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The consequences of the war between Georgia and Russia

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr Luc Van den BRANDE, Belgium, Group of the European People's Party, and Mr Mátyás EÖRSI, Hungary, Alliance of Liberals and Democrats for Europe

Summary

The Monitoring Committee condemns the outbreak of the war between Georgia and Russia, two member states of the Council of Europe, and deplores the human suffering caused by it. During the war and in its aftermath, international law principles, the Statute of the Council of Europe and accession commitments undertaken by both states have been violated.

In the view of the committee, the outbreak of the war on 7 August 2008 was the result of a serious escalation of tensions, with provocations and ensuing deterioration in the security situation, which had started much earlier. Truth is a prerequisite for reconciliation. Since the facts surrounding the outbreak of the war are disputed by both Georgia and Russia, they should be established, in an objective manner, by an independent international investigation.

The report 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. In addition, the act of recognition and the subsequent signing by Russia of friendship and co-operation treaties with the *de facto* authorities in Tskhinvali and Sukhumi hinder the effective deployment of humanitarian aid. The committee reaffirms its attachment to the territorial integrity and sovereignty of Georgia and calls upon Russia to withdraw its act of recognition.

Human rights and humanitarian law violations committed in the course of the war by both sides are an issue of concern. The committee is especially concerned about credible reports of acts of ethnic cleansing committed in ethnic Georgian villages in South Ossetia and the "buffer zone" by irregular militia and gangs which the Russian troops failed to stop.

Dialogue is the best way forward for the solution of any conflict and for fostering stability in the long-term. But it requires political will on both sides and cannot be pursued in isolation of concrete actions. Some basic conditions for the dialogue have to be established and observed. Full implementation of the peace plan, including withdrawal of the Russian troops to positions *ex ante* the conflict, is essential. In addition, full deployment of EU and OSCE monitors into South Ossetia and withdrawal by Russia of the recognition of independence of South Ossetia and Abkhazia, would be minimum conditions for a meaningful dialogue.

1. Reference to committee: Ref. No. 3489 of 29 September 2008

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A. Draft resolution

1. The Parliamentary Assembly is firmly committed to the principles embodied in the Statute of the Council of Europe: democracy, human rights and the rule of law, as well as to principles of state sovereignty, the right to territorial integrity and the inviolability of frontiers of states. Respect of these principles is an obligation incumbent upon all member states of the Council of Europe.

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

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

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

5. However, the start of shelling of Tskhinvali by the Georgian military, on 7 August 2008, initiated a new level of escalation, namely that of open and full-fledged warfare. The use of heavy weapons and cluster munitions, creating grave risks for civilians, constituted a disproportionate use of armed force by Georgia, albeit within its own territory, and as such a violation of international law and Georgia's commitment to resolve the conflict peacefully.

6. At the same time, the Russian counter-attack, including large-scale military actions in Central and Western Georgia and in Abkhazia, equally failed to respect the principle of proportionality and international humanitarian law and constituted a violation of Council of Europe principles, as well as of statutory obligations and specific accession commitments of the Russian Federation as a member state. It led to the occupation of a significant part of the territory of Georgia, as well as attacks on the economic and strategic infrastructure of the country which can be deemed to be either a direct attack on the sovereignty of Georgia and thus a violation of the Statute of the Council of Europe, or an attempt by Russia to extend its influence over a "near abroad" state in violation of its accession commitment to denounce such a concept.

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

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

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

10. The Assembly particularly deplores that the recognition of independence was prompted by the unanimous demand of both houses of the Parliament of the Russian Federation, the State Duma and the Council of the Federation. It is seriously concerned that the act of recognition as well as the recent subsequent signing by Russia of friendship and co-operation treaties with the *de facto* authorities in Tskhinvali and Sukhumi, hinder the implementation of the EU brokered cease fire agreement, as well as the provision of humanitarian aid and monitoring of the implementation of the cease-fire agreement by independent monitors.

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

12. Russia appears to have failed in its duty, under the 1907 Hague Convention 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 human rights and humanitarian law violations 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 Tshkinvali.

