bodies such as Peace-Keeping Groups are established to deal with peace-keeping in the CIS. The primary reason of carrying out peace-keeping operations is the prevention and solution of conflicts on interethnic, interconfessional and political character on the territories of the Member-States of the Commonwealth of Independent States which may result in human rights violations;

2. Composition of the CIS peace-keepers is formed on a voluntary basis by the States-Parties the Agreements concerned except for conflicting states. All States, except for conflicting parties may represent military contingents, military or civil observers or other civil personnel, as well as technical assistance necessary to conduct peace-keeping operations;

3. Formal status of the CIS peace-keepers is neutral and impartial. The personnel of the Peace-Keeping Groups are not allowed to

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<sup>6</sup> The Charter of the United Nations: A Commentary, Edited by B. Simma, Oxford University Press, 1995. p. 588.

participate directly in military conflicts in the interests of one of the conflicting parties;

4. The CIS instruments provide for the possibility of participation of the personnel of Peace-Keeping Groups in peace-keeping operations outside of the CIS area in accordance with the decisions of the United Nations and the Organizations for Security and Cooperation in Europe. Thus, activity of the Peace-Keeping Group may go beyond the CIS area;

5. It can be concluded that both kinds of operations can be carried out within the CIS with regard to maintenance of peace and security. If all instruments done in this field before deal with peace-keeping operations as means of solutions of disputes between the conflicting parties, the new development, namely the Concept of Prevention and Resolution of conflicts in the Territory of CIS (19 January, 1996) explicitly states that enforcement action (enforcement to peace) is allowed within the CIS under the authorization of the UN Security Council in accordance with the UN Charter.

It is important to note that the documents considered do not define any criteria of differentiation between peace-keeping operation and enforcement action. As known, the enforcement action under international law is understood pursuant to Chapter VII of the UN Charter as measures against the states violating or posing a threat to peace. These measures may be taken without use of military force for instance suspension of economic relations (Article 41 of the Charter) or using military force (Article 42 of the Charter). The purpose of such action is to make aggressor states to terminate aggression and hold that state responsible under international law. One of the examples of enforcement action pursuant to Chapter VII of the UN Charter is the measures taken against Iraq.

On the other hand, peace-keeping operations are of different nature. Military action is carried out not against conflicting parties but the purpose of the military force is to separate the conflicting parties and to control the agreements on cease-fire.<sup>7</sup>

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<sup>7</sup> For the definition of peace-keeping and enforcement action it is interesting to refer to the General Guidelines for Peace-Keeping Operations providing that peace-keeping is a UN presence in the field (normally involving military and civilian personnel), with the consent of the conflicting parties to implement or monitor the implementations of arrangements relating to the control of conflicts (cease-fires, separation of forces, etc) and their resolution or to ensure the safe delivery of humanitarian relief.

Peace-enforcement may be needed when all other efforts fail. The authority for enforcement is provided by Chapter VII of the Charter, and includes the use of armed force to maintain or restore international peace and security in situations in which

Nevertheless, no political and legal criteria are provided in the CIS instruments for making distinction between two kinds of operations.

Therefore, both operations in the meaning of Chapter VI and Chapter VII can be carried out by the CIS.

6. CIS instruments provide for the necessity of requesting authorization of the UN Security Council to carry out enforcement action as it is stipulated in Article 53 of the UN Charter.

7. Although the above-mentioned instruments do not explicitly define categories of CIS peace-keeping operations, they may be divided primarily into two types: military observer missions (unarmed officers) and peace-keeping forces (armed military units).

### **III. The Problem of Determination of the Legal Status of the CIS in the Meaning of Chapter VIII of the United Nations Charter and Mode of Interaction with the UN**

In this Chapter of the research appropriate articles (52, 53 and 54) of the UN Charter are examined to explore whether the CIS could qualify to meet requirements of UN Charter for regional arrangements or agencies.

The starting point for any analysis of interaction of the United Nations and regional arrangements or agencies in the context of settlement of local disputes is Article 52 (1) of the UN Charter stating the following:

‘Nothing in the present Chapter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities

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the Security Council has determined the existence of a threat to peace, breach of the peace or act of aggression.

UN Department of Peace-Keeping Operations, General Guidelines for Peace-Keeping Operations, October, 1995. p. 3.

consistent with the Purposes and Principles of the United Nations.’<sup>8</sup>

Article 52 of the UN Charter admits the possibility of settlement of local disputes by regional arrangements or agencies and provides that regional arrangements or agencies to make every efforts to achieve the pacific settlement of local disputes though such regional arrangements or by such regional agencies before referring them to the UN Security Council. The balance between universal and regional arrangements or agencies in the context of settlement of local disputes has been the subject of in-depth discussion while drafting the UN Charter. Finally, the decision was that the regional arrangements or agencies, which meet certain criteria are to be given the possibility to settle local disputes at the regional level, thus making a compromise between universal and regional arrangements or agencies.

Examining paragraph 1 of the Article 52, one can distinguish several criteria to be met by the regional arrangements or agencies in order to settle local disputes at the regional level before referring them to the United Nations Security Council such as regionality and consistency with the purposes and principles of the United Nations.

