



**Information Documents  
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**Consolidated report on the conflict in Georgia  
(October 2009 – March 2010)**

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**Document presented by the Secretary General**

## Introduction

1. At their 1080<sup>th</sup> meeting on 24 and 26 March 2010, the Ministers' Deputies took the following decision: "The Deputies, restating the previous decisions of the Committee of Ministers, invited the Secretary General to prepare his consolidated report on the conflict in Georgia based on his outline and taking into account the comments made during the present meeting".

2. This first consolidated report prepared by the Secretariat builds upon previous Secretariat reports on the human rights situation in the areas affected by the conflict in Georgia<sup>1</sup> and the report on the Council of Europe activities in the areas affected by the conflict<sup>2</sup> and its updates<sup>3</sup>. The various parts of this report should therefore be seen in conjunction with all the above-mentioned reports.

3. The objective of the report is to take stock of the situation in Georgia following the August 2008 conflict, to report on the related activities of the Council of Europe and propose further Council of Europe action.

4. This report is composed of four major parts: assessment of statutory obligations and commitments related to the conflict and its consequences; human rights situation in the areas affected by the conflict; current Council of Europe conflict-related activities and their follow-up; and proposals for future action. It focuses in particular on the developments in the areas affected by the August 2008 military conflict in the period between 1 October 2009 and the end of March 2010. It also contains an overview of the Council of Europe action during the same period.

5. Priority topics covered by the report include human rights issues; humanitarian protection and rehabilitation of the conflict-affected population, especially the situation of the internally displaced persons, as well as minority issues.

6. Different parts of this report were prepared on the basis of information and documents provided by other relevant international organisations working towards addressing the consequences of the August 2008 conflict. Any present and possible future activities by the Council of Europe in this respect are closely co-ordinated with other international organisations (in particular the EU, OSCE and UN) and other relevant international actors.

7. This report in no way replaces the relevant monitoring procedures established by the Parliamentary Assembly of the Council of Europe and the Committee of Ministers, as well as other monitoring bodies. Nor should it be seen as prejudging any possible decisions in the cases related to the conflict and its consequences which are currently pending before the European Court of Human Rights.

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<sup>1</sup> SG/Inf(2009)7, SG/Inf(2009)9 and SG/Inf(2009)15 final

<sup>2</sup> SG/Inf(2009)5

<sup>3</sup> SG/Inf(2009)5 Addendum and SG/Inf(2009)5 Addendum 2

8. Nothing in this report should be interpreted as being contrary to the full respect of the territorial integrity and sovereignty of Georgia within its internationally recognised borders, and to the six-point agreement of 12 August and the implementing measures of 8 September 2008.

## **1. Assessment of statutory obligations and commitments related to the conflict and its consequences**

9. For the purpose of this report, the following statutory obligations and specific commitments to the Council of Europe as listed in PACE Opinions 193 (1996) on Russia's request for membership of the Council of Europe and 209 (1999) on Georgia's application for membership of the Council of Europe have been selected, having regard to their direct relevance to the conflict and its consequences:

- i. to accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and to collaborate sincerely and effectively in the realisation of the aim of the Council of Europe;
- ii. to settle international as well as internal disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe), rejecting resolutely any forms of threats of force against its neighbours;
- iii. to respect strictly the provisions of international humanitarian law, including in cases of armed conflict on its territory;
- iv. to co-operate in good faith with international humanitarian organisations and to enable them to carry out their activities on its territory in conformity with their mandates;
- v. to facilitate the delivery of humanitarian aid to the most vulnerable groups of the population affected by the consequences of the conflict.

10. The obligations and commitments listed above will be assessed based on the conclusions of the report by the Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG), thereafter referred to as the "Tagliavini report"<sup>4</sup>; as well as reports by the Council of Europe Commissioner for Human Rights and the documents of the Parliamentary Assembly of the Council of Europe related to the conflict in Georgia (Resolutions 1633, 1647, 1648, 1664 and 1683).

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<sup>4</sup> On 2 December 2008 the Council of the European Union, by its decision, established an Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG). The mission was mandated "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 the context" (see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:323:0066:0066:EN:PD>). The mission's report with relevant findings was made public on 30 September 2009.

11. The “Tagliavini report” contains a detailed analysis and assessment of events related to the conflict in Georgia in August 2008, as well as the role of the respective parties in the conflict. It should be noted that while the report quite often differentiates between the responsibilities of the sides – Georgia, the Russian Federation and the breakaway regions of South Ossetia and Abkhazia - , for the purpose of this analysis the Secretariat mainly refers to those conclusions of the report which are directly applicable/related to the actions by Georgia and the Russian Federation and their respective military (and in some cases paramilitary) forces.

- i. *to accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and to collaborate sincerely and effectively in the realisation of the aim of the Council of Europe*

12. This obligation, incumbent upon all member States of the Council of Europe, derives from Article 3 of the Statute of the Council of Europe and Article 1 of the European Convention on Human Rights.

13. There is one inter-state case<sup>5</sup> (Georgia v Russian Federation) related to the August 2008 conflict and more than 3 000 individual applications against one or both of these states currently pending before the European Court of Human Rights. Many of them relate to the perceived failure by one or another or both parties to the European Convention on Human Rights to ensure the protection and enjoyment by all persons within their respective jurisdiction of human rights and fundamental freedoms. It is recalled that, on 11 August 2008, the Court received a second Inter-State application (38263/08) from the Georgian Government directed against the Russian Federation. It was accompanied by a request for an interim measure. On 12 August 2008, the Court issued an interim measure inviting both Governments to respect their obligations under the Convention. This decision is still in force. The Inter-State application was completed, and a full application was submitted on 6 February 2009. The level of different responsibilities under the relevant ECHR provisions, if any, will in due time be determined by the Court in its respective decisions in the cases mentioned above. This can be regarded as a benchmark.

14. On 15 October 2008, the International Court of Justice issued an order on provisional measures pertaining to the case concerning the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation) based on the application filed by Georgia on 12 August 2008 in the immediate aftermath of the conflict. In this Order, the Court “reminding the Parties of their duty to comply with their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination”, *inter alia*, indicated the following provisional measures:

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<sup>5</sup> There are two inter-state cases (Georgia v Russian Federation) pending before the European Court of Human Rights. The first inter-state case concerns the deportation by the Russian Federation of ethnic Georgian migrants in the aftermath of the so-called “spy scandal” that occurred in autumn 2006.

“A. [...], Both Parties, within South Ossetia and Abkhazia and adjacent areas in Georgia, shall (1) refrain from any act of racial discrimination against persons, groups of persons or institutions; (2) abstain from sponsoring, defending or supporting racial discrimination by any persons or organisations, (3) do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin,

(i) security of persons; (ii) the right of persons to freedom of movement and residence within the border of the State; (iii) the protection of the property of displaced persons and of refugees;

(4) do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions; [...]"

15. The Court recalled that the provisional measures which it indicated “have binding effect” and “thus create international legal obligations which both Parties are required to comply with”<sup>6</sup>.

16. The case before the International Court of Justice is still pending.

17. Since the end of the conflict, several reports have been made public which contain numerous allegations of the violations of human rights during and in the immediate aftermath of the August 2008 conflict (see for example a report by Human Rights Watch “Up in Flames: Humanitarian Law Violations in the Conflict Over South Ossetia” of 23 January 2009 and a more recent Report of the Representative of the UN Secretary-General on the human rights of internally displaced persons, Walter Kälin (A/HRC/13/21/Add.3)).

ii. **To settle international as well as internal disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe), rejecting resolutely any forms of threats of force against its neighbours**

18. Referring to the conflict of August 2008, the “Tagliavini report” states that “the shelling of Tskhinvali by the Georgian armed forces during the night of 7 to 8 August 2008 marked the beginning of the large-scale armed conflict in Georgia, yet it was only the culminating point of a long period of increasing tensions, provocations and incidents. Indeed, the conflict has deep roots in the history of the region, in peoples’ national traditions and aspirations as well as in age-old perceptions or rather misperceptions of each other, which were never mended and sometimes exploited”<sup>7</sup>.

19. When assessing the responsibility for the conflict, the overall conclusion contained in the “Tagliavini report” is that “the conflict is rooted in a profusion of causes comprising different layers in time and actions combined. While it is possible to identify the authorship of some important events and decisions marking its course, there is no way

<sup>6</sup> <http://www.icj-cij.org/docket/files/140/14803.pdf>

<sup>7</sup> Ibid, paragraph 3

to assign overall responsibility for the conflict to one side alone. They have all failed, and it should be their responsibility to make good for it”<sup>8 9</sup>.

➤ *Use of force*

20. When speaking about the use of force by Georgia, the “Tagliavini report” concludes the following: “There is the question of whether the use of force by Georgia in South Ossetia, beginning with the shelling of Tskhinvali during the night of 7/8 August 2008, was justifiable under international law. It was not”<sup>10</sup>. It further finds that “at least as far as the initial phase of the conflict is concerned, an additional legal question is whether the Georgian use of force against Russian peacekeeping forces on Georgian territory, i.e. in South Ossetia, might have been justified. Again the answer is in the negative”<sup>11</sup>.

