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

Report

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

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Summary

The Monitoring Committee considered the implementation by Georgia and Russia of the recommendations and demands made by the Assembly in Resolution 1633 on “the consequences of the war between Georgia and Russia”, which was adopted in October 2008. Based on the analysis made by the co-rapporteurs, the committee concluded that Georgia has complied with many, but not all, of the Assembly's demands. However, the committee regretted to conclude that Russia has not yet complied with the majority of the demands made by the Assembly, including the many demands that are not related to, and therefore have no effect on, the question of the status of the two break-away regions of South Ossetia and Abkhazia.

The committee is seriously concerned that the escalation of tensions and provocations along the administrative borders of the break-away regions of South Ossetia and Abkhazia is undermining the stability of the region and could lead to renewed clashes or an outbreak of hostilities. Full and unconditional 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 guarantee stability and security. The committee reiterated its support for the territorial integrity of Georgia. It expressed its concern about the ongoing human rights violations, including ethnic cleansing in South Ossetia and called upon Russia and the facto authorities to bring these practices to an immediate halt and their perpetrators to justice.

The committee 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 of Human Rights, as well as other relevant Council of Europe Conventions, as a result of the consequences of the war between Russia and Georgia. It therefore proposes the development of a comprehensive action plan to ensure that the rights guaranteed under the Convention are effectively secured for persons residing in South Ossetia and Abkhazia.

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. The committee therefore proposes the setting up of a special ad hoc committee, in which both Georgian and Russian parliamentarians should be invited to participate, to discuss their differences and develop concrete proposals to address the consequences of the war.

A. Draft resolution

1. On 2 October 2008, the Parliamentary Assembly adopted Resolution 1633 (2008) on “the consequences of the war between Georgia and Russia”. In this Resolution, the Assembly strongly condemned the outbreak of war between two of its member states and considered that, during the war and its immediate aftermath, both countries had violated human rights and humanitarian law principles, as well as the Statute of the Council of Europe and specific accession commitments. 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. 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 (EU), 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 to now effectively, fully and unconditionally co-operate with the EU 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 EU members to ensure that the report of the EU mission is also presented to the Council of Europe in order for its findings to be debated before the Assembly;

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 EU mission has been presented.

3. The Assembly welcomes the constructive approach shown by all parties, after a difficult start on 15 October 2008, in the subsequent rounds of Geneva talks on the modalities of security and stability in Abkhazia and South Ossetia. The Assembly supports the principle that representatives of the South Ossetian and Abkhaz peoples, from both the *de facto* authorities and those that favour integration with Georgia, should participate in these talks. It also considers legitimate the demand of the Georgian authorities 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 is seriously concerned that the escalation of tensions and provocations along the administrative borders of the break-away regions of South Ossetia and Abkhazia is undermining the stability of the region and could lead to renewed clashes or an outbreak of hostilities. It considers that the full and unconditional 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 guarantee stability and security. The Assembly therefore:

4.1. regrets the continued refusal of Russia and the *de facto* authorities to allow access to Organisation for Security and Co-operation in Europe (OSCE) monitors to South Ossetia and to EU monitors to both South Ossetia and Abkhazia;

4.2. 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;

4.3. welcomes the continued access of 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 UN Security Council on 15 February 2009.

5. The Assembly reaffirms its full support for the sovereignty, 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.

6. The Assembly condemns the ongoing 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 full responsibility for violations of human rights and humanitarian law in the areas under its *de facto* control.

7. With respect to Georgia, the Assembly:

7.1. 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;

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

7.3. 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 takes note that this commission finalised its work and publicised its report in December 2008 and calls upon the Parliament to review its conclusions in the light of the forthcoming report of the EU fact-finding mission;

7.4. 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 all sides in the course of the war and its aftermath and calls upon it impartially to investigate any alleged violations brought to its attention and ensure that the perpetrators are brought to justice;

7.5. 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, 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;

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

8. With respect to Russia, the Assembly:

8.1. 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;

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

8.3. regrets that Russia has not yet complied with the majority of the demands made by the Assembly, including the many demands that are not related to, and therefore have no effect on, the question of the status of the two break-way regions;