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

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

15. Some 192,000 persons were displaced as a consequence of the war. The Assembly is concerned that a total of 31.000 displaced persons (25.000 from South Ossetia and 6.000 from Abkhazia) are considered to be "permanently" unable to return to their original place of residence. These numbers should be seen in the context of the approximately 222,000 persons who remain displaced from the previous conflict in the early 1990's.

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

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

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

19. The Assembly calls on the Russian authorities to allow EU, as well as OSCE monitors to have access to South Ossetia and Abkhazia, which are under the *de facto* control of the Russian Federation. In addition, differences about the role of EU monitors in the so-called "buffer zone" may lead to an even further deterioration of the security situation in this area, impeding the return of displaced persons after Russian troops have withdrawn from it.

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

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

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

21.2. enable OSCE and EU monitors to be deployed into South Ossetia and Abkhazia; and withdraw its recognition of independence of South Ossetia and Abkhazia;

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

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

21.5. refrain from inflammatory discourse and take steps to entertain good neighbourly relations;

21.6. ensure effective respect for all human rights under the European Convention on Human Rights and humanitarian norms under the 1949 Geneva Conventions and their additional protocols on the territories under their *de facto* control;

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

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

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

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

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

22.1.2. provide, without delay, UNHCR and all humanitarian organisations with unhindered access to the areas affected by the conflict, in particular in the region of South Ossetia and the so-called "buffer zone". All organisations providing humanitarian assistance in these areas should be guaranteed safety.

22.2. remove all mines and unexploded ordnance. This implies all parties to the conflict exchanging information on the use and location of such materials, and also the involvement of experts on mine and ordnance location and removal;

22.3. co-operate fully with all international monitoring missions whether from the UN, the OSCE, the EU, the Council of Europe or other international body and grant these organisations full access to the conflict regions;

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

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

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

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

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

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

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

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

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

23.2. keep under the spotlight the needs of the 222,000 persons who remain displaced from the earlier conflict over Abkhazia and South Ossetia as well as those displaced from earlier conflicts in the North Caucasus;

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

23.4. ensure, to the extent they are also members of NATO, that the NATO assessment of the military build-up with respect to this war be made public;

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

24. Because of the human rights violations and the humanitarian challenges resulting from the conflict between Russia and Georgia, the Assembly invites the Bureau to ensure that the Assembly remains seized of the matter through its competent committees and step up its monitoring procedure with respect to both countries.

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

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

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

28. The Assembly is convinced that the establishment of a dialogue is the best way forward for the solution of any conflict and for fostering stability in the long-term. This holds true for this particular conflict. However, dialogue requires political will on both sides and cannot be pursued in isolation of concrete actions. Therefore, some basic conditions for the dialogue have to be established and observed. Full implementation of the peace plan, including withdrawal of the Russian troops to positions *ex ante* the conflict is essential. In addition, full deployment of EU and OSCE monitors into South Ossetia and Abkhazia and withdrawal by Russia of the recognition of independence of South Ossetia and Abkhazia, would be minimum conditions for a meaningful dialogue.

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

B. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution…. on the consequences of the war between Georgia and Russia in which it welcomed *inter alia* the initiative of the Swedish Chairmanship of the Committee of Ministers to convene an informal extraordinary meeting of Ministers of Foreign Affairs on 24 September 2008 in order to prepare the response of the intergovernmental sector of the Organisation to the war between Georgia and Russia.

2. The Assembly recalls in this respect the 1994 Declaration of the Committee of Ministers on compliance with commitments accepted by member states of the Council of Europe which refers to the statutory responsibility incumbent upon itself for ensuring full respect of commitments in all member states, without prejudice to other existing procedures, including the activities of the Parliamentary Assembly and conventional control bodies.

3. The Assembly therefore recommends to the Committee of Ministers to:

3.1. develop an Action Plan and take concrete measures to respond to the crisis between two member states of the Organisation and, consequently, within the Organisation itself, taking into account the Organisation's mandate and expertise;

3.2. consider specific action to ensure full respect of commitments undertaken by both Georgia and Russia, including reinforced field presence and a human rights mission on the ground.

