



# SECURITY COUNCIL REPORT UPDATE REPORT



23 August 2007 No. 2

## GEORGIA

### Expected Council Action

In a letter on 8 August to the president of the Security Council, Georgia called for a meeting of the Council stating that a Russian missile had impacted in its territory on 6 August 2007. The Council has since had two informal briefings on the missile incident in Georgia.

The Council is not expected to make a decision on the Georgian request until more information is available from on-going investigations.

### Recent Developments

On the evening of 6 August 2007, according to Georgian authorities, violations of Georgian airspace occurred. They reported subsequently finding a guided missile which had fallen in an area in Georgia near South Ossetia (a region of Georgia which sought to break away in the early 1990s.) No one was injured by the missile which did not explode. The Georgian authorities alleged that the missile was linked to the violation of Georgian airspace and that their radar tracks showed the aircraft as having entered the airspace from Russia.

A Joint Monitoring Team (JMT) made up of Russian, South Ossetian and Georgian officials conducted interviews with observers in the area. The JMT reported aircraft movement consistent with the Georgian allegations and identified the missile as a guided missile but could not identify the missile type or the number or type of aircraft. The Organisation for Security and Cooperation in Europe (OSCE) later released a report based on the findings from the monitoring team.

On 7 August the Russian ambassador in Georgia was summoned to the Georgian foreign ministry. According to the ministry's website Georgia protested the "violation of the Georgian-Russian State border, intrusion into Georgian airspace and the bombing of the Georgian territory by Russian military aircraft" and demanded an explanation from Russia. On 7 August Russia said that it was not involved in the incident and that no Russian aircraft had made any flights in the airspace adjacent to Georgia at that particular time.

On 8 August Georgia requested the president of the Council to convene a meeting of the Council to address the issue. The Council considered the letter on 9 August under "other matters" after which it decided that it would wait for further information before taking any action.

Georgia asked for an independent international investigation. In response, Latvia, Lithuania, Sweden and the US sent experts who formed an International Group of Experts (IGE). From 12 to 14 August the IGE reviewed the official reports and radar information and visited the missile impact site and a Georgian air force base. Georgia released the IGE's report on 16 August. The experts concluded that

the missile was a Russian-made, anti-radar Raduga Kh-58. They were not able to identify the aircraft but said that it flew from Russian airspace into Georgian airspace three times. It ruled out any possibility of the missile being dropped from a Georgian aircraft as none of Georgia's planes are able to launch Kh-58 missiles.

The Georgian ambassador to the UN met with the Secretary-General on 15 August and gave him an advance copy of the IGE report. He also presented the Secretary-General with a letter from the Georgian foreign minister asking for a meeting of the Group of Friends of Georgia (comprised of the US, the UK, France, Germany, Russia and in New York, Slovakia) on the margins of the General Assembly.

The next day, the Assistant Secretary-General for Peacekeeping, Hedi Annabi briefed the Council under "Other Matters" on what the Secretariat knew about the incident based on information from the UN peacekeeping mission in the area, UNOMIG.

At the end of last week several new investigations began. High-level Russian military experts went to Georgia from 16 to 17 August to examine evidence gathered by Georgian investigators. Following this the chief of staff of Russia's air force who was part of the team suggested that Georgia might have planted the missile to disrupt a planned meeting in South Ossetia. The Russian ambassador to the UN on 21 August disputed the findings of the Georgian and IGE investigation and called the incident a deliberate provocation by Georgia.

On 17 August the OSCE appointed Miomir Zuzul, a former Croatian foreign minister as special envoy to look into the 6 August missile incident. Zuzul will be meeting with the Georgian and Russian authorities this week. Last weekend a second group of international experts (from the UK, Estonia and Poland) went to Tbilisi to investigate the incident. Their findings corresponded with the IGE report.

Georgia reported a second incursion into their airspace coming from Russia on 21 August and has demanded an explanation from Russia. Russia has denied that there were any Russian air force planes flying near the Georgian border on that date.