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

8.5. participate unconditionally in the negotiations with a view to renewing the mandate of the OSCE Mission in Georgia, including its military monitoring operation;

- 8.6. calls upon Russia not to create any obstacles for the renewal of the UNOMIG mandate in Abkhazia;
 - 8.7. calls upon Russia to allow, without further delay, the unconditional access of all international monitors to South Ossetia and Abkhazia, especially to allow access of OSCE monitors to South Ossetia and access of EU monitors to South Ossetia and Abkhazia;
 - 8.8. calls upon Russia and the *de facto* authorities of South Ossetia to bring to an immediate halt all acts of ethnic cleansing and other human rights violations that continue to occur in South Ossetia and bring the perpetrators promptly to justice;
 - 8.9. 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;
 - 8.10. calls upon Russia and the *de facto* authorities to fully ensure the right of return of all IDPs to the areas under their effective control;
 - 8.11. 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 South Ossetian forces allied to it. The Assembly calls upon Russia to initiate such an investigation without further delay and to ensure that the perpetrators are brought to justice;
 - 8.12. calls upon Russia to work constructively towards the creation of a new peacekeeping format and internationalised peacekeeping force.
9. The Assembly calls upon both Russia and Georgia to:
- 9.1. allow unhindered and unconditional access of humanitarian organisations and humanitarian aid to the areas of South Ossetia and Abkhazia;
 - 9.2. sign, without further delay, the United Nations Convention on Cluster Munitions;
 - 9.3. 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.
10. The Assembly welcomes the ongoing efforts by the Human Rights Commissioner of the Council of Europe 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.
11. The Assembly is especially concerned about the human rights and humanitarian situation in the Akhagori district, as well as about the status of this district which, while technically a part of the former Autonomous 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, 3 days after the signing of the Ceasefire agreement.
12. 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 of 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). 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.

13. 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. It therefore tasks its Bureau to set up a special ad hoc Committee, in which both Georgian and Russian parliamentarians will participate, to discuss their differences and develop concrete proposals to address the consequences of the war, in line with paragraph 31 of Resolution 1633 (2008).

14. The Assembly asks its Monitoring Committee to monitor the follow-up given by Russia and Georgia to this Resolution, as well as its Resolution 1633 (2008), and to report back to the Assembly at a future part-session. It also reiterates its request that the Monitoring Committee steps up its monitoring procedure with respect to both Georgia and Russia.

B. Explanatory memorandum by Mr Van den Brande and Mr Eörsi, co-rapporteurs

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I. Introduction

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

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

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

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

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

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

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

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

6. The Presidential Committee visited Georgia on 30 and 31 October 2008. The visit of the Presidential Committee to Russia was foreseen to take place on 13 and 14 November 2008. However, these dates coincided with the EU-Russia Summit in Nice. Many of the high-level meetings requested therefore could not take place, resulting in a programme that would not meet the requirements set by the Bureau for this visit. It was therefore decided to postpone the visit to Moscow to 18 and 19 January 2009. The findings by the Presidential Committee on these visits, in which both co-rapporteurs participated, are reflected in this report¹.

II. Implementation of the Ceasefire agreement

i. Withdrawal of troops

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

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

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

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

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

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

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

¹ See also the Memorandum prepared by Mr Lluís Maria de Puig, President of the Assembly, for the Bureau of the Assembly, Doc. AS/Bur (2008) 81 rev., which the Bureau declassified at its meeting in Madrid, on 27 November 2008.

11. According to international monitors, Georgian troops have in general withdrawn to their usual bases, with the exception of those that used to be based in areas that are currently under the control of Russia. The Russian authorities, however, dispute that Georgian troop withdrawals are in line with the Ceasefire agreement. In December 2008, in response to increased tensions along the administrative border with South Ossetia, the Georgian Police started the deployment of Cobra armed vehicles in the area adjacent to the administrative border. In the view of the Russian authorities, this deployment is in violation of the 12 August Ceasefire agreement. The Head of the EU Monitoring Mission stated that, although deployment of these armored vehicles "is not in violation of the relevant provisions of the six-point plan of August 12 and the Implementation Agreement of September 8", the EU Monitoring mission had advised against their deployment as it would not reduce the tensions in the region.

