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**Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)**

**The implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia**

**Preliminary draft explanatory memorandum<sup>1</sup>**

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***The full report, including the preliminary draft resolution, will be presented to the Committee after the visit of the Presidential Committee to Moscow, which is foreseen for 18 and 19 January 2009, for adoption by the Committee at the beginning of the January 2009 part-session of the Assembly, on Monday, 26 January 2009.***

<sup>1</sup> This preliminary draft explanatory memorandum was made public by decision of the Monitoring Committee dated 17 December 2008.

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## I. Introduction

1. On 2 October 2008, the Parliamentary Assembly adopted Resolution 1633 (2008) on the consequences of the war between Georgia and Russia. In this Resolution, the Assembly strongly condemned the outbreak of war between two of its member states and considered that, during the war and its immediate aftermath, both countries had violated human rights and international humanitarian law, as well as the Statute of the Council of Europe and specific accession commitments.

2. While recognising that the war did not start on 7 August 2008, the Assembly considered that the shelling of Tskhinvali, without warning, by Georgia marked a new level of escalation and constituted a disproportionate use of armed force, albeit within its own territory, which violated international humanitarian law and Georgia's commitment to resolve the conflict peacefully. At the same time, the Russian response, including large scale military operations in Georgia, outside its own territory and the original conflict zone, failed to respect the principle of proportionality and international humanitarian law, and constituted a violation of the principles of the Council of Europe, as well as statutory obligations and specific accession commitments of Russia as a member state of this Organisation. The Assembly was especially concerned about the failure of Russia to stop the looting, destruction of property and acts of ethnic cleansing, and to protect the ethnic Georgian civilian population, in the areas under its de facto control, despite its duties under the Hague Convention (IV) on the Laws and Customs of War on Land. The Assembly considered the occupation of a significant part of the territory of Georgia by Russia and the subsequent recognition of the independence of the break-away regions of South Ossetia and Abkhazia by Russia to be a direct violation of the sovereignty, territorial integrity of Georgia as well as the inviolability of its frontiers, which it strongly condemned.

3. The Assembly remained especially concerned about the immediate implications of the war, especially the human suffering it caused and the human rights abuses that were committed during and after the war, including the large scale wanton destruction of property and looting, as well as the credible reports that ethnic cleansing was taking place in the areas under effective control of Russia and the de facto South Ossetian authorities. In Resolution 1633 (2008), in order to address these concerns, the Assembly formulated a series of precise and concrete demands to Russia and Georgia. In addition to the full and unconditional implementation of the Ceasefire agreement of 12 August 2008, in particular the obligation for Russia to withdraw its troops to their positions ex ante the war, the Assembly called upon the Russian and Georgian authorities, inter alia, to:

- co-operate fully in the establishment of an independent international investigation into the precise circumstances surrounding the outbreak of the war;
- co-operate fully with all international monitoring missions - especially those from the Organisation for Security and Co-operation in Europe (OSCE) and European Union (EU) - and allow these monitors unrestricted access to South Ossetia and Abkhazia;
- bring an immediate halt to, and investigate all reports of, human rights abuses and acts of ethnic cleansing in the two break-away territories and the so-called "buffer zone";
- investigate any alleged violations of humanitarian law and the laws on the conduct of war that occurred during the war and bring the perpetrators to justice;
- ensure the right of return of all IDPs as a result of this conflict and implement the six principles outlined by the Human Rights Commissioner of the Council of Europe;
- work towards the creation of a new peacekeeping format and internationalise the peace keeping force.

From the de facto authorities in South Ossetia, the Assembly demanded to co-operate fully with any international monitoring missions, to stamp out lawlessness, as well as to protect the security of all persons in the areas under their control, and to ensure the effective implementation of the six principles outlined by the Human Rights Commissioner of the Council of Europe. Russia was called upon to withdraw its recognition of the independence of South Ossetia and Abkhazia and to respect fully the sovereignty and territorial integrity of Georgia and the inviolability of its frontiers.

4. At the same time, the Assembly considered that the establishment of a dialogue was the best way forward to overcome the consequences of the war and to ensure the long-term stability of the region. However, a meaningful dialogue should be backed up by political will and concrete action. The Assembly therefore considered compliance with its demands in Resolution 1633 (2008) to be minimum requirements for a meaningful dialogue.

5. Following the adoption of Assembly Resolution 1633 (2008), the Bureau of the Assembly, at its meeting on 3 October 2008, decided to place on the agenda of the Standing Committee meeting in Madrid, on 28 November 2008, an item on "the follow-up given to Resolution 1633 (2008)" and to include in the

preliminary draft agenda of the January 2009 part-session of the Assembly a report on the implementation of Resolution 1633 (2008). The Monitoring Committee was seized on this matter for report and the Political Affairs Committee and the Committee on Legal Affairs and Human Rights for opinion. The Bureau also asked the Committee on Migration, Refugees and Population to prepare a report on the "humanitarian consequences of the war between Georgia and Russia" which could also be debated during the January 2009 part-session. In addition, the Bureau decided to ask the Presidential Committee to visit Tbilisi and Moscow to discuss with the authorities, at the highest level, the implementation of Assembly Resolution 1633 (2008) and to report back to the Standing Committee on the follow-up given to this resolution.

6. The Presidential Committee visited Georgia on 30 and 31 October 2008. The findings by the Presidential Committee on this visit, in which both co-rapporteurs participated, are reflected in this report<sup>2</sup>. The visit of the Presidential Committee to Russia was foreseen to take place on 13 and 14 November 2008. However, these dates coincided with the EU-Russia Summit in Nice. Many of the high-level meetings requested could therefore not take place, resulting in a programme that would not meet the requirements set by the Bureau for this visit. It was therefore decided to postpone the visit to Moscow to a later date, on 18 and 19 January 2009. The findings of the visit of the Presidential Committee to Moscow, as well as any update on recent developments, will be reflected in the full report to be presented to the Monitoring Committee after the visit to Moscow.

## II. Implementation of the Ceasefire agreement

### *i. Withdrawal of troops*

7. The 12 August 2008 Ceasefire agreement contains 6 points:

- non-use of force;
- definitive cessation of hostilities;
- access for humanitarian aid;
- withdrawal of Georgian military forces to their usual bases;
- withdrawal of Russian military forces to the lines they held before the hostilities broke out. While waiting for an international body, the Russian peacekeeping forces will implement additional security measures;
- opening of international discussions on the modalities of security and stability in Abkhazia and South Ossetia.