21. As for the use of force by the Russian Federation, the report states: “When considering the legality of Russian military force against Georgia the answer needs to be differentiated. The Russian reaction to the Georgian attack can be divided into two phases: first, the immediate reaction in order to defend Russian peacekeepers, and second, the invasion of Georgia by Russian armed forces reaching far beyond the administrative boundary of South Ossetia. In the first instance, there seems to be little doubt that if the Russian peacekeepers were attacked, Russia had the right to defend them using military means proportionate to the attack. Hence the Russian use of force for defensive purposes during the first phase of the conflict would be legal. On the second item, it must be ascertained whether the subsequent Russian military campaign deeper into Georgia was necessary and proportionate in terms of defensive action against the initial Georgian attack. Although it should be admitted that it is not easy to decide where the line must be drawn, it seems, however, that much of the Russian military action went far beyond the reasonable limits of defence. [...] Furthermore, continued destruction which came after the ceasefire agreement was not justifiable by any means. It follows from this that insofar as such extended Russian military action reaching out into Georgia was conducted in violation of international law, Georgian military forces were acting in legitimate self-defence under Article 51 of the UN Charter”<sup>12</sup>.

22. The report further concludes that “in a matter of a very few days, the pattern of legitimate and illegitimate military action had thus turned around between the two main actors Georgia and Russia”<sup>13</sup>.

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<sup>8</sup> Report by the IIFMCG, September 2009, Volume I, The Conflict in Georgia in August 2008, paragraph 36.

<sup>9</sup> It should be noted that throughout the report, its authors refer not only to the failure of the sides to the conflict, but also the failure of the international community as a whole to prevent the outbreak of the hostilities.

<sup>10</sup> Ibid, paragraph 19

<sup>11</sup> Ibid, paragraph 20

<sup>12</sup> Ibid, paragraph 21

<sup>13</sup> Same as above

➤ *Threat of force*

23. On this issue the “Tagliavini report” indicates “Concluding the discussion on the use of force in the August 2008 conflict, a final look should be given to the repeated instances of threat of force by one side or the other before the beginning of the August 2008 conflict. It should be noted that Article 2 (4) of the UN Charter as well as the relevant ceasefire agreements require that states and parties to the conflict not only refrain from the use of force but explicitly also from the threat of force. Threats of this nature are equally not in conformity with Article 2 (3) of the Charter, which stipulates the obligation to settle conflicts peacefully. The threats of force by all sides were consequently illegal and as such, violated international law”<sup>14</sup>.

Furthermore, the mission looked into the following conflict-related issues:

➤ *Recognition of Abkhazia and South Ossetia*

24. “The issue of self-determination of South Ossetians and Abkhaz as well as their right to unilateral secession from Georgia are two legal issues related to the conflict. [...] According to the overwhelmingly accepted *uti possidetis* principle, only former constituent republics such as Georgia but not territorial sub-units such as South Ossetia or Abkhazia are granted independence in case of dismemberment of a larger entity such as the former Soviet Union. Hence, South Ossetia did not have a right to secede from Georgia, and the same holds true for Abkhazia for much of the same reasons. Recognition of breakaway entities such as Abkhazia and South Ossetia by a third country is consequently contrary to international law in terms of an unlawful interference in the sovereignty and territorial integrity of the affected country, which is Georgia. It runs against Principle 1 of the Helsinki Final Act which states “the participating States will respect each other’s sovereign equality and individuality as well as all the rights inherent in and encompassed by its sovereignty, including in particular the right of every State to juridical equality, to territorial integrity and to freedom and political independence”<sup>15</sup>.

25. In its Resolution 1633(2008), the Parliamentary Assembly of the Council of Europe stated: “The Assembly condemns the recognition by Russia of the independence of South Ossetia and Abkhazia as a violation of international law and Council of Europe statutory principles. The Assembly reaffirms its attachment to the territorial integrity and sovereignty of Georgia and calls on Russia to withdraw its recognition of the independence of South Ossetia and Abkhazia and respect fully the sovereignty and territorial integrity of Georgia, as well as the inviolability of its frontiers”<sup>16</sup>.

➤ *“Passportisation policy”*

26. “Another legal issue related to the conflict and to relations between Georgia and Russia is the Russian so-called “passportisation” policy, meaning the mass conferral of

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<sup>14</sup> Ibid, paragraph 24

<sup>15</sup> Ibid, paragraph 11

<sup>16</sup> <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta08/ERES1633.htm>

Russian citizenship and consequently passports to persons living in South Ossetia and Abkhazia, where a vast majority of the population are now carrying such Russian passports. [...] The mass conferral of Russian citizenship to Georgian nationals and the provision of passports on a massive scale on Georgian territory, including its breakaway provinces, without the consent of the Georgian Government runs against the principles of good neighbourliness and constitutes an open challenge to Georgian sovereignty and an interference in the internal affairs of Georgia”<sup>17</sup>.

iii. **To respect strictly the provisions of international humanitarian law, including in cases of armed conflict on its territory**

27. The conclusions by the IIFFMCG contained the following assessments: “As for the conflict in South Ossetia and adjacent parts of the territory of Georgia, the Mission established that all sides to the conflict – Georgian forces, Russian forces and South Ossetian forces – committed violations of International Humanitarian Law and Human Rights Law. [...] It is, however, difficult to identify the responsibilities for and the perpetrators of these crimes. The fact that both Georgian and Russian forces in many cases used similar armament further complicates the attribution of certain acts. If it were not for the difficulties of identification and attribution, many of these acts have features which might be described as war crimes”<sup>18</sup>.

28. According to the report, “the August 2008 conflict in Georgia was a combination of an inter-state conflict between Georgia and Russia and an intra-state conflict. Such a conflict is subject to both military engagements between regular armed forces and armed actions by less firmly-controlled militias and even irregular armed groups. Situations of this kind are particularly prone to violations of International Humanitarian Law and Human Rights Law. Special attention must be given to the responsibility to protect non-combatants by regular forces in effective control of the situation. It needs to be stressed that during the August 2008 conflict regular forces frequently failed, however, to provide adequate protection of civilians against atrocities committed by militias and irregular armed groups”<sup>19</sup>.

29. The report furthermore stated: “as regards the provisions of International Law on the conduct of hostilities and the protection of non-combatants, the violations in question mainly concern the ill-treatment of persons, the destruction of property and forced displacement. More specifically the violations include indiscriminate attacks in terms of the type of weaponry used and their targeting, the lack of adequate protection by Russia and Georgia, widespread campaigns of looting and destruction of ethnic Georgian settlements by South Ossetians, as well as ill-treatment, gender-related crime including rape, assault, hostage-taking and arbitrary arrests, together with the failure by Russian forces to prevent and stop violations by South Ossetian forces, armed irregular groups and armed individuals before and after the ceasefire in South Ossetia and the adjacent territories. [...] It needs to be stressed that both South Ossetia and Abkhazia, together

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<sup>17</sup> Same as footnote 15, paragraph 12

<sup>18</sup> Ibid, paragraph 26

<sup>19</sup> Ibid, Observations, paragraph 10

with Russia, must take appropriate measures to ensure that IDPs/refugees, including those from the conflicts of the early 1990s, are able to return to their homes with no conditions imposed other than those laid down in relevant international standards, and that Georgia must respect the principle of return based on free individual decisions by the displaced persons<sup>20</sup>.

30. In line with its mandate, the IIFFMCG also looked into various allegations related to the August 2008 conflict and in particular concluded:

a. As regards “Russian and South Ossetian charge of genocide against Georgia”, the mission concluded “that to the best of its knowledge allegations of genocide committed by the Georgian side in the context of the August 2008 conflict and its aftermath are neither founded in law nor substantiated by factual evidence<sup>21</sup>”.

b. With regard to “allegations of ethnic cleansing committed by South Ossetian forces or irregular armed groups, however, the Mission found patterns of forced displacements of ethnic Georgians who had remained in their homes after the onset of hostilities. In addition, there was evidence of systematic looting and destruction of ethnic Georgian villages in South Ossetia. Consequently, several elements suggest the conclusion that ethnic cleansing was indeed practised against ethnic Georgians in South Ossetia both during and after the August 2008 conflict<sup>22</sup>”.

c. Concerning a claim that the use of force by the Russian Federation was justified as a “humanitarian intervention” aimed at protecting South Ossetian civilians, the mission underlined that this issue is highly controversial and that humanitarian intervention is allowed only under very limited circumstances. The mission further concluded that in a situation, where as a “directly neighbouring state, Russia has important political and other interests of its own in South Ossetia and the region [...], a humanitarian intervention is not recognised at all<sup>23</sup>”.

31. Following his visit to the conflict-affected areas at the end of August 2008, the Council of Europe Commissioner for Human Rights stated that what the region had been facing was nothing less than a humanitarian disaster. He further formulated his six principles for urgent human rights and humanitarian protection, namely:

- *The right to return of those who fled or were displaced must be guaranteed.*
- *Those who fled or were displaced must be ensured adequate living conditions until they can return home.*
- *The whole area affected by the warfare must be demined.*

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<sup>20</sup> Ibid, paragraph 28

<sup>21</sup> Ibid, paragraph 27

<sup>22</sup> Same as above

<sup>23</sup> Ibid, paragraph 22

- *Physical assault, torching of houses and looting must be totally stopped and persons responsible for such crimes apprehended and held to account.*
- *Prisoners of war, other detainees and persons stranded in unsafe situations must be protected and rescued through continued humanitarian efforts.*
- *International presence and assistance are needed in the area affected by the conflict.*

32. Since the presentation of his six principles in September 2008, the Commissioner for Human Rights carried out several follow-up visits to assess their implementation<sup>24</sup>.

