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

Consequences of the war between Georgia and Russia

Information note on the fact-finding visit to Moscow and Tbilisi (12-16 May 2013) prepared by the co-rapporteurs on the Russian Federation and the co-rapporteurs on Georgia, under the responsibility of the Chair¹

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¹ This information note has been made public by decision of the Monitoring Committee dated 27 June 2013.

I. Introduction

1. At its meeting on 27 January 2011, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), approved the proposal of the then Chair, based on an agreement with the Georgian and Russian national delegations to the Assembly, on the manner in which it should continue its work on the consequences of the war between Georgia and Russia. It was decided that the file as well as the implementation of Assembly recommendations and demands made on Georgia and Russia in the relevant resolutions on this issue should be followed by the respective co-rapporteurs for Georgia and Russia in the framework of the ongoing monitoring procedures for both these countries.

2. Furthermore, it was agreed that the co-rapporteurs, under the responsibility and co-ordination of the Chairperson of the Monitoring Committee, would present on an annual basis a joint information note to the Committee, in which they would outline the relevant developments with regard to the conflict and their findings with regard to the implementation of Assembly demands, as expressed in its resolutions on this subject.

3. Finally, the committee decided that the information note will be discussed by the Committee at a specific sitting, during which it would also be updated, inter alia, on relevant developments in other international fora.

4. The Bureau of the Assembly, at its meeting on 28 January 2011, took note of the agreement reached by the committee on the manner in which it would continue its work on the file.

5. The aim of the present note is to accomplish the task conferred by the committee upon the co-rapporteurs and the Chair. Its late presentation can be partly explained by a series of elections which took place in Russia in December 2011 and March 2012, and in Georgia in October 2012. It is needless to say that the period of run up to elections is not timely for a discussion on such a sensitive issue. Moreover, the renewal in rapporteurships of both countries in 2012 and 2013 also contributed to delays. Last but not least, the four rapporteurs and Chair agreed that the note should be based on meetings with the relevant actors in Moscow and Tbilisi, as well as in Tskhinvali and in Sukhumi. This added to the practical difficulty of finding dates convenient for everyone for a week-long visit. It turned out to be a complicated task and the visit was postponed on more than one occasion at the request of one or another participant.

6. The present note is the result of the fact-finding visit which finally took place on 13-16 May 2013. Regrettably, contrary to the delegation's intention, approved by the committee at its meeting on 24 January 2013, it was limited to Moscow and Tbilisi. The original draft programme for the visit included meetings in Tskhinvali and Sukhumi, and contacts had been established at the level of the Secretariat through the intermediary of the Russian delegation with the *de facto* authorities on the spot. On 10 April 2013, the letters proposing the meetings were sent directly to the *de facto* Speakers of Parliament in Tskhinvali and Sukhumi, with copies to the Head of the Russian delegation, who had kindly agreed to support the proposals contained therein. At the same time, the Liaison Mechanism for Abkhazia was contacted with a view to advancing the procedure.

7. The reply from Tskhinvali arrived on 8 May 2013. The *de facto* Deputy Speaker of Parliament observed that *"the aim of the visit by the delegation of the PACE in order to gather information for the preparation of the report on "the war between Georgia and Russia" is unclear to us, as such a war had not taken place on the territory of South Ossetia. In consequence taking into account possible negative consequences of the visit for the political image of the South Ossetian Republic (which is even not considered as a party to the conflict) as well as partiality of previous reports, the Parliament of South Ossetia considers useless the visit of the PACE's representatives to the Republic of South Ossetia"*²

8. There has been no reply from Sukhumi except for a phone call from the Liaison Mechanism to the Secretariat, informing them that the *de facto* authorities did not wish to receive the delegation.

9. The meetings in Moscow and Tbilisi focused on the main concerns outlined in Resolution 1683(2009), which fully reiterated the earlier Resolutions 1633(2008) and 1647 (2009), which can be divided into four main areas: status of the breakaway regions and implementation of the agreement of 12 August 2008; access to the breakaway regions; return of IDPs and humanitarian questions; investigation into the allegations of war crimes and violations of international human rights and humanitarian law.

² The above text is a quotation from the letter and is not meant to bear any implications – implicitly or explicitly – on the position of the Assembly regarding the status of the breakaway regions.

10. In both capitals, we met *inter alia*, representatives of the Foreign Ministry, the authorities responsible for the investigations (Prosecutor General's Office, Investigative Committee, Ministry of Justice), and for co-operation/humanitarian assistance. We also met the co-Chairs of the Geneva International Discussions and other relevant representatives of the international community (EUMM, Red Cross). The full programme can be found in Appendix 1.

11. There was a striking difference between the meetings in both capitals with regard to the level of our interlocutors. Whereas in Tbilisi we had a chance to speak to the Minister of Justice, the Minister of Integration, the Special Representative of the Prime Minister for Relations with Russia and the Prosecutor General, in Moscow the meetings were held at the level of Head of Department. Moreover, the ranks of the interlocutors were only announced to the delegation once it arrived in Moscow. We took this as a clear signal of the political importance attached by both countries to our mission, as well as to co-operation with the Council of Europe.

12. Following the completion of the visit, the Secretary General of the Parliamentary Assembly of the Council of Europe received a letter from the Head of the Russian delegation informing him that "*the Russian delegation has done its utmost to provide assistance in the organization of the co-rapporteurs' visit to South Ossetia*" and expressing his regret at the negative reply. He furthermore suggested that "*as South Ossetia and Abkhazia are independent States*" in future "*direct contacts should be established with the authorities of South Ossetia and Abkhazia for more efficient solutions of all aspects for the preparation of such visits, without any kind of mediation from our part.*" Finally, he stressed that "*from now on, the Russian delegation in the PACE declines any responsibility for the development of these contacts*".³

13. We will return to the question of possible future contacts with the *de facto* authorities and communities in the breakaway regions in the conclusions to this note in the light of the findings during our visit.

14. Finally, we would like to express here our gratitude to both delegations for their co-operation in the preparation and organisation of the visits and the hospitably extended to our delegation.

II. Status of breakaway regions, Geneva negotiations and implementation of the cease-fire agreement of 12 August 2008

15. Despite the clear status of the breakaway regions under international law, status related issues and questions have proved to be the most contentious and intricate issues in relation to the consequences of the war between Russia and Georgia. The status issue and the diametrically opposed positions of Russia and Georgia – as well as the vast majority of the international community – permeates all other issues related to the war. It hampers the improvement of the humanitarian situation and negatively affects the daily lives of all residents in the war affected regions.

16. Regrettably, no progress can be reported on this subject. The international community and Georgia insist that Russia should withdraw its recognition of South Ossetia and Abkhazia and fully abide by the cease-fire agreement of 12 August 2008, including with respect to the withdrawal of its troops and the establishment of an international peace-keeping force.

17. For its part, Russia insists that the cease-fire agreement has been superseded by its recognition of the independence of Abkhazia and South Ossetia and that its troop presence in these regions is now regulated by bilateral agreements with these independent States. In its view, it has therefore fully implemented the cease-fire agreement.

18. The Russian position was confirmed during our meetings with the representatives of the Ministry of Foreign Affairs. They underscored that a "new reality" had emerged with the coming into existence of two new republics that were recognised by Russia. According to the Russian authorities, Russia not only fulfilled all its obligations under the cease-fire agreement, but the agreement is no longer of relevance due to this new reality. In addition, with the emergence of these two new republics, the consequences of the war are now primarily an issue to be negotiated between Georgia and these new States, which are sovereign and over which Russia has only limited influence. In its view, Russia was not, and has never been, a party to the conflict. Its role was, and is, that of a mediator, peacemaker and now also of the guarantor of the sovereignty of South Ossetia and Abkhazia.

³ The above text is a direct quotation from the letter.

19. The Russian authorities acknowledged that this view is diametrically opposed to that of the international community. However, they emphasised that the Russian authorities do not consider themselves bound by any position or recommendation, by any international organisation that does not recognise this new reality or which considers Russia as a party to the conflict. This confirmed the position of the Russian authorities that they do not consider themselves bound by, or intend to comply with, the Assembly resolutions adopted on the consequences of the war. As a consequence, the Russian authorities refused the dialogue on the basis of PACE resolutions.

20. Until now, Russia has pursued a policy of actively encouraging States to recognise the two breakaway regions, and subordinated its policy on the conflict and its consequences to this objective. Despite this, only Venezuela, Nicaragua, Nauru and Tuvalu have joined Russia in recognising the independence of South Ossetia and Abkhazia and it is unlikely that any other States will follow in the foreseeable future.

21. The meetings with the Ministry of Foreign Affairs gave us the impression that the goal of having other States recognise the independence of South Ossetia and Abkhazia, is no longer a primary policy objective for the Russian authorities. If this is confirmed, it would eliminate an important point of contention in the relations between Russia and the international community and should therefore be welcomed.

22. The relations between Russia and Georgia, as well as the relations between Tbilisi and the populations in the two breakaway regions, were an issue of debate between the Georgian Dream and the United National Movement during the elections. However, most interlocutors, including representatives of both political forces, informed us that the change of power after the elections did not change Georgia's position with regard to the occupation and status of the two territories.

23. It is unlikely that the current status quo will change in the foreseeable future. Therefore, it is important to explore how this conflict can be transformed in the long-term and how the immediate consequences of the ongoing status quo can be addressed.