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

1. Introduction

1. Immediately following the outbreak of the war between Russia and Georgia on 7 and 8 August 2008, and acknowledging the unique challenge to principles and values of the Council of Europe that a war between two of its member states represented, the President of the Assembly requested the co-rapporteurs from the Monitoring Committee for Russia and Georgia to visit the respective countries under their responsibility. The co-rapporteurs for Georgia, Mr Mátyás Eörsi and Mr Kastriot Islami, visited Tbilisi and Gori from 18 to 21 August and one of the co-rapporteurs for Russia, Mr Luc van den Brande, visited Moscow and Vladikavkaz from 20 to 22 August.

2. The Bureau of the Assembly, at its meeting on 5 September 2008, decided, on the basis of a unanimous proposal submitted by the five chairpersons of the Assembly's Political Groups, on behalf of their groups, to recommend to the Assembly to hold a debate under urgent procedure during the 2008 fourth part-session on "Consequences of the war between Georgia and Russia"; and proposed to refer this matter to the Monitoring Committee for report and to the Political Affairs Committee, the Committee on Legal Affairs and Human Rights and the Committee on Migration, Refugees and Population for opinion.

3. At that same meeting, with a view to obtaining a better understanding of the facts regarding the exact sequence of events on 7 and 8 August, and the circumstances that led to them, as well as the political situation in the immediate aftermath of the hostilities, the Bureau of the Assembly decided to set up an Ad Hoc Committee to study the situation on the ground in Russia and Georgia from 21 to 26 September 2008. The Ad Hoc Committee was composed of the co-rapporteurs of the Monitoring Committee for Russia, myself and Mr Theodoros Pangalos (Greece, SOC); the co-rapporteurs of the Monitoring Committee for Georgia, Mr Mátyás Eörsi (Hungary, ALDE) and Mr Kastriot Islami (Albania, SOC); the Chairman of the Political Affairs Committee, Mr Göran Lindblad (Sweden, EPP/CD); the Chairwoman of the Committee on Migration, Population and Refugees, Ms Corien Jonker (Netherlands, EPP/CD); the Chairman of the Socialist Group, Mr Andreas Gross (Switzerland); the Chairman of the Unified Left Group, Mr Tiny Kox (Netherlands); and the First Vice-Chairman of the European Democrat Group, Mr David Wilshire (United Kingdom).

4. The delegation visited the Russian Federation from 21 to 23 September 2008 and, subsequently, Georgia from 24 to 26 September 2008. During their visit in the two countries, the delegation met with high-level state authorities, representatives of international organisations, as well as representatives of civil society and diplomatic community. In addition, during the visit in Georgia, the delegation visited the so-called "buffer zone" and South Ossetia. The findings of the delegation are an integral part of this report.

5. Other parts of the Council of Europe also provided an immediate response to the conflict. The Chairman of the Committee of Ministers, Swedish Foreign Minister Carl Bildt, visited the conflict area jointly with the Secretary General of the Council of Europe, Mr Terry Davis, from 11 to 13 August 2008. Moreover the Swedish chairmanship convened an informal meeting of the Ministers of Foreign Affairs in New York on 24 September 2008. The Council of Europe Human Rights Commissioner, Mr Thomas Hammarberg visited the conflict area from 22 to 29 August and subsequently from 25 to 28 September 2008, and played an active role in addressing the humanitarian and human rights issues as a result of the conflict. The active role of the Swedish Chairmanship and the Human Rights Commissioner should be welcomed. In addition, the Congress of Local and Regional Authorities paid a visit to the region.

2. Background

6. The conflict over South Ossetia started following the declaration of independence of Georgia, and, subsequently, the abolition of the autonomous status of South Ossetia by the Georgian Government at that time, when violent clashes broke out in 1991 between Georgian troops and South Ossetia separatists militia. In order to avoid a large-scale confrontation with Russia, Georgia accepted, in 1992, a cease-fire agreement – the so-called Sochi agreement – that left part of South Ossetia under the de facto control of the separatist forces. As part of the cease-fire agreement, a peacekeeping force consisting of Russian, Georgian and Ossetian (both North and South) troops was set up and, in 1992, the Organisation of Security and Co-operation in Europe (OSCE) established a mission to monitor the peacekeeping operation. In addition an OSCE-Joint Control Commission, with Georgian, South and North Ossetian and Russian participation, was established as the main negotiation mechanism to maintain peace.