The criterion of regionality has been widely discussed for a long time. Since the UN Charter does not expressly define the meaning of ‘regionality’, different interpretations have been made to define this concept such as geographical proximity, cultural, linguistic and historical relations, political unity. Others interpret ‘regionality’ more flexibly, defining it simply as ‘non-universal’.

As correctly stated by legal scholars, the criterion of geographical proximity is irrelevant since a state may belong to a certain region but might not be a member of the regional organization.

International practice has proved that the term ‘region’ is not usually used in a legal but rather in a political meaning.

Clarification is necessary with regard to the terms referred in Article 52 (1) namely ‘regional arrangements’ or ‘regional agencies’. Although without much practical significance regional arrangement is understood as a treaty under the Vienna Convention on the Law of Treaties, 1969 dealing with the resolution of conflicts while regional agencies mean international organization dealing with same issues. The distinction between arrangements and agencies evaporates since

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<sup>8</sup> Charter of the United Nations and Statute of the International Court of Justice, United Nations, New-York, 1997.

agencies are also established on the basis of the treaty regulated by public international law.

Another important element for defining regional arrangements or agencies under Article 52 (1) of the UN Charter is whether activity of regional arrangements or agencies are consistent with the purposes and principles of the United Nations Charter. There is a solid ground to suggest that consistency with the purposes and principles of the United Nations mean that the organization aims at providing security and defense system for its member-states and settling conflicts among them at the regional level.<sup>9</sup> In other words, the mandate of the regional organization should be solution of security and defense problems. Some of these organizations having a mandate to address and respond to security issues are OAS,<sup>10</sup> OAU, OIC and the Arab League.<sup>11</sup>

Another example of regional organization in the meaning of Article 52 (1) of the UN Charter are the Organization for Security and Cooperation in Europe (OSCE) which has an explicit security role. The Helsinki Document of 1992 declared CSCE a regional arrangement within the meaning of Chapter VIII of the UN Charter. Paragraph 25 of the Helsinki Summit Declaration stipulates: ". . . we [the Heads of State and Government of the participating state of the CSCE-*author*] declare our understanding that the CSCE is a regional arrangement in the sense of Chapter VIII of the Charter of the United Nations. As such, it provides an important link between European and global security. The rights and responsibilities of the Security Council remain unaffected in their entirety. The CSCE will work together closely with the United Nations especially in preventing and settling conflicts."

Further, in Section III, paragraph 52 of the Helsinki Document, which deals with the cooperation of the CSCE with regional organizations, the CSCE is empowered: "to benefit from resources and possible expertise of existing organizations such as the EC, NATO and the WEU, and could therefore, request them to make resources available in order to support it in carrying out peacekeeping activities. Other institutions and mechanisms, including the peacekeeping mechanisms of the Commonwealth of Independent State (CIS), may also be asked by

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<sup>9</sup> Gareth Evans, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, Allen&Unwin, 1993, p. 29.

<sup>10</sup> Article 1 of the OAS Charter expressly states: 'Within the United Nations, the Organization of American States is a regional agency'.

<sup>11</sup> *The Charter of the United Nations: A Commentary*, Edited by B. Simma, Oxford University Press, 1995. p. 690-691.

the CSCE to support peacekeeping in the CSCE region." Thus, under the Helsinki Document, the CSCE (now OSCE) may request the use of the military resources of NATO, WEU, EC, CIS and other organizations to facilitate planning for peace-keeping operations. It is important to note that on October 28, 1992, the UN General Assembly adopted (without a vote) Resolution 47/10 entitled 'Cooperation between the United Nations and the Conference on Security and Cooperation in Europe'. By that resolution, the GA welcomed the declaration of CSCE as a regional arrangement in the sense of Chapter VIII of the Charter of the UN. In a letter dated August 20, 1993 the representatives of the participating States of the CSCE to the UN requested the inclusion in the agenda of the forty-eight sessions of the GA of an item entitled 'Observed status for the CSCE in the General Assembly' (A/48/231). Following this request, the GA adopted the Resolution 48/5 of October 13, 1993 without a vote.

Notably, although OSCE is no doubt regional organization in the meaning of Charter VIII of the UN Charter, it does not meet one criterion, namely it is not based on an international treaty since neither the Helsinki Final Act of 1975 nor the Charter for Paris for a new Europe of 1990 are international treaties under public international law. The international practice proves that the UN puts more emphasis upon the actual capacity to fulfill the functions of a regional organization rather than on formal criteria.

NATO is also a regional organisation within the meaning of Chapter VIII of the United Nations Charter.

It is significant that the United Nations has never denied competence of the regional arrangements or agencies to settle disputes at the regional level.

Although approach of the UN whether regional arrangements and agency meet requirements under Chapter VIII is important, one would suggest that the subjective approach of the State-Parties of regional arrangement or Member-States of regional organization is decisive, if the regional arrangements or agencies meet the requirements provided in Article 52 of the UN Charter.

The criterion of having observed status with the UN General Assembly is referred by some legal scholars in attempting to define regional organizations in the meaning of Article 52 (1) of the UN Charter. Others take the view that the granting of the observer status was not in any way legally linked with Article 52 since it does not specify who is or is not to be admitted as an observer with the United Nations General Assembly. Namely, Article 52 does not stipulate rule precluding regional

political entities which may have conflicting purposes and principles from acquiring the observer status with the UN General Assembly.