24. The Georgian authorities have recognised that the current status quo is unlikely to change in the near future and have started to adapt their policies towards the two regions in this respect. However, they stress that this does not change Georgia's position with regard to the status of the two breakaway regions. In this respect there has been a careful shift in policy focus: emphasising engagement over isolation of the two regions, especially on the civilian level. The Minister of Reintegration informed us that the establishment of informal contacts with the two regions, whether on the level of the *de facto* authorities or between civil society representatives, was still very difficult and, in his view, discouraged by the authorities in Moscow.

25. In the view of the new authorities in Tbilisi, the relations between Georgia and Russia cannot be dictated only by the profound differences over the 2008 war and its consequences. Therefore, Georgia has tried to improve and normalise its relations with Russia in other, non-conflict related areas such as trade, economy, culture, etc. However, the authorities exclude the re-establishment of diplomatic relations as long as Russia occupies part of Georgian territory,

26. In order to underscore the wish of the new authorities to improve relations with Russia on non-conflict related issues, Prime Minister Ivanishvili has appointed former Georgian Ambassador to Russia, Mr Zurab Abashidze, as Special Envoy for relations with Russia. In this capacity, Mr Abashidze has held several meetings with Russian Deputy Foreign Minister Grigory Karasin. These meetings reportedly take place in a friendly and constructive, if not always easy, atmosphere and have achieved concrete results, most notably the agreement of Russia to lift its ban on the import of Georgian products to Russia.⁴

27. It is undisputable that an improvement in the relations between Georgia and Russia on non-conflict related matters will also help to reduce the tensions between the two countries in relation to conflict-related issues, and therefore should be welcomed and encouraged.

28. Russia and Georgia formally agree on the importance of the continuation of the Geneva talks to discuss the consequences of the war. Especially from the Georgian side this is seen as the only component of the cease-fire agreement that is still in place and functioning. Therefore, any attempts to diversify the discussions on this conflict to other international platforms, are regarded with hesitation and refused by the Georgian authorities. Mainly due to status related issues, the Geneva talks have, until now, only yielded very limited concrete results.

⁴ The import of mineral water started mid May 2013, the import of wine is expected to start in June this year, while negotiations about the technical requirements for the commencement of the import of agricultural products are still ongoing.

29. The Geneva talks take place in two working groups: the first one on security related issues and the second one on humanitarian issues and the return of IDPs. The main achievement of the Geneva talks has been the establishment of the joint incident prevention and response mechanisms (IPRM) for Abkhazia and South Ossetia. These IPRMs have worked with varying success but are generally credited with reducing tensions across the Administrative Border Line (ABL) and resolving potentially destabilising problems. Regrettably, the IPRM with Abkhazia is reportedly frozen as a result of the refusal of the Abkhazian authorities to participate in its work, ostensibly due to comments by the Head of the European Union Monitoring Mission in Georgia (EUMM), which the *de facto* authorities found offensive. We were informed by the Geneva co-chairs, whom we met in Tbilisi that the IPRM with South Ossetia is now functioning efficiently. They credited it with contributing to the resolution of a number of arrests for “illegal crossing” of the Administrative Border Line (ABL).

30. Another important issue on the agenda of working group 1 is the formal renouncement by Russia and Georgia of the use of force to resolve the conflict. Regrettably, only limited success has been achieved. Georgia formally renounced the use of force to resolve the conflict during a speech by President Saakashvili to the European Parliament. This should be welcomed. To our regret, there has been no reciprocal move by Russia or the *de facto* authorities. Russia has responded that it is not a party to the conflict and that any agreement on the non-use of force should be based on a formal agreement signed between Georgia and South Ossetia and Abkhazia. This is understandably unacceptable to Georgia. The Geneva co-chairs are reportedly investigating the possibility of all participants in the Geneva talks, and in that capacity, informing the co-chairs of their pledge not to use force to resolve the conflict. It is hoped that such an arrangement would provide a “status neutral” mechanism to renounce the use of force. However, it should be underscored that, despite the absence of a formal agreement on the non-use of force, the chance that new hostilities would break out is considered to be very slim.

31. Regrettably, working group 2, on humanitarian issues and the return of IDPs, has not achieved any concrete results and is, at this moment, effectively boycotted by the Abkhaz participants.

32. A main issue of concern has been the increased “borderisation” of the ABL between Tbilisi controlled areas of Georgia and the breakaway regions and especially the creeping movement of the ABL deep into Georgian controlled areas as a result of the installation of border works by Russian troops. In a number of cases, the ABL has moved several hundred meters into Tbilisi controlled areas of Georgia. This movement of the ABL has been especially profound around the village of Ditsi, which is close to the ABL. As a result, villagers in Ditsi have problems in reaching their agricultural lands and fear being arrested by Russian border patrols when tending their fields. This movement of the ABL, which was confirmed by the European Union Monitoring Mission in Georgia (EUMM), was widely condemned by the international community. Similarly, we would like to express our deep concern about this movement of the ABL and call upon the Russian authorities to dismantle these new border fences and refrain from any action that seems to move the ABL further into Tbilisi controlled areas. This movement of the ABL unnecessarily increases tensions and hardships for the civilians living in the war-affected areas close to the ABL.

33. For the Georgian authorities, the increased isolation of the break-away regions is of serious concern. This isolation increases tensions and precludes the resolution of a number of poignant humanitarian issues. In addition, it cements the dependency of these regions and the *de facto* authorities on Russia. While, in the view of the Georgian authorities, this isolation is mostly self-inflicted at the instigation of Moscow, they admit that it is aided by some of the policies implemented by Georgia vis-à-vis the breakaway regions. The Georgian authorities therefore wish to adjust the existing policy towards these regions with a view to strengthening contacts and engagement, at the civilian level, with the population in the two breakaway regions. In this context, the authorities have proposed to partially decriminalise illegal entry into South Ossetia and Abkhazia.⁵ According to this proposal, first time offenders will be subjected to a fine instead of lengthy prison sentences.

34. Until now, contacts with civilians and civil society representatives in the breakaway regions were possible, albeit on a limited scale. In addition, some means of communication existed between the authorities in Tbilisi and in Sukhumi and to a (much) lesser extend in Tskhinvali. Regrettably, such contacts have become increasingly more difficult, even at an informal level. This is partly the result of the increased borderisation and partly because of the increased isolationist positions of the *de facto* authorities. This

⁵ According to the current law on the occupied territories, it is illegal to enter, without prior authorisation by the cabinet of ministers of Georgia, South Ossetia or Abkhazia via Georgia’s external borders that are not under the control of Tbilisi i.e. the borders between the territories and Russia as well as the sea border with Abkhazia.

increased isolationism by the *de facto* authorities was also evident from their refusal to meet with the delegation, as outlined in the introduction to this note.

35. Several interlocutors stressed the importance of the upcoming Sochi Olympic Winter Games in relation to developments concerning the two breakaway regions. The Sochi Games are extremely prestigious for Russia and can count on the direct interest and involvement of President Putin. Their successful and problem-free conduct is therefore a key political priority for Russia. Given the instability of the region, security issues are a crucial preoccupation for the Russian authorities in this respect. Reportedly, a new hard border is being established between the Gali⁶ district and the rest of Abkhazia as part of the security measures for the games. Moreover, Russia is reportedly considering using the existing infrastructure in Abkhazia for the logistics of the Sochi games. Some interlocutors indicated that these developments may also have played a role in the refusal of the *de facto* authorities in Sukhumi to meet with our delegation.

36. The Sochi Games undoubtedly play an important role in the developments in the region. As a sign of good will, Georgia has announced that it will participate in the Sochi Games and that it is willing to cooperate with Russia on security issues. We hope that Russia and the breakaway regions will demonstrate a more flexible and open attitude after the games have taken place. However, we are doubtful that the end of the games will result in a major breakthrough with regard to resolving some of the most distressing questions related to the war and its consequences for the region, such as the return of IDPs and freedom of movement across the ABL.

III. Access to the breakaway regions, including by international monitors

37. Access to South Ossetia and Abkhazia by civilians as well as by international organisations is of crucial importance from both the humanitarian and political perspectives. It has been the subject of PACE recommendations and the cease-fire of 12 August 2008 agreement. Regrettably, no progress has been achieved in this respect and the situation has even deteriorated recently.

38. In 2009, Russia vetoed continuation of the 100-strong UN presence operating mainly in Abkhazia, as well as the large OSCE mission that was active in Georgian controlled areas, as well as Abkhazia and South Ossetia. UNDP and UNHCR presence in Abkhazia has been scaled back.

39. The EUMM does not have unrestricted access to the breakaway regions. EUMM experts have participated in the IPRM fact-finding visits that were authorised by the *de facto* authorities. The absence of impartial and independent monitors - and potential mediators in case of rising tensions - negatively affects the security climate in the region.

40. The *de facto* authorities of South Ossetia have, as a rule, refused access to international organisations, including for humanitarian reasons, via the south, except for the Geneva co-chairs and the ICRC. This attitude has contributed to the deep isolation of the region.

41. Initially, the *de facto* authorities of Abkhazia generally allowed access to international organisations via the south. However, this policy seems to have changed and most requests for visits are now refused. Today, Abkhazia is also to a large extent isolated, with international engagement limited to the work of a very few humanitarian and civil society organisations. Their activities are hampered by deliberate bureaucratic restrictions.

42. For Georgia, access to South Ossetia and Abkhazia is regulated by the law on the occupied territories. In principle there are no limitations for civilians to cross the ABL with these two regions. Foreign nationals are requested to inform the authorities that they will visit the two territories from within Georgia but do not need authorisation. However, the law specifically prohibits entering the occupied territories via the external borders of Georgia that are not under control of the authorities in Tbilisi, i.e. via Russia or via the sea in the case of Abkhazia. In order to enter the two territories via such borders explicit authorisation needs to be granted by the Georgian Cabinet of Ministers. Entering the two territories via the north without such authorisation, which is granted only in exceptional circumstances provided for in the law, is a crime according to Georgian law and punishable with hefty fines or prison sentences for repeat offenders.