8. Following a delay in the implementation of the Ceasefire agreement by Russia, Mr Nicolas Sarkozy, President of the French Republic, in his capacity of President of the European Council, joined by Mr José Manuel Barroso, President of the European Commission, Mr Javier Solana, High Representative for the Common Foreign and Security Policy, and Mr Bernard Kouchner, French Minister of Foreign and European Affairs, travelled to Moscow on 8 September 2008 to press the Russian authorities to unconditionally implement the Ceasefire agreement, as well as to discuss the initial phase of its implementation.

9. In the agreement reached at this meeting, the Russian authorities reaffirmed their commitment to fully implement the 6-point Ceasefire agreement and agreed that Russia:

- would withdraw its troops from the areas adjacent to Abkhazia and South-Ossetia within 10 days after the deployment of an EU monitoring mission on 1 October 2008;
- would allow UN observers to remain in Abkhazia and allow OSCE monitors access to all of their previous areas of deployment, including in South Ossetia;

It was also agreed to start the talks under point 6 of the Ceasefire agreement on 15 October 2008 in Geneva.

10. The exact status of the Sarkozy-Medvedev agreement of 8 September has led to some controversy. While the international community and the Georgian authorities insist that the 8 September agreement outlines the first phase of the implementation of the 12 August Ceasefire agreement and in no manner supersedes it, the Russian position seems to be that this agreement replaces certain aspects of the Ceasefire agreement most notably with regard to the withdrawal of Russian troops. This was also clear during the Assembly's debate on 2 October 2008 on the consequences of the war between Georgia and

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<sup>2</sup> See also the Memorandum prepared by Mr Lluís Maria de Puig, President of the Assembly, for the Bureau of the Assembly, Doc. AS/Bur (2008) 81 rev., which the Bureau declassified at its meeting in Madrid, on 27 November 2008.

Russia, when the Russian delegation sought to replace references to the Ceasefire agreement with references to the “Sarkozy-Medvedev” agreement of 8 September 2008.

11. Georgian troops have in general withdrawn to their usual bases, with the exception of those that used to be based in areas that are currently under the control of Russia.

12. On 9 October, Russia completed its withdrawal of troops from the zones adjacent to South Ossetia and Abkhazia, after the deployment of the EU observers in these areas on 1 October 2008. However, Russian forces maintain a checkpoint in Perevi near the administrative border with South Ossetia, but within the undisputed territory of Georgia. The maintenance of military troops in Perevi is clearly in violation of not only the 12 August Ceasefire agreement, but also of the Sarkozy-Medvedev agreement of 8 September 2008. In a Statement on 16 November 2008, the EU insisted that Perevi is well outside the administrative borders of the break-away region of South Ossetia and therefore should be vacated, without delay, by Russian troops and South Ossetian militia.

13. According to the 12 August Ceasefire agreement, Russia should withdraw its troops to the positions held before the start of the conflict. This implies that the presence of Russian troops in these two regions should be limited to the positions and strengths as defined in the 1992 Sochi agreement with respect to the conflict zone in South Ossetia and the 1994 CIS treaty with respect to Abkhazia; this would limit the number of Russian troops in South Ossetia to 500 and in Abkhazia to less than 3,000. However, the Russian authorities assert that, with the recognition of the independence of South Ossetia and Abkhazia by Russia, the presence of Russian troops in these two regions is now governed by bilateral agreements with the de facto authorities of these regions. On 17 September, Russia signed far-reaching “friendship and co-operation” treaties with South Ossetia and Abkhazia. These treaties foresee the establishment of military bases and the stationing of up to 3,800 Russian troops in each of these two regions. Therefore they maintain that, with the withdrawal from the zones adjacent to these regions, Russia has fulfilled its obligations under the Ceasefire agreement. On 20 October, President Medvedev transmitted both treaties to the State Duma for ratification. Both treaties were unanimously ratified by the State Duma on 29 October 2008 and by the Council of the Federation on 11 November 2008. Russia has currently stationed several thousands of troops in each of the break-away regions.

14. The deployment of Russian troops foreseen in these “friendship and co-operation” treaties, and indeed the continued presence of Russian troops over and above the strengths and positions as outlined in the 1992 and 1994 agreements, is in violation of the Ceasefire agreement of 12 August, as well as the demands made by the Assembly in Resolution 1633 (2008). On 1 September 2008, the European Council concluded that: *“The military forces which have not yet withdrawn to the lines held prior to the outbreak of hostilities must do so without delay”*. In the conclusions of its meeting on 15 and 16 October 2008, the European Council noted *“with satisfaction that Russian troops have withdrawn from the zones adjacent to South Ossetia and Abkhazia as an essential additional step in the implementation of the agreements of 12 August and 8 September”*. These two conclusions were reconfirmed during the meeting of the General Affairs and External Relations Council on 10 and 11 November 2008, which concluded that: *“All points regarding the withdrawal of Russian troops from Georgia and the implementation of the agreements of 12 August and 8 September, as set out in the European Council conclusions of 1 September and 15 and 16 October, remain valid and relevant, including those concerning access to certain areas”*. In an interview on 13 November, President Medvedev acknowledged that “no text, and that includes our agreement with President Sarkozy, governs our military contingent” in South Ossetia and Abkhazia, stressing that it was up to Russia itself to decide upon its military deployment in these two break-away regions.

15. This issue is of particular importance with respect to the Akhagori district of South Ossetia and the ethnic Georgian areas of Upper Abkhazia. While administratively part of the former Autonomous Oblast of South Ossetia, whose administrative borders are now recognised by Russia as the “state borders” of South Ossetia, the Akhagori district, which is mainly populated by ethnic Georgians, has always been under the control of the central authorities in Tbilisi and was not part of the conflict zone. Indeed, Russian troops only occupied this district on 15 August, 3 days after the signing of the Ceasefire agreement on 12 August. Similarly, the ethnic Georgian areas in upper Abkhazia had been under the control of the central authorities in Tbilisi until the Georgian troops were driven out by Abkhaz separatist forces, purportedly with the help of Russian troops, on 8 August 2008.

ii. *Security situation: non-use of force and cessation of hostilities*

16. Following the deployment of EU monitors and the withdrawal of Russian troops from the zones adjacent to the break-away regions of South-Ossetia and Abkhazia, Georgian police forces moved back into these zones to ensure security in those areas. With the return of the Georgian police, the security vacuum

that existed in these zones dissolved and IDPs returned in large numbers to these areas. The security situation in the areas is generally calm.