7. While the escalation of the conflict into a fully fledged war between Georgia and Russia came totally unexpected, tensions between the two countries had been seriously escalating for some time before the outbreak of the war. It is clear that the war between Russia and Georgia did not start on 7 August 2008.

8. It will be difficult to pinpoint an exact date when the tensions started to escalate and develop to a point that military conflict became the option for both parties in the conflict. However, a key date is 6 March 2008, when Russia unilaterally withdrew from the 1996 CIS treaty on the imposition of economic sanctions on Abkhazia.

9. This was followed, on 21 March 2008, by a Resolution passed in the Russian State Duma asking the authorities to consider the recognition of the independence of South Ossetia and Abkhazia. This call was rejected at that time by the Russian authorities, but, on 16 April 2008, the then President Putin of Russia issued a decree instructing the Russian authorities to establish direct official and legal links with the de facto authorities in the breakaway regions of Abkhazia and South Ossetia. The latter decree was denounced by Georgia as a de facto attempt to annex Georgian territory and led to strong criticism from the international community.

10. The exact reasons for these Russian decisions, which undeniably increased the tensions between the two countries are as yet unclear. The unilateral recognition of the independence of Kosovo by several Western countries, as well as the prospect of a Membership Action Plan for Georgia to enter NATO would appear to have had a non-negligible influence on such a decision.

11. The aforementioned actions by the Russian Federation not only increased the tensions, and further deteriorated the bilateral relations between Georgia and Russia, but, together with the mass distribution of Russian passports to the inhabitants of the two breakaway regions undoubtedly also encouraged the separatist leadership of these regions to step up the confrontation and reject a negotiated solution to the conflict. As a result, the security situation in the two regions deteriorated sharply. In addition, these actions led to an uncessary exchange of inflammatory language that did nothing to improve the already tense relations between the two countries.

12. The security situation deteriorated further following the decision of the Russian authorities to send, while remaining within the numerical limits allowed under the 1994 CIS agreements, an additional number of “peacekeeping” troops into Abkhazia in May 2008, including heavy artillery and paratroopers. Furthermore, on 31 May 2008, the Ministry of Defence of the Russia announced that it was sending 300 unarmed members of the Railway Forces into Abkhazia to repair the Sukhumi–Ochamchire railroad link. Both these actions led to an outcry from the Georgian authorities and were also strongly condemned by the international community.

13. In the meanwhile, the security situation in South Ossetia continued to deteriorate, with provocations and violent incidents on both sides, including sniper and bomb attacks and attacks on Georgian and South Ossetian villages with small arms and light artillery fire. It is clear that the peacekeeping format established with the Sochi agreements had broken down and that the peacekeepers were not fulfilling their intended role of protecting the civilian population and maintaining order in their area of deployment. In addition, the failure of the peacekeeping format, as well as the actions by the Russian authorities mentioned above, appear to confirm the assertion that Russia had become a partner in the conflict and could no longer be seen, or maintain, its role as an unbiased mediator. However, repeated calls from the Georgian authorities to change the peacekeeping format were met with a rejection from the Russian and South Ossetian sides.

14. Aware that the situation was spinning out of control, the German Government proposed a peace plan for Abkhazia, but the talks failed when the Abkhaz de facto authorities refused to participate in peace talks scheduled in Berlin in July 2008. In addition, proposals for peace talks by the European Union and OSCE between Georgia and the South Ossetia de facto leadership broke down in July 2008, when the proposals were rejected by the South Ossetian de facto leadership.

15. In early August, the security situation sharply deteriorated, and began to run out of control when, on 1 August, 5 Georgian policemen were injured by car bombs in South Ossetia. On the same date, several people died in clashes in Tskhinvali and ethnic Georgian villages. Between 3 and 5 August, the South Ossetian de facto authorities began to evacuate the civilian population from Tskhinvali and surrounding areas. On 7 August, ethnic Georgian villagers in South Ossetia were advised by their leadership to leave the area.