43. The criminalisation of entry into the two occupied regions via its land borders with Russia (or sea in the case of Abkhazia) has contributed to the isolation of the two territories and has raised concerns among the international community, including neighbouring countries such as Turkey. The current authorities have proposed changing the law on the occupied territories on this issue. Illegal entry would not be decriminalised

⁶ The Gali district is predominantly inhabited by ethnic Georgians.

but punishment for first time transgression would be mostly symbolic. Although these proposals are fiercely criticised by the Georgian opposition, during our visit we were told that they will enter into force at the latest in July 2013. However, the Russian Foreign Ministry considers them insufficient to have any tangible impact.

44. The prohibition of crossing of the ABL in both directions by civilians imposed by the *de facto* authorities is of serious concern. The *de facto* authorities of South Ossetia do restrict civilian movement across the ABL with the exception of the Akhagori region which is predominantly inhabited by ethnic Georgians. However, reportedly travel across the ABL with Akhagori has recently also become increasingly more difficult. As a result, people who want to join their relatives living a few kilometres away behind the ABL, are obliged to travel via Vladikavkaz and cross the border between Georgia and North Ossetia, which amounts to a two-day journey. Holders of a Georgian passport still need a visa to enter Russia. Georgia has abolished visa requirements for Russian passport holders.

45. The *de facto* authorities in Abkhazia were more lenient with regard to ABL crossing. Ethnic Georgians residing in the breakaway region – predominantly in the Gali region - were relatively readily given permission to cross the ABL to obtain medical treatment or, for pupils, to attend Georgian schools.

46. However, the situation has become more difficult with the increased borderisation of the ABL, which has been practically finalised by now, and in particular after Russian border guards sealed off the ABL and, in September 2012, took full control over the only existing crossing point. Since then, crossing the ABL in any direction, even for humanitarian reasons, has become increasingly difficult, if not impossible. There have been reports of a number of fatalities on the ABL when the Russian border guards did not allow ambulances to cross from Abkhazia into Georgia proper, which is the nearest place for emergency medical services for residents of Abkhazia.

47. The sealing of the ABL has left many locals who do not possess so-called Abkhaz passports unable to cross to the Tbilisi-controlled part of the territory. According to the data released by the *de facto* Abkhazi authorities, about 13 000 passports, up from 3000 in 2010, have been issued to Gali Georgians. Most residents of Abkhazia, except ethnic Georgians from the Gali district, have Russian passports, but many more remain stateless under the laws imposed by the *de facto* authorities.

48. The current Georgian Government is considering softening its attitude towards Abkhazia residents travelling on Russian passports but not to those holding passports issued by Russian officials in Abkhazia itself, as this might give the impression of accepting Russian recognition of, or jurisdiction over, Abkhazia. It has also removed rules that complicated travel inside Georgia for those with Abkhazia and South Ossetia issued so-called “passports”, accepting them as valid ID documents within the Tbilisi-controlled territories.

49. Another concern is that many Gali residents must travel for hours to reach the only existing checkpoint. The intention of creating a second crossing point has been announced by the *de facto* authorities but so far it has not materialised.

50. Before the recent Georgian elections, almost all of Abkhazia “official” trade and border crossings went via the land border on the Psou River in Russia. The new Georgian Government has removed regulations that made it impossible to use Georgian roads to bring goods to Abkhazia through the ABL.

51. To further facilitate trade and increase freedom of movement, the new government says it is willing to consider restoring the railway over the ABL between the Tbilisi- and Sukhumi-controlled territories.

IV. Humanitarian situation

52. The humanitarian situation in the war-affected areas was outlined and discussed in great detail in Resolution 1916(2013), and the accompanying report (Doc. 13083) by Ms Tina Acketoft, on “*Georgia and Russia: the humanitarian situation in the conflict- and war-affected areas*”, which was adopted by the Assembly on 23 January 2013. We will therefore limit ourselves to briefly outlining any additional information that we obtained during our visit to Moscow and Tbilisi.

53. The overarching problem with regard to the humanitarian situation continues to be the lack of freedom of movement across the ABL and lack of access to the breakaway regions. Recently, crossings for purely humanitarian reasons, such as medical emergencies, have also been refused by the Russian border guards. The nearest specialist medical services for people in the breakaway regions, including emergency services, are in Tbilisi controlled Georgia. The new Georgian Government has extended the previous government’s programme to deliver free medical assistance to people from breakaway regions where medical care is in disastrous state. Until recently, the Russian border guards therefore allowed ambulances to cross the ABL.

However, lately ambulances have been turned away by the Russian border guards, often with fatal consequences. This is unacceptable.

54. Free Georgian medical care is perceived by the *de facto* authorities as a potential threat to their independence, so they have started to spend large amounts of money for medical care in Russia. They have also forbidden the import of medicines from the Tbilisi-controlled territory, thus driving up prices or causing shortages. We strongly condemn the politicisation of basic humanitarian needs.

55. A number of international organisations and NGOs have established programmes in the two breakaway regions, mostly in Abkhazia. Recently, the *de facto* authorities in Abkhazia ordered international organisations to relocate to, and focus their programmes solely on, the Gali region. In practical terms, this means that many organisations will have to close down their activities and move out of Abkhazia.

56. The Abkhaz authorities explain their decreasing interest in the activities of international organisations by the substantial aid received from Russia and limited financial capacity of these organisations. Projects are considered to focus too much on emergency aid rather than real development. Their yearly value does not exceed 10-15 million USD, which is little compared to the aid received from Russia.

57. The Ministry for Regional Co-operation in Moscow informed us that in 2012 they provided 900 million roubles for social and economic development in Abkhazia. This figure was down from 8.9 billion roubles in 2010, also as a result of the economic crisis. South Ossetia received in total 10.9 billion roubles in aid for social and economic development. The main problem with financial support to Abkhazia and South Ossetia is the lack of transparency and any formal rules for e.g. organising tenders by the *de facto* authorities.

V. Investigation into the allegations of war crimes and violations of international human rights and humanitarian law, including allegations of ethnic cleansing

58. Under international law, both Russia and Georgia are obliged to investigate any allegations of violations of human rights and international humanitarian law committed by persons under their *de facto* jurisdiction. In its resolutions on the consequences of the war between Georgia and Russia, the Assembly has insistently called on both Russia and Georgia to fully and effectively investigate the credible allegations of violations of international human rights and humanitarian law – including allegations of war crimes and ethnic cleansing – by civilians and military personnel under their command or jurisdiction. The possibility that both sides committed war crimes was also raised in the Tagliavini report. This report was accepted by both sides as an impartial investigation into the war and its consequences. This should be an additional incentive for the Russian and Georgian authorities to conduct effective and credible investigations into these allegations.

59. The Investigative Committee has conducted an investigation into alleged war crimes committed by Russian troops during the war. It concluded that no evidence could be found that any war crimes or violations of international humanitarian law were committed by Russian troops during or in the immediate aftermath of the war. These conclusions echoed the findings of an investigation conducted by the Russian military. The Investigative Committee has also opened criminal investigations into the killing of Russian peacekeeping troops by the Georgian military during the war; the use of prohibited weapons and methods of war by the Georgian military; and into the attack on an institution (Russian Peacekeeping Forces) enjoying international protection.

60. The representatives of the Investigative Committee and the General Prosecutor's Office informed us that they had made several requests for information to the Georgian authorities under the relevant international agreements for judicial co-operation to which both Russia and Georgia are party. However, no reply was ever received. This was questioned by the Prosecutor General in Georgia, who informed us that, since the war, there had been no co-operation on any front between the prosecutor general's offices of Russia and Georgia. He was not aware of any request being made. At the same time, he emphasised that he would welcome the reactivation of co-operation with the Russian Prosecutor General's office, including on war related issues, which, in his view, was in the interests of both countries.

61. In its resolutions on the consequences of the war, the Assembly has insisted that Russia not only investigates alleged violations of humanitarian law committed by its military, but also those allegedly committed by persons under its *de facto* control and jurisdiction, including by Russian "volunteers" as well as by South Ossetian militia and civilians.

62. The representatives of the Investigative Committee and Prosecutor General Office confirmed the Russian position that the investigations into alleged violations of international humanitarian and human rights

law by non-Russian military is the responsibility of the *de facto* authorities in South Ossetia. However, they emphasised that any claims filed directly with the Russian authorities would be duly investigated. No such claims were filed before mid-2009. Since then, 88 claims about alleged violations have been filed with the Russian Prosecutors Office. Most claims were filed on behalf of groups of individuals by the Georgian Young Lawyers Association (GYLA) and the well-known Russian Human Rights NGO, Memorial. These cases are now being investigated by the Investigative Committee. In the framework of these investigations, witnesses need to be questioned. The representatives of the Investigative Committee informed us that they had offered to Memorial and GYLA to question these witnesses on "neutral ground" in the Russian Embassy in Yerevan. The cost for the witnesses to come to Yerevan would be borne by the Russian authorities. However, this was disputed by GYLA, who informed us that no such offer was ever received. On the contrary, all witnesses and claimants were ready to come to Moscow for questioning and GYLA had obtained international funding to cover the expenses of these persons to do so. A formal proposal to do so was made to the Russian Prosecutor General's Office but no reply was received, according to GYLA.