17. While initially limited to a few isolated incidents, the situation along the administrative borders of South Ossetia and Abkhazia has been escalating during the last months, with an increasing number of violent incidents and provocations being reported. OSCE and EU monitors regularly report cases where Georgian villages and Georgian police posts along the administrative border with South Ossetia have come under fire with small arms and grenade launchers from the Ossetian side. The OSCE and EU monitors have not been able to confirm allegations that Ossetian villages have come under fire from the Georgian side, due to the refusal by Russia and the de facto authorities in South Ossetia to allow access of EU and OSCE monitors to the region. In their meeting with the Presidential Committee in Georgia, the international monitors indicated that the number of reported incidents and provocations along the administrative border with South Ossetia had started to approach the levels seen in the months before the outbreak of the military hostilities in August, raising fears of possible new clashes in these volatile regions.

18. On 22 and 24 October, two Abkhaz officials from the de facto authorities were killed in the Gali region, while, on 24 October, a local Georgian governor was killed in Muzhava on the administrative border with Abkhazia. On 15 November, a Georgian policeman was killed near the administrative border with Abkhazia. EU monitors reportedly came under fire from the Abkhaz side when investigating this incident. On 10 November, a bomb explosion killed a police officer in Dvani, near the administrative border of South Ossetia, while another one was killed and three injured when a second bomb was detonated when they were investigating the scene of the first explosion. The EU Monitoring Mission called this attack an unacceptable breach of the Ceasefire agreement by its perpetrators.

19. In addition to the attacks, there are continuing reports of bands of South Ossetian marauders crossing the administrative border in order to loot and terrorise Georgian villages and villagers close to the administrative border. We regret that Russia, despite its overwhelming troop presence, has so far failed to stop these incursions into undisputed Georgian territory.

20. Regrettably, the Russian authorities and South Ossetian de facto authorities have increased their rhetoric against the international observer missions in what seems to be an attempt to cast doubt on their impartiality. On 20 October, the de facto authorities in Tskhinvali accused the EU monitors of being biased against South Ossetia and, on 23 October, the Russian Foreign Minister criticised the EU monitors of being biased and not doing enough to ensure the security in the zones adjacent to South Ossetia and Abkhazia. This was dismissed by the Head of the EU Monitoring Mission.

21. We are seriously concerned that this increase in tensions and provocations could undermine the overall security and stability in the region and could lead to renewed clashes or even military hostilities. This underlines the urgent need for access of international monitors to the two break-away regions and for the establishment of a new international peacekeeping force as demanded by the Assembly.

*iii. International discussions on the modalities of security and stability in Abkhazia and South Ossetia*

22. The opening of international discussions on the modalities of security and stability in Abkhazia and South Ossetia is the sixth point of the 12 August Ceasefire agreement. During the Sarkozy-Medvedev meeting on 8 September 2008, it was agreed to start the talks under this point on 15 October 2008, in Geneva.

23. The first round of talks in Geneva, under the co-sponsorship of the UN, EU and OSCE and with the participation of the United States, did not lead to any results and was suspended on the same day, after the Russian and Georgian delegations failed to meet face to face.

24. The main stumbling point during the 15 October talks was the participation of representatives from the South Ossetian and Abkhaz de facto authorities. The Russian authorities insisted that the Abkhaz and South Ossetian representatives should be given a status equal to that of Georgia and Russia. This was refused by Georgia and the international community, which considered that this would imply recognising the statehood of these two regions. As a result, Russia refused to participate in the plenary opening session of the talks. The Georgian side agreed that representatives of the de facto authorities could participate in the informal working groups, but insisted that representatives of the Abkhaz and South Ossetian communities that favour integration with Georgia should also participate in these working groups. This was refused by the de facto authorities. As a result, it was decided to postpone the talks to 19 November, so as to give the negotiators time to work on the "procedural difficulties".

25. The second round of talks, held on 19 November 2008 in Geneva, was considered constructive by all participants and hailed by its co-sponsors as an important step forwards. In order to avoid a new stalemate, the talks took place in informal working groups where all participants, including representatives of the de facto authorities, participated under a personal title. During the talks, it was agreed by all participants to suspend the discussions on the most polemical issues to a future round and to focus on the security situation, as well as on the return of IDPs and freedom of movement across the administrative borders. It was agreed that a new round of talks would take place on 17 and 18 December in Geneva, during which, inter alia, a broader discussion on peacekeeping missions would also be included in the agenda.

26. We welcome the constructive attitude displayed by all participants during the second round of talks, which could play a crucial role in increasing the stability in the regions. However, we note that the talks remain fragile and that, to date, no plenary sessions have taken place. We hope that the same constructive spirit as witnessed in Geneva on 19 November will also prevail in order to find a solution for the format of these plenary sessions. This would allow all the different representatives of the South Ossetian and Abkhaz people to participate, while respecting Georgia's legitimate concern that no equal status can be given to the representatives of the de facto authorities to that of Georgia and Russia, as this would amount to an implicit recognition of the two break-away regions in violation of Georgia's sovereignty and territorial integrity.

### **III. Access of international monitoring missions to the South Ossetian and Abkhazian regions**

27. In Resolution 1633 (2008), the Assembly demanded that Russia, Georgia and the de facto authorities in South Ossetia co-operate with all international monitoring missions, specifically those of the UN, OSCE and the EU, and explicitly insisted that those observer missions should be given full and unconditional access to the areas under the control of Russia and the de facto authorities. In addition, in the Medvedev-Sarkozy agreement of 8 September 2008, Russia agreed to allow UN observers to remain in Abkhazia and to allow OSCE monitors access to all of their previous areas of deployment, including in South Ossetia.

28. On 9 October, the UN Security Council adopted Resolution 1839 which extended the UNOMIG<sup>3</sup> mandate until 15 February 2009, allowing for the continued presence of UN monitors in Abkhazia until that date, in line with the Sarkozy-Medvedev agreement. However, beyond that date, the future of the UNOMIG presence is uncertain: Russia and the Abkhaz de facto authorities demand changes to its mandate and dropping the reference to Georgia from its name. This could put into question the continued presence of UN observers in that region after 15 February. However, some officials from the Abkhaz de facto authorities are reported to have privately informed western diplomats that they would prefer a continued UN presence, in some format or another.

29. Georgia has given its full co-operation to the international monitoring missions and has allowed these missions, as well as other international humanitarian bodies, full and unconditional access to the areas under its control.

30. To our great concern, and in violation of the Sarkozy-Medvedev agreement and Assembly demands, OSCE observers have not been granted access to South Ossetia by Russia and the South Ossetian de facto authorities. In addition, EU observers have not been granted access to South Ossetia and Abkhazia, as requested by the EU and the international community, including the Assembly in Resolution 1633 (2008). This has, inter alia, hindered the investigation of reports of violence along the administrative borders, the improvement of the security situation in zones along the administrative borders of these two regions, as well as the return of IDPs to South Ossetia and Abkhazia.