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

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

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

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

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

16. Following the deployment of EU monitors and the withdrawal of Russian troops from the zones adjacent to the break-away regions of South-Ossetia and Abkhazia, Georgian police forces, including Ministry of Interior Special Police Forces, moved back into these zones to ensure security in those areas. With the return of the Georgian police, the security vacuum that existed in these zones dissolved and IDPs returned in large numbers to these areas. The security situation in the areas is generally calm.

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

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

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

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

21. In their meetings with the Presidential Committee, the Russian authorities also expressed their concern that the increased tensions along the administrative borders with South Ossetia and Abkhazia could lead to renewed hostilities between Russia and Georgia. The Russian authorities claim that the increase in tensions is mainly the result of Georgian provocations. They allege that Georgia has established armed civilian units with the aim of destabilising the security situation in the areas adjacent to the administrative border. These allegations have not been confirmed by independent international monitors.

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

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

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

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

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

26. The second round of talks, held on 19 November 2008 in Geneva, was considered constructive by all participants and hailed by its co-sponsors as an important step forwards. In order to avoid a new stalemate, the talks took place in informal working groups where all participants, including representatives of the *de facto* authorities, participated under a personal title. During the talks, it was agreed by all participants to suspend the discussions on the most polemical issues to a future round and to focus on the security situation, as well as on the return of IDPs and freedom of movement across the administrative borders. It was agreed that a new round of talks would take place on 17 and 18 December in Geneva, during which, inter alia, a broader discussion on peacekeeping missions would also be included in the agenda. The third round of talks, held on 17 and 18 December, took place in the same format as the talks in November and with the same constructive attitude of the participants. During this round of talks, the participants agreed on most of the details regarding concrete mechanisms to address security related incidents and disputes. It was agreed to discuss the outstanding issues in relation to these mechanisms during the next round of talks, which is foreseen to take place on 17 and 18 February 2009.

27. We welcome the constructive attitude displayed by all participants during the second and third rounds of talks, which could play a crucial role in increasing the stability in the regions. However, we note that the talks remain fragile and that, to date, no plenary sessions have taken place. We hope that the same constructive spirit as witnessed in Geneva on 19 November and 17 and 18 December will also prevail in order to find a solution for the format of these plenary sessions. This would allow all the different representatives of the South Ossetian and Abkhaz people to participate, while respecting Georgia's legitimate concern that no equal status can be given to the representatives of the *de facto* authorities to that of Georgia and Russia, as this would amount to an implicit recognition of the two break-away regions in violation of Georgia's sovereignty and territorial integrity.

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

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

29. On 9 October, the UN Security Council adopted Resolution 1839 which extended the UNOMIG² mandate until 15 February 2009, allowing for the continued presence of UN monitors in Abkhazia until that date, in line with the Sarkozy-Medvedev agreement. However, beyond that date, the future of the UNOMIG presence is uncertain: Russia and the Abkhaz *de facto* authorities demand changes to its mandate and dropping the reference to Georgia from its name. This could put into question the continued presence of UN observers in that region after 15 February. Some officials from the Abkhaz *de facto* authorities are reported to have privately informed western diplomats that they would prefer a continued UN presence, in some format or another. We call upon Russia not to veto the extension of the UNOMIG's mandate in Abkhazia on grounds related to the status of the break-away region.

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

² UNOMIG is an abbreviation for United Nations Observer Mission in Georgia.

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

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

33 On 22 December 2008, Russia blocked the extension of the mandate of the OSCE Mission in Georgia, as a result of its objection to any linkage between the OSCE activities in South Ossetia and the rest of Georgia. The proposal by the Finnish Chairman-in-Office of the OSCE to establish two mutually independent field offices, directed by a special representative of the Chairman-in-Office in Vienna, was, regrettably, not acceptable to the Russian authorities. Taking into account the increased tensions along the administrative borders, we deeply regret the *de facto* vetoing by one OSCE member state, Russia, of the renewal of the mandate of the OSCE Mission in Georgia. The negotiations over the mandate of the OSCE Mission in Georgia are ongoing under the current Greek Chairmanship of the OSCE and we urge all parties, including Russia, to accept a formula for the extension of the mandate of the OSCE Mission in Georgia, including its military monitoring operation, that would not prejudice the status of the two break-away regions;

34. These developments reinforce our above-mentioned concerns with regard to the extension of the UNOMIG's mandate in Abkhazia.