63. We are not in a position, and do not wish, to judge about the veracity of these contradictory claims by the Russian and Georgian sides. However, we do note that both Russian and Georgian prosecutors have expressly stated that they are willing to co-operate with one another. We therefore expect that both sides now will make the necessary concrete steps to back up these claims and we hope to receive documentary evidence that this is the case. The establishment of such co-operation between the Russian and Georgian sides in the investigation of the allegations of violations of humanitarian law and possible war crimes would constitute considerable progress in relation to this subject.

64. The International Criminal Court (ICC) has started an investigation into possible war crimes committed during the 2008 war. Russia is not a signatory of the ICC but Georgia is, and the alleged violations took place on Georgian territory (even from a Russian point of view, as it only recognised the independence of these territories after the war was over). The International Prosecutor of the ICC will only take up this case if effective national investigations do not take place or are deficient. The International Prosecutor has not yet decided whether he will open a formal investigation or not. Both the Russian and Georgian authorities met with the International Prosecutor and provided him with information pertinent to his investigation. That information is currently being studied by the International Prosecutor's Office.

65. The Georgian authorities have started an investigation into allegations of violations of humanitarian law and possible war crimes, irrespective of whether they were committed by Russian or Georgian troops and/or civilians, as well as ethnic Ossetian paramilitary and/or civilians. This investigation is being conducted by representatives of the Ministry of Justice, the Ministry of the Interior, the Ministry of Defence and the Prosecutor General's Office. More than 7000 witness testimonies have been taken. These testimonies and other evidence are now being clarified. The ICC is reportedly giving guidance to the Georgian authorities with regard to these investigations.

66. The Georgian Prosecutor General also announced that he would re-open the investigation into the fates of three missing Ossetians, which is an important issue for the Ossetian side that resurfaces regularly during the Geneva talks. On a proposal of the Geneva co-chairs, the Prosecutor General has offered to meet the relatives of these three missing persons himself in order to hear their testimonies and claims.

67. Numerous Russian and Georgian citizens, often with the support of their respective authorities, have filed claims against Russia or Georgia with the European Court of Human Rights in Strasbourg. In addition, Georgia has filed an interstate application against Russia over the war. These are still under consideration by the Court.

VI. Conclusions

68. Unfortunately, it is obvious that the current *status quo* is unlikely to change in the near future. Diametrically opposed positions, in particular with regard to the status of the breakaway regions, make the prospect of a quick and mutually acceptable solution highly improbable. The Geneva talks are important as they are the only platform for dialogue between those concerned. Unfortunately, it is not expected that they will yield dramatic concrete results that will advance the peace process in the foreseeable future.

69. The approach of the Russian authorities does not leave much room for a possible compromise. The Russian side considers that, in the light of the "new reality" it has implemented the four points of the cease-fire agreement of 12 August 2008. Moreover, it considers itself not bound by any report or recommendation that does not take into account this new reality, or which considers Russia a party to the conflict.

70. In that context, we were clearly told that the Russian side does not feel itself bound by, and will not implement the recommendations contained in PACE Resolutions 1683(2009), 1647(2009) and 1633(2008) – which can be found in Appendix 2 of this note – and it rejects any political dialogue held on the basis of these texts which, in its opinion, also contradict the findings of the Tagliavini report. The authorities acknowledge that this position is in flagrant contradiction with the position of the international community, nevertheless they are not prepared to change it.

71. The formal recognition of the independence of two the breakaway republics has had immediate implications. As a consequence, the majority of recommendations made by the PACE and the international community to the Russian authorities with regard to the withdrawal of the military forces, allowing access to the breakaway regions, investigations into allegations of war crimes and return of IDPs remain unfulfilled. With the exception of the first point, which according to the Russian side results from bilateral agreements, the Russian authorities claim that it is no longer in their power to accomplish these tasks and they refer the responsibility to the *de facto* authorities in Tskhinvali and Sukhumi.

72. During our visit, we discussed extensively the question of investigations into alleged violations of humanitarian law, including war crimes by both sides with the relevant Georgian and Russian authorities. In this context, we also discussed co-operation between the Russian and Georgian investigative authorities. Here again, it seems that there is a chance for improvement and these issues will be closely followed by the co-rapporteurs for both countries.

73. The isolation of the *de facto* authorities has a dramatic impact on the lives of the local communities and limited access hinders the efforts of humanitarian organisations. The latter issue, which is the subject of specific recommendations to both sides of the conflict, is of particular importance from the humanitarian perspective.

74. Certainly, the population of both breakaway regions, including those who remain on their territory and those displaced, are the main victims of this political stalemate. The humanitarian situation is most worrying and we fully subscribe to the recommendations in Resolution 1916 (2013). Therefore, every effort should be made to improve the living conditions of the populations, using *inter alia* and where appropriate status neutral practical solutions to concrete problems.

75. As co-rapporteurs on both countries, we are obviously bound by the position of the Assembly as expressed in its adopted texts and did not feel authorised to make any – even symbolic – gestures, such as addressing the *de facto* authorities without using the prefix “*de facto*” for their functions. At the same time, we are aware that our mandate is not limited to an assessment of the extent to which the PACE recommendations have been fulfilled and we feel obliged to try to identify and propose possible ways for the PACE to contribute to improving the situation.

76. We are convinced that the shift from isolation to engagement in a status-neutral manner is creating new opportunities for the Assembly’s contribution to confidence-building measures and community co-operation. The aim of our attempt to establish contacts and dialogue with the *de facto* authorities of the breakaway regions was to explore and define further possible action. Unfortunately, our initiative was rejected and the *de facto* authorities made it clear that a pre-condition for the establishment of a dialogue is some kind of recognition.

77. Joint information notes, like this one only, make sense only if they are based on a dialogue with all those concerned by the conflict and if they can contribute to a dialogue between them.

78. We strongly believe that the Committee should continue to closely follow the developments with regard to the consequences of the war. In that context, dialogue with all parties concerned is essential to further our work. Therefore, until we have received clear signals that the *de facto* authorities in Sukhumi and Tskhinvali are willing to engage in a dialogue without making status-related pre-conditions, which is needed to produce a proper information note as requested by the Committee, the file on the consequences of the 2008 war be included in our respective monitoring files on Georgia and Russia, and the fulfilment of specific recommendations in this respect be followed in the framework of periodical monitoring reports.

79. We continue to favour a careful dialogue with the *de facto* authorities on these issues. If we receive signals that such a wish for unconditional dialogue also exists among the *de facto* authorities, we will prepare the next joint information note based on a visit not only to Moscow and Tbilisi but also to Sukhumi and Tskhinvali.

APPENDIX 1

Programme of the fact-finding visit to Moscow and Tbilisi (12-16 May 2013)

Mr Andres HERKEL, member of Parliament
 Mr Boriss CILEVICS, member of Parliament
 Mr Michael Aastrup JENSEN, member of Parliament
 Ms Theodora BAKOYANNIS, member of Parliament
 Mr Andreas GROSS, National Councilor
 Ms Agnieszka NACHILO, Deputy to the Head of Department of the Monitoring Committee of the Parliamentary Assembly
 Mr Bas KLEIN, Secretary of the Monitoring Committee of the Parliamentary Assembly

Sunday, 12 May 2013

Arrival of the delegation in Moscow

Monday, 13 May 2013

09:00 – 10:30 Meeting with Mr Ivan SOLTANOVSKY, Head of Department of the European Co-operation, Ministry for Foreign Affairs

11:00 – 12:30 Meeting with Mr Alexander PROSTOV, Head of Department of International Investigation, Investigative Committee

13:00 – 14:30 Working lunch hosted by the Head of the Russian Delegation to the Parliamentary Assembly of the Council of Europe

15:00 – 16:00 Meeting with Mr Victor GRIN, Deputy Prosecutor General

16:30 – 17:30 Meeting with the Head of the Department responsible for the assistance, Ministry for Regional Co-operation

Evening Departure from Moscow

Tuesday, 14 May 2013

Morning Arrival in Tbilisi

13:00 Departure to Kutaisi

16:30 Meeting with Mr David USUPASHVILI, Chairperson of the Parliament of Georgia

17:30 Meeting with members of the Georgian Delegation to the Parliamentary Assembly of the Council of Europe

19:00 Departure for Tbilisi

Wednesday, 15 May 2013

10:30 Meeting with Mr Zurab ABASHIDZE, Special Representative of the Prime Minister of Georgia for relations with Russia

11:15 Meeting with Mr Paata ZAKAREISHVILI, State Minister for Reintegration of Georgia

12:00 Meeting with Mr Giga BOKERIA, Secretary of the National Security Council of Georgia

15:00 Meeting with Mr David ZALKALIANI, Deputy Minister of Foreign Affairs

16:00 Meeting with Ms Tea TSULUKIANI, Minister of Justice of Georgia

17:00 Meeting with Co-Chairs of Geneva International Discussions (organised by the Council of Europe office in Georgia)

AS/Mon(2013)14rev

18:00 Meeting with Mr Archil KBILASHVILI, Prosecutor General of Georgia

19:00 Meeting with the Representatives of EUMM and Red Cross
(organised by the Council of Europe office in Georgia)

Thursday, 16 May 2013

Morning Departure of the delegation

APPENDIX 2

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Resolution 1633 (2008)¹ The consequences of the war between Georgia and Russia

1. The Parliamentary Assembly is firmly committed to the pursuit of peace and the principles embodied in the Statute of the Council of Europe (ETS No. 1): democracy, human rights and the rule of law, as well as to principles of state sovereignty, the right to territorial integrity and the inviolability of state frontiers. Respect for these principles is an obligation incumbent upon all member states of the Council of Europe.

2. When joining the Council of Europe, both Georgia and Russia committed themselves to settle conflicts by peaceful means and in accordance with the principles of international law.