Article 53 of the UN Charter deals with the limits of competence of the regional arrangements or agencies in carrying out enforcement action. Its paragraph 1 states that “[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a State.”

The basic idea of this provision is that UN Security Council’s authorization is necessary for regional arrangements or agencies to take enforcement measures. Thus, although the UN Security Council gives the possibility to carry out enforcement action to the regional arrangements or agencies it retains decision-making power on the execution of the enforcement actions itself. For instance, the UN Security Council has charged NATO with the task to take enforcement measures actions against Bosnian/Serbian troops. One of the most important elements of carrying out enforcement action is the determination by the UN Security Council of the existence of a threat to peace, breach of the peace or act of aggression.

Article 54 of the UN Charter is of great importance in cooperating between the United Nations and regional arrangements or agencies in the field of settlement of disputes.

Article 54 of the UN Charter provides that ‘[t]he Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security’. This article requires provision of the UN SC with information with respect to activities being contemplated or already undertaken for the maintenance of international peace and security. It is interesting to examine this provision with regard to rules set out within the CIS.

Two elements of this provision must be distinguished. Namely, Article 54 obliges regional arrangements or agencies to report to the UN Security Council on the one hand on an ‘intended measures’ and

‘measures already undertaken’ by the regional arrangements or agencies on the other hand.

Another significant element of Article 54 is that the UN Security Council shall be fully informed ‘at all times’. This notion in international practice is interpreted as an obligation of the regional arrangements or agencies to inform the UN Security Council permanently on the progress in conflict settlement process. Notably, the purpose of committing the regional agencies to report to the United Nations Security Council is to be fully aware of the ongoing situation in the country concerned to be in a position to control those activities.<sup>12</sup>

The obligation of regional arrangements or agencies under Article 54 of the UN Charter applies to the entire range of activities of regional agencies in the area of securing peace which includes both measures of pacific dispute settlement within the meaning of Article 52 and enforcement measures within the meaning of Article 53 of the UN Charter.

After the general overview of Chapter VIII of the United Nations Charter and the requirements it puts upon regional arrangements or agencies, it is necessary to make a comparative analysis of the United Nations and the Commonwealth of Independent States practice in maintaining international peace and security.

As already stated one of the most important criteria is whether the Commonwealth of Independent States fits the notion of regional arrangements or agencies under Chapter VIII of the UN Charter. At the outset it is to be noted that the CIS meets the requirements of the ‘regional agency’ under the Article 52 of the United Nations Charter since it is a charter-based institution.

Examining paragraph 1 of Article 52, one can identify several criteria to be met by the regional arrangements or agencies in order to settle local disputes at the regional level before referring them to the United Nations, such as regionality and consistency with the purposes and principles of the United Nations.

As far as ‘regionality’ is concerned the membership in the Commonwealth is one of the criteria to determine that the CIS is a regional organization. Historical and cultural relations between CIS Member-States may be also considered as regional unity of these states.

Another element is whether CIS purposes and principles are consistent with the purposes and principles of the United Nations. As

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<sup>12</sup> The Charter of the United Nations: A Commentary, Edited by B. Simma, Oxford University Press, 1995. p. 755-756.

already noted, one of the purposes of the Commonwealth of Independent States pursuant to Chapter 1 (purposes and principles of the Organization) is cooperation among Member-States in ensuring international peace and security and cooperation of CIS Member-States in solving disputes and conflicts among states of the Commonwealth.

As far as consistency of the principles of the CIS with the principles of the United Nations is concerned the CIS Charter stipulates number of generally recognized principles of international law stipulated in the United Nations Charter and other UN documents such as respect of sovereignty, right to self-determination, inviolability of state borders, territorial integrity, non-use of force and the threat to use force against political independence of Member-States, settlement of disputes by peaceful means, non-interference in internal and external affairs of each other, protection of human rights and fundamental freedoms, faithful fulfillment of obligations.

Frequent references to the United Nations as the basis of activity of the CIS in the CIS Charter or subsequent documents confirm the compliance of principles and purposes of the CIS with the those of the UN. Besides, the Concept of Prevention and Resolution of Conflicts on the Territory of Member-States of the Commonwealth of Independent States stipulates that CIS activity on peace-keeping and conflict resolution on the territory of Member-States of the CIS is regulated by the UN Charter, CIS Charter and its other basic instruments, generally recognized principles and norms of international law, relevant resolution of the UN Security Council, OSCE documents, agreements among CIS states, relevant protocols.

Besides, one can also refer to observer status granted to the regional organization to determine consistency of its purposes and principles with the purposes and principles of the United Nations. As known, on 24 March 1994 UN General Assembly adopted a resolution granting the Observer Status to the Commonwealth of Independent States. One could strongly suggest that the United Nations would abstain from granting the Commonwealth of Independent States the observer status considering the CIS as an organization having the purposes and principles contrary to the purposes and principles of the United Nations.