33. The Parliamentary Assembly of the Council of Europe in its Resolution 1633 (2008) on the consequences of the war between Georgia and Russia stated: “The Assembly is concerned about the human rights and humanitarian law violations committed by both sides in the context of the war, such as the intentional or avoidable killing or wounding of civilians, as well as destruction of property. In particular, the use of indiscriminate force and weapons by both Georgian and Russian troops in civilian areas can be considered as war crimes that need to be fully investigated”. It further noted that “Russia appears not to have succeeded in its duty, under the 1907 Hague Convention (IV) on the Laws and Customs of War on Land, to prevent looting, maintain law and order and protect property in the areas under the *de facto* control of its forces. In this respect, the Assembly notes that Russia bears full responsibility for violations of human rights and humanitarian law in the areas under its *de facto* control. In the light of the case law of the European Court of Human Rights, this also concerns acts committed at the behest of the *de facto* authorities in Tskhinvali”<sup>25</sup>.

- iv. **To co-operate in good faith with international humanitarian organisations and to enable them to carry out their activities on its territory in conformity with their mandates**
- v. **To facilitate the delivery of humanitarian aid to the most vulnerable groups of the population affected by the consequences of the conflict**

34. Taking into account that the two commitments are closely intertwined, their assessment will be carried out in parallel.

35. The above-mentioned commitments are assessed based on Council of Europe documents, such as reports by the Council of Europe Commissioner for Human Rights, the Parliamentary Assembly of the Council of Europe and the Opinions of the Venice Commission. These issues are also closely followed within the framework of the “Geneva discussions”, where they are discussed on a regular basis in a working group on humanitarian issues.

36. In its order on provisional measures pertaining to the case concerning the Application of the International Convention on the Elimination of All Forms of Racial

<sup>24</sup> See [CommDH\(2008\)22/08 September 2008](#); [CommDH\(2008\)30/30 September 2008](#); [CommDH\(2008\)33/17 November 2008](#); [CommDH\(2008\)37/16 December 2008](#) and [CommDH\(2009\)22/15 May 2009](#).

<sup>25</sup> <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1633.htm>

Discrimination (Georgia v Russian Federation) issued on 15 October 2008 on the basis of the application filed by Georgia on 12 August 2008, the International Court of Justice, *inter alia*, indicated the following provisional measure:

“B. [...], Both Parties shall facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population are entitled under the International Convention on the Elimination of All Forms of Racial Discrimination, [...]”<sup>26</sup>.

37. In the immediate aftermath of the conflict an issue of access to the conflict-affected population emerged and remains on the agenda until now. The *de facto* South Ossetia authorities have been consistently denying access to the region from the south, while insisting that they can only accept any emergency humanitarian assistance if it comes in from the territory of the Russian Federation via the Roki tunnel. On the other hand, the Georgian authorities were reluctant to accept such channelling of international assistance, since in their view this could be interpreted as an infringement of Georgia’s sovereignty and territorial integrity<sup>27</sup>.

38. On 23 October 2008, the Georgian Parliament adopted the Law on the Occupied Territories which provided special regime for the regions of Abkhazia and South Ossetia and the relevant waters and air space, with limitation of free migration, economic activities, real estate transaction, as well as limiting freedom of movement and access to the regions concerned. In particular, it provided for the criminalisation of irregular entry (from elsewhere than from the designated entry points) into the regions concerned with no explicit exception for humanitarian aid and for emergency situations. In March 2009, the Venice Commission adopted an Opinion on this Law in which certain problematic aspects of the law were highlighted. Subsequently, in October 2009, the Venice Commission assessed a first set of draft amendments to the law containing important improvements in line with the recommendations of the Opinion, and in December 2009 a further version of draft amendments, revised in the light of the interim opinion, and representing a significant step forward. The draft amendments were then adopted by the Georgian Parliament on 26 February 2010.

39. Compared with the initial version of the Law, the amendments provided for the possibility of issuing special permits in order to enter from elsewhere than the official entry points for purposes of confidence-building between the conflict-affected population or humanitarian purposes; and provided for an exception to the need of obtaining a special permission in order to enter from elsewhere than the official entry points in favour of asylum-seekers, victims of human trafficking, persons rendering emergency humanitarian assistance. They also provided for the possibility of revising the Law in two years’ time, as previously recommended by the Venice Commission. The main remaining

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<sup>26</sup> <http://www.icj-cij.org/docket/files/140/14803.pdf>

<sup>27</sup> It should be noted that on several occasions the Georgian authorities have shown flexibility by allowing humanitarian delegations, including from the Council of Europe, to enter the South Ossetia region from the north. The *de facto* South Ossetia authorities also allowed certain delegations to enter the region from the south.

issue, however, is that the humanitarian aid would be unhindered, but only when qualified as an “emergency”. This qualification appears redundant and carries the risk of unduly restrictive interpretation. The Georgian authorities, for their part, gave assurances that the formula would not be interpreted in contradiction to Geneva Convention IV. Special attention should now be given to the implementation of the Law, which also has to be adequately monitored.

40. Since the end of the conflict the international community has been calling on all sides involved to allow unhindered access to the region for humanitarian assistance, as well as to allow international humanitarian organisations to operate on the ground. The Council of Europe Commissioner for Human Rights, in particular, has been consistently urging all the parties concerned “to allow free and unhindered access for international organisations to all the conflict-affected areas (including those which were indirectly affected), from all directions, at all times, so that the population can be provided with all the necessary humanitarian assistance and human rights support and the work of confidence-building can proceed”<sup>28</sup>.

41. In its Resolution 1648 (2009) on the humanitarian consequences of the war between Georgia and Russia, the Parliamentary Assembly of the Council of Europe stated the following: “The Assembly deplores the fact that humanitarian access has fallen victim to political considerations by the parties to the conflict and is also concerned at provisions of the new Georgian Law on the Occupied Territories, which may restrict access and the delivery of humanitarian aid to all areas by humanitarian actors and may not be in line with, or even violate, relevant international obligations”<sup>29</sup>. Therefore, the Assembly called on Georgia, Russia and the *de facto* authorities in South Ossetia and Abkhazia to “provide immediate and unimpeded access at all times to all conflict areas for all humanitarian actors from either Georgia or Russia so that they may reach IDPs and other civilians at risk without further delay” and to “refrain from any steps that may impede such access”. It further called on them to “ensure that all humanitarian aid and essential supplies are not cut off and reach persons in need. This includes gas and water supplies”<sup>30</sup>.

42. At the time of drafting this report, the question of access to the two regions concerned – Abkhazia and in particular South Ossetia – still remains on the agenda. As for the presence of international organisations in the two regions concerned, at the time of the drafting there were a few of them operating in the Abkhazia region, even if it was reported that they were increasingly coming under pressure from the *de facto* authorities in the region demanding them to “legalise” their presence on the ground<sup>31</sup>, as a prerequisite to any further activities and continued presence on the ground. As for the

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<sup>28</sup> <https://wcd.coe.int/ViewDoc.jsp?id=1444917&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

<sup>29</sup> <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1648.htm>

<sup>30</sup> Ibid

<sup>31</sup> Since autumn 2009 the Abkhaz *de facto* authorities have been insisting on the signature of a “Memorandum of Understanding” with international organisations operating in the region. The negotiations on the text proposed by the Abkhaz side are reportedly still ongoing.

South Ossetia region, the ICRC remains the only international organisation which is present and operational.

## **2. Human rights situation in the areas affected by the conflict<sup>32</sup>**

### *i. International presence on the ground and progress of the Geneva discussions*

43. Three rounds of Geneva discussions took place within the period under review: the 8<sup>th</sup> round on 11 November 2009, the 9<sup>th</sup> round on 28 January 2010 and the 10<sup>th</sup> round on 30 March 2010. No particular progress has been achieved in the two working groups, on security issues and on humanitarian issues and IDPs and refugees. The participants of the 10<sup>th</sup> round of discussions, amongst other things, discussed the issue of missing persons and welcomed the ongoing contribution by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in this regard. The next round is envisaged for 8 June 2010.

44. Nine meetings of the IPRM mechanism with regard to Abkhazia took place within the same period. An IPRM meeting in respect of South Ossetia scheduled to take place on 19 November 2009 was not attended by the South Ossetian participants. The meetings in respect of Abkhazia are taking place on a regular basis and reportedly in a constructive atmosphere. IPRM meetings in respect of South Ossetia have been blocked since autumn 2009<sup>33</sup>.

45. The EUMM continues to enjoy full access to the territories under control of the Georgian Government, but has no access to the other side of the administrative boundary line (ABL) with either region. The sole exception to this occurred on 5 January 2010 when the EUMM was invited by the *de facto* South Ossetia authorities to undertake an investigation into the circumstances surrounding the detention of Gennady Pliev (see below for more detailed information).

### *ii. Other developments*

46. On 5 and 6 November 2009, the Representative of the UN Secretary-General on the human rights of internally displaced persons, Mr Walter Kälin, carried out a visit to

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<sup>32</sup> The sources of information used for the preparation of this chapter include information provided by international organisations (UN, OSCE and EU) as well as international and local non-governmental organisations, and relevant media reports. During the period covered by the report the Secretariat visited neither South Ossetia (Georgia), nor Abkhazia (Georgia). As further mentioned in the chapter on “Activities of Council of Europe organs and institutions and their follow-up”, the Commissioner for Human Rights made three visits during this period – to Tbilisi, Gori and Tskhinvali.