## Options

Council members have a range of options once the investigations are complete, including:

- Decide not to take up the issue. (This is a possible option. There are many examples of the Council deciding not to respond to complaints by member states regarding action by the military forces of neighbouring states, including in cases much more serious than the current one. Many factors affect such decisions including the quality of available information, the seriousness of the incident, and whether under the UN Charter there is a real likelihood that the incident will endanger international peace and security. Wider issues such as the relative importance of the issue in terms of the Council's overall workload and political judgements also inevitably play a role.)
- Agree to hold a closed formal meeting to hear the Georgian complaint and Russian response. (This is a possible option once the investigations are complete.)
- Agree to an open formal meeting at which other Council members would also state their views publicly.
- Agree to discuss the matter in informal consultations only.
- Agree that Council members, in informal consultations, would request the Secretary-General to ask the Group of Friends of Georgia to find ways to repair relations between Georgia and Russia

and for the president of the Council to brief the media accordingly.

## **Key Issues**

The main issue for the Council is whether it should seek to take up the issue on its agenda following the conclusion of the investigations. An important issue lying behind such a decision is the assessment of whether this incident will continue to be a situation likely to endanger international peace and security.

In this regard it is important to recall a previous incident—the rocket firing incident into the Kodori Gorge that took place in March 2007. A Joint Fact-Finding Group made up of officials from Georgia, Abkhazia, Commonwealth of Independent States (CIS) peacekeeping forces and the UNOMIG set up in March to investigate the incident released its report on 14 July. That report concluded that there was not enough evidence to determine the firing range of the rockets and the location of launch sites or to identify the number and type of helicopters. In that case the Council chose to let the matter lie. A related question, of course, is whether this second incident might strengthen the case for a discussion of the August event.

A second key issue is the procedural aspect of any decision for the Council to meet to consider the Georgian request. The vast majority of Council meetings are convened by consensus—a process of prior informal agreement to the draft agenda in informal consultations is often used. In effect this is to test that there is no objection to adoption of the proposed agenda. If there is an objection Council members have the option either of deferring the proposal or proceeding under the Provisional Rules of Procedure. If some members wish to proceed to have a meeting the focus then shifts from informal consultations to the Council chamber.

Under rule 2 of the Provisional Rules of Procedure, the president “shall call for a meeting of the Council” at the request of any member. Therefore, a member who wants to discuss the incident in Georgia would write to the president to request a meeting and that the incident be put on the agenda for that meeting and that Georgia be invited to participate under rule 37. The Council would then face a vote on the adoption of the agenda. (A case with some procedural similarity occurred in 2005 on Zimbabwe, although in that case, by agreement, the formal meeting was a closed one (S/PV.5237), please see our 19 December 2005 Update Report on Zimbabwe.)

A further issue could arise if Russia sought to challenge whether a decision to adopt the agenda on Georgia’s complaint is a procedural matter, in effect trying to apply the so-called “double veto”. That could then require either a vote on this preliminary question before moving on to voting on the substantive question, i.e. the matter submitted to the Council, or possibly a vote on a ruling by the president.

At face value the meaning of article 27(2) of the Charter is clear:

“Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members” (i.e. no veto on procedural matters)

However, the origin of the claim that there is a right to a “double veto” prerogative by the permanent members lies in the “Statement of the Sponsoring Governments on the Yalta Formula” of 8 June 1945.

The Yalta Formula statement was a response by the permanent members to concerns about the extent of the veto. An important feature of this statement was the attempt to clarify the meaning and

operation of article 27(2). Its status is contested. Some see it as a valid legal interpretive statement. Others reject that. Certainly, opposition to it was registered in San Francisco in 1945 prior to the adoption of the UN Charter. And there has been state practice, in the form of at least one past Council decision, inconsistent with the approach advocated in the Yalta Formula statement.