Apart from this general analysis aiming at proving that the CIS is a regional organization under Chapter VIII of the UN Charter, the Concept of Prevention and Resolution of Conflicts in the Territory of Member-States of the Commonwealth of Independent States of 19 January, 1996 directly provides that the Commonwealth of Independent States is a

regional organization, taking necessary measures to solve conflicts on the territories of its Member-States in accordance with Chapter VIII of the UN Charter. This provision puts light on any doubt whether the Commonwealth of Independent States is a regional agency with the purposes and principles consistent to those of the United Nations.

As far as authorization mechanism under Article 53 of the United Nations Charter is concerned, Chapter 2 (resolution of military conflict) of the Concept of Prevention and Resolution of Conflicts on the Territory of Member-States of the Commonwealth of Independent States of 19 January 1996 is of particular importance. The Concept provides that the enforcement action on conflict resolution (enforcement to peace) is permitted only in case of existence of relevant authorization of the UN Security Council in accordance with the UN Charter.

Logically, if there is no authorization of the UN Security Council to carry out enforcement action under Chapter VII of the UN Charter, no enforcement measures can be taken by the CIS. Thus, the CIS meets the requirements of Article 53 of the UN Charter with regard to UN Security Council authorization to take enforcement action under Chapter VII of the UN Charter.

Although, as noted, the mandate of the CIS to carry out enforcement action requires UN Security Council authorization, CIS instruments, including the Concept, fails to provide any legal criteria to define 'appropriateness' of the CIS action with regard to enforcement actions.

The importance of cooperation of the Commonwealth of Independent States with other international organizations, in particular with the United Nations is emphasized in Chapter 4 (Relations of the CIS with the United Nations and Organization for Security and Cooperation in Europe) of the Concept of Prevention and Resolution of Conflicts on the Territory of Member-States of the Commonwealth of Independent States providing that in its activity on conflict settlement, carried out in accordance with the Chapter VIII of the UN Charter, Commonwealth of Independent States closely cooperates with other international organizations, particularly with the United Nations and OSCE. Furthermore, it is stated that these cooperation may be carried out on the following directions:

1. preparation and conducting consultations among the representatives of the Commonwealth, UN and OSCE on different levels;
2. rendering assistance to peace-keeping efforts of various missions and representatives of the United Nations and OSCE;

3. cooperation in promoting the political settlement process, including promotion of negotiations between the conflicting parties;

4. submission of information to the UN Security Council and relevant bodies of OSCE about the decisions relating to carrying out peace-keeping operations;

5. submission to the UN Secretary-General of necessary information to enhance effectiveness of preventive diplomacy and other kinds of peace-keeping activities;

6. discussion in the UN Security Council and relevant bodies of the OSCE on the issues relating to conflict resolution on the territory of Member-States of the Commonwealth;

7. interaction, coordination and cooperation between Collective Peace-Keeping Forces, Groups of Military Observers and missions of observers of the UN and OSCE;

8. participation in elaborating international legal and conceptual basis of peace-keeping activity.

Paragraph 4, Chapter of 4 of the Concept requires a particular attention. This provision reflects Article 54 of the United Nations Charter committing regional organizations to keep the UN Security Council informed on their activities for the maintenance of international peace and security. Besides, paragraph 4 obliges the CIS to report not only the United Nations Security Council on the maintenance of international peace and security but also the Organization for Security and Cooperation in Europe.

The Concept also provides that in their contacts on the international arena on the issues of conflicts on whose settlement is dealt by the Commonwealth as a regional organization, Member-States of the Commonwealth will take agreed policy. They will exchange information on similar contacts and will consult on issues requiring additional steps in the interests of securing success of efforts of the Commonwealth on conflict resolution.

There is a sound ground to state that this provision limits the freedom of the Member-States of CIS in attempting to seek means of conflict resolution in other regional organization to which these states may be also members to. It is interesting what will happen if one or several CIS Member-States will give priority to the OSCE as regional agency under Chapter VIII of the UN Charter in the maintenance of international peace-and security rather than to the CIS.

After analysis of the instruments adopted within the CIS some conclusions can be made with regard to the relationship between the Commonwealth of Independent States and the United Nations:

1. Referring to the Charter of the Commonwealth of Independent States and other instrument adopted within the Organization CIS meets the requirements of Chapter VIII of the United Nations Charter and may act as a regional agency under Article 52 of the UN Charter..

2. Cooperation between CIS and UN as well as with other international organizations is carried out through:

- a) consultations with the UN and OSCE on various levels;
- b) assistance in the peace-keeping efforts of various missions and representatives of UN and OSCE;
- c) cooperation for political settlement of dispute, including assistance to the negotiations between the conflicting parties;
- d) reporting to the UN SC and appropriate bodies of OSCE on decisions related to the peace-keeping operations;
- e) reporting to the Secretary-General of the UN and to the OSCE on necessary measures to enhance effectiveness of preventive diplomacy and peace-keeping activity etc.

CIS documents explicitly state that the peace-keeping may be utilized with the consent of the conflicting parties and UN Security Council's authorization is not required. Although when the operation assumes a character of enforcement action carried out against the will of the parties of the conflict, the authorization of the United Nations Security Council becomes necessary under Article 53 of the UN Charter.