16. The exact sequence of events, as well as the circumstances that led to them, are the subject of great controversy between Russia and Georgia, with diametrically opposed views being expressed.

17. According to the Russian authorities, the tension and outbreaks of violence, involving small arms and light artillery fire, between the Georgian and South Ossetian sides had been steadily escalating over the summer months mainly as a result of, but not exclusively, Georgian provocations and this despite all efforts by the Russian Peacekeepers to calm both sides down and bring them back to the negotiating table. At approximately 22:38 on 7 August, the Georgian authorities then initiated an unprovoked and, in their opinion, clearly premeditated, full-scale military attack on Tskhinvali and Ossetian villages in the security zone, including a "massive and indiscriminate" shelling with heavy artillery and multiple rocket systems of Tskhinvali. When reports of heavy civilian casualties and attacks on Russian Peacekeepers became clear, the Russian authorities launched their counter-offensive and sent troops through the Roki tunnel into Georgia.

18. According to the Georgian authorities, tensions in South Ossetia had been steadily escalating for several months as a result of provocations and attacks on Georgian villages by South Ossetian separatist forces, which were not prevented by Russian Peacekeepers. Repeated attempts by the Georgian side to stop the hostilities by peaceful means were met with a refusal from the South Ossetian side, with the tacit approval of the Russian Peacekeepers. On 6 and 7 August, the escalations reached unprecedented heights, which risked destabilising the country. When, on 7 August in the late evening, the Georgian authorities received multiple intelligence reports that Russian military troops, including tanks and heavy artillery, were crossing the Roki tunnel and building up in South Ossetia, a counter-attack was launched in self defence of the Russian invasion of Georgian territory.

19. The Russian authorities strongly deny that Russian troops passed the Roki tunnel before the Georgian attack on Tskhinvali and point out that the intelligence information to that effect made public by the Georgian authorities is widely considered to be at best inconclusive and not independently verified. Regrettably, Russia and the United States, countries with considerable satellite intelligence capability, claim that they do not possess any satellite images that could help either confirm or contradict the Georgian assertion that Russian troops passed the Roki tunnel prior to the attack on Tskhinvali.

20. The Russian authorities have made public what they allege to be captured Georgian military plans for the invasion of South Ossetia and Abkhazia. In the Russian opinion, these plans are the proof that the attack on South Ossetia was planned and prepared well in advance. The Georgian side strongly denies any prior preparation and planning for such an invasion. It should be considered that military forces in most, if not all, countries would have plans for hypothetical military situations that could occur, and that therefore, even if these plans were genuine, the existence of such plans would not per se constitute the proof that the attack on Tskhinvali was premeditated and prepared in advance. Moreover, members of the international community in Georgia asserted that the level of disorganisation during the Georgian military action in South Ossetia, as well as the chaotic retreat, would seem to belie the notion that this attack was prepared well in advance. NATO has made an assessment of the conduct of the hostilities that could shed light on the question of preparation. It is regrettable that this assessment remains classified.

21. In view of the complexity of the situation, these diametrically opposed views, the fact that Georgia and Russia contest each other's versions and the negation by both sides of any share of responsibility, it is clear that only an independent international investigation can bring clarity to the exact sequence of events on 7 and 8 August as well as the circumstances that led to the outbreak of armed hostilities between Georgia and Russia. It is essential that these facts are established. Truth is a prerequisite for any start of reconciliation between these two member states of the Council of Europe.

22. As mentioned the war did not start on 7 August, however it clear that, irrespective of what provoked it, the shelling of Tskhinvali by Georgian troops with heavy artillery and multiple rocket launchers signalled the start of the outbreak of open warfare between Georgia and the Russian Federation.

23. Following the start of the shelling of Tskhinvali, Russia retaliated with a counter-offensive and, after several days of heavy fighting, Russian forces not only drove Georgian military forces out of South Ossetia, but also occupied a large part of Georgia to the West and South of the conflict zone. Subsequently, Russian forces also began to attack strategic economic and civilian targets deep inside Georgia itself, including railroads, bridges and the harbour of Poti, which is situated a considerable distance from the conflict zone.