31. The refusal to give access to international monitors to South Ossetia, which negatively affects the security situation, endangers further the overall stability in these volatile regions, potentially leading to renewed confrontations. We find this unacceptable, especially taking into account the fact that the unconditional access of international monitors to the two break-away regions does not, as such, affect the question of their status.

### **IV. Independent international investigation into the precise circumstances surrounding the outbreak of the war, as well as investigations into alleged violations of human rights and international law in the course of the war and its aftermath**

32. An independent international investigation into the precise circumstances surrounding the outbreak of the war, as well as the exact sequence of events in August 2008, is one of the key demands of the Assembly expressed in Resolution 1633 (2008). Recent media reports, from different sides, giving support to the

<sup>3</sup> UNOMIG is an abbreviation for United Nations Observer Mission in Georgia.

claims made by the Russian or the Georgian authorities, only serve to show the extent of the controversy and the conflicting accounts regarding the circumstances surrounding the outbreak of the war. This underscores the need for an independent international investigation, as demanded by the Assembly.

33. We welcome the fact that, from the onset, the Georgian authorities publicly stated their full support for the establishment of such an independent international inquiry, as well as their readiness to give it their full co-operation. This support was reiterated to the Presidential Committee during its visit to Tbilisi on 30 and 31 October 2008. We also welcome the fact that, in a meeting with the Council of Foreign Relations in Washington, on 15 November, President Medvedev stated that Russia would equally welcome the establishment of such an independent international investigation, and that Russia was ready to co-operate fully with it.

34. The EU established, on 2 December 2008, an independent international fact-finding mission on the conflict in Georgia to investigate the origins and the course of the conflict, including with regard to international law<sup>4</sup>, humanitarian law and human rights, and the accusations made in that context<sup>5</sup>. Ms Heidi Tagliavini has been appointed head of the fact-finding mission for the period from 2 December 2008 to 31 July 2009. Ms Tagliavini was former deputy State Secretary of Switzerland and, from 2002 to 2006, the Head of UNOMIG in Georgia. The geographical scope and time span of the investigation will be sufficiently broad to determine all the possible causes of the conflict. The results of the investigation will be presented to the parties to the conflict, and to the EU Council, the OSCE and the United Nations (UN), in the form of a report. Taking into account the fact that both Georgia and Russia are members of the Council of Europe and the important human rights implications of the war between them, we consider it important that the report of the fact-finding mission would also be presented to the Council of Europe and its Assembly. We therefore call upon the member states of the Council of Europe which are also EU members to ensure that the report of the EU mission is also presented to the Council of Europe in order for its findings to be debated before the Assembly.

35. In order to ensure the independence of the investigations, Ms Tagliavini is fully independent to decide on the composition of the mission, as well as its procedures and working methods. The fact-finding mission shall comprise recognised experts, in particular lawyers, historians, military staff and human rights experts. The implementation of the EU Council's decision on the fact-finding mission shall be reviewed by the Council before 31 July 2009 and the work of the mission may be prolonged, if necessary.

36. We welcome the establishment of the independent international fact-finding mission and reiterate the demand of the Assembly that both Georgia and Russia fully and unconditionally co-operate with its investigations. In addition, we call upon all Council of Europe member states and states that have observer status with the Organisation, to make available to this fact-finding mission any information, including satellite data, that may be of relevance to the investigation. We equally welcome the support of Russia and Georgia for its establishment, and their declared willingness to co-operate with it. We would, however, like to stress that only their effective, full and unconditional co-operation with the investigation will mean that they have met the Assembly's demands in this respect. In the light of this important development, we will not touch further upon the possible causes of, and circumstances leading to, this war. We recommend that the Assembly comes back to this issue when the fact-finding mission has published its report and findings.

37. In parallel with the discussions on an international inquiry, the Parliament of Georgia has started its own inquiry into the circumstances of the war, the exact sequence of events in August and the decisions taken by the Georgian executive authorities. For this purpose, the Parliament established, on 7 October 2008, a special Ad Hoc Commission which is chaired by a member of the parliamentary opposition, Mr Paata Davitaia. The Inquiry Commission will report back to the Parliament, but has the power to refer issues to the General Prosecutor for investigation, if it finds that possible criminal actions may have taken place.

38. In order to ensure the fullest transparency of its work, the Commission meets in public, unless issues affecting national security are discussed, and its meetings are broadcast live on television. In addition, the full transcript of its proceedings is published, in both Georgian and English, on the website of the Georgian Parliament. Moreover, the public has been exhorted to provide information, as well as raise any questions they wish to see answered by the Commission.

39. The Commission started its work on 10 October and, to date, has heard testimonies from key decision-makers during the war, including from President Saakashvili, the Minister of Integration, the Minister of Foreign Affairs, the Secretary of the National Security Council, the Head of the Security Services, the

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<sup>4</sup> including the Helsinki Final Act

<sup>5</sup> including allegations of war crimes



Chief of Staff of the Georgian Armed Forces and the Speaker of the Parliament. The ruling party has publicly stated that any of its officials that fail to fully co-operate with the Inquiry Commission will face dire political consequences. Although the Commission does not have the constitutional power to summon the President to testify, President Saakashvili has stressed that "not a single official is immune" from being questioned by the Inquiry Commission and that he would be ready "to come and answer all questions" put to him by the Commission. He subsequently testified to the Commission on 28 November 2008.

40. From our meetings with the Chairman of the Commission, we are convinced of the clear political will of the Commission to fully investigate the circumstances of the war and to address the many questions that have been raised in its context. We believe that this is an example of how parliamentary democracies should function, by making the events that lead to the outbreak of the war, as well as its conduct and the different responsibilities in relation to it, subject to a wide public debate. However, in this context, we regret that the questioning of the former Ambassador of Georgia to Moscow, who has been publicly critical of the authorities' conduct of the crisis since his dismissal in June 2008 for unrelated reasons, resulted in a brawl between him and some members of the ruling party. We would call upon all members of the Commission to refrain from any actions and behaviour that may be seen as compromising its impartiality.

41. We are not aware of the establishment of any such similar commission, with a comparable mandate, composition and powers, by the Parliament of Russia. In his meeting with the Ad Hoc Committee of the Assembly to study the situation on the ground in Russia and Georgia, that visited Moscow from 21 to 23 September 2008, the Chairman of the Council of the Federation indicated that the Council was considering to set up an ad hoc committee to study the conduct and origins of the war as well as the actions of the Russian authorities in relation to this. We therefore would urge the Council of the Federation to establish an inquiry committee with the same scope and mandate as that established by the Georgian Parliament.