<sup>33</sup> The fate of three South Ossetia residents, who went missing in the aftermath of the August 2008 military conflict and who were allegedly detained by the Georgian side, has been in the past one of the most often quoted reasons for South Ossetia’s refusal to participate in the IPRM meetings. *NB. Two international experts have been dispatched to Georgia by the Office of the Commissioner for Human Rights and tasked with monitoring the ongoing investigations into cases of missing persons on all sides following the August 2008 conflict in Georgia (more information in the Chapter “Activities of Council of Europe organs and institutions and their follow-up”).*

the South Ossetia region<sup>34</sup>. The Representative had access to all the areas that he requested to see, including Tskhinvali, the Akhalkgori district and the Znauri district. The report on this visit was made public on 14 January 2010 (A/HRC/13/21/Add.3).

47. On 27 January 2010, the Georgian Government adopted its “State Strategy for Occupied territories: Engagement through Co-operation”<sup>35</sup>. This Strategy was first presented at the Council of Europe<sup>36</sup> and then followed by the presentations at other international organisations.

48. The OSCE High Commissioner on National Minorities, Knut Vollebaek, visited Georgia, including the Abkhazia region, on 3-5 February.

**iii. Overall assessment of the human rights situation<sup>37</sup>**

49. The security situation in the conflict-affected areas in the period under review continued to be a matter of concern, in particular with respect to South Ossetia (Georgia) and the adjacent areas. While there have been very few incidents involving shootings and blasts, the number of detentions which could possibly fall under the category of hostage-taking practices has been increasing. The process of “borderisation” (i.e. tightening the procedures for crossing the ABL separating the two regions from the rest of Georgia and building the infrastructure) continued. This affects the situation as regards freedom of movement. All the other major issues of concern identified in the previous reports on the human rights situation in the areas affected by the conflict in Georgia remain valid, such as access to education in the Georgian language, access to medical services and others.

**iv. Security and freedom of movement**

50. The period under review has been marked by numerous incidents related to the detention of people crossing the ABL, in particular in the vicinity of the South Ossetia ABL. At the time of drafting the report, information about the exact number of detentions and/or releases which occurred on both sides of the ABL with the two regions concerned in the period under review was not available. In many instances, the persons detained for crossing the ABL were released after some hours or days of detention. Below are just a few cases of detentions/releases which attracted international and local media attention:

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<sup>34</sup> The Government of Georgia gave its consent to the Representative’s visit to the South Ossetia region from the north.

<sup>35</sup> The Strategy strives to ensure the reintegration of the breakaway regions of Abkhazia and South Ossetia/Tskhinvali into Georgia’s constitutional ambit, *inter alia* via the greater engagement of its population and promotion of people-to-people contacts. This goal is to be achieved through enhanced co-operation in the following key areas: economic relations, infrastructure and transportation, education, health care, people-to-people interaction, preservation of cultural heritage and identity, free flow of information, legal and administrative measures, and human rights.

<sup>36</sup> See further information in the chapter “Activities of Council of Europe organs and institutions and their follow-up”.

<sup>37</sup> This chapter does not contain an exhaustive list of all human rights issues and alleged violations during the reporting period.

- Sixteen Georgian citizens were detained either by the *de facto* border guards in South Ossetia or by the Russian FSB border guards. However, the Secretariat was not able to verify who carried out the detentions. According to the South Ossetia side, sixteen men were detained close to the village of Salbieri, east of Akhagori, for “violation of the South Ossetian border”. They were in the forest to get firewood, according to the reports from both the Georgian and South Ossetia sides<sup>38</sup>. In a separate incident which took place the next day, five men, residents of the Kareli district, were detained by the *de facto* border guards at the ABL close to Akhagori<sup>39</sup>. They were then released on 29 October and the sixteen others on 30 October. Following these incidents, the EUMM called on law enforcement agencies on both sides of the South Ossetia ABL “to exercise flexibility” in dealing with cases of accidental trespassing over the administrative border<sup>40</sup>.

- On 4 November 2009, four Georgian minors were arrested in Tskhinvali on charges of illegally crossing the state border and illegal possession of explosives (based on the provisions of the Penal Code of the Russian Federation applied in the region)<sup>41</sup>. These cases generated a lot of international attention. Following an intervention by the Council of Europe Human Rights Commissioner, two of the four minors were released on 2 December; and the two other minors together with another detained minor were released on 19 December 2009.

- On 2 December 2009, through the mediation of the Council of Europe Human Rights Commissioner, the Georgian side released five ethnic Ossetians detained between October 2008 and spring 2009<sup>42</sup>.

- A female resident of the Akhagori district was detained in Tbilisi on 20 December 2009, after police reportedly found 30 000 counterfeit US dollars in her bag<sup>43</sup>.

- On 4 January 2010, a male South Ossetian resident was detained by the Georgian police on charges of carrying a firearm and grenades. Following this incident, the EUMM monitors paid their first visit to Tskhinvali and the surroundings to discuss issues related to this detention. In a statement made on 26 January, the EUMM expressed serious reservations about the circumstances surrounding this detention. The EUMM once again reiterated the view that people who cross the administrative boundary line should be dealt with by administrative, not judicial actions<sup>44</sup>.

<sup>38</sup> <http://civil.ge/eng/article.php?id=21604>

<sup>39</sup> <http://www.civil.ge/eng/article.php?id=21615&search=>

<sup>40</sup> Six woodcutters who were detained in late August 2009 still remain in detention in South Ossetia.

<sup>41</sup> <http://osinform.ru/17746-cvety-zhizni-so-vzryvchatkoj-iz-gruzii.html>

NB. Based on Articles 158 (Theft), 222 (Illegal purchase, transfer, selling, storing, transportation or possession of weapons or its parts, ammunition, explosive materials and explosive devices) and 322 (Illegal crossing of the State Border of the Russian Federation) of the Penal Code of the Russian Federation.

<sup>42</sup> <http://civil.ge/eng/article.php?id=21740&search=>

<sup>43</sup> <http://radio-imeri.ge/index.php?l=2&pg=nt&id=3168>

<sup>44</sup> [http://www.eumm.eu/en/press\\_and\\_public\\_information/press\\_releases/1836/](http://www.eumm.eu/en/press_and_public_information/press_releases/1836/)

- Following an intervention by the Council of Europe Human Rights Commissioner, the Georgian authorities released on 29-30 March 2010 four detained South Ossetian residents<sup>45</sup>, including the two mentioned in the previous paragraphs, as well as two citizens of the Russian Federation<sup>46</sup>. In its statement of 31 March 2010, the EUMM welcomed the release of detainees and called upon the *de facto* South Ossetia authorities to take similar action. The EUMM expressed hope that in future such cases will be dealt with through administrative rather than judicial systems and called upon the *de facto* South Ossetia authorities to re-engage in the IPRM process<sup>47</sup>.

- The *de facto* South Ossetia authorities, for their part, released one ethnic Georgian detainee who had been detained on “illegal border crossing” charges.

51. At the time of drafting, according to the available information, there were still thirteen persons detained by the *de facto* South Ossetia authorities (nine persons detained prior to the reporting period and four persons detained during the reporting period).

52. The security situation in the areas affected by the conflict remains volatile. On 29 January 2010 a local policeman and two civilians were killed in a mine blast which occurred in the village of Chuburkhinji in the Gali district. Four other policemen and three civilians were reportedly wounded in the explosion. The local law enforcement representatives expressed the view that it was a deliberate act aimed at destabilising the situation in the area<sup>48</sup>. Following this incident, the *de facto* authorities called for the tightening of control over the ABL, including procedures for its crossing.

53. Further measures have been taken in the period under review which complicate the procedures for crossing the ABL with the South Ossetia region. Since 20 January 2010, residents of the Akhagori district (populated mostly by ethnic Georgians and mixed families) are required to present a notarised Russian translation of their Georgian IDs, in order to be able to move across the ABL. Furthermore, the *de facto* authorities of South Ossetia announced on 25 January 2010 that only one checkpoint will be left on the ABL near Akhagori.

54. A pattern of further tightening the procedures for crossing the ABL with Abkhazia was also observed, and this appears to have caused a number of incidents related to the detention of people residing in the adjacent areas while they were

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<sup>45</sup> Based on information at the disposal of the Office of the Human Rights Commissioner and other relevant organisations, no other persons detained after the conflict are being held on the territory under effective control of the Government of Georgia.