3. The Assembly condemns the outbreak of war between two member states of the Organisation and deplores the human suffering it has caused.

4. The Assembly is conscious that, although the outbreak of the war on 7 August 2008 may have come unexpectedly to most of its members, it was the result of a serious escalation of tension, with provocations and ensuing deterioration of the security situation, which had started much earlier. Steps to reduce tension were not taken and the possibility of military intervention became an option for both sides in the conflict. This is unacceptable for the Assembly. It is of the view that in the end the peacekeeping format proved that it could not fulfil its intended function and that the peacekeepers did not succeed in their mission to protect the lives and property of the people in the conflict area. It therefore regrets that earlier calls to discuss a change in the format of the peacekeeping and conflict resolution process were rejected by South Ossetia and Russia.

5. However, the initiation of shelling of Tskhinvali without warning by the Georgian military, on 7 August 2008, marked a new level of escalation, namely that of open and fully fledged warfare. The use of heavy weapons and cluster munitions, creating grave risks for civilians, constituted a disproportionate use of armed force by Georgia, albeit within its own territory, and as such a violation of international humanitarian law and Georgia's commitment to resolve the conflict peacefully.

6. At the same time, the Russian counter-attack, including large-scale military actions in central and western Georgia and in Abkhazia, equally failed to respect the principle of proportionality and international humanitarian law, and constituted a violation of Council of Europe principles, as well as of the statutory obligations and specific accession commitments of Russia as a member state. It led to the occupation of a significant part of the territory of Georgia, as well

as to attacks on the economic and strategic infrastructure of the country, which can be deemed to be either a direct attack on the sovereignty of Georgia and thus a violation of the Statute of the Council of Europe, or an attempt by Russia to extend its influence over a "near abroad" state in violation of its accession commitment to denounce such a concept.

7. In this respect, the Assembly considers that, from the point of view of international law, the notion of "protecting citizens abroad" is not acceptable and is concerned by the political implications of such a policy by the Russian authorities for other member states where a substantial number of Russian citizens reside.

8. The Assembly believes that truth is a precondition for reconciliation. Since the facts surrounding the outbreak of the war are disputed by both Georgia and Russia, they should be established, in an objective manner, by an independent international investigation. The Georgian authorities have indicated that they would welcome such an international inquiry and the Russian members of parliament have also indicated that they would not object to this proposal. This investigation should not be limited to the outbreak of the war, but should also focus on the years leading up to the conflict.

9. The Assembly condemns the recognition by Russia of the independence of South Ossetia and Abkhazia as a violation of international law and Council of Europe statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and calls on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and respect fully the sovereignty and territorial integrity of Georgia, as well as the inviolability of its frontiers.

10. The Assembly particularly deplores the fact that the recognition of independence was prompted by the unanimous demand of both houses of the Parliament of Russia, the State Duma and the Council of the Federation. It is seriously concerned that the act of recognition, followed by the recent signing by Russia of friendship and co-operation treaties with the de facto authorities in Tskhinvali and Sukhumi, hinders the implementation of the European Union-brokered ceasefire agreement, as well as the provision of humanitarian aid and monitoring of the implementation of the ceasefire agreement by independent observers.

11. The Assembly is concerned about the human rights and humanitarian law violations committed by both sides in the context of the war, such as the intentional or avoidable killing or wounding of civilians, as well as destruction of property. In particular, the use of indiscriminate force and weapons by both Georgian and Russian troops in civilian areas can be considered as war crimes that need to be fully investigated.

12. Russia appears not to have succeeded in its duty, under the 1907 Hague Convention (IV) on the Laws and Customs of War on Land, to prevent looting, maintain law and order and protect property in the areas under the de facto control of its forces. In this respect, the Assembly notes that Russia bears full responsibility for violations of human rights and humanitarian law in the areas under its de facto control. In the light of the case law of the European Court of Human

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Rights, this also concerns acts committed at the behest of the de facto authorities in Tshkinvali.

13. The Assembly is especially concerned about credible reports of acts of ethnic cleansing committed in ethnic Georgian villages in South Ossetia and the "buffer zone" by irregular militia and gangs which the Russian troops failed to stop. It stresses in this respect that such acts were mostly committed after the signing of the ceasefire agreement on 12 August 2008, and continue today.

14. The total number of deaths and persons wounded has been the subject of controversy. The most recent independent estimates indicate that 300 persons were killed and approximately 500 were wounded on the South Ossetian and Russian sides, and that 364 persons were killed and 2 234 were wounded on the Georgian side. These figures are far lower than those initially advanced in particular by Russia. Some 54 persons remain missing from the conflict on the Georgian side and 6 persons are missing on the South Ossetian side. The International Committee of the Red Cross (ICRC), however, continues to receive tracing requests from families of the missing.

15. Some 192 000 persons were displaced as a consequence of the war. The Assembly is concerned that a total of 31 000 displaced persons (25 000 from South Ossetia and 6 000 from Abkhazia) are considered to be "permanently" unable to return to their original places of residence. These numbers should be seen in the context of the approximately 222 000 persons who remain displaced from the previous conflict in the early 1990s.

16. The Assembly welcomes the role played by the Council of Europe Commissioner for Human Rights who travelled to the region in August and September 2008, organised the exchange of prisoners and spelled out six principles for urgent protection of human rights and humanitarian security. The Assembly fully supports these principles.

17. The Assembly welcomes the initiative of the Swedish Chairmanship of the Council of Europe Committee of Ministers which, *inter alia*, convened an informal extraordinary meeting of the ministers for foreign affairs of member states of the Council of Europe on 24 September 2008 in order to prepare the response of the intergovernmental sector of the Organisation to the crisis.

18. The Assembly further welcomes the fact that the European Union, under the French Presidency, has been actively involved since the outbreak of the conflict and recalls its earlier appeals to this effect in its Resolution 1603 on the honouring of commitments and obligations by Georgia, adopted in January 2008. The Assembly further invites the European Union to strengthen its own monitoring mission on the ground and give it a mandate and resources not only to monitor, but also to protect persons and property, pending the restoration of public security by the Georgian police.

19. The Assembly also welcomes the proposal of the Turkish Government concerning a "Caucasus stability and co-operation platform" as a complementary and constructive initiative.

20. The Assembly calls on the Russian authorities to allow observers from both the European Union and the Organization for Security and Co-operation in Europe (OSCE) to have access to South Ossetia and Abkhazia, which are under the de facto control of Russia. In addition, differences about the role of European Union observers in the so-called "buffer zone" may lead to an even further deterioration of the security situation in this area, impeding the return of displaced persons after Russian troops have withdrawn from it.

21. The Assembly welcomes the quick reaction of the international community in providing assistance to the region. It welcomes the fact that the Russian authorities have provided generous support to refugees from South Ossetia and that the Georgian authorities similarly have mobilised considerable resources to meet the immediate needs of those persons displaced within Georgian territory under their effective control. However, the Assembly is concerned that the recognition by Russia of the independence of South Ossetia and Abkhazia is hindering the effective deployment of humanitarian aid in these areas.

22. In view of the above-mentioned considerations and taking into account in particular the findings of the ad hoc committee of its Bureau, which visited Georgia and Russia in the context of the war from 21 to 26 September 2008, the Assembly urges Georgia and Russia to:

22.1. implement unconditionally all points of the European Union-brokered ceasefire agreement. This implies, in particular, the obligation for Russia to withdraw its troops to positions *ex ante* the conflict and refrain from any act of provocation to justify maintaining the presence of Russian troops in the so-called "buffer zone";

22.2. enable OSCE and European Union observers to be deployed into South Ossetia and Abkhazia; Russia should also withdraw its recognition of independence of South Ossetia and Abkhazia;

22.3. co-operate fully in the establishment of an independent international investigation to look into the precise circumstances surrounding the outbreak of the war; this initiative should be without prejudice to the work of inquiry committees set up or to be set up within their own parliaments, which the Assembly fully supports;

22.4. work towards the creation of a new peacekeeping format and to internationalise the peacekeeping force, with the active participation of Council of Europe and European Union member states, in order to establish genuine conditions for the start of a peace process;

22.5. participate unconditionally in the Geneva talks scheduled for 15 October regarding the modalities of stability and security in South Ossetia and Abkhazia. In this respect the Assembly regrets that these talks will now only take place at expert level;

22.6. refrain from inflammatory discourse and take steps to maintain good neighbourly relations;

22.7. ensure effective respect for all human rights under the European Convention on Human Rights (ETS No. 5) and humanitarian norms under the 1949 Geneva Conventions

and their additional protocols on the territories under their de facto control;

22.8. investigate all allegations of human rights violations committed during the war and in its aftermath, and hold the perpetrators to account before the domestic courts;

22.9. allow safe and unhindered access by the media to the conflict zone, in accordance with Assembly Resolution 1438 (2005) on freedom of the press and the working conditions of journalists in conflict zones;

22.10. make full use of available means of peaceful conflict resolution, including, as appropriate, the European Court of Human Rights, the International Court of Justice and the International Criminal Court, in order to resolve the underlying conflict situation; in this context, implement the interim measures ordered by the European Court of Human Rights on 12 August 2008, upon the request of the Georgian Government, as well as any forthcoming judgments of the Court concerning alleged violations of human rights relating to the conflict;

22.11. join the United Nations Convention on Cluster Munitions.