42. Since the adoption of Resolution 1633 (2008), a number of reports have been published, inter alia by such respected non-governmental organisations as Amnesty International and Human Rights Watch, that have documented evidence and witness testimonies that give credence to the claims that both Russia and Georgia have committed violations of human rights and international humanitarian law – possibly including war crimes - in the course and aftermath of the war, such as the indiscriminate and disproportionate use of armed force, the forceful displacement of civilians, looting, pillage, wanton seizure and destruction of property and acts of ethnic cleansing. We are seriously concerned about reports that the looting and pillaging, as well as harassment of civilians, hostage-taking and acts of ethnic cleansing, are still continuing in areas under Russian control. In addition, the UNOSAT satellite images reveal the massive damage of Georgian villages predominantly after cessation of hostilities.

43. In Resolution 1633 (2008), the Assembly demanded that Russia and Georgia "stamp out lawlessness", investigate all allegations of human rights violations committed during the war and its aftermath and hold the perpetrators to account before domestic courts.

44. The Inquiry Commission of the Georgian Parliament has the mandate to investigate allegations of violations of human rights and international humanitarian law committed by Georgia in the course of the war. As already mentioned, it has the power to refer to the General Prosecutor for investigation any allegations of criminal behaviour in this respect. The Commission has not yet finalised its investigations and we are not aware of any cases having been referred to the General Prosecutor's Office.

45. The General Prosecutor's Office of Georgia, for its part, launched, on 9 August 2008, an investigation into deliberate violations of international humanitarian law in the course of the war and its aftermath. The Prosecutor's Office has made clear that this investigation is aimed at all violations regardless of who has committed them on either side. The Georgian government has stated that it will fully co-operate with these investigations.

46. The Investigative Committee of the General Prosecutor's Office of Russia launched an investigation into genocide committed by Georgian troops against Russian citizens (ethnic Ossetians) in South Ossetia. In addition, it opened an investigation into crimes committed by Georgia against the Russian military. It would seem that there is no intention to investigate possible violations of human rights and humanitarian law committed by Russian forces and forces under the control of the de facto South Ossetian authorities. Indeed, the special Investigation Committee reportedly closed its investigations on the ground in South Ossetia in mid-September, at a time when credible reports indicated that looting, pillaging, as well as acts of ethnic cleansing were taking place on a daily basis in the areas under Russian control, including in the so-called "buffer zone".

47. To our knowledge, neither the investigation of the General Prosecutor's Office of Georgia, nor that of the General Prosecutor's Office of Russia, have to date resulted in any persons being charged.

48. Amnesty International has reported that the Public Chamber of Russia, a consultative body of NGOs, established, on 12 August 2008, a Public Commission on "War Crimes in South Ossetia and Civilian Victims Aid".

49. The Russian authorities have been actively encouraging and assisting ethnic Ossetians to file applications with the European Court of Human Rights against alleged human rights violations committed by Georgia in the course of the war. On 10 October 2008, the European Court of Human Rights announced that it had received over 2.700 individual applications from South Ossetians against Georgia. The unprecedented number of applications is having a considerable impact on the already heavy workload of the Court, especially in the absence of the reform of the Court foreseen in Protocol 14 to the European Convention on Human Rights.

50. Georgia has filed an inter-state application against Russia with the European Court of Human Rights and, on 12 August 2008, on a request of the Georgian authorities, the European Court of Human Rights indicated interim measures to Russia and Georgia under Rule 39 of the Court.

51. Georgia has also filed with the International Court of Justice (ICJ) in the Hague a request for the indication of provisional measures in order to preserve its rights under the International Convention on the Elimination of All Forms of Racial Discrimination "*to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries*". On 15 October 2008, the ICJ held that the case fell under its jurisdiction and ordered provisional measures to be taken by both Georgia and Russia.

52. Under the Rome Statute, the International Criminal Court (ICC) has jurisdiction over possible war crimes and crimes against humanity. As Georgia has ratified the Rome Statute, the ICC has jurisdiction over such crimes committed on the territory of Georgia in the course of the conflict, irrespective of whether they were committed by Georgian or Russian citizens, notwithstanding the fact that Russia has not yet ratified the Statute. In addition, as Russia has signed the Rome Statute, according to the Vienna Convention on the Law of Treaties, it is bound to refrain from any action that would defeat its object and purpose. The Prosecutor of the ICC has reportedly started his preliminary analysis of information received. This is the first formal step in deciding whether to seek authorisation from the Pre-Trial Chamber to open a formal investigation.

## **V. Humanitarian consequences of the war**

53. The humanitarian consequences of the war between Georgia and Russia are the subject of a separate report by the Committee on Migration, Refugees and Population. We will therefore not deal extensively with these issues in the context of this report.

54. Following the re-establishment of a security environment in the zones adjacent to the break-away regions of Abkhazia and South Ossetia, many IDPs have returned to these areas. On 17 October 2008, UNHCR reported that, from the originally recorded 133,000 IDPs in Georgia, more than 100,000 had returned to their homes, among which 20,000 to the former "buffer zone". However, many homes in the areas adjacent to South Ossetia have been looted and destroyed by South Ossetian militias in the aftermath of the conflict. The UN estimates that around 11,500 IDPs cannot return to their original residences in the zones adjacent to South Ossetia. The Georgian Ombudsman estimates that, at present, a total of 23,000 IDPs cannot return to their pre-war place of residence. Moreover, occasional incursions by South Ossetian marauders make many IDPs fearful to return permanently to the areas close to the administrative border.

55. The return of IDPs to ethnic Georgian villages in South Ossetia and Abkhazia is considerably more difficult, if not outright impossible. Amidst continuing reports of acts of ethnic cleansing, most IDPs fear for their safety if they return, especially in the absence of independent international monitors from the EU and OSCE. In addition, most ethnic Georgian villages in South Ossetia have been looted and razed.

56. The return of ethnic Georgian IDPs to the break-away region of South Ossetia is further complicated by the insistence of the de facto authorities that IDPs returning to it accept the South Ossetian "nationality" and rescind the Georgian one. Ethnic Georgians in the Gali District of Abkhazia are reportedly also beginning to be put under pressure to accept Abkhazian passports. The Abkhaz de facto Foreign Minister, Mr Sergey Shamba, has informed OSCE/ODIHR officials that Georgian IDPs would be welcome to return to the Gali district and the upper Kodori Gorge. However, he said that the return of IDPs (including the IDPs from the 1994 conflict) to other areas of Abkhazia would be "impossible" under the current circumstances.