<sup>46</sup> See <http://www.civil.ge/eng/article.php?id=22137> and <http://www.itar-tass.com/level2.html?NewsID=14971036&PageNum=0>

<sup>47</sup> [http://eumm.eu/en/press\\_and\\_public\\_information/press\\_releases/2069/?year=2010&month=3](http://eumm.eu/en/press_and_public_information/press_releases/2069/?year=2010&month=3)

<sup>48</sup> <http://www.civil.ge/eng/print.php?id=21931>;  
<http://www.apsny.ru/apsnynews/apsnynews.php?mode=more&more=14422>;  
<http://www.rian.ru/incidents/20100129/206853654.html>

attempting to cross the ABL. They are usually taken to the local police station in Gali, briefly detained, ordered to pay a fine and then released.

v. *The situation of Internally Displaced Persons*

55. There have been no particular developments with regard to the return of persons displaced by the August 2008 conflict, as well as previous conflicts, to their original places of residence. As has been emphasised in previous reports, the long-term sustainable solution of the problem of IDPs is to ensure the safe, voluntary and dignified return of all IDPs to their homes. However, the right to return is not incompatible with the right to be integrated in the host communities. The Georgian State Strategy and Action Plan for IDPs has been an important step in ensuring the integration of IDPs, as well as improving their living conditions and solving housing problems.

56. According to the report of the Representative of the UN Secretary-General on the human rights of internally displaced persons, Walter Kälin, much of the displacement was caused or followed by violations of international humanitarian law committed by the parties to the conflict. The report also “underscores that the issue of displacement has to be addressed comprehensively taking into account the recent and past armed conflicts and therefore reaffirms the recommendations made in the reports on his 2005 and 2008 missions to Georgia”<sup>49</sup>.

57. The main issues where further action is necessary with a view to improving the conditions of life for IDPs include:

- IDPs are among Georgia’s poorest and most vulnerable citizens, who suffer from an inadequate access to housing, land, jobs, social services and healthcare;
- Lack of information and the inadequate transparency of decision-making processes contribute to building distrust and suspicion among IDPs. As an example, many IDPs fear that after receiving assistance and shelter from the State they will lose their right to return and the right to property left behind. One study carried out by a coalition of NGOs showed that over 90% of internally displaced persons have no knowledge of their various rights and obligations. The Government could make better use of television and radio broadcasts in order to communicate its decisions and strategies and keep the IDPs better informed on their rights and different procedures to follow. At the same time the flow of information from the Government to IDPs is better than vice versa;
- The registration of IDPs is ongoing, but rather slow. The Civil Registry was in charge of registering the new IDPs, but many people could not register at the moment of displacement, and now face problems with their registration which cannot be resolved without going to court;
- While the policies of the Government following the arrival of newly-displaced persons largely focused on providing them with housing, the focus should now shift to their integration into society and to income-generating opportunities. The

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<sup>49</sup> See Report of the Representative of the UN Secretary-General on the human rights of internally displaced persons, Walter Kälin (A/HRC/13/21/Add.3).

- main source of income for many IDPs remains an IDP allowance or social benefits;
- Freedom of movement for IDPs across the ABL with Abkhazia and South Ossetia continues to be an issue of concern;
  - The privatisation of collective centres for IDPs has continued but has proved to be a complex process with a number of difficulties. So far, 50% of the IDPs have been involved in this scheme.

***The situation of displaced persons within the South Ossetia region***

58. The reconstruction process in the region continued in the reporting period, but still at a very slow pace. A number of private and municipal buildings which were supposed to be constructed before 1 December 2009 have not been completed on time and in a number of cases the delays are severe<sup>50</sup>. Of an estimated 10 000 to 15 000 persons who were internally displaced within the South Ossetia region following the August conflict, many still await reconstruction of their houses. Moreover, there is still a group of 3 500 IDPs from the 1991-1992 conflict who live in collective centres, in deplorable living conditions<sup>51</sup>.

***vi. Human rights defenders and media***

59. In the period under review quite a few human rights groups in Georgia came under criticism in the media for assisting the residents of South Ossetia with bringing their cases to the European Court of Human Rights. Such activities should, however, be seen as a valuable tool for promoting confidence and developing a dialogue on the human rights issues across the ABL, which is worth supporting.

60. In February 2010, Mr Vakhtang Komakhidze, an investigative journalist, requested political asylum in Switzerland claiming he was persecuted in Georgia for his professional activities. In particular, Mr Komakhidze claimed that following his visit to Tskhinvali in December 2009 - in order to collect information for a documentary film about the August 2008 military conflict that he had been working on - he and his family started to receive threats. He was also harshly criticised in some local media outlets<sup>52</sup>.

61. On 13 March 2010, the privately-owned Imedi TV (with nation-wide coverage) ran a “simulated news report” (without clear indications in the course of broadcasting that it was not a real report but a simulation) implying that there were renewed hostilities in the region and the Russian military contingent was advancing towards Tbilisi. This programme caused anxiety and panic among the residents, in particular those close to the ABL with South Ossetia. Various embassies in Georgia, representatives of different international organisations and other international actors, as well as local politicians made statements expressing their deep concern over this broadcast.

<sup>50</sup> <http://www.presidentrso.ru/meetings/detail.php?ID=2993>

<sup>51</sup> For more information, see Report of the Representative of the UN Secretary-General on the human rights of internally displaced persons, Walter Kälin (A/HRC/13/21/Add.3).

<sup>52</sup> <http://www.civil.ge/eng/article.php?id=21968&search=>

62. On 15 March 2010, the Georgian National Communications Commission (GNCC) obliged Imedi TV to announce in its primetime news bulletin those provisions of the Georgian laws and regulations that had been violated by airing the “simulated” report and to apologise for the report. At the time of this decision by GNCC, Imedi TV and its top manager had already apologised and did so once again, in line with the decision, on 20 March. Moreover, the journalist who anchored the programme was invited to give explanations before the Council of the Charter of Journalistic Ethics<sup>53</sup>, but decided to quit it since she disagreed with the conclusions.

63. The EUMM, in its statement of 16 March 2010, reminded “all parties concerned, that this type of irresponsible programming had the potential to seriously destabilise the situation close to the boundary lines”, and called “on all those with positions of responsibility to fully consider the implications of their actions in future”<sup>54</sup>.

**vii. Developments in the Abkhazia region**<sup>55</sup>

64. The *de facto* Presidential elections took place on 12 December 2009. The incumbent *de facto* President Sergey Bagapsh was re-elected with 59.37% of the votes. The voter turnout was reported to be 64.29% of the registered voters. This time only the holders of the local IDs - Abkhaz internal passports - were allowed to vote in the elections. This prevented the overwhelming majority of residents in the Gali district from taking part in the voting (only around 4 000 people out of an estimated 45 000 - 55 000 residents of this district have so far been granted the local IDs). IDPs from previous conflicts currently residing in other parts of Georgia had no effective possibility to vote<sup>56</sup>.

65. Local civil society groups under the umbrella of a coalition – the League of Voters – have been actively involved in providing an oversight of the *de facto* electoral campaign and the *de facto* elections<sup>57</sup>.

**a. Penitentiary system**

66. An ethnic Georgian inmate died in Dranda prison on 27 February 2010. Some media reports contained allegations that he passed away as a result of years of ill-treatment. Other sources indicated that the person was seriously ill. While these reports cannot be verified at present, one should note the following: during its visit to Abkhazia (Georgia) in April/May 2009, the CPT delegation visited Dranda prison. According to the

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<sup>53</sup> The Georgian Charter of Journalistic Ethics was launched in Tbilisi on 4 December 2009 as part of the activities under the CoE–EU joint programme on media.

<sup>54</sup> [http://eumm.eu/en/press\\_and\\_public\\_information/press\\_releases/2043/?year=2010&month=3](http://eumm.eu/en/press_and_public_information/press_releases/2043/?year=2010&month=3)

<sup>55</sup> There is no similar chapter on the developments in the South Ossetia region, since the Secretariat could neither visit the region, nor had other effective means to monitor the human rights situation there.

<sup>56</sup> The international community did not recognise the legitimacy of these elections.

<sup>57</sup> A delegation of the Russian State Duma observed these elections. A group of 52 observers from 21 countries, under the aegis of the International NGO “Federation for Peace and Conciliation” (IFPC), was also present to observe (for more information, see *News release on the Mission of International observers at the election of the President of Republic of Abkhazia, 12 December 2009*).

report, the delegation received no allegations of torture or other forms of deliberate ill-treatment of persons deprived of their liberty by prison staff or fellow prisoners. However it has observed that the level of health care was inadequate. The delegation in particular noted that, “where the most serious pathologies were concerned, it was generally prisoners’ relatives or friends who were responsible for supplying the necessary medicines”<sup>58</sup>. It therefore recommended that “a system be set up without delay to ensure that prisoners without resources and who do not benefit from outside support are able to receive the medication that their condition requires”<sup>59</sup>.

#### **b. Property rights**

67. The Representative of the UN Secretary General on the human rights of internally displaced persons, in his recent report, underlined that housing, land and property issues in the areas affected by the conflict in Georgia are very complex, in particular since possession may have changed several times since the end of the Soviet era, during different waves of violence, conflict and displacement. He therefore recommended that the parties agree to set up a property resolution mechanism involving international expertise to resolve all outstanding property claims, including those arising in the regions of South Ossetia and Abkhazia.

68. The most pressing property-related issue remains the one concerning the property rights of the persons displaced during the previous conflicts and currently residing in other parts of Georgia. Another emerging property related issue is the increasing number of individual complaints by a number of people who are being deprived of their property rights as a result of highly questionable schemes and due to obscure local legislation on the property rights<sup>60</sup> (most of them being Russian citizens).