23. The Assembly calls on all parties to the conflict, namely Georgia, Russia and the de facto authorities in South Ossetia to:

23.1. take urgent measures to guarantee the security of all persons within the region of South Ossetia, and those in the so-called "buffer zone". The de facto authorities in South Ossetia and the Russian forces have, in particular, the obligation to:

23.1.1. stamp out lawlessness (including physical assault, robbery, kidnapping, harassment, looting and torching of property), in accordance with Article 43 of the Hague Convention (IV) of 1907 and the Fourth Geneva Convention of 1949;

23.1.2. provide, without delay, the Office of the United Nations High Commissioner for Refugees (UNHCR) and all humanitarian organisations with unhindered access to the areas affected by the conflict, in particular in the region of South Ossetia and the so-called "buffer zone". All organisations providing humanitarian assistance in these areas should be guaranteed safety.

23.2. remove all mines and unexploded ordnance. This implies all parties to the conflict exchanging information on the use and location of such materials, and also the involvement of experts on mine and ordnance location and removal. The people living in these areas, as well as other persons concerned, must be made aware of the dangers of mines and unexploded ordnance;

23.3. co-operate fully with all international monitoring missions, whether from the United Nations (UN), the OSCE, the European Union, the Council of Europe or any other international body and grant these organisations full access to the conflict regions;

23.4. ensure that all persons displaced by the conflict have the right to return on a fully voluntary basis and to refrain from using displaced persons as political pawns when tackling the issue of return. Furthermore, all internally displaced persons should have the right to return in safety and dignity, or to resettle voluntarily or integrate locally;

23.5. release and exchange immediately hostages, prisoners of war and other persons detained as a result of the conflict, without requiring reciprocity from any of the parties;

23.6. solve the issue of missing persons from the recent conflict and the earlier conflict, ensuring that the issue is treated as a humanitarian issue and not a political issue. Furthermore, establish a multilateral co-ordination mechanism with commissions in charge of searching for missing persons;

23.7. take concrete measures to fully and effectively implement the Council of Europe Commissioner for Human Rights' six principles for urgent protection of human rights and humanitarian security drawn up after his August 2008 visit to the region.

24. The Assembly calls on all member states and states with observer status with the Organisation to:

24.1. not recognise the independence of South Ossetia and Abkhazia;

24.2. intensify their efforts to provide humanitarian assistance to the victims of the conflict, including:

24.2.1. the pledging and delivery of aid and assistance for immediate urgent needs and those of a more long-term nature;

24.2.2. assistance covering basic needs, accommodation, health care, including care for trauma victims, support for the livelihood of victims, etc.;

24.2.3. particular support for vulnerable persons, including children, the aged and the sick and infirm;

24.3. maintain a focus on the needs of the 222 000 persons who remain displaced from the previous conflict over Abkhazia and South Ossetia, as well as those displaced from earlier conflicts in the North Caucasus;

24.4. formally condemn the ethnic cleansing taking place in the areas under the effective control of Russian forces and of the de facto authorities in South Ossetia;

24.5. ensure, to the extent that they are also members of the North Atlantic Treaty Organization (NATO), that the NATO assessment of the military build-up with respect to this war be made public;

24.6. make available to the independent international investigation into the circumstances surrounding the outbreak of the war all relevant satellite data they may have in their possession.

25. Because of the human rights violations and the humanitarian challenges resulting from the conflict between Russia and Georgia, the Assembly invites its Bureau to ensure that

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the Assembly remains seized of the matter through its competent committees and to step up its monitoring procedure with respect to both countries.

26. The Assembly resolves to convene an international conference to reflect on establishing and improving existing early warning systems to prevent the escalation of conflicts into fully fledged wars.

27. The Assembly invites the Secretary General of the Council of Europe to consider the establishment, possibly in consultation with the Commissioner for Human Rights, of a special human rights field mission of the Council of Europe with unhindered access to all areas affected by the war.

28. The Assembly also invites the Secretary General of the Council of Europe to consider availing himself of his powers under Article 52 of the European Convention on Human Rights in particular for the purpose of asking the Russian authorities to provide information on how the rights guaranteed by the Convention in zones under their de facto jurisdiction are effectively secured, and the Georgian authorities to provide explanations as to how it was deemed necessary to declare a state of war without it being necessary to make a derogation under Article 15 of the Convention.

29. The Assembly invites the Council of Europe Development Bank to consider action with a view to assisting refugees and displaced persons, as well as contributing to reconstruction in the areas affected, including South Ossetia and Abkhazia.

30. The Assembly is convinced that the establishment of dialogue is the best way forward for the solution of any conflict and for fostering stability in the long term. This holds true for this particular conflict. However, dialogue requires political will on both sides and must be backed up by concrete action. Therefore, some basic conditions for the dialogue have to be

established and observed. Full implementation of the peace plan, including withdrawal of the Russian troops to positions *ex ante* the conflict is essential. In addition, full deployment of European Union and OSCE observers into South Ossetia and Abkhazia and withdrawal by Russia of the recognition of independence of South Ossetia and Abkhazia, would be minimum conditions for a meaningful dialogue.

31. In order to promote such dialogue, the Assembly will consider setting up under its aegis a special Parliamentary Assembly ad hoc committee, in which both Georgian and Russian parliamentarians will participate, to serve as a forum for discussing their differences and proposing ways to put an end to the current impasse and look towards the future.

32. With a view to minimising the risk of further outbreaks of violence involving its member states, the Assembly should play a role in the field of conflict prevention and resolution, as without peace there cannot be genuine respect for democracy, human rights and the rule of law. It decides, therefore, to ask its Bureau to study mechanisms by which it could conduct parliamentary diplomacy in the context of frozen conflicts in Europe and other situations liable to undermine peace and stability.

1. *Assembly debate* on 30 September and 2 October 2008 (30th, 34th and 35th Sittings) (see Doc. 11724, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Van den Brande and Mr Eörsi; Doc. 11731, opinion of the Political Affairs Committee, rapporteur: Mr Lindblad; Doc. 11732, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides; and Doc. 11730, opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Jonker). *Text adopted by the Assembly* on 2 October 2008 (35th Sitting). See also Recommendation 1846 (2008).

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Resolution 1647 (2009)¹ Implementation of Resolution 1633(2008) on the consequences of the war between Georgia and Russia

1. The Parliamentary Assembly fully reaffirms its Resolution 1633 (2008) on the consequences of the war between Georgia and Russia, adopted on 2 October 2008. 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 principles of humanitarian law, as well as the Statute of the Council of Europe (ETS No. 1) and specific accession commitments made by the two countries. Therefore, the Assembly placed a series of concrete demands on both Georgia and Russia, as well as on the de facto authorities in South Ossetia and in Abkhazia, including the demand on Russia to withdraw its recognition of independence of these two break-away regions. In so doing, the Assembly provided a transparent, impartial and concrete roadmap to address the consequences of the war, not only for the parties concerned, but also for the Assembly itself.

2. The Assembly welcomes the establishment, by the European Union, on 2 December 2008, of 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, humanitarian law and human rights and the accusations made in that context. This is a crucial step towards establishing the truth and providing the basis for future reconciliation between Russia and Georgia. In this respect, the Assembly:

2.1. welcomes the support of both Russia and Georgia for the establishment of an independent international inquiry into the outbreak of the war and their declared willingness to fully co-operate with it;

2.2. calls upon Russia and Georgia now to co-operate effectively, fully and unconditionally with the European Union fact-finding mission;

2.3. calls upon all Council of Europe member states and states that have observer status with the Organisation to make available to the fact-finding mission any information, including satellite data, that may be of relevance to the investigation;

2.4. calls upon the member states of the Council of Europe which are also European Union members to ensure that the report of the European Union mission is also presented to the Council of Europe in order for its findings to be debated before the Assembly; the Council of Europe shall continue to fulfil its own responsibilities concerning this conflict between two of its member states;

2.5. resolves to return to the issue of the causes and precise circumstances surrounding the outbreak of the war once the report of the European Union mission has been presented.

3. The Assembly encourages all parties to pursue, in a constructive spirit, the Geneva talks on the modalities of security and stability in Abkhazia and South Ossetia with a view to introducing an incident prevention mechanism, as proposed by the co-chairing organisations (the United Nations, the Organisation for Security and co-operation in Europe (OSCE) and the European Union). The Assembly supports the principle that representatives of the inhabitants of South Ossetia and Abkhazia at the beginning of August 2008, both supporters of the de facto authorities and those that favour reintegration with Georgia, should participate in these talks. It also insists that their status in the talks should not violate Georgia's sovereignty and territorial integrity. The Assembly therefore calls upon all parties to agree on a formula ensuring their participation without prejudice to the status of the two break-away regions.

4. The Assembly condemns the recognition by Russia of the independence of South Ossetia and Abkhazia and considers it to be a violation of international law and of the Council of Europe's statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and reiterates its call on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and to fully respect the sovereignty and territorial integrity of Georgia, as well as the inviolability of its borders.

5. The Assembly is seriously concerned that the escalation of tensions and provocations along the administrative borders of the break-away regions of South Ossetia and Abkhazia are undermining the stability of the region and could lead to renewed clashes or an outbreak of hostilities. It deplores in particular the recent attacks on Georgian police officers in the areas close to the Abkhaz and South Ossetian administrative borders. It considers that the full access of international monitors to South Ossetia and Abkhazia, as well as the establishment of a new internationalised peacekeeping force in the region, are essential to guaranteeing stability and security and should not be made conditional on the status issue. The Assembly therefore:

5.1. deplores the continued refusal of Russia and the de facto authorities to allow access to OSCE monitors to South Ossetia and to European Union monitors to both South Ossetia and Abkhazia;

5.2. deeply regrets the closure of the OSCE mission in Georgia as a result of Russian objections over its exact mandate and calls upon all parties, and especially the Russian authorities, to accept a formula for the mandate of the OSCE mission, including its military monitoring operation, in Georgia, that would not prejudice the status of the two break-away regions;

5.3. welcomes the continued access of the United Nations Observer Mission in Georgia (UNOMIG) observers to Abkhazia and calls upon all parties not to take any actions that would endanger the renewal of the mandate of UNOMIG by the United Nations Security Council on 15 February 2009;

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5.4. condemns the Russian non-mandated military presence and the building of new military bases within the separatist regions of South Ossetia and Abkhazia, as well as in Akhagori, Perevi and Upper Abkhazia and in villages controlled by the central government of Georgia before the breakout of the conflict.