57. A further complication is the result of restrictions imposed on the freedom of movement for civilians. Civilian movement across the administrative border has until now been possible on a limited ad hoc basis. However, with the entry into force of the “friendship and co-operation” agreements between Russia and the break-away regions, which include an open border agreement between the parties, the administrative borders of these regions will be manned by Russian border guards, ending any possibilities for the free movement of civilians across the administrative borders. In this context, the de facto leadership in South Ossetia and Abkhazia have indicated that they plan to implement a visa regime for Georgians in the very near future.

58. The situation in the Akhagori district of South Ossetia, which is a predominantly ethnic Georgian area that was not directly affected by the war in August and which, prior to the war, was never under the control of the de facto authorities, is a matter of special concern. Indeed, Russian troops occupied this district on 15 August, some 3 days after the signing of the Ceasefire agreement on 12 August.

59. Recent reports by Human Rights Watch and the Russian human rights NGOs, Memorial and Demos Centre, have documented extensive evidence that systematic looting, pillaging, hostage taking and attacks on ethnic Georgians by South Ossetian militias continue to take place in the Akhagori district of South Ossetia, and that the Russian forces have done nothing to stop them. We strongly condemn the ethnic cleansing in the Akhagori district by South Ossetian militia, as well as Russia’s unwillingness to stop this from happening or to bring its perpetrators to justice. We would like to reiterate that, under international law, Russia bears full responsibility for violations of human rights and humanitarian law committed in the areas under its de facto control, including those committed at the behest of the de facto authorities in Tshkinvali.

60. As a result of the continuing attacks on ethnic Georgians, many of them have fled the Akhagori district out of safety concerns. In addition, many more have left due to fears that the administrative border with Georgia will be closed or because they are obliged to accept the South Ossetian nationality. According to UNHCR, Georgia registered more than 1,700 IDPs from the Akhagori area in October alone.

61. Humanitarian aid has been reaching the two break-away regions, mainly via Russia. However, significant obstacles remain for the access of humanitarian organisations and aid as a result of the insistence, on the one hand, of Georgia that access to the two break-away regions takes place via Georgia, and, on the other hand, of Russia and the de facto authorities that access takes place via Russia.

62. The UN and other international (humanitarian) organisations have been given unrestricted access by the Georgian authorities to the zones adjacent to South Ossetia and Abkhazia. Regrettably, the de facto authorities have only allowed limited access for these organisations, with the exception of the International Committee of the Red Cross (ICRC), to the territories under their control.

63. In his report to the Committee of Ministers of the Council of Europe, the Commissioner for Human Rights expressed his concern about the possible negative impact of the law on the occupied territories that was adopted by the Georgian Parliament on 28 October 2008. According to this law, access for foreigners and stateless persons to the occupied territories is subject to authorisation by the Georgian authorities, while entry into these areas without such an authorisation would be a criminal offence under Georgian law. Moreover, this law restricts economic activity with the two regions and declares null and void any certificate issued by the de facto authorities, including civil certificates and property deeds. In his report, the Commissioner expressed concern that certain provisions in the law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We would therefore join the President of the Assembly in his call to the Georgian authorities to submit this law to the European Commission for Democracy through Law (Venice Commission) for opinion and to fully implement its recommendations.

## **VI. Recognition of independence of the break-away regions of Abkhazia and South Ossetia by Russia**

64. In Resolution 1633 (2008), the Assembly condemned the recognition of the break-away regions of Abkhazia and South Ossetia by Russia as a violation of Georgia’s sovereignty, territorial integrity and the inviolability of its recognised international borders. The Assembly therefore called upon Russia to withdraw its recognition and urged all member states, as well as states holding observer status with the Organisation, not to recognise the independence of these two regions. The Assembly regretted that the recognition by Russia was prompted by a unanimous demand of both houses of the Parliament of Russia.

65. The Russian authorities, as well as the Federal Parliament, have publicly stated that they do not intend to withdraw their recognition of the independence of South Ossetia and Abkhazia. The “friendship and co-operation” treaties signed by Russia with South Ossetia and Abkhazia on 17 September 2008, which were unanimously ratified by the State Duma and Council of the Federation on 29 October and 11 November 2008 respectively, further confirmed this position. Under the treaties, Russia has pledged to help the two break-away regions to protect their borders and will be responsible for the control of them, and their signatories have granted each other the right to set up military bases on their respective territories. The treaties also formalised economic co-operation between Russia and the two break-away regions, and allowed dual citizenship for Russian, Abkhaz and South Ossetian residents.

66. The recognition of the independence of Abkhazia and South Ossetia and the subsequent signing and ratification of the “friendship and co-operation” treaties not only violate the Ceasefire agreement, international law, the Statute and principles of the Council of Europe and Russia’s accession commitments, but also impede the normalisation of the current situation and further affect the stability in the region. In this context, we also regret that Russia seems to be making the implicit recognition of the independence of the two break-away regions by the international community, including by our Assembly, a point in its co-operation with international organisations, as borne out by its insistence that the representatives of the de facto authorities of the two break-away regions should be given state status in the Geneva talks.

## **VII. Creation of a new peacekeeping format and internationalisation of the peacekeeping force**

67. In Resolution 1633 (2008), the Assembly called upon Russia and Georgia to work towards the creation of a new peacekeeping format and to internationalise the peacekeeping force.

68. Georgia formally withdrew from the 1992 Sochi and 1994 Moscow agreements that established the pre-war peacekeeping formats on 27 August 2008, and has indicated that it would welcome a peacekeeping force that would include European peacekeepers. The Georgian authorities have not ruled out their acceptance of a possible Russian participation in such a peacekeeping force. The Russian authorities have announced that the former peace agreements are now replaced by the bi-lateral friendship and co-operation treaties between Russia and the break-away regions and have stated that they see no role for any “additional” international peacekeeping format.

69. We would like to stress that Russia, as a party to the conflict, cannot be the sole provider of peace keeping troops and the sole guarantor of peace and security in the two break-away regions. As we have mentioned before, the absence of an international peacekeeping force, especially in combination with the presence of a large number of Russian troops, undermines the stability in the region, as well as the possibilities for the normalisation of the situation resulting from the war. In that respect, we welcome the fact that the issue of peacekeeping is on the agenda for the next round of talks in Geneva and call upon a constructive approach by all participants in these talks.