### **3. Activities of Council of Europe organs and institutions and their follow-up**

#### *Commissioner for Human Rights*

69. Since October 2009, the Commissioner for Human Rights has carried out three visits to Georgia: from 27 November to 3 December 2009, from 16 to 19 December 2009 and from 26 to 28 February 2010. His visits focused on an update of the six principles on human rights and humanitarian protection he formulated in the aftermath of the August

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<sup>58</sup> See [report on the CPT visit to Abkhazia, Georgia](#), paragraph 27.

<sup>59</sup> Ibid

<sup>60</sup> According to the local legislation, only holders of the local Abkhaz IDs (internal passports) are entitled to enter into real estate transactions. Holders of other national passports wishing to acquire property in the region are either entering into such transactions while by-passing the existing laws on the acquisition of property (quite often via the local mediator), or after obtaining a local ID, often also in violation of the local legislation in this respect. *NB. According to the Georgian Law on the Occupied Territories, any transactions related to real estate property on the territory of Abkhazia and South Ossetia that were concluded not in line with the requirement of the Georgian legislation shall be deemed void from the moment of conclusion and shall not give rise to any legal consequences (Clause 5. Real Estate Property Rights on the Occupied Territories).*

2008 conflict (see above). He also pursued his efforts in relation to the release of detainees and the clarification of the fate of missing persons.

70. The Office of the Commissioner has been involved in the following activities within the same period of time:

- *Human rights training in Gori*

71. Six human rights awareness trainings for the formal and informal leaders of conflict-affected villages in the Shida Kartli province and new IDP settlements were conducted in the period November-December 2009. The trainings were carried out in partnership with the OHCHR and UNIFEM, with an objective to raise the awareness of community leaders on human rights of IDPs and other conflict-affected populations, including socio-economic rights, right to care and support, and access to justice and information. The participants in the trainings identified areas for follow-up action. One option that will be explored is to erect billboards in conflict-affected villages where the population can obtain first-hand information on available government assistance programmes and relevant contact details.

- *Human rights publication with International Alert (start date 1 December 2009)*

72. The Office of the Commissioner for Human Rights is funding the translation into Georgian and dissemination of a publication prepared by civil society members brought together by International Alert. The material was originally available only in English and Russian. The project increases the publication's outreach towards various target groups in Georgia.

- *Ombudsman project (start date 18 January 2010)*

73. The Office of the Commissioner is funding six posts (5 monitors/advisers and 1 project co-ordinator) in the Public Defender's Office (PDO) in Tbilisi, Gori, Kutaisi, Zugdidi and Batumi to support the PDO in addressing the situation with regard to IDPs and other conflict-affected persons. A comprehensive report on the situation of IDPs and other conflict-affected individuals will be compiled upon the completion of the project by its co-ordinator, in co-operation with relevant PDO staff and based on input received by monitors/advisers and expert analysis. A database listing individual and structural problems as well as positive developments will be set up. Identification of further needs is envisaged for the second half of May 2010.

- *Monitoring investigations into cases of missing persons (start date 25 February 2010)*

74. On the occasion of his visit in February 2010, the Commissioner introduced two international experts who are tasked with monitoring the ongoing investigations into cases of missing persons on all sides following the August 2008 conflict in Georgia. The experts started their work with the case of three young Ossetians who went missing in

October 2008. The experts' activities include reviewing investigation documentation, assessing the investigation's progress and problems, and conducting interviews with various persons, including the families of persons who have disappeared. They will provide advice on methodology and the further direction of the investigations. The experts are working in co-operation with partners from the Incident Prevention and Response Mechanism (IPRM), including the European Union Monitoring Mission (EUMM), and are also co-ordinating their work with the ICRC. A report will be submitted by the experts to the Commissioner for Human Rights, providing a detailed, independent, balanced assessment and review of the events concerned. On 25 March 2010, the experts facilitated the travel of family members of the three missing persons from Tskhinvali to Gori in order to give statements to the Gori prosecutor. The expert's advice and recommendations on methodology could well have a wider applicability. A possible follow-up to this activity will be determined at a later stage.

- *Observation project, phase II (start date 15 March 2010) – continuation of phase I*

75. The project aims at monitoring the human rights situation in the villages adjacent to the ABL with South Ossetia in the Shida Kartli region (the former "buffer zone"). In addition, there is monitoring of the implementation of a package of recommendations compiled in October 2008 by civil society actors, local government and international organisations, following a CoE, UNIFEM and UNHCR initiative upon the completion of phase I. The project is implemented in co-operation with UNIFEM. An analytical report on the situation of the conflict-affected population in the Shida Kartli region is being drawn up. A possible follow-up to this activity will be determined at a later stage.

- *Documentary on IDPs ("Lives in transit") (start date 25 March 2010)*

76. The Office of the Human Rights Commissioner is funding the realisation of "Lives in transit", a documentary on persons displaced as a result of conflicts in the early 1990s, with a view to increasing awareness of the Georgian and international public on the situation of the "old" IDPs. The partner for this activity is OKUP'ART Association. The screening of the documentary is envisaged at international and European Human Rights Film Festivals and other events in the autumn 2010. No follow-up is envisaged at this stage.

### ***European Court of Human Rights***

77. It is recalled that, on 11 August 2008, the Court received a second Inter-State application (38263/08) from the Georgian Government directed against the Russian Federation. It was accompanied by a request for an interim measure. On 12 August 2008, the Court issued an interim measure inviting both Governments to respect their

obligations under the Convention. This decision is still in force. The Inter-State application was completed, and a full application was submitted on 6 February 2009<sup>61</sup>.

78. In the second Inter-State case, the Government of the Russian Federation submitted its written observations on the admissibility of the application on 7 October 2009 and the Georgian Government submitted its observations in reply on 10 March 2010. The Court's decision on admissibility is expected by the end of 2010/beginning of 2011.

79. Almost 3 300 individual applications against Georgia have been lodged by persons affected by the August 2008 conflict. Seven of these applications were communicated to the Georgian Government on 6 January 2009. The Georgian Government submitted written observations. Some of the applicants have made written observations in reply. The Government of the Russian Federation requested and has been granted the right to intervene, and has submitted written observations on 3 November 2009. On 23 March 2010 five of these applications, in which no observations were submitted by the applicants, were struck out of the list of cases, and seven further applications were communicated to the Georgian Government. A decision on admissibility on these cases can be expected by the end of 2010/ beginning of 2011.

80. To date, the Court has also received 198 applications involving more than 900 applicants from Georgia complaining about the Russian Federation. These applications have not yet been examined.

### *Committee of Ministers*

81. At the 1070bis meeting of the Ministers' Deputies on 18 November 2009, the outgoing Slovenian Chair presented a stocktaking report on the action taken by the Council of Europe with respect to the conflict in Georgia since the 119<sup>th</sup> Ministerial Session in Madrid (12 May 2009).

82. On 15-17 January 2010, the Chair of the Committee of Ministers, Minister for Foreign Affairs of Switzerland, Mrs Micheline Calmy-Rey, visited Georgia in order to discuss the co-operation between the Council of Europe and Georgia, including the consequences of the conflict.

83. On 3 February 2010, Mr Temur Yakobashvili, State Minister of Georgia for Reintegration Issues, presented the "State Strategy on Occupied Territories: Engagement through Co-operation" at the 1076<sup>th</sup> Ministers' Deputies' meeting. The Minister invited the Council of Europe to consider possible assistance with the implementation of the Strategy and its Action Plan, due to be developed by the end of June 2010.

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<sup>61</sup> There is an earlier Inter-State application (13255/07) which was declared admissible by a Chamber on 30 June 2009 following a hearing on 16 April 2009, and relinquished to the Grand Chamber on 15 December 2009.

*Parliamentary Assembly of the Council of Europe*

84. Pursuant to Resolution 1683 (2009) on the “The war between Georgia and Russia: one year after”, the Monitoring Committee has received a mandate from the Assembly to monitor the follow-up given by Georgia and Russia to Resolution 1683 (2009) and earlier resolutions (Resolutions 1633, 1647, 1648 and 1664), also taking into account the findings of the report of the IFFMCG, and to propose any further action to be taken by the Assembly as required by the situation. At its meeting on 18 November 2009, the Monitoring Committee decided to ask the Georgian and Russian delegations to provide the Committee with written information on the implementation of Resolution 1683 (2009), and in particular paragraph 12 of Resolution 1683 (2009) and to prepare a report for debate during the April 2010 part-session, following a fact-finding visit by the rapporteurs, Mr Matyas Eorsi (Hungary, ALDE) and Mr David Wilshire (United Kingdom, EDG) to Tbilisi, Sukhumi and Moscow.

85. Subsequent to Resolution 1664 (2009) and Recommendation 1869 (2009) on “The humanitarian consequences of the war between Georgia and Russia: follow-up to Resolution 1648 (2009)” the Committee on Migration, Refugees and Population has received a mandate from the Assembly to follow up its work on the humanitarian consequences of the war between Georgia and Russia. It plans to present a report to the Assembly during the October 2010 Part-Session. In this context the rapporteur (Ms Corien Jonker, Netherlands, EPP/CD) hopes to visit Sukhumi and Tskhinvali at the beginning of June 2010. She plans to continue to put emphasis on issues of “access” (for humanitarian assistance, for monitoring, for movement of the local population), and the importance of working with civil society and strengthening dialogue. She remains particularly interested in the areas of Gali and Akhgori, which she will also seek to visit.