6. The Assembly reaffirms its full support for the sovereignty and territorial integrity of Georgia, as well as the inviolability of its borders. In this respect, it regrets the unanimous ratification by both houses of the Russian Parliament of the "Friendship and Co-operation" treaties between Russia and the two break-away regions, in violation of these principles, as well as of the ceasefire agreement of 12 August 2008.

7. The Assembly condemns the ethnic cleansing and other human rights violations in South Ossetia, as well as the failure of Russia and the de facto authorities to bring these practices to a halt and their perpetrators to justice. The Assembly reiterates that, under international law, Russia bears responsibility for violations of human rights and humanitarian law in these areas which are under its de facto control.

8. With respect to Georgia, the Assembly:

8.1. welcomes the constructive approach and clear political will of the Georgian authorities to comply with the demands of the Assembly as expressed in Resolution 1633 (2008) and considers that Georgia has complied with many, but not all, of its demands;

8.2. calls upon the Georgian authorities to ensure that all outstanding demands are promptly and fully complied with;

8.3. welcomes the establishment of an inquiry commission by the Georgian Parliament as evidence that it is willing to reflect on the actions and mistakes committed by the Georgian authorities in the outbreak and in the course of the war. The Assembly notes that this commission finalised its work and published its report in December 2008 and calls upon the parliament to review its conclusions in the light of the forthcoming report of the European Union fact-finding mission;

8.4. in the light of the overwhelming evidence to the effect that both Georgia and Russia violated human rights and humanitarian law in the course of the war, welcomes the investigation launched by the Georgian Prosecutor General's Office into alleged human rights and humanitarian law violations committed by both sides in the course of the war and its aftermath, and calls upon it to investigate, impartially, any alleged violations brought to its attention and ensure that the perpetrators are brought to justice;

8.5. is concerned that provisions in the Georgian law on the occupied territories may be at odds with principles of international human rights law, including the European Convention on Human Rights (ETS No. 5), and therefore

calls upon Georgia to promptly implement any recommendations contained in the forthcoming opinion of the European Commission for Democracy through Law (Venice Commission) on this law, which was requested by the Monitoring Committee of the Assembly;

8.6. calls upon Georgia to refrain from any actions that could provoke or increase tensions along the administrative borders with South Ossetia and Abkhazia.

9. With respect to Russia, the Assembly:

9.1. takes note of the expressed intention of the Russian authorities to engage in a constructive and open dialogue with the Assembly in relation to the conflict;

9.2. welcomes the readiness expressed by the Russian parliamentarians to engage in dialogue with their Georgian counterparts under the aegis of the Assembly;

9.3. urges Russia to fully and unconditionally implement all requirements of Resolution 1633 (2008) of the Parliamentary Assembly, including the withdrawal of the recognition of the two break-away regions of Georgia, the implementation of the European Union-brokered ceasefire agreement of 12 August 2008, allowing OSCE and European Union monitors into South Ossetia and Abkhazia, and to work towards the creation of a new peacekeeping format and an internationalised peacekeeping force, with the active participation of Council of Europe and European Union member states;

9.4. specifically requests Russia to withdraw from the Akhagori district, Upper Abkhazia, the Georgian enclave around Tskhinvali and Perevi village, and to reduce its military presence to pre-conflict levels;

9.5. calls upon Russia to implement fully and unconditionally all points of the ceasefire agreement of 12 August 2008;

9.6. calls upon Russia to agree to renew the mandate of the OSCE mission in Georgia, including its military monitoring operation;

9.7. calls upon Russia not to create any obstacles for the renewal of the UNOMIG mandate in Abkhazia;

9.8. calls upon Russia to allow, without further delay, the full access of all international monitors to South Ossetia and Abkhazia, and especially to allow OSCE monitors access to South Ossetia and European Union monitors access to South Ossetia and Abkhazia, without making it conditional on the question of status;

9.9. calls upon Russia and the de facto authorities of South Ossetia to ensure that there are no more acts of ethnic cleansing and other human rights violations, which continue to occur in South Ossetia, and bring the perpetrators promptly to justice;

9.10. calls upon Russia and the de facto authorities of both regions to bring to an immediate halt the provocations and attacks from the South Ossetian and Abkhaz sides of the

administrative border and to refrain from any actions that could provoke or increase tensions along the administrative borders with South Ossetia and Abkhazia;

9.11. calls upon Russia and the de facto authorities to fully ensure the right of return of all internally displaced persons to the areas under their effective control;

9.12. in the light of the overwhelming evidence to the effect that both Georgia and Russia violated human rights and humanitarian law in the course of the war and in its aftermath, regrets that the Russian Prosecutor's Office has not yet started any investigation into alleged human rights and humanitarian law violations committed by Russian and allied South Ossetian forces. The Assembly calls upon Russia to initiate such an investigation without further delay and to ensure that the perpetrators are brought to justice.

10. With respect to the de facto authorities in South Ossetia, the Assembly notes that they have generally complied with the demand to exchange prisoners of war but regrets that they have failed to co-operate with international monitoring missions and are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia.

11. The Assembly calls upon both Russia and Georgia to:

11.1. allow unhindered and unconditional access of humanitarian organisations and humanitarian aid to the areas of South Ossetia and Abkhazia;

11.2. sign, without further delay, the United Nations Convention on Cluster Munitions;

11.3. implement the interim measures ordered by the European Court of Human Rights and the International Court of Justice, as well as any forthcoming judgments of these courts concerning alleged violations of human rights in the course of the conflict, and to co-operate fully and unconditionally with any possible investigation by the International Criminal Court;

11.4. work constructively towards the creation of a new peacekeeping format and internationalised peacekeeping force.

12. The Assembly welcomes the ongoing efforts by the Council of Europe Commissioner for Human Rights to protect human rights and humanitarian security in the region. It calls upon both Russia and Georgia to ensure that the six principles he formulated in this respect are fully and effectively implemented.

13. The Assembly is especially concerned about the human rights and humanitarian situation in Perevi, Upper Abkhazia, and in the Akhagori district, as well as about the status of the Akhagori district which, while technically a part of the former autonomous region (*oblast*) of South Ossetia, was never under the control of the de facto authorities and has

always been mainly populated by ethnic Georgians. In this respect, it takes note that the Akhagori district was occupied by Russian forces on 15 August 2008, three days after the signing of the ceasefire agreement.

14. The Assembly considers it unacceptable that persons residing in Abkhazia and South Ossetia should not be effectively covered by the human rights protection mechanisms granted to them as citizens of a Council of Europe member state under the European Convention on Human Rights, as well as other relevant Council of Europe conventions, as a result of the consequences of the war between Russia and Georgia. Such a human rights protection black hole should not be allowed to exist within the Council of Europe area. The Assembly therefore invites the Secretary General of the Council of Europe to develop a comprehensive action plan to ensure that the rights guaranteed under the Convention are effectively secured for persons residing in South Ossetia and Abkhazia. This could include the establishment of a field presence in the two break-away regions, as demanded by the Assembly in Resolution 1633 (2008), including an ombudsperson who could examine individual applications in cases of human rights violations. In the absence of other credible investigations, this field presence should also investigate and document human rights violations committed during and in the aftermath of the war.

15. The Assembly reconfirms its conviction that the establishment of a genuine dialogue is the only way forward for the resolution of any conflict and to secure long-term stability in the region, provided the minimum conditions for meaningful dialogue as defined in Resolution 1633 (2008) are met. It therefore tasks its Bureau to set up in due course a special ad hoc committee, in which both Georgian and Russian parliamentarians will be invited to participate, to discuss their differences and develop concrete proposals to address the consequences of the war, in line with Resolution 1633 (2008). The Assembly would also welcome the possible participation of representatives of the Abkhaz and South Ossetian communities, from both the de facto authorities and those that favour integration with Georgia, in the work of the committee, subject to an agreement on the format of their participation.

16. The Assembly calls upon the European Union to continue to seek effective ways for the peaceful resolution of the Georgian-Russian conflict, including the strengthening and extension of the mandate of the European Union Monitoring Mission (EUMM) to cover protection and peacekeeping functions on both sides of the de facto borders of South Ossetia and Abkhazia and other parts of the former conflict zones that are presently occupied.

17. Having considered the consequences of the war between Georgia and Russia on other so-called "frozen conflicts" in Europe, the Assembly calls on Council of Europe member states to intensify their diplomatic efforts in order to find solutions which avoid violent confrontation. At the same time, the Assembly should intensify its activities on these matters, in particular as regards Nagorno-Karabakh and Transnistria.

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18. The Assembly reiterates its commitment to play a role in the field of conflict prevention and, in this context, welcomes the establishment of an ad hoc sub-committee on early warning systems and conflict prevention in Europe within its Political Affairs Committee.

19. The Assembly invites its Monitoring Committee to monitor the follow-up given by Russia and Georgia to this resolution, as well as to its Resolution 1633 (2008), and to report back to the Assembly at the second part-session in April 2009. It also reiterates its request that the Monitoring Committee

step up its monitoring procedure with respect to both Georgia and Russia.