## **VIII. Overview of implementation of the demands of the Assembly as expressed in Resolution 1633 (2008)**

### *i. Georgia*

70. On the basis of the recent developments described in this report, we consider that Georgia has implemented the following demands of the Assembly outlined in Resolution 1633 (2008). It has notably:

- implemented fully and unconditionally the Ceasefire agreement of 12 August 2008 (§ 22.1 of the Resolution);
- allowed full access of, and given its fullest co-operation to, international monitors to the territories under its control (§ 22.2 and 23.3);
- taken measures to ensure the safety – including from mines and unexploded ordnances - of citizens in, and allowed for the voluntary return of IDPs to, the territories under its control (§ 23.1, 23.2 and 23.4);
- worked towards a new peacekeeping format and worked to internationalise the peacekeeping force (§ 22.4);
- made use of available means of peaceful conflict resolution (§ 22.10);

- participated unconditionally in the Geneva negotiations foreseen in point 6 of the Ceasefire agreement (§ 22.5). We consider that the condition from the Georgian authorities that the participation of the de facto authorities of the two break-away regions should not be taken to signify any implicit recognition of them is justified and does not contradict the Assembly's corresponding demand.

71. The Georgian authorities have stressed that they would welcome the establishment of, and would co-operate unconditionally with, an independent international inquiry into the war and its circumstances (§ 22.3). They can therefore be said to have taken all the necessary steps to comply with this demand of the Assembly, even though a final judgement can only be made when the inquiry has been completed and Georgia's co-operation in it has been fully assessed.

72. The Georgian authorities have taken concrete measures to effectively implement the six principles formulated by the Council of Europe Commissioner for Human Rights, in compliance with § 23.7 of Resolution 1633 (2008). We note that the implementation of several of these principles, including the exchange of prisoners of war, the unconditional return of IDPs and the provision of adequate accommodation to them, are still ongoing. We therefore urge the Georgian authorities to continue to implement the Commissioner's six principles as well as the related demands made in sub-paragraphs § 23.4 and 23.5 of Resolution 1633 (2009).

73. Overall, Georgia seeks to ensure effective respect for all human rights under the ECHR and humanitarian norms under the 1949 Geneva conventions and their additional protocols, in the territories under its control, in compliance with § 22.7 of the resolution. However, we share the concerns expressed by the Commissioner for Human Rights that certain provisions in the new law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We therefore call upon the Georgian authorities to submit this law to the Venice Commission for opinion and implement its recommendations. This would also ensure full compliance with § 22.7 of Resolution 1633 (2008).

74. The Georgian authorities have been allowing unhindered access by the press to the part of the conflict zone under its control, in line with § 22.9. However, we are concerned that the provisions in the law on the occupied territories that make it obligatory for foreign nationals to obtain prior authorisation from the Georgian authorities to visit the Georgian territories under Russian control could hinder the free access of the press to those parts of the conflict zone, in contradiction with § 22.9.

75. The Georgian Prosecutor General's Office has opened an investigation into violations of humanitarian and human rights law in the course of the war and its immediate aftermath. This investigation explicitly also includes possible violations committed by Georgia. In addition, the parliamentary Inquiry Commission has the mandate to investigate the war and look into possible human rights and humanitarian law violations committed by all sides in the course of the war. It has the right to refer cases to the General Prosecutor for investigation. We therefore welcome the efforts of the Georgian authorities to comply with § 22.8. These investigations are still ongoing and we are not aware that they have as yet resulted in any persons being charged. In the light of the overwhelming and credible evidence mentioned in this report that human rights and humanitarian law were violated by both sides during the war, including by Georgia, full compliance with this demand of the Assembly can only be assessed on the basis of the outcome of these investigations and the manner, including impartiality, in which the allegations of violations are addressed. We therefore call upon the Georgian authorities to inform the Monitoring Committee of the Assembly, on a regular basis, about the progress of the investigations conducted by both the parliamentary Inquiry Commission and the Prosecutor General's Office. We consider that compliance with this Assembly demand is still pending.

76. Regrettably, Georgia has not yet signed the UN Convention on Cluster weapons. In addition, the relations and rhetoric between Russia and Georgia are still tense and influenced by the war. We cannot therefore consider that Georgia has complied with § 22.6 and 22.11 of Resolution 1633 (2008).

#### *ii De facto authorities in South Ossetia*

77. On the basis of the recent developments described in this report, we consider that, with regard to the demands addressed to the de facto authorities in South Ossetia, the latter have generally complied with the demand to exchange prisoners of war (§ 23.5), although we are concerned about reports that hostage takings still occur, in contravention of § 23.5.

78. Regrettably, the South Ossetian de facto authorities have failed to co-operate with international monitoring missions, as demanded in § 23.3, and are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia in contravention of the demand of the Assembly in § 23.1.2. In

addition, the South Ossetian de facto authorities have failed to stamp out lawlessness and to guarantee the security in the areas under their de facto control, as demanded in § 23.1. and § 23.1.1. They have also failed to guarantee the right of return of all IDPs from the areas under their control. We therefore consider that they have not complied with the demands formulated in §23.3, § 23.4 and § 23.7 of Resolution 1633 (2008).

*iii. Russia*

79. On the basis of the recent developments described in this report, we consider that Russia has implemented the following demands of the Assembly outlined in Resolution 1633 (2008):

- removal of mines and unexploded ordnances and raising awareness among the affected population about the danger posed by such devises. We understand that this difficult task is ongoing (§ 23.2 of the Resolution);
- release and exchange of prisoners of war (§ 23.5), on the understanding that this is also an ongoing process;
- on the basis of the constructive proceedings during the latest round of the Geneva talks, we would consider that Russia has complied with § 22.5 of Resolution 1633 (2008) regarding participation in the Geneva talks. While we support the principle that different representatives of the Abkhaz and South Ossetian people, both those of the de facto authorities and those favouring integration with Georgia, should participate in these talks, we consider that Russia’s insistence that representatives of the de facto authorities should be given state status equal to that of Georgia and Russia in these talks, infringes on Georgia’s sovereignty and territorial integrity and could raise questions regarding Russia’s continued compliance with this point.

80. The Russian authorities have indicated that they would welcome the establishment of, and would co-operate unconditionally with, an independent international inquiry into the war and its circumstances (§ 22.3). They can therefore be said to have taken all the necessary steps to comply with this demand of the Assembly, even though a final judgement can only be made when the inquiry has been completed and Russia’s co-operation in it has been fully assessed.

81. The Russian Prosecutor General has initiated investigations against human rights and humanitarian law violations committed by Georgian troops during the course of the war against Russian citizens and against Russian servicemen. However, despite several credible reports that provide evidence that human rights and humanitarian law were also violated by Russia and the South Ossetian forces allied to it in the course of the war and its aftermath, no investigation has been started by the Russian Prosecutor General into such alleged violations. We therefore consider that Russia has not complied with § 22.8 of Resolution 1633 (2008).