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

35. An independent international investigation into the precise circumstances surrounding the outbreak of the war, as well as the exact sequence of events in August 2008, is one of the key demands of the Assembly expressed in Resolution 1633 (2008). Recent media reports, from different sides, giving support to the claims made by the Russian or the Georgian authorities, only serve to show the extent of the controversy and the conflicting accounts regarding the circumstances surrounding the outbreak of the war. This underscores the need for an independent international investigation, as demanded by the Assembly.

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

37. The EU established, on 2 December 2008, an independent international fact-finding mission on the conflict in Georgia to investigate the origins and the course of the conflict, including with regard to international law³, humanitarian law and human rights and the accusations made in that context⁴. Ms Heidi Tagliavini has been appointed head of the fact-finding mission for the period from 2 December 2008 to 31 July 2009. Ms Tagliavini was former deputy State Secretary of Switzerland and, from 2002 to 2006, the Head of UNOMIG in Georgia. The geographical scope and time span of the investigation will be sufficiently broad to determine all the possible causes of the conflict. The results of the investigation will be presented to the parties to the conflict and to the EU Council, the OSCE and the United Nations (UN) in the form of a report. Taking into account the fact that both Georgia and Russia are members of the Council of Europe and the important human rights implications of the war between them, we consider it important that the report of the fact-finding mission would also be presented to the Council of Europe and its Assembly. We therefore call upon the member states of the Council of Europe which are also EU members to ensure that the report of

³ including the Helsinki Final Act

⁴ including allegations of war crimes

the EU mission is also presented to the Council of Europe in order for its findings to be debated before the Assembly.

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

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

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

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

42. The Commission started its work on 10 October and heard testimonies from key decision-makers during the war, including from President Saakashvili, the Minister of Integration, the Minister of Foreign Affairs, the Secretary of the National Security Council, the Head of the Security Services, the Chief of Staff of the Georgian Armed Forces and the Speaker of the Parliament. The ruling party publicly stated that any of its officials that failed to fully co-operate with the Inquiry Commission would face dire political consequences. Although the Commission did not have the constitutional power to summon the President to testify, President Saakashvili stressed that "not a single official is immune" from being questioned by the Inquiry Commission and that he would be ready "to come and answer all questions" put to him by the Commission. He subsequently testified to the Commission on 28 November 2008.

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

44. The Commission finalised its work and published its report on 18 December 2008. Although critical of the authorities' actions during the war, it largely confirms the official Georgian version of the events that led to the outbreak of the hostilities. Taking into account the ongoing work of the EU fact-finding mission we call upon the Parliament of Georgia to review its conclusions in the light of the forthcoming report of this mission once it has been published.

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

Russian authorities in relation to this. We therefore would urge the Council of the Federation to establish an inquiry committee with the same scope and mandate as that established by the Georgian Parliament.

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

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

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

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

50. The Investigative Committee of the General Prosecutor’s Office of Russia launched an investigation into genocide committed by Georgian troops against Russian citizens (ethnic Ossetians) in South Ossetia. In addition, it opened an investigation into crimes committed by Georgia against the Russian military. It would seem that there is no intention to investigate possible violations of human rights and humanitarian law committed by Russian forces and forces under the control of the *de facto* South Ossetian authorities. Indeed, the special Investigation Committee reportedly closed its investigations on the ground in South Ossetia in mid-September, at a time when credible reports indicated that looting, pillaging, as well as acts of ethnic cleaning were taking place on a daily basis in the areas under Russian control, including in the so-called “buffer zone”. On 23 December 2008, the Head of the Investigation Commission of the General Prosecutor’s Office of Russia announced that the Commission had finalised its investigations into the deaths of 162 South Ossetian civilians – a considerably lower number of deaths of civilians than originally announced by the Russian authorities – and of 48 members of the Russian military troops during the war and that it had collected sufficient evidence to bring charges against Georgia of genocide against South Ossetians. In addition, he alleged that the Commission had found irrefutable evidence that nationals of a number of other countries had provided assistance to Georgian military forces during the war.