CIS meets the requirements of the UN Charter with regard to reporting to the UN on measures regarding maintenance of peace and security. It can be concluded that the obligation of the CIS to inform the UN does not only concern measures undertaken with regard to conflict resolution under Chapter VI of the UN Charter, but also to enforcement actions under Chapter VII of the UN Charter.

#### **IV. Case-Study: CIS Peace-Keeping Practice**

Georgia and Tajikistan are test-cases for examining the CIS peace-keeping practice both from theoretical and practical points of view. The purpose of the analysis is to show how the rules and concepts elaborated within the CIS are being applied to different situations.

A brief overview of the conflict in Abkhazia - a western region of Georgia, is necessary. The Conflict in Abkhazia began with the attempts of the local authorities to separate from Georgia. It escalated into armed

confrontations particularly strained by 1992. A cease-fire agreement was reached on 3 September 1992 among Georgia, the de-facto leadership of Abkhazia and the Russian Federation. The agreement provided that the territorial integrity of Georgia shall be ensured. In October 1992 the fighting resumed. In May 1993 the UN Secretary-General appointed a Special Envoy for Georgia. In July 1993 an Agreement of Cease-Fire and Mechanism of Control over its Observance has been concluded. It states that the parties deem it necessary to invite and utilize in the zone of the conflict international observers and peace-keeping forces.<sup>13</sup>

The UN Security Council on 24 August 1993 (S/Res/858 (1993)) established UNOMIG (United Nations Observer Mission in Georgia) to monitor implementation of July 1993 Agreement. UNOMIG was entrusted with the following tasks:

- “1. to verify compliance with the Cease-fire Agreement of 27 July 1993 with special attention to the situation in the City of Sukhumi;
2. to investigate reports on cease-fire violations and to attempt to resolve such incidents with the parties involved;
3. to report to the Secretary-General on the implementation of its mandate including, in particular, violation of the Cease-fire agreement.”

In the same resolution the UN Security Council called upon the parties involved to respect and implement the Cease-fire Agreement of July 1993 and to cooperate fully with UNOMIG and ensure the safety of all United Nations personnel and all other peace-keeping and humanitarian personnel within Georgia (para. 7). The resolution also provided a call upon the Government of Georgia to conclude with the United Nations a status of forces agreement to facilitate deployment of UNOMIG. For this purpose diplomatic notes constituting an agreement have been exchanged between the UN Secretary-General and the Georgian Foreign Minister. It provides for an international status of the UNOMIG and its personnel with whole range of immunities usually applied to the UN personnel.

In its Resolution N 876 of 1993 (S/Res/876 (1993)) the UN Security Council affirmed the sovereignty and territorial integrity of Georgia and reaffirmed its strong condemnation of the grave violation by the Abkhaz side of the Cease-fire Agreement of 27 July 1993.

Cease-fire provided by Agreement of July 1993 was broken in September, 1993. Another agreement has been concluded on a cease-fire and separation of forces in May 1994. Significantly, the

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<sup>13</sup> T. Nadareishvili, *Genocide in Abkhazia, 'Samshoblo'*, Tbilisi 1996. p. 266.

Communiqué on the Second Round of Negotiation between Georgian and Abkhaz sides in Geneva held on 11-13 January, 1994 in paragraph 2 provided that conflicting parties expressed their consent to introduce into the zone of conflict the UN peace-keeping forces or other forces sanctioned by the UN.<sup>14</sup> Notably, the second part of this provision of the Communiqué seems legally incorrect since there is no necessity under Chapter VI of UN Charter to sanction introduction of peace-keeping forces (for example, CIS peace-keeping forces) into the zone of conflict.

In its resolution (S/RES/937 (1994)) of 21 July, 1994 the UN Security Council took note of the address of the Head of State of the Republic of Georgia of 16 May 1994 and that of the Chairman of the Supreme Council of Abkhazia of 15 May 1994 to the Council of Heads of the Commonwealth of Independent States and recognizing that the deployment of a CIS peace-keeping forces to the area is predicated upon the request and consent of the parties to the conflict. Therefore, necessary requirement provided for in Chapter VI of the UN Charter has been fully met.

In the same Resolution the UN Security Council determined the UNOMIG mandate as follows:

a). to monitor and verify the implementation by the parties of the Agreement on Cease-fire and Separation of Forces signed in Moscow in 14 May 1994;

b). to observe the operation of the peace-keeping of the Commonwealth of Independent States (CIS);

c). to verify, through observations and patrolling, that troops of the parties do not remain in or re-enter the security zone and that heavy military equipment does not remain or is not reintroduced in the security zone or the restricted weapons zone;

d). to monitor the storage areas for heavy military equipment withdrawn from the security zone and the restricted weapons zone in cooperation with the CIS peace-keeping force as appropriate;

e) to monitor the withdrawal of troops of the Republic of Georgia from the Kodori valley to places beyond the boundaries of Abkhazia, Republic of Georgia;

f). to patrol regularly the kodori valley;

g). to investigate, at the request of either party or the CIS peace-keeping force or on its own initiative, reported or alleged violations of the Agreement and to attempts to resolve or contribute to the resolution of such incidents;

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<sup>14</sup> T. Nadareishvili, *Genocide in Abkhazia, 'Samshoblo'*, Tbilisi 1996. p. 289.

h). to report regularly to the Secretary-General within its mandate, in particular on the implementation of the Agreement, any violations and their investigation by UNOMIG, as well as other relevant developments;

i). to maintain close contacts with both parties to the conflict and to cooperate with the CIS peace-keeping forces and by its presence in the area, to contribute to conditions conducive to the safe and orderly return of refugees and displaced persons.