82. While press accredited in Moscow has had access to the break-away regions of South Ossetia and Abkhazia, continued restrictions on journalists’ freedom of movement, including the refusal of access to the two regions from undisputed Georgian territory, are in contradiction with § 22.9 of Resolution 1633 (2008).

83. The Russian authorities have asserted that the former peace agreements with respect to South Ossetia and Abkhazia are now replaced by the bi-lateral “friendship and co-operation” treaties between Russia and these break-away regions and that they see no role for any “additional” international peace keeping format, as demanded in § 22.4. However, we take note of the fact that the issue of peacekeeping has been included into the agenda of the December round of talks in Geneva. We hope that these talks will lead to concrete and constructive results which would imply that Russia is complying with this demand of the Assembly.

84. While we welcome the prompt withdrawal of the areas adjacent to the break-away regions of Abkhazia and South Ossetia, Russia has so far failed to withdraw its military forces to the positions ex ante the war in violation of the Ceasefire agreement of 12 August, as well as the Sarkozy-Medvedev agreement of 8 September 2008 and the demand of the Assembly. In addition, the continuing attacks and provocations on Georgian villages and police forces, originating from the South Ossetian side of the administrative border are, as mentioned by the Head of the EU Monitoring Mission, a clear violation of the Ceasefire agreement. We would like to stress that Russia is directly responsible for any violations of this agreement at the behest of the South Ossetian de facto authorities. We therefore regret to note that Russia has not implemented all points of the Ceasefire agreement of 12 August 2008, as demanded by the Assembly in § 22.1 of Resolution 1633 (2008).

85. We are extremely concerned by Russia's failure to stop the ongoing looting, pillaging and ethnic cleansing in South Ossetia and to bring its perpetrators to justice. Russia has therefore not complied with the Assembly demands to ensure effective respect for all human rights under the ECHR in the territories under its control (§ 22.7), take urgent measures to ensure the safety of all persons within the region of South Ossetia (§ 23.1), as well as to stamp out lawlessness in accordance with Article 43 of the Hague Convention (§ 23.1.1).

86. Russia's continuing refusal to give access to OSCE and EU monitors to South Ossetia, as well as access to EU monitors to Abkhazia, are in contradiction with the demands formulated by the Assembly in § 22.2 and § 23.3 of Resolution 1633 (2008).

87. As mentioned in the recent report of the OSCE/ODIHR<sup>6</sup> dealing with the human rights situation in the former conflict areas, prepared at the request of the Finnish Chairman-in-Office of the OCSE, Russia and the South Ossetian de facto authorities are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia and Abkhazia. Moreover, the right of return of IDPs from those areas is severely restricted or refused outright. We have therefore to consider that Russia is not complying with § 23.1.2, § 23.4 and § 23.7 of Resolution 1633 (2008).

88. Russia has been actively encouraging and assisting ethnic South Ossetians to file applications against Georgia with the European Court of Human Rights. However, as stated by the OSCE High Commissioner on National Minorities, the restrictions on the right of return of IDPs from the areas under control of the de facto South Ossetian leadership is in contradiction to the provisional measures ordered by the International Court of Justice in the Hague. We therefore do not consider that Russia has complied with § 22.10 of Resolution 1633 (2008).

89. Regrettably, Russia has not yet signed the UN Convention on Cluster weapons. In addition, the relations and rhetoric between Russia and Georgia are still tense and influenced by the war. We cannot therefore consider that Russia has complied with § 22.6 and § 22.11 of Resolution 1633 (2008).

90. The Russian authorities, as well as the Federal Parliament, have publicly stated that they do not intend to withdraw their recognition of the independence of South Ossetia and Abkhazia, contrary to Assembly demands as formulated in § 22.2 of Resolution 1633 (2008).

## **IX. Preliminary considerations**

91. We reiterate the position taken and demands made by the Assembly in Resolution 1633 (2008).

92. We fully support the establishment by the EU, on 2 December 2008, of an independent international fact-finding mission to investigate the origins and the course of the conflict in Georgia, including with regard to international law, humanitarian law and human rights, and the accusations made in that context. We urge the member states of the Council of Europe that are also members of the EU to ensure that the report of this mission is also presented to the Council of Europe and recommend to the Assembly to include a debate on its findings at a future part-session.

93. We welcome the support of Russia and Georgia for the establishment of this independent fact-finding mission and their declared willingness to fully co-operate with it. We call upon Russia and Georgia to effectively, fully and unconditionally co-operate with the mission.

94. We welcome the constructive approach and political will of the Georgian authorities to comply with the demands of the Assembly expressed in Resolution 1633 (2008). As a result, Georgia has complied with many, but not all, demands of the Assembly expressed in this resolution. We call upon the Georgian authorities to ensure that all remaining outstanding demands are promptly and fully complied with.

95. We welcome, in particular, the establishment of an Inquiry Commission by the Georgian Parliament as evidence that it is willing to reflect on the actions and mistakes of the Georgian authorities in the outbreak and the course of the war. We stress that the credibility of the work of this Commission, as well as the investigations by the Georgian General Prosecutor into possible violations of human rights and humanitarian law by Georgia, are crucial to ensure that Georgia is in full compliance with Resolution 1633 (2008).

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<sup>6</sup> OSCE/ODIHR report on "human rights in the war-affected areas, following the conflict in Georgia" (CIO.GAL/182/08), 1 December 2008

96. We are concerned that some provisions of the Georgian law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We therefore call upon the Georgian authorities to submit this law to the Venice Commission for opinion and to implement its recommendations.

97. We regret that Russia has not yet complied with a significant number of key demands made by the Assembly, including the many demands that are not related to, and therefore have no effect on, the question of the status of the two break-away regions.

98. We condemn the ongoing violations of human rights and international law, such as looting, pillaging and ethnic cleansing that are taking place in South Ossetia and which Russia has failed to stop. We reiterate that Russia is fully responsible for any human rights violations in the territories under its effective military control. We therefore call upon Russia to bring these practices to an immediate halt, to prosecute all perpetrators and to implement fully all Assembly demands aimed at protecting the human rights of all individuals in the two break-away regions.

99. We are seriously concerned that the escalation of tensions and provocations along the administrative borders is undermining the stability in the region and could lead to renewed clashes or an outbreak of hostilities. The access of international monitors to South Ossetia and Abkhazia and the establishment of a new internationalised peacekeeping format and force are therefore crucial to establish security and guarantee the stability in the region.