86. In accordance with paragraph 15<sup>62</sup> of Resolution 1647 (2009), the Bureau of the Assembly set up an ad hoc committee on promoting dialogue between the Georgian and Russian PACE delegations. The ad hoc committee, chaired by the President of the Assembly, is composed of the chairpersons of the Assembly’s political groups, the co-rapporteurs of the Monitoring Committee for Georgia and Russia, the chairpersons (or their representatives) of three Committees (the Migration, Refugees, and Population Committee, the Political Affairs Committee and the Legal Affairs and Human Rights Committee) and representatives of the Georgian and Russian delegations to the Assembly. At its meeting on 11 March 2010, the Bureau of the Assembly decided to

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<sup>62</sup> “The Assembly reconfirms its conviction that the establishment of a genuine dialogue is the only way forward for the resolution of any conflict and to secure long-term stability in the region, provided the minimum conditions for meaningful dialogue as defined in Resolution 1633 (2008) are met. It therefore tasks its Bureau to set up in due course a special ad hoc committee, in which both Georgian and Russian parliamentarians will be invited to participate, to discuss their differences and develop concrete proposals to address the consequences of the war, in line with Resolution 1633 (2008). The Assembly would also welcome the possible participation of representatives of the Abkhaz and South Ossetian communities, from both the *de facto* authorities and those that favour integration with Georgia, in the work of the committee, subject to an agreement on the format of their participation.”

postpone to a forthcoming meeting its decision on the reconstitution of this ad hoc Committee.

87. Pursuant to paragraph 32<sup>63</sup> of Resolution 1633 (2008), the Political Affairs Committee set up, in November 2008, an ad hoc sub-committee on early warning systems and conflict prevention in Europe. This ad hoc sub-committee, chaired by Mr Wilshire, had as its main task the organisation of a Forum on early warning in conflict prevention, which took place on 24-25 September 2009 in Strasbourg. Subsequently, the Political Affairs Committee decided to set up a standing sub-committee on conflict prevention through dialogue and reconciliation, beginning its work as of January 2010. The sub-committee, which is chaired by Mr Wilshire, has a mandate to:

- a. implement the recommendations of the Forum on early warning in conflict prevention;
- b. keep under review potential or real situations of tension or conflict in the member states of the Council of Europe with a view to identifying possible PACE contributions;
- c. work out possible fast reaction mechanisms for PACE when crises arise.

### ***Monitoring mechanisms and others***

#### *European Committee for the Prevention of Torture*

88. The report on the CPT visit to Abkhazia, Georgia, carried out in April/May 2009 was made public at the request of the Georgian authorities on 23 December 2009. During the visit, the CPT delegation was granted access to all places of deprivation of liberty which it wished to visit and was able to interview, in private, persons deprived of their liberty.

#### *European Commission against Racism and Intolerance (ECRI)<sup>64</sup>*

89. ECRI adopted its draft report on Georgia on 15-18 December 2009. The final report will be adopted at the Plenary Meeting (28-30 April 2010). It will become public in June 2010.

90. ECRI suggested to the Georgian authorities to organise a presentation of the main findings of this report. The authorities have indicated their interest in this initiative.

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<sup>63</sup> “With a view to minimising the risk of further outbreaks of violence involving its member states, the Assembly should play a role in the field of conflict prevention and resolution, as without peace there cannot be genuine respect for democracy, human rights and the rule of law. It decides, therefore, to ask its Bureau to study mechanisms by which it could conduct parliamentary diplomacy in the context of frozen conflicts in Europe and other situations liable to undermine peace and stability.”

<sup>64</sup> This report applies to the monitoring of Georgia, but contains conflict-related recommendations.

*Framework Convention for the Protection of National Minorities (FCNM)*<sup>65</sup>

91. The Opinion on Georgia from the Advisory Committee of the Framework Convention for the Protection of National Minorities was adopted on 19 March 2009 and is now public, together with comments by the Government of Georgia. The Committee of Ministers (acting in the framework of Article 22 of the FCNM) is currently considering a draft Resolution on the basis of the above opinion.

*Venice Commission*

92. Following the adoption in March 2009 of an Opinion on the Law on Occupied Territories (CDL-AD(2009)015), the Venice Commission in October 2009 assessed a first set of amendments which had been prepared along the lines of the previous opinion and contained important improvements (see Interim opinion on draft amendments and annexes to the Law on Occupied Territories, CDL-AD(2009)046).

93. The final Opinion on the draft amendments to the Law on Occupied territories of Georgia was adopted by the Venice Commission at its 81<sup>st</sup> Plenary Session (Venice, 11-12 December 2009). This was a further version of the amendments, revised in the light of the interim opinion. In its conclusions, the Venice Commission acknowledged the efforts made by the Georgian authorities to respond to its concerns and recommendations and concluded that the revised draft amendments addressed most of the main concerns previously expressed by the Venice Commission.

94. Compared with the initial version of the Law, the draft amendments:

- provided for the possibility of issuing special permits in order to enter from elsewhere than the official entry points for purposes of confidence-building between the conflict-affected population or humanitarian purposes;
- provided for an exception to the need of obtaining a special permission in order to enter from elsewhere than the official entry points in favour of asylum-seekers, victims of human trafficking, persons rendering *emergency* humanitarian assistance (see below);
- abolished the restriction on inheritance rights;
- abolished the retroactive application of criminalisation of economic activities;
- ruled out any possible retroactive application of the law;
- provided for the possibility of revising the Law in two years' time, as previously recommended by the Commission.

95. The remaining issue is that humanitarian aid would be unhindered, but only when qualified as an "emergency". This qualification appeared redundant and carried the risk of unduly restrictive interpretation. The authorities gave assurances that the formula would not be interpreted in contradiction to Geneva Convention IV. Special attention should be paid to the implementation of the Law, which also has to be adequately monitored.

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<sup>65</sup> This report applies to the monitoring of Georgia, but contains conflict-related recommendations.

96. The draft amendments were adopted by the Parliament of Georgia on 26 February 2010.

### ***Operational activities***

- *Training of trainers for the EUMM monitors in Georgia (Tbilisi, 21-23 October 2009)*

97. Thirty EUMM monitors benefited from in-depth training on substantive and procedural human rights, monitoring techniques and reporting and training methodology. This enables them to train newly-arrived EUMM monitors following six-month rotations.

98. The DG-HL stands ready to provide further assistance to the EUMM, should such a request be made, and subject to funding being available.

99. The following activities under the project on “Enhancing good governance, human rights and the rule of law in Georgia”, funded by the Government of Denmark, were carried out by the Council of Europe and its partner, the European Centre on Minority Issues (ECMI):

- *Conference “Inter-ethnic Co-operation and Enhancement of Integration through the Ethnical Tolerance” (Tbilisi, 14 November 2009)*

100. The aim of the conference was to promote dialogue within Georgian society, involving national minorities, on the consequences of the August 2008 conflict and seeking solutions for re-establishing links among Ossetians – those residing in North Ossetia (Russian Federation) and in Georgia. The participants of the conference elaborated a joint Memorandum.

101. Two projects related to the humanitarian consequences of the August 2008 conflict are under implementation in Georgia with the financial support of the Council of Europe Development Bank.

- *“Support to IDPs in Georgia – Training in inter-community relations”*

102. Following a needs assessment mission in June 2009, two training modules were carried out in Georgia on 5-9 October 2009. The first module focused on general approaches to community cohesion and development and was attended by the high-ranking representatives of different ministries and agencies and by local government officials from the regions where IDPs reside. The second training module was delivered to the community leaders of IDPs and focused on improving employment and self-employment opportunities for IDPs.

103. The second stage of the project is currently under implementation. Its objective is to offer personalised advice to trainees on using the skills and knowledge they acquired in the course of the training modules in attaining the “practical goals” they set for themselves.

Meetings of consultants with small groups of IDP community leaders and representatives of central government will be organised in different localities (IDP settlements) throughout Georgia. These meetings aim to identify principal difficulties and barriers IDPs encounter and, through discussion, to develop proposals on how these barriers can be overcome. The project is implemented in co-operation with the Georgian Ministry of Refugees and Accommodation.

- *“Psychological rehabilitation of Georgian children traumatised by the conflict – combating the increase of violence in schools”*

104. A fact-finding mission to Georgia was carried out on 15-19 March 2010 by a team of experts together with members of the Secretariat. The objective of this mission was to gather up-to-date information enabling the design of a training programme for school development in the areas of psychological support, violence reduction in schools and human rights training for teachers and other professionals working in and with the schools. The programme is supposed to reach out to all children in Georgia, including children in distress and children traumatised by the conflict.

105. The project is implemented in co-operation with the Ministry of Education and Sciences of Georgia (MoES).

106. The mission resulted in an agreement being reached with the key partners on the re-definition of the initial project objectives as formulated in early 2009 and the extension of the project until the end of 2010. The delegation had meetings with all the institutions co-operating in the framework of the project, as well as with the Public Defender, a Teacher’s Union as well as key NGOs (Save the Children and World Vision). It also visited the IDP settlements and secondary schools in different regions of Georgia (Shida Kartli, Mtskheta-Mtianeti, Kvemo Kartli).

107. A request for project extension will be submitted to the Council of Europe Development Bank as soon as possible. Thirty participants for the training will be selected in June. Training on “Compassito”, the “Violence Reduction in Schools Training Pack”, school development and psychological support will start in September 2010. If successful, this will lead to the training programme’s national accreditation by the MoES in 2011.