Russia has been assigned the role of facilitator of the conflict resolution in Georgia.

Although for the time being negotiations between Georgian and Abkhaz sides are in progress there are no visible results. The primary reason of failure to reach agreement on fundamental issues is the destructive position of the Abkhaz side. The UN Security Council has several times condemned a non-constructive position of the Abkhaz de-facto authorities. As a result of the conflict 300.000 predominantly Georgian population was displaced from places of residence. The UN Security Council emphasized the necessity to achieve comprehensive political settlement including the political status of Abkhazia within the State of Georgia, in full respect for sovereignty and territorial integrity of Georgia within its internationally recognized borders.

The Georgian side expresses its readiness to grant to Abkhazia the broadest autonomy status as possible within the State of Georgia, while Abkhaz side takes the position that relations between Georgia and Abkhazia should be established as between two sovereign entities.

The mandate of the UNOMIG and CIS Peace-Keepers has been extended for several times and currently it is prolonged until 31 July 1999. It is important to note the decisions to postpone their mandates are made by both conflicting parties, which is an important criterion to infer character of dispute settlement mechanism under Chapter VI of the United Nations Charter.<sup>15</sup>

Therefore, two international organizations are involved in the conflict in Abkhazia, Georgia such as the United Nations and the Commonwealth of Independent States. They have their own mandates and therefore are independent, although the UN and the CIS closely cooperate and coordinate their activities.<sup>16</sup> Thus, in the zone of conflict

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<sup>15</sup> Information Bulletin of the Council of Heads of States and Council of Heads of Government of the CIS. Minsk, 1995 N 2(19) p. 73.

<sup>16</sup> Addendum to the Report of the Secretary-General concerning the Situation in Abkhazia, Georgia, S/1994/529/Add.1, 6 June 1994.

UN military observers and CIS peace-keeping military contingents are deployed.

The mandate of the CIS Collective Peace-Keeping Forces to carry out peace-keeping operations in the zone of the conflict of Abkhazia, Georgia has been amended by the Council of Heads of State of the Commonwealth on 26 May, 1995. It states that the CIS peace-keeping forces and groups of military observers are entrusted with the following tasks:

- a) securing strict observance of cease-fire, establishment of peace, prevention of resuming of military actions in the zone of conflict through separation of military formations of the conflicting sides;
- b) creation of conditions for safe return of displaced persons;
- c) observance over implementation of the agreements reached between the parties;
- d) promotion of rehabilitation of districts and securing humanitarian assistance, carrying out anti-mining work;
- e) securing safety of the key system of important objects;
- f) promotion over observance of norms of international humanitarian law and human rights;
- g) close cooperation with the UNOMIG;
- h) control over withdrawal of voluntary military formations consisting of the persons arriving from the outside of Abkhazia;
- i) control of the heavy military equipment in cooperation with UNOMIG.

The decision also provides that the list of functions are not exhaustive and may be amended upon the consent of both parties.<sup>17</sup>

As for the criterion of formal compatibility of the CIS peace-keeping with the UN system one can also refer to the majority of decisions taken by the Heads of States of the CIS which clearly provide for the necessity of submitting information about their decisions to the UN Security Council. Thus, the consent of commencing peace-keeping operations as well as decisions to postpone their mandates are expressed by the conflicting parties.<sup>18</sup>

The fact that the CIS can act as a regional organization under Chapter VIII of the UN Charter is also confirmed by the circumstance

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<sup>17</sup> Information Bulletin of the Council of Heads of States and Council of Heads of Government of the CIS. Minsk, 1995 N 2(19) p. 76-77.

<sup>18</sup> Information Bulletin of the Council of Heads of States and Council of Heads of Government of the CIS. Minsk, 1997 N 2(26) p. 187.

that the UN frequently notes in a positive manner the role of the CIS played in conflict resolution process.

With regard to the nature of resolutions it is noteworthy that the mandates of the UNOMIG and CIS peace-keeping forces are limited by observance over implementation and promotion of peaceful conflict resolution which meets the requirements of Chapter VI of the UN Charter and does not include enforcement measures under Chapter VII of the UN Charter.

Conflict in Tajikistan is another test case examined in this research. The basic reason for the conflict in Tajikistan is the fight for power. The primary contradiction existed between the President elected by the Supreme Council of the Republic of Tajikistan in 1992 and political opposition referred to as United Tajik Opposition.

Like in the case of the Conflict in Abkhazia both the Commonwealth of Independent States and the United Nations are directly involved in the conflict resolution.

The Council of Heads of States of the CIS in the Declaration on the situation in Tajikistan of 22 January 1993 supported application of the Supreme Council of the Republic of Tajikistan requesting introduction of CIS collective peace-keeping forces in Tajikistan. The Heads of States supported the request by sending CIS peace-keepers to Tajikistan.<sup>19</sup> The decision on establishment of this forces and their functioning in Tajikistan was adopted on 24 September 1993.<sup>20</sup> The introduction of the collective peace-keeping forces contributed to the promotion of the dialogue between the leadership of Tajikistan and the opposition.