1. *Assembly debate* on 28 January 2009 (5th and 6th Sittings) (see Doc. 11800, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Van den Brande and Mr Eörsi; Doc. 11806, opinion of the Political Affairs Committee, rapporteur: Mr Gross; and Doc. 11805, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). *Text adopted by the Assembly* on 28 January 2009 (6th Sitting).

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE

Resolution 1683 (2009)¹ The war between Georgia and Russia: one year after

1. One year after the outbreak of the tragic war between two of its member states, Georgia and Russia, the Parliamentary Assembly reaffirms its Resolutions 1633 (2008) and 1647 (2009), adopted on 2 October 2008 and 28 January 2009 respectively. It considers that the demands on both countries, as well as on the de facto authorities in Abkhazia and South Ossetia, continue to constitute a transparent, impartial and realistic road map to address the consequences of this war, not only for the parties concerned but also for the Assembly itself. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia, as well as the inviolability of its borders.

2. With regard to the independent international inquiry into the origins and course of the conflict that was established by the European Union, the Assembly notes that the mandate of the fact-finding mission has been extended by the European Council until 30 September 2009. The Assembly welcomes the reported constructive co-operation of both Georgia and Russia with this mission and resolves to return to the issue of the causes and precise circumstances surrounding the outbreak of the war once the international fact-finding mission has presented its report.

3. The Assembly is seriously concerned by the continuing tension and provocations along the administrative boundaries of Abkhazia and South Ossetia, which can only destabilise the region as a whole. It considers that the sole guarantee that such tensions will not escalate into renewed fighting and hostilities is the immediate, unrestricted access of international monitors to both sides of the administrative boundaries of Abkhazia and South Ossetia, as well as the deployment of a new impartial international peacekeeping force in the region. In this respect the Assembly:

3.1. deplores the continued refusal of Russia and the de facto authorities to allow European Union monitors access to Abkhazia and South Ossetia and calls upon them to give the monitors immediate and unconditional access to the territories under their de facto control;

3.2. deplores the closure of the United Nations Observation Mission in Georgia (UNOMIG) as a result of the veto by Russia in the United Nations Security Council;

3.3. deeply regrets that the proposal presented by the Greek chairmanship of the Organization for Security and Co-operation in Europe (OSCE) for a continued OSCE presence, including a military monitoring component, did not achieve consensus, and calls upon Russia to reconsider its objections to this proposal.

4. The Assembly notes the modest progress made in the first working group, within the framework of the Geneva discussions, dealing with the modalities of security and stability in Abkhazia and South Ossetia. It especially welcomes the regular meetings held between the sides concerned within the incident prevention and response mechanisms, but regrets that similar progress has not been achieved in the second working group, dealing with humanitarian issues and freedom of movement.

5. The Assembly is seriously concerned that further closure of the administrative boundaries of Abkhazia and South Ossetia, as a result of the transfer of the control of the administrative boundary to Russian Federal Security Service (FSB) border guards, will lead to a further exodus of ethnic Georgians from the Gali district in Abkhazia and the Akhagori district in South Ossetia. The Assembly is especially concerned about the increased pressure placed on them to accept Abkhazian or South Ossetian passports and the current total absence of an international presence in these regions. The Assembly therefore calls upon Russia and the de facto authorities of Abkhazia and South Ossetia to remove any impediments to the freedom of movement of Georgian citizens across the administrative boundary lines.

6. The Assembly continues to be deeply concerned about the humanitarian consequences of this war and therefore:

6.1. reaffirms its positions taken in Resolutions 1648 (2009) and 1664 (2009) on this issue;

6.2. calls upon Georgia, Russia and the breakaway regions of Abkhazia and South Ossetia to implement fully and effectively the Council of Europe Commissioner for Human Rights' six principles for urgent protection of human rights and humanitarian security, and especially Russia and the de facto authorities of Abkhazia and South Ossetia to fully and unconditionally ensure the right of return of internally displaced persons (IDPs), who fled following the August 2008 hostilities, and to fully respect their property rights;

6.3. calls upon the relevant parties to the conflict to refrain from taking steps which may lead to a further wave of internally displaced persons, including threats to security, forced passportisation, interference with education in the mother tongue, conscription and restrictions on freedom of movement;

6.4. calls for the human rights and humanitarian experience of the Council of Europe to be taken into account in the Geneva discussions, in particular within the framework of the second working group dealing with humanitarian issues and freedom of movement.

7. The Assembly deeply regrets that Russia and the breakaway regions of Abkhazia and South Ossetia continue to place excessive restrictions on the access of international and humanitarian organisations, including for humanitarian aid, to these two regions, and that Georgia also places restrictions on access. Furthermore, Russia, and the breakaway regions of Abkhazia and South Ossetia continue to place undue restrictions on the local population wishing to cross the administrative boundary line. In this respect it:

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7.1. remains deeply concerned about the humanitarian consequences of the "Law on Occupied Territories of Georgia" and its application, although it welcomes the readiness expressed by the Georgian authorities to address the concerns set out in the recent European Commission for Democracy through Law (Venice Commission) opinion on that law and takes note of the amendments that were initiated in the Georgian Parliament and sent to the Venice Commission for opinion;

7.2. takes note of Russia's efforts to provide humanitarian aid to Abkhazia and South Ossetia and calls on Russia and the de facto authorities of Abkhazia and South Ossetia to immediately remove all restrictions on the access, including with regard to the point of entry, of international and humanitarian organisations and humanitarian aid to these two regions;

7.3. calls upon all parties to ensure the uninterrupted flow of gas, water and other basic humanitarian supplies across administrative boundary lines, in particular during the forthcoming winter months.

8. The Assembly cannot accept the apparent reluctance of both Georgia and Russia to investigate, in a credible manner, serious allegations of violations of human rights and humanitarian law committed during and after the war by their own forces or militia and civilians under their de facto control and jurisdiction. It notes that the European Union inquiry will also cover allegations of violations of human rights and humanitarian law, as well as possible war crimes committed by either side during the war. It therefore:

8.1. resolves to return to this issue, including the possible consequences for the two member states concerned, in the light of the conclusions of the European Union inquiry mission;

8.2. encourages the prosecutor of the International Criminal Court to request the Pre-Trial Chamber of the Court formally to open an investigation into possible war crimes and crimes against humanity committed by either side during and after the August 2008 hostilities.

9. The Assembly condemns Russia and the de facto authorities of South Ossetia for not having brought resolutely to a halt and seriously investigated the ethnic cleansing of ethnic Georgians that by all accounts took place in South Ossetia during and after the war, and for not having brought the perpetrators to justice. It recalls that, under international law, Russia bears responsibility for violations of human rights and humanitarian law in those areas that fall under its de facto control.

10. The Assembly deplores the fact that, one year after the August 2008 hostilities, little tangible progress has been achieved in addressing the consequences of this war, and that, in several areas, the situation has actually regressed. While Georgia has complied with most, albeit not all, demands of the Assembly expressed in Assembly Resolutions 1633 (2008) and 1647 (2009), Russia has not complied with most of the key demands placed upon it in these resolutions.

11. The Assembly is fully aware of Russia's argument that its non-compliance with the Assembly demands is the result of its diverging position with regard to the status of the two

regions. The Assembly underscores that most of its demands have no relation to the status of the two regions and therefore cannot understand that Russia failed to comply even with these demands. It therefore considers that Russia's non-compliance with its demands underscores a lack of political will on Russia's part to address the consequences of the war in a manner incumbent on a member state of the Council of Europe. In addition, the Assembly deeply regrets that the leadership of both the State Duma and the Council of the Federation, as well as the members of the Russian delegation to the Assembly, have publicly opposed the demands of the Assembly and dismissed the possibility of Russian compliance with them.

12. Therefore, while stressing the need and importance of full implementation of all the demands of its Resolutions 1633 (2008) and 1647 (2009) by the Russian Federation, the Assembly specifically demands full implementation of the European Union-brokered ceasefire agreement, in particular the demand to withdraw troops to their pre-war positions and to work towards the creation of a new internationalised peace-keeping format and police force. It strongly urges the Russian authorities, before the end of this year, to:

12.1. give unrestricted access to European Union monitors to both Abkhazia and South Ossetia in line with paragraph 22.2 of Resolution 1633 (2008) and paragraph 9.8 of Resolution 1647 (2009);

12.2. grant freedom of movement for Georgian civilians across the administrative boundary lines and lift restrictions, including with regard to the point of entry, on international and humanitarian organisations and humanitarian aid to the two regions;

12.3. recognise formally and effectively the right of safe and dignified return of all IDPs, including those from the 2008 war, to their original place of residence in Abkhazia and South Ossetia, in line with paragraphs 9.9 and 9.11 of Resolution 1647 (2009);

12.4. initiate a credible investigation into acts of alleged ethnic cleansing committed by the South Ossetian forces allied to it, or by civilians under its de facto jurisdiction, and control and implement measures to reverse or, if not possible, to remedy those acts;

12.5. submit the law on the amendments to the law on defence of the Russian Federation to the Venice Commission for opinion and to fully implement any of its recommendations.

13. The Assembly invites its Monitoring Committee to monitor the follow-up given by Georgia and Russia to Assembly demands and to propose any further action to be taken by the Assembly as required by the situation, in particular with regard to compliance with paragraph 12 of this resolution.

1. *Assembly debate* on 29 September 2009 (29th and 30th Sittings) (see Doc. 12010, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Mr Van den Brande and Mr Eörsi; and Doc. 12039, opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Jonker). *Text adopted by the Assembly* on 29 September 2009 (30th Sitting).