The background to the statement seems to be that Russia had wanted greater protection for its veto power and in particular some guarantee that its veto could not be undermined by a majority deciding that important issues should be deemed to be procedural. A compromise seems to have resulted in which the permanent members presented to the San Francisco Conference an interpretive statement under which they clarified their understanding of how article 27 would work in practice. In it they identified a number of possible agenda items and decisions that were clearly procedural (i.e. not subject to veto). However, in the view of the permanent members, beyond that all matters should be seen as potentially substantive and open to the “double veto”.

What is particularly significant in the current context is that one of the key points agreed in the Yalta Formula as “clearly procedural” was:

“no member of the Council can alone prevent consideration and discussion by the Council of a dispute or situation brought to its attention”.

Accordingly, whatever the actual status of the 1945 statement, it seems that even in terms of the statement itself, a proposal simply to have a meeting to hear Georgia cannot be subject to a veto. In the end, however, if this were disputed, it would need to be resolved either by a vote or more likely by a ruling of the Council president.

A further procedural issue could also arise in that under article 27(3), “a party to a dispute shall abstain from voting” on matters of substance coming under Chapter VI. This provision could further complicate the procedural aspects of the current situation.

A practical issue will be whether the investigations are seen as thorough and independent. In the March rocket firing investigation there were suggestions that lack of material evidence and information made it difficult to draw firm conclusions on where the rockets came from. In the current 6 August missile incident, access by investigators to all necessary information from all parties, such as radar logs, may be a factor which will impact Council members’ approach to the issue.

Finally, an underlying issue for many on the Council may be whether the frequency such incidents is likely to increase and how best to lower the tensions. Relations between Tbilisi and Abkhazia have steadily deteriorated over the year and this has been matched by parallel deterioration in Georgia’s relations with Russia. The current issue seems likely to strain bilateral relations further. As a result the Council may be reinforced in its determination to seek solutions to the Abkhazia and South Ossetia issues and be interested in options that do not inflame the situation further, but rather steer the parties towards solutions of the underlying issues.

### **Council Dynamics**

The missile incident has put a P5 member, Russia, under the spotlight making it a particularly sensitive issue for the Council. The difficulty of dealing with an issue that involves a permanent member is already evident at this early stage. While Russia has not said that it will vote against having a meeting on the incident it has made it clear that it does not think there is a need for the Council to consider the matter.

The US has been supportive of having a Council meeting to look into the incident. Russia has argued that the Council should wait. Russia has publicly said that it is disappointed with the apparent haste in taking Georgia's side over the missile incident.

The UK is the lead Council member on Georgia and believes that a Council debate might be helpful in sending messages to all concerned about what is and is not appropriate behaviour. It feels that unless there is some response there is a risk of encouraging further incidents in the future. Both the US and the UK were ready to issue a presidential statement or a press statement when the Council met on 16 August.

Controversy over a range of other issues between the major powers, and how best to manage those issues, seems likely to play an important role in policy choices over the Georgian missile incident in the coming weeks.

Most of the other Council members are open to holding a meeting on the issue but prefer not to take a position before further findings are released.

Some of the elected members seem to have some interest in the Council finding a way to refer to the Group of Friends of Georgia, at least as a first step.

## UN Documents

### Latest Security Council Resolution

- S/RES/1752 (13 April 2007) extended the UN Observer Mission in Georgia's (UNOMIG) mandate until 15 October 2007.

### Selected Secretary-General's Report

- S/2007/439 (18 July 2007) was the latest Secretary-General's report on the situation in Abkhazia.

### Selected Letters to the president of the Council

- S/2007/489 (10 August 2007) was the letter from the Georgian Charge d'affaires to the president of the Council containing the report of the OSCE mission to Georgia.
- S/2007/480 (8 August 2007) was the letter from the Georgian Charge d'affaires to the president of the Council informing him of the missile incident and asking him to convene a special meeting of the Council.

## Useful Additional Sources

- Joint Fact-Finding Group Report on The Rocket Firing Incident in the Upper Kodori Valley 11 March 2007, <http://www.unomig.org/>
- Statement on the Yalta Formula
- *The Procedure of the Security Council*, Sydney D. Bailey and Sam Daws (eds.), Clarendon Press, Oxford UK, 2005