Upon the request of the parties in conflict the UN Security Council made a decision to establish a United Nations Mission of Observers in Tajikistan (UNMOT) with the following mandate:

- a) to assist the Joint Commission to monitor the implementation of the Agreement of 17 September 1994;
- b) to investigate reports on cease-fire violations and to report on them to the United Nations and to the Joint Commission;
- c) to provide its mediation in negotiations as stipulated in the Agreement of 17 September 1994;

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<sup>19</sup> Information Bulletin of the Council of Heads of States and Council of Heads of Government of the CIS. Minsk, 1993 N 1(9) p. 43.

<sup>20</sup> А. А. Ааеіоџçааâ, Ìèđіòâіđ÷аñеâÿ äâÿòâеüіñòü Đіññеè â оџââеèèđіаâіеè аііџòæâііúò еііџеèеòіâ â ÑІĂ, â: ÌÆІІ, N 4, 1994, ñòđ. 26-27.

d) to maintain close contacts with the parties to the conflict, as well as close liaisons with the CSCE Mission in Tajikistan and with the Collective Peace-keeping Forces of the Commonwealth of Independent States in Tajikistan and with the border forces;

e) to provide support for the efforts of the Secretary-General's Special Envoy;

f) to provide political liaison and coordination services, which could facilitate expeditions humanitarian assistance by the international community.<sup>21</sup>

Heads of States of the CIS making a decision on postponement of stay of the CIS peace-keeping force in the territory of the Republic of Tajikistan referred to the request of the President of the Republic of Tajikistan.

As provided in the Interim Report of the Secretary-General on the Situation in Tajikistan of 13 August 1998 (S/1998/754) provides that the operation was carried out by the Collective Peace-keeping forces of the CIS and monitored by UNMOT.

One of the most important elements in conflict resolution process was the General Agreement on the Establishment of Peace and National Accord in Tajikistan signed by the conflicting parties on 27 June, 1997 which includes several legal instruments concluded between the parties. The General Agreement provides that the conflicting parties agreed to apply to the UN Secretary-General and Chairman-in-Office of OSCE to render assistance in implementing the Agreement.<sup>22</sup>

From the legal point of view the provision of the Agreement providing for its registration at the UN Secretariat in accordance with Article 102 of the UN Charter would bring about legal misunderstanding, since it is only international treaties under the Vienna Convention on the Law of Treaties, 1969 require registration at the UN Secretariat. Because the parties to this agreement cannot conclude a treaty under public international law, one could claim a legal mistake.

The General Agreement also stipulates that the parties apply to the UN to monitor implementation of the agreement, render expert assistance and mediate in the conflict settlement process.

The peace agreement between the conflicting parties resulted in the expansion of the mandate of the UNMOT by the UN Security

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<sup>21</sup> UN Security Council Resolution 968 (1994), S/RES/968 (1994).

<sup>22</sup> Moscow Journal of International Law, N1/98/29. p. 247-248.

Council. Pursuant to the UN Security Council Resolution N 1138 (1997) it decided that the mandate of the UNMOT shall be as follows:

To use its best efforts to promote peace and national reconciliation and to assist in the implementation of the General Agreement and, to this end, to

a) Provide good offices and expert advice as stipulated in the General Agreement;

b) Cooperate with the CNR and its subcommissions, and with the Central Commission on Elections and the Holding of a Referendum;

c) Participate in the work of the Contact Group of guarantor States and organizations and to serve as its coordinator;

d) Investigate reports on cease-fire violations and report on them to the United Nations and the CNR;

e) Monitor the assembly of UTO fighters and their reintegration, disarmament and demobilization;

f) Assists in the reintegration into governmental power structures or demobilization of ex-combatants;

h) Maintain close contacts with the parties, as well as cooperative liaison with the CIS Peace-keeping Forces, the Russian border forces and the Mission of the Organization for Security and Cooperation in Europe (OSCE) in Tajikistan.<sup>23</sup>

At the same time it is to be noted that not only the UN and the CIS but also OSCE is involved in the conflict resolution process.

Thus, the CIS peace-keeping operation in Tajikistan meets the formal requirements for conducting peace-keeping operations provided for in the UN Charter and the CIS documents.

As far as the initial intent to analyze the situation in Moldova is concerned, after in-depth analysis of the conflict settlement in this country, it was revealed that the UN Security Council did not take part in the conflict resolution and therefore, the decision was to abstain from examining this case.

## **V. CIS Peace-Keeping Operations in the Context of International Law**

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<sup>23</sup> UN Security Council Resolution 1138 (1997), S/RES/1138 (1997).

The principles of peace-keeping operations such as legality and impartiality are of paramount importance in assessing peace-keeping operations conducted by regional arrangements or agencies.

At the outset, principle of legality will be examined with particular reference to the CIS peace-keeping practice. One of the most important elements of the principle of legality is whether the peace-keeping operation is conducted in compliance with the United Nations Charter which means that the operation is established in accordance with the requirements of the UN Charter such as conducting peace-keeping operation by the regional arrangements or agencies provided that such arrangements or agencies and its activities are consistent with the purposes and principles of the United Nations Charter.