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

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

53. The Russian authorities have been actively encouraging and assisting ethnic Ossetians to file applications with the European Court of Human Rights against alleged human rights violations committed by Georgia in the course of the war. On 10 October 2008, the European Court of Human Rights announced that it had received over 2.700 individual applications from South Ossetians against Georgia. By January 2009, the number of applications filed had increased to over 3.300. The unprecedented number of applications is having a considerable impact on the already heavy workload of the Court, especially in the absence of the reform of the Court foreseen in Protocol 14 to the European Convention on Human Rights. On 16 January 2009, the European Court of Human Rights announced that it would urgently examine seven applications of South Ossetians against Georgia, which it considers to be representative of the over 3300 similar

applications that have been filed with the Court. These cases have now been communicated to the Georgian Government under Rule 54 § 2 (b) of the Rules of Procedure of the Court.

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

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

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

V. Humanitarian consequences of the war

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

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

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

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

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

62. The situation in the Akhlagori district of South Ossetia, which is a predominantly ethnic Georgian area that was not directly affected by the war in August and which, prior to the war, was never under the control of

the *de facto* authorities, is a matter of special concern. Indeed, Russian troops occupied this district on 15 August, some 3 days after the signing of the Ceasefire agreement on 12 August.

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

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

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

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

67. In his report to the Committee of Ministers of the Council of Europe, the Commissioner for Human Rights expressed his concern about the possible negative impact of the law on the occupied territories that was adopted by the Georgian Parliament on 28 October 2008. According to this law, access for foreigners and stateless persons to the occupied territories is subject to authorisation by the Georgian authorities, while entry into these areas without such an authorisation would be a criminal offence under Georgian law. Moreover, this law restricts economic activity with the two regions and declares null and void any certificate issued by the *de facto* authorities, including civil certificates and property deeds. In his report, the Commissioner expressed concern that certain provisions in the law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. For this reason, the Monitoring Committee, at its meeting on 17 December, decided to submit this law to the European Commission for Democracy through Law (Venice Commission) for opinion. We call on the Georgian authorities to implement any recommendations contained in the future opinion of the Venice Commission.

68. Problems in the supply of gas from Georgia to the region of South Ossetia, as well as the supply of drinking water from the break-away region of South Ossetia to the villages in the zones adjacent to the administrative borders have led to mutual recriminations between Russia and Georgia. The Georgian authorities have accused Russia and the South Ossetian *de facto* authorities of blocking the water supply to the areas adjacent to the administrative border, while Russia has accused the Georgian authorities of halting the gas supply to South Ossetia. The Georgian authorities expressed their readiness to resume the gas supply to Tskhinvali, but asserted that the gas pipeline to Tskhinvali had been damaged during the war close to the administrative border, which could not be repaired without adequate security guarantees from Russia. OSCE-mediated contacts between the two sides revealed continuing damage of the pipeline on 31 December 2008. On 21 January 2009, the Georgian gas company announced that the pipeline had been fully repaired and that it was ready to resume the supply of gas as soon as it would receive authorisation from the Georgian government. Furthermore, on 28 December 2008, Georgia and Russia reached an agreement on the joint management of the Enguri Hydro power central, which is situated on the administrative border with Abkhazia. We welcome this agreement which will ensure an uninterrupted electricity supply to Abkhazia and the rest of Georgia. We hope that the same constructive approach will prevail in other disputes over energy and water supplies.

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

69. In Resolution 1633 (2008), the Assembly condemned the recognition of the break-away regions of Abkhazia and South Ossetia by Russia as a violation of Georgia's sovereignty, territorial integrity and the

inviolability of its recognised international borders. The Assembly therefore called upon Russia to withdraw its recognition and urged all member states, as well as states holding observer status with the Organisation, not to recognise the independence of these two regions. The Assembly regretted that the recognition by Russia was prompted by a unanimous demand of both houses of the Parliament of Russia.