24. When the war started over South Ossetia, Abkhaz separatist forces began, on 8 August 2008, to attack Georgian troops in the Kodori Gorge and, reportedly with the help of Russian military forces, drove the Georgian military troops out of the Georgian held parts of Abkhazia.

25. The Russian incursion in Georgia was only halted with the signing of the cease-fire agreement, brokered by President Sarkozy of France on behalf of the European Union, by Presidents Medvedev and Saakashvili on 12 August 2008.

26. Leaving aside the circumstances that led to this war, and irrespective of whether Georgia's military assault on Tskhinvali was justified or not, the Russian response was disproportionate and went far beyond what was needed to restore peace and protect civilian lives. This disproportionate military response, together with the unjustified destruction of the economic and strategic infrastructure of Georgia and the repeated public calls for regime change in Georgia, is either a direct attack on the sovereignty of Georgia or an indication that Russia intends to restore its direct and decisive influence over Georgia with the intention to restore the concept of the "near abroad" in violation of its accession commitments.

3. Cease-fire agreement and immediate aftermath of the war

27. In the cease-fire agreement brokered by President Sarkozy, Georgia and Russia agreed:

– not to resort to force;

– to a definitive halt to the hostilities;

– to make provision for free access for humanitarian assistance;

– that Georgian Forces must withdraw to the places where they are usually stationed;

– that the Russian armed forces will be pulled back to the line preceding the start of hostilities. While awaiting an international mechanism, Russian peacekeeping forces will implement additional security measures;

– to the opening of international discussions on security and stability modalities in Abkhazia and South Ossetia.

28. According to the cease-fire agreement, Russian troops were to withdraw immediately to their pre-war positions and strengths. However, despite assurances from President Medvedev of Russia to the contrary, the withdrawal of Russian troops did not start immediately after the cease-fire agreement was signed and at the time of the visit of the Assembly co-rapporteurs for Russia and Georgia to Moscow and Tbilisi respectively, the withdrawal of Russian troops had not yet started. In fact the destruction of the economic and strategic infrastructure of Georgia by Russian troops continued unabated.

29. The definition of additional security measures to be implemented by Russian peacekeeping forces, as mentioned in point 5. of the cease-fire agreement, led to conflicting interpretations between the Russian authorities, on the one side, and the Georgian authorities and international community, on the other side. The Russian authorities gave this a broad interpretation that would allow them to maintain a wide range of checkpoints outside the conflict zone deep inside Georgia. As a result, Russian troops assumed de facto control over the main East-West and North-South transport arteries, which was considered unacceptable as it significantly undermined Georgia's sovereignty. In response, President Sarkozy of France sent a letter to both Presidents Saakashvili and President Medvedev on 16 August 2008, clarifying the definition of "additional security measures" as agreed during the cease-fire talks. In this letter, President Sarkozy made it clear that these measures could only be implemented within the limits of a couple of kilometres outside the administrative border of South Ossetia -excluding explicitly any other part of Georgia-; would be of a temporary character; would take the form of patrols by peacekeeping forces authorised under the 1992 Sochi agreement; and could under no circumstances include major urban centres or transport links.

30. On 25 August, the Federal Assembly of Russia (State Duma and Council of the Federation) unanimously voted to urge President Medvedev to recognise the independence of South Ossetia and Abkhazia. Subsequently, on 26 August, President Medvedev issued a decree by which the Russian Federation recognised the independence of the self-proclaimed republics of Abkhazia and South Ossetia. This recognition was widely condemned by the international community, as it violates the principle of the territorial integrity of Georgia, is in contravention of international law, as well as the obligations of Russia as a member state of the Council of Europe, and contradicts the cease-fire agreement signed by President Medvedev.

31. Given the delay in observing the cease-fire agreement, President Sarkozy, joined by Mr José Manuel Barroso, President of the European Commission, Mr Javier Solana, High Representative for the Common Foreign and Security Policy, and Mr Bernard Kouchner, French Minister of Foreign and European Affairs, travelled to Moscow on 8 September 2008, to press the Russian authorities unconditionally to implement the cease-fire agreement. During this meeting, it was agreed that Russia would withdraw its troops from the areas adjacent to Abkhazia and South-Ossetia within 10 days after the deployment of an EU monitoring mission on

1 October 2008, would allow UN observers to remain in Abkhazia and allow OSCE monitors access to all of their previous areas of deployment, including South Ossetia, and agreed to the start of the talks under point 6 of the cease-fire agreement, on 15 October 2008.