Apart from this meaning, principle of legality in international practice also denotes representation of the will of the international community of states as a whole rather than the interests of one or several states.

Besides, the principle of legality is of importance in terms of composition of a peace-keeping operation, usually consisting of personnel from various States.

As far as the principle of impartiality is concerned, one would refer to the neutrality and objectivity of the international personnel conducting a peace-keeping operation. This would mean not only formal impartiality as it may be provided for in the legal instruments adopted but also actual neutrality and objectivity in its every day activity giving no advantages to any of the conflicting parties as a result of the peace-keeping operation.

After in-depth insight of the CIS legal instruments, one would take a view that the formal requirements of the UN Charter are met. On the one hand, CIS peace-keeping system is in compliance with the criterion of 'regional agency'. On the other hand, purposes and principles of the Commonwealth of Independent States as provided in the CIS Charter and other instruments are consistent with the purposes and principles of the UN Charter.

As far as such element as the will of the whole international community is concerned, one would come to a more pessimistic conclusion. For example, although the peace-keeping operation in Abkhazia is conducted by the Commonwealth of Independent States actually only Russian troops carry out peace-keeping operations. Thus, only Russia out of all CIS Member-States is directly involved in peace-keeping operations.

There is a lot of criticism towards Russia which is not the only country directly involved in peace-keeping operation in Abkhazia, but also the country assigned the role of a facilitator in the conflict resolution process.

Many legal and political scholars doubt the role of Russia in conflict resolution generally and particularly in Georgia. The primary reason for this criticism is that the state which has political and economic interests in the country with the ongoing conflict should not be directly involved in the conflict resolution process since its attitude to the outcome of the conflict will be preconditioned by its own interests rather than interests of the international community as a whole. The impartiality of the state with historical interests to the conflicting country and existence of military bases in that country should be doubted while assessing its neutrality to the conflict.<sup>24</sup>

As noted, composition of the peace-keepers is also an important element of legality assessment. While CIS peace-keepers are only mononational (Russians) putting their impartiality under doubt, the same cannot be said with regard to the UN observers working in these regions. For instance, composition of the United Nations Observer missions in Georgia and Tajikistan is truly multinational. There are 102 observers in Georgia from 23 countries and 170 observers in Tajikistan from 14 States.

Thus, the CIS peace-keeping in practice raise many doubts as to its neutrality and impartiality.

## **VI. Concluding Observations**

After analysing the CIS peace-keeping one could come to the conclusion that the Commonwealth of Independent States meets the formal requirements of a regional agency under Chapter VIII of the UN Charter.

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<sup>24</sup> V. Keshelava, Conflict in Abkhazia (Negotiations versus Resolution), in: Ethno-Political Conflicts: International Legal Aspects and Constitutional Basis for their Resolution, Tbilisi, 1997. p. 108-109. See also Report of the Secretary-General concerning the situation in Abkhazia, Georgia, S/1997/558, 18 July 1997.

The preconditions for conducting peace-keeping operations by the Commonwealth of Independent States can be summarized as follows: conclusion of a cease-fire agreement between conflicting parties and an express political will to solve conflict by political means; consent of the conflicting parties to conduct a peace-keeping operation. Importantly, the CIS instruments provide for the necessity of immediate conveying of information to the UN Security Council and Chairman-in-Office of the OSCE on the decision taken on carrying out a peace-keeping operation.

Granting the CIS peace-keepers international status is also in full compatibility with the international practice. Likewise the international practice, the CIS peace-keepers are not allowed to participate directly in military conflicts in the interests of one of the conflicting parties.

As far as functions of the CIS peace-keeping operations are concerned they are also in compliance with the UN practice consisting primarily of monitoring over implementation of the cease-fire agreements and assistance to the conflicting parties in peaceful conflict resolution.

Although the system of conducting peace-keeping operations by the Commonwealth of Independent States has been utilized in practice as a mean of conflict resolution under Chapter VI of the UN Charter, the system of taking coercive measures under Chapter VII of the UN Charter has already been provided in one of the CIS instruments. No enforcement action has been taken by the CIS so far. Importantly, the CIS instrument explicitly stipulates the requirement of requesting authorization of the UN Security Council.

Although formally the CIS instruments are in compatibility with the UN requirements, the practice of CIS peace-keeping operations is still unsatisfactory. The basic principles such as legality and impartiality in the context of CIS peace-keeping operations brought about many doubts. In practice only Russia with its peace-keeping forces is involved in these operations, thus failing to meet the criteria of international character of peace-keeping with multinational personnel. A state having its own strategic interests in the conflicts excludes its neutrality and objectivity.

The practice of deployment of the United Nations Observer Missions and the Collective Peace-Keeping forces of the Commonwealth of Independent States is significant in term of effectiveness of the peace-keeping operation in the zones of conflicts. There is a sound ground to state that the conflict resolution process in the Commonwealth of Independent States although successful with regard to localization of the conflicts and cease-fire, failed to settle the disputes. Due to these factors

the CIS Member-States can seek new possibilities of cooperation in the field of conflict resolution with other regional organizations such as OSCE and NATO.