- *“Post-Conflict Immediate Actions”*

108. The project “Post-Conflict Immediate Actions for the Social and Economic Revitalisation of Communities and of the Cultural Environment in the Region of Gori” (PIAG) was launched in December 2008. The project’s approach fosters the “rehabilitation” process and is aimed at recreating suitable conditions for the economic development of the communities directly affected by the conflict in August 2008.

109. To date, the following results have been achieved:

- A Political Statement has been adopted by the Interministerial Commission in order to develop possible synergies with Governmental programmes for implementing the expected project recommendations;
- “Guidelines for Reconstruction” have been published;
- The Preliminary Technical Assessment for the rehabilitation of the Monastery of Nikozi has been published and disseminated to potential investors. A Feasibility Study is also being published;
- The Reference Development Plan of the Nikozi village is being published. This comprehensive rehabilitation strategy proposes some 30 practical actions/investments in diverse fields, such as infrastructure, social equipment, housing repair, rehabilitation, heritage revitalisation, etc.;
- Communication and public awareness have been organised as part of the European Heritage Days;
- A diagnosis for drafting the Gori Regional Development Plan has been prepared. It identifies the main problems that need to be faced in terms of urban planning, infrastructure and economic development.

110. Activities under this project will continue in the coming months. The main objective is to finalise the Gori Regional Development Plan and present the global PIAG results to the Interministerial Commission (scheduled to take place in June 2010). It is expected that the Government of Georgia will decide to implement some of the rehabilitation projects proposed and secure funding for that purpose. A follow-up project could be initiated to accompany the implementation phase.

- *Meetings of the Moscow and Tbilisi Schools of Political Studies*

111. A third seminar between the Moscow and Tbilisi Schools of Political Studies took place in Batumi (Georgia) on 30-31 October 2009. Experts and civil society representatives from Georgia and Russia discussed the political, economic and humanitarian challenges the region has been facing fifteen months after the August conflict and perspectives for the future. The next meeting is scheduled to take place in St Petersburg (Russian Federation) in Autumn 2010. An overall evaluation and proposals for extending the scope of the dialogue will be presented following the fourth bilateral seminar.

#### **4. Proposals for further action**

112. The ongoing Council of Europe activities and their possible follow-up have been presented in the previous section of the report. In preparation of this report the Secretariat has looked into possibilities for extending the activities of the Council of Europe to the regions of Abkhazia and South Ossetia. The three major enabling factors for any meaningful activities there are: an unimpeded access for the Council of Europe Secretariat and experts; modalities which would allow activities on the ground to be carried out (including modalities for interaction with the *de facto* institutions); and an international human rights presence on the ground. These conditions are far from being in place.

113. As for the access modalities, the situation with respect to the Abkhazia region is less problematic compared with that of South Ossetia, since there already exist practical modalities providing for an access of representatives of international organisations. However, there are certain requirements attached to this procedure, such as entry clearance and a requirement for foreign nationals<sup>66</sup> to obtain an “Abkhaz visa”<sup>67</sup>.

114. As for the modalities for interaction, the “State Strategy on Occupied Territories: Engagement through Co-operation” foresees the elaboration of a “status-neutral liaison mechanism with the authorities in control with the aim of discussing the confidence-building measures with them for the good of the divided communities”. Work in this direction is currently in progress. If successful, the setting-up of such a “liaison mechanism” has a potential to facilitate possible Council of Europe activities.

115. At the time of drafting this report very few international organisation dealing with humanitarian and human rights issues were present in the Abkhazia region and only the ICRC had a presence in the South Ossetia region. The Council of Europe could consider entering into partnership(s) with these organisations operating on the ground with a view to jointly implementing certain activities which are compatible with their respective mandate(s). However, as it has been noted earlier in the report, these international organisations currently experience uncertainty in respect to their own continued presence and operations on the ground. It is, however, clear that while the presence of partners would greatly facilitate any activities on the ground, a possible presence of the Council of Europe and/or another organisation with human rights mandate would certainly constitute a breakthrough in this respect.

116. Keeping in mind all the above-mentioned assumptions, risks and reservations, below is a list of potential areas where action might be possible, inasmuch as the political context allows it. The exact implementation modalities, however, should be further explored and agreed with all the relevant stakeholders involved.

*a. Activities with journalists*

A joint study visit to the Council of Europe for a group of journalists<sup>68</sup> (five from Abkhazia, five from South Ossetia if possible, and 5-10 journalists from other parts of Georgia), combined with training on standards and principles of balanced coverage of politically sensitive events. Based on the results of the discussions with the participants, a list of specific follow-up activities will be developed.

The overall budget for this component is € 50 000 (funding non-secured).

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<sup>66</sup> Visa requirements do not apply to the citizens of the member states of the Commonwealth of Independent States.

<sup>67</sup> This requirement could nevertheless be lifted under certain circumstances.

<sup>68</sup> To facilitate this activity, the Secretariat will work in partnership with an international NGO that has experience in organising the confidence-building activities with the parties involved.

*b. Human rights education and awareness-raising activities in the Abkhazia region*

- providing civil society groups and possibly selected educational institutions<sup>69</sup> in the Abkhazia region with Council of Europe publications on various human rights issues;
- disseminating materials of the ongoing Council of Europe campaigns (a possibility of translating the campaign materials into the Abkhaz language could also be explored);
- organising the screening of films/documentaries on human rights;
- the possibility of organising public discussions on human rights issues could also be looked at.

The overall budget for this component is € 40 000 (funding non-secured).

*c. Capacity-building activities for the Abkhaz civil society*

This component will include organising a series of training workshops for local civil society groups on specific articles of the European Convention on Human Rights. The possibility of organising a separate workshop on specific issues, e.g. non-discrimination, children's rights, could be further explored.

The overall budget for this component is € 30 000 (funding non-secured).

117. Close co-operation and consultations with other international organisations and actors involved in the Abkhazia region – both at the stage of elaborating the projects and their implementation - will be vigorously pursued. Furthermore, extra care should be given to ensuring that all the activities are carried out in a conflict-sensitive manner and that preference should be given to low-profile events.

118. Possible implementation of the above-mentioned proposals should be seen as a test for any possible medium- and longer-term involvement. If successful, this could possibly lead to a carefully-designed gradual expansion of the Council of Europe action within the scope of its expertise. Experience of other actors operating in the areas affected by the conflict suggests that a long-term involvement is crucial for achieving sustainable results.

119. Taking into account the fundamental difficulties with access to the South Ossetia region, as well as the absence of interested interlocutors, activities in South Ossetia are not being considered at all for the moment.

120. Other initiatives considered by the Council of Europe with a view to addressing the consequences of the conflict, subject to availability of funding, include organising a seminar on the role of women in the prevention of conflict (estimated cost € 40 000) and a seminar on social rights (the right to housing, protection of health, education, social protection, protection against poverty and social exclusion) in the areas affected by the conflict in Georgia (estimated cost € 15 000).

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<sup>69</sup> Such as the law faculty of the university in Sukhumi.

121. The INGO Conference will organise a side event on the role of NGOs in the post-conflict situations in connection with the next regional NGO Congress which will take place in Vilnius on 10-12 June 2010, with a view to ensuring the continuation of an exchange of views and ideas which took place during the seminar organised by the Conference in Strasbourg in February 2009.

122. The Secretariat will further consider supporting selected projects and initiatives resulting from the discussions in Vilnius, in particular those addressing the consequences of the August 2008 conflict in Georgia and the Georgian-Russian civil society dialogue.

123. Furthermore, a Georgian-Russian youth meeting will take place in the European Youth Centre in Strasbourg on 17-23 May 2010, with a view to building communication channels between the target groups and restoring trust. Based on the results of this activity, new approaches will be developed for 2011. In addition, the Youth Peace Ambassadors project for 2011 will have a substantial part of its activities addressed to the conflict.

## 5. Concluding remarks

124. There has been no particular progress achieved in the reporting period on a possible human rights presence on the ground. The issue of physical access to Abkhazia and in particular to South Ossetia is still on the agenda. The recently adopted Strategy of the Government of Georgia on the reintegration of the two regions and its Action Plan are deemed to provide the framework to ensure ongoing contacts with the population residing on the respective territories.

125. The Council of Europe should continue to closely follow the developments in the areas affected by the conflict and could further explore, in close co-ordination and co-operation with other relevant international organisations and actors, opportunities for possible extension of its human rights activities there, inasmuch as the political context allows it. It should further support the efforts by the Georgian Government aimed at restoration of a dialogue between the communities residing on different sides of the ABL and could possibly consider additional measures to this end.

126. One of the observations in the “Tagliavini report” provides the following conclusion: “[...] *The international community as well as all other regional or non-regional actors involved in the conflict should continue to make every conceivable effort to bring the sides to the negotiating table and to assist them in making arrangements in keeping with the Charter of the UN, the Helsinki Final Act of the OSCE and the relevant documents of the Council of Europe, in order to settle their differences and prevent another outbreak of hostilities. [...] There is little hope, however, for a peaceful future in the conflict region unless the two main contenders, Russia and Georgia, make bilateral efforts themselves to solve their disputes. This needs to be done now*”<sup>70</sup>.

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<sup>70</sup> Report by the IIFFMCG, September 2009, Volume I, Observations, paragraph 12.