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

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

72. On 23 December 2008, the Russian Ministry of Foreign Affairs and its counterpart in the *de facto* authorities in Abkhazia signed a co-operation memorandum of understanding in which they agree *inter alia* to strive for the formation of mutually advantageous relations in the field of international co-operation and in which Russia pledges to facilitate the entry of “the Republic of Abkhazia” into international organisations of which Russia is a member.

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

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

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

75. We would like to stress that Russia, as a party to the conflict, cannot be the sole provider of peace keeping troops and the sole guarantor of peace and security in the two break-away regions. As we have mentioned before, the absence of an international peacekeeping force, especially in combination with the presence of a large number of Russian troops, undermines the stability in the region, as well as the possibilities for the normalisation of the situation resulting from the war. In that respect, we welcome the fact that the issue of peacekeeping was on the agenda for the December round of talks in Geneva, although no concrete results have as yet been achieved. We call upon a continued constructive approach by all participants in future talks.

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

i. Georgia

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

- implemented fully and unconditionally the Ceasefire agreement of 12 August 2008 (§ 22.1 of the Resolution);

- allowed full access of, and given its fullest co-operation to international monitors to the territories under its control (§ 22.2 and 23.3);
- taken measures to ensure the safety – including from mines and unexploded ordnances - of citizens in, and allowed for the voluntary return of IDPs to, the territories under its control (§ 23.1, 23.2 and 23.4);
- worked towards a new peacekeeping format and worked to internationalise the peacekeeping force (§ 22.4);
- made use of available means of peaceful conflict resolution (§ 22.10);
- participated unconditionally in the Geneva negotiations foreseen in point 6 of the Ceasefire agreement (§ 22.5). We consider that the condition from the Georgian authorities that the participation of the *de facto* authorities of the two break-away regions should not be taken to signify any implicit recognition of them is justified and does not contradict the Assembly's corresponding demand.

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

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

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

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

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

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

ii De facto authorities in South Ossetia

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

84. Regrettably, the South Ossetian *de facto* authorities have failed to co-operate with international monitoring missions, as demanded in § 23.3, and are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia in contravention of the demand of the Assembly in § 23.1.2. In addition, the South Ossetian *de facto* authorities have failed to stamp out lawlessness and to guarantee the security in the areas under their *de facto* control, as demanded in § 23.1. and § 23.1.1. They have also failed to guarantee the right of return of all IDPs from the areas under their control. We therefore consider that they have not complied with the demands formulated in §23.3, § 23.4 and § 23.7 of Resolution 1633 (2008).

iii. Russia

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

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

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

87. The Russian General Prosecutor has initiated investigations against human rights and humanitarian law violations committed by Georgian troops during the course of the war against Russian citizens and against Russian servicemen. These investigations were closed on 18 December 2008. However, despite several credible reports that provide evidence that human rights and humanitarian law were also violated by Russia and the South Ossetian forces allied to it in the course of the war and its aftermath, no investigation has been started by the Russian General Prosecutor into such alleged violations. We therefore consider that Russia has not complied with § 22.8 of Resolution 1633 (2008).

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

89. The Russian authorities have asserted that the former peace agreements with respect to South Ossetia and Abkhazia are now replaced by the bi-lateral "friendship and co-operation" treaties between Russia and these break-away regions and that they see no role for any "additional" international peace keeping format, as demanded in § 22.4. However, we take note of the fact that the issue of peacekeeping was included into the agenda of the December round of talks in Geneva. We hope that these talks will lead

to concrete and constructive results which would imply that Russia is complying with this demand of the Assembly.

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

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

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

93. As mentioned in the recent report of the OSCE/ODIHR⁵ dealing with the human rights situation in the former conflict areas, prepared at the request of the Finnish Chairman-in-Office of the OSCE, Russia and the South Ossetian *de facto* authorities are placing unreasonable restrictions on the access of humanitarian organisations to South Ossetia and Abkhazia. Moreover, the right of return of IDPs from those areas is severely restricted or refused outright. We have therefore to consider that Russia is not complying with § 23.1.2, § 23.4 and § 23.7 of Resolution 1633 (2008).