32. The unilateral recognition of the independence of South Ossetia and Abkhazia by the Russian Federation has a direct impact on the implementation of the cease-fire agreement. The Russian authorities have made it clear that the presence of Russian troops in these regions is no longer governed by the cease-fire agreement but by bilateral agreements between Russia and South Ossetia and Abkhazia. On 18 September, Russia signed Friendship and Co-operation treaties with Abkhazia and South Ossetia that inter alia enable the establishment of Russian military bases in both regions. The Russian authorities have indicated that they plan to station up to 4000 troops in each of the regions, in clear violation of the cease-fire agreement.

33. The recognition by Russia of the independence of these two regions also complicates the provision of humanitarian aid, as well as the monitoring of the implementation of the cease-fire agreement by independent monitors. International organisations are refused entry into South Ossetia via Georgia, while EU and OSCE monitors are prevented from entering South Ossetia and Abkhazia at all. Despite the agreement of 8 September, talks about OSCE observers on their area of deployment have broken down, with access to South Ossetia being the sticking point and the Russian authorities have made it clear that the EU monitors will not be allowed to enter South Ossetia and Abkhazia, despite EU insistence that their mandate covers the whole of Georgia, including the breakaway regions.

34. It should be noted that the unilateral recognition of independence extended the control of the de facto authorities in Tskhinvali over the Akhalgori District in South Ossetia, which was not subject to the Sochi agreement and therefore was under full and recognised control of the Georgian authorities before the war.

35. The opinion of the Committee on Migration, Refugees and Population will contain a detailed examination of the humanitarian consequences of the war. However, in the initial phases of the conflict, around 35,000 to 40,000 South Ossetian refugees were recorded in North Ossetia. This refugee stream was managed in a very efficient manner by the Russian authorities, thereby avoiding a humanitarian crisis in North Ossetia. Most of these refugees have now returned to their place of residence, while an estimated 2,000 remain in North Ossetia with their families

36. There is a some confusion regarding the exact number of IDPs that this war caused inside Georgia. According to different sources, the conflict initially led to more than 140,000 IDPs in Georgia, of which 60,000 currently remain. Another 29,000 are expected to be able to return when Russian troops have withdrawn from the so-called “buffer zone”[2] and security for the population has been re-established. A total of 31,000 IDPs (25,000 from South Ossetia and 6,000 from Abkhazia) are considered to be “permanently” unable to return to their original place of residence, mainly ethnic Georgians from the areas under de facto control of Tskhinvali and Sukhumi. These numbers should be seen in the context of the approximately 222,000 already existing IDPs from these areas a result of the 1992 conflict.

37. The humanitarian situation is further exacerbated by the uncertainty regarding the “buffer zone”. The current serious security vacuum needs to be urgently addressed, but there seem to be conflicting views regarding the role of the EU Monitors and Georgian police forces. While the EU is sending strictly civilian monitors to observe the security situation, and considers it to be the role of the Georgian law enforcement forces to provide security to the population in that area, the Russian authorities seem to be of the view that civilian protection will be also the responsibility of the EU Monitors and have reservations about the idea of armed Georgian police in this area. This issue needs to be urgently resolved to avoid an even further decline of security in this area.

38. The number of deaths as a result of the conflict is a matter of controversy, although all sides agree that the initial high numbers were inflated. Independent reports put the total number of deaths around 664. However, it should be stressed that even one victim is a victim too many

39. Widespread and large-scale looting, assaults and destruction of property broke out in Georgian villages in South Ossetia and the “buffer zone” mainly after the signing of the cease-fire agreement. Witness reports indicate that these crimes were committed by South Ossetian irregular troops and gangs, but also by so-called volunteers from the Northern Caucasus. Russian troops are not reported to have been involved in the looting and burning themselves, but were reported to have done nothing to stop these practices, often turning

2. The area of Georgia that is currently under control of Russian troops around South Ossetia until EU observers have been deployed.

a blind eye. These accounts were confirmed by independent reports from Russian human rights organisations who had been present in South Ossetia both during and after the outbreak of hostilities. The widespread looting and destruction of property was also confirmed by the Assembly delegation that visited several villages in South Ossetia and the so-called "buffer zone" on 25 September 2008.

