
LEGISLATIVE NEWS

Agreement between the Government of Georgia and the Government of the United States of America on Defence Cooperation

NINO CHACHAVA*

The Agreement between the Government of Georgia and the Government of the United States of America on Defence Cooperation (the Agreement) was signed on 10 December 2002.

Under this Agreement the U.S. Government is authorised to have access to and use certain facilities and areas for the accommodation of United States military and civilian personnel and various activities related with the operation of vehicles, vessels and aircraft. These facilities and areas shall be used for the above and other purposes only on the basis of mutual agreement with the Georgian party.

Georgia will provide to U.S. Forces logistic support, the scope of which is stipulated by an annex to the Agreement. The annex encompasses the following categories of logistic support: accommodation; maintenance and repair services; water, drinkable, and non-drinkable; utilities and services; medical support and services; land, air and sea transportation services. The U.S. Government will pay reasonable costs associated with the provision of logistic support at such rates and charges that are no less favourable than those available for the Georgian armed forces or Government. The United States military and civilian personnel have a duty to respect the laws of Georgia and not to interfere in the internal affairs of the country.

The United States military and civilian personnel may enter and exit Georgia without passports and visas, with identification cards and with individual or collective movement orders. United States contractors shall not be required to have visas either.

The United States military and civilian personnel enjoy the status, provided for administrative and technical staff by the Vienna Convention on Diplomatic Relations (1961). This status involves a number of privileges and immunities.

Recognising the particular importance of disciplinary control over the United States military and civilian personnel, Georgia authorises the U.S. Government to exercise exclusive criminal jurisdiction over such personnel.

* First Secretary of the International Law Department of the Ministry of Foreign Affairs of Georgia.

Pursuant to the Agreement, the United States military and civilian personnel may possess and carry arms and wear uniforms while performing official duties in Georgia.

Acquisition of articles and services by or on behalf of U.S. forces shall not be subject to any taxes or duties. Also exempted from taxation is any income received from the United States or from sources outside Georgia by the United States military and civilian personnel and their contractors. This provision is not applicable to Georgian nationals. The United States personnel shall not be liable to pay any tax or similar charges on the ownership, possession or use of the property imported into Georgia or acquired therein during the term of the Agreement.

The U.S. forces and their contractors may import into Georgia any equipment, supplies, material or services required for their operations in Georgia. The importation and re-exportation of any articles brought into Georgia shall not be subject to any license, other restrictions, customs duties and taxes.

Aircraft, vessels and vehicles operated by or for U.S. forces may enter, exit, and move freely within the territory of Georgia. Such aircraft, vessels and vehicles shall be exempt from any taxes and free from inspection.

The Georgian government shall secure the safety and security of the United States military and civilian personnel and their property, while the U.S. forces shall provide internal security of those facilities and areas, assigned to their exclusive use.

The United States military and civilian personnel may use public utilities on terms and conditions, no less favourable than those available to the Georgian armed forces or Government. They are also allowed to operate their own telecommunication systems, which includes the right to use radio spectrum and frequencies. The above should be done in full compliance with effective Georgian legislation and in agreement with the respective Georgian authorities.

Georgia shall compensate the United States Government for the residual value, if any only in the event that U.S. forces discontinue the use of a facility at the initiative of Georgia.

Any dispute regarding the interpretation or application of this Agreement will be resolved by consultations between the parties and will not be referred to any national or international tribunal or any third party for settlement.

According to the final provisions, the Agreement shall enter into force upon the date that Georgia notifies the United States of America that all internal procedures as are necessary to give effect to the Agreement in Georgia have been satisfied, and shall have an initial term of one year. Thereafter it shall continue to be in force unless terminated by either party on written notice to terminate the Agreement. Amendments to the Agreement shall be made in accordance with the procedure, agreed upon for the entry of the Agreement into force.

According to the Georgian Constitution and Article 14 of the Law of Georgia on International Agreements, military agreements are subject to ratification by the Georgian Parliament as a binding prerequisite for the entry of the above-discussed Agreement into force. Consequently on 21 March 2003 Parliament ratified it and the Agreement entered into force from the date of notification on ratification by Georgia, i.e. from 25 March 2003.

The Agreement envisages a number of privileges and immunities for the United States military and civilian personnel, and provides for a beneficial tax regime. This caused certain disagreements upon its ratification.

Largely disputed were the provisions of Chapter VII of the Agreement, under which the United States military and civilian personnel, as well as other persons enjoy the right to carry arms in Georgia. Equally contentious were the provisions related to visa-free entry and exit and the movement of vehicles. However, under the Agreement among the States parties to the North Atlantic Treaty and the other States participating in the Partnership for Peace regarding the status of their forces, made on 19 June 1995, the armed forces of the countries of the North Atlantic Treaty enjoy this right. Georgia ratified the Agreement on 1 May 1997 and it came into force on 18 June 1997. The right is also provided for by the Agreement on Training and Equipment made between Georgia and the United States through the exchange of notes, which was ratified by the Georgian Parliament on 12 April 2002. The Agreement is in force and is an integral part of Georgian legislation. As regards the other privileges and immunities, the United States military and civilian personnel were granted the status provided for the administrative and technical staff by Vienna Convention on Diplomatic Relations (1961) under the Agreement on Humanitarian and Technical and Economic Promotion made between the governments of the United States and the Republic of Georgia on 31 July, 1992. This Agreement envisages a beneficial tax regime as well.

Certain differences of opinion were caused by Article 10 of the Agreement, under which U.S. forces may import into Georgia any equipment, supplies, material or services. Some considered that the phrase "any equipment" was very general and authorised the import of prohibited weapons and equipment. However, such a supposition is groundless as no such action is allowed either by the Agreement itself or by Georgian law and other international agreements. This Article means only such equipment that is necessary for the U.S. armed forces activities in Georgia. Furthermore, according to Article 4 of the Agreement, the United States military and civilian personnel have a duty to respect Georgian laws. Additionally, by virtue of both bilateral and multilateral agreements, Georgia and the United States have assumed the international obligation to cooperate in the field of the prohibition of weapons of mass destruction and are parties to international conventions on the prohibition of nuclear, bacteriological, toxic and chemical weapons.

Military cooperation between Georgia and the United States dates back to 1997. However, the majority of agreements concern specific military cooperation, while the Agreement on Defence Cooperation, signed on 10 December 2002 could be considered as a framework instrument in the military field. Its signature is regarded as the necessary legal precondition for the transfer to a new stage of strategic partnership in Georgian-U.S. relations.

At this important stage of reforming the Georgian armed forces attention is accorded to the intensification of cooperation between the two states and the establishment of basic principles. This is the purpose of the Agreement.

Furthermore, the Agreement is regarded as one of the most important elements for the successful implementation of the Georgian-American "train and equip" programme.

The Agreement reinforces the military legal framework between Georgia and the United States and enhances the speedy and efficient reform of Georgia's armed forces and security infrastructure, introduction of international standards into of Georgian army. This makes possible Georgia's integration into European and North Atlantic structures - a foreign policy priority.