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

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

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

IX. Conclusions

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

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

⁵ OSCE/ODIHR report on "human rights in the war-affected areas, following the conflict in Georgia" (CIO.GAL/182/08), 1 December 2008

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

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

101. We welcome, in particular, the establishment of an Inquiry Commission by the Georgian Parliament as evidence that it is willing to reflect on the actions and mistakes of the Georgian authorities in the outbreak and the course of the war. We call upon the Parliament to review the conclusions of this commission in the light of the forthcoming report of the EU fact-finding mission.

102. We are concerned that some provisions of the Georgian law on the occupied territories may be at variance with principles of international human rights law, including the European Convention on Human Rights. We therefore call upon the Georgian authorities to promptly implement any recommendation contained in the forthcoming opinion of the Venice Commission, which was requested by the Monitoring Committee.

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

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

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

106. We welcome the fact that, during the visit of the Presidential Committee to Moscow, the Russian authorities expressed willingness to engage in an open and constructive dialogue with the Assembly. In this context we would like to stress that the issue of the status of the two break-away regions should not be used as an argument by Russia not to address other Assembly concerns raised in Resolutions 1633 (2008), as well as in this explanatory memorandum, most notably those related to the short- and long-term stability along the administrative borders with South Ossetia and Abkhazia, the respect of human rights for all Georgian citizens and the humanitarian consequences of the war between Georgia and Russia.

107. We welcome the readiness expressed by both Russian and Georgian parliamentarians to engage in a dialogue with each other under the aegis of the Assembly. We therefore call upon the Assembly to set up a special Ad Hoc Committee, in which both Georgian and Russian parliamentarians will participate, to discuss their differences and develop concrete proposals to address the consequences of the war, in line with paragraph 31 of Resolution 1633 (2008).

108. We consider 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 of 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 relevant bodies of the Council of Europe should 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). 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.

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

Reference to committee: Resolution No. 1115 (1997)

Draft resolution unanimously adopted by the committee on 26 January 2009

Members of the committee: Mr Serhiy **Holovaty** (Chairperson), Mr György **Frunđa** (1st Vice-Chairperson), Mr Konstantin **Kosachev** (2nd Vice-Chairperson), Mr Leonid **Slutsky** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Pedro Agramunt, Mr Miloš Aligrudić, Mrs Meritxell Batet Lamaña, Mr Ryszard Bender, Mr József Berényi, Mr Luc **van den Brande**, Mr Mevlüt Çavuşoğlu, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss **Cilevičs**, Mr Georges **Colombier**, Mr Telmo Correia, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Ms Mirjana **Ferić-Vac**, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajiyeva, Mr Michael **Hancock**, Mr Davit Harutyunyan, Mrs Olha **Herasym'yuk**, Mr Andres **Herkel**, Mr Raffi Hovannisian, Mr Kastriot **Islami**, Mr Miloš Jevtić, Mrs Evguenia Jivkova, Mr Hakki Keskin, Mrs Katerina Konečná, Mr Andros Kyprianou, Mr Jaakko **Laakso**, Mrs Sabine **Leutheusser-Schnarrenberger**, Mr Göran **Lindblad**, Mr René van der Linden, Mr Eduard Lintner, Mr Pietro Marcenaro, Mr Dick Marty, Mr Miloš **Melčák**, Mr João Bosco Mota Amaral, Mr Theodoros Pangalos, Mr Ivan Popescu, Ms Maria Postoico, Mr Christos **Pourgourides**, Mr John Prescott, Mr Andrea Rigoni, Mr Armen **Rustamyan**, Mr Indrek **Saar**, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Samad Seyidov, Mr Christoph Strässer, Mrs Chiora **Taktakishvili**, Mr Mihai Tudose, Mr Egidijus **Vareikis**, Mr José Vera Jardim, Mr Piotr **Wach**, Mr Robert **Walter**, Mr David Wilshire, Mrs Renate **Wohlwend**, Mrs Karin S. Woldseth, Mrs Gisela Wurm, Mr Boris Zala.

N.B.: The names of the members who took part in the meeting are printed **in bold**

Secretariat of the committee: Mrs Chatzivassiliou, Mr Klein, Ms Trévisan, Mr Karpenko