40. In the report after his visit to the conflict area, between 22 and 29 August, the Human Rights Commissioner presented six principles for urgent protection of human rights and humanitarian security, which we fully support:

40.1. The right to return of those who fled or were displaced must be guaranteed. This requires that their safety is protected and that their homes are made liveable again. The repair of damaged houses is an urgent priority. Affected persons have the right to be informed about relevant developments and no one must be returned against their will.

40.2. Those who fled or were displaced must be ensured adequate living conditions until they can return home. This requires competent coordination of the assistance from both governmental and intergovernmental actors. Not only material needs but also psychological and psycho-social damages must be addressed.

40.3. The whole area affected by the warfare must be de-mined. Cluster bombs, mines, unexploded ordnances and other dangerous devices must be located, removed and destroyed. Until this is done the targeted terrain must be marked and the population clearly informed about the dangers. The parties to the conflict need to declare what type of weapons and ammunition were used, when and where. International contribution to this effort will be required and should be welcomed by both parties.

40.4. Physical assault, torching of houses and looting must be totally stopped and persons responsible for such crimes apprehended and held to account. The problem of the 'policing vacuum' in the so-called buffer zone between Tskhinvali and Karaleti must be resolved urgently.

40.5. Prisoners of War, other detainees and persons stranded in unsafe situations must be protected and rescued through continued humanitarian efforts. The established mechanism for dialogue and mutual exchanges of such cases should be kept in place and fully supported, also by the international community. There is a need to establish a coordinated system for assembling and acting upon information on missing persons.

40.6. International presence and assistance are needed in the area affected by the conflict. The programs of UNHCR, UNICEF, ICRC and other agencies should be supported and the OSCE be given authority and resources to expand its mission. Apart from cease-fire observers and police presence there is a need for specialised human rights monitors – who could also operate in coordination with the domestic ombudsmen. The protection of minorities must be a key priority and positive inter-community relations must be encouraged.

41. The systematic nature of the looting and destruction of property in South Ossetia, together with indications from the de facto leadership in Tskhinvali that ethnic Georgian IDPs are not welcome to return, even if they take on citizenship of the self-proclaimed state as demanded by the de facto authorities, is a clear indication that ethnic cleansing is taking place in South Ossetia. This is confirmed by reports from international humanitarian and relief organisations, as well as human rights organisations and the diplomatic community in Georgia, who have reported systematic acts of ethnic cleansing of Georgian villages in South Ossetia by South Ossetian irregular troops and gangs. Reports have been received that, in some cases, complete villages have been bulldozed and razed. This pattern also seemed to be confirmed by the visit of the PACE delegation to the region, which saw that the Georgian village of Ksuisi in South Ossetia had been completely looted and virtually destroyed.

42. The reports of ethnic cleansing are extremely worrying. It should be stressed that, even if Russian troops have not been directly involved, Russia, under international law, bears full responsibility for any crimes and human rights violations that are committed on the territories that are under its effective control.

43. The initial phase of the armed hostilities reportedly saw the indiscriminate shelling of Tskhinvali with heavy artillery and multiple rocket launchers by the Georgian military. Indeed, during its visit to Tskhinvali the delegation of the Assembly saw several residential areas, as well as public buildings, that had been completely destroyed by indiscriminate shelling by Georgian troops in the initial phases of the war as well as in the course of subsequent battles between Georgian and Russian troops over the city. It should stressed that the use of indiscriminate force and weapons in civilian areas by both sides can be considered a war crime and a full investigation in order to establish the facts in this respect should be initiated.

4. The commitments and obligations of Georgia and Russia and the consequences of the war

44. The war between Russia and Georgia poses one of the most serious challenges to the Council of Europe and its principles and values in recent times. It is clear that that there have been serious violations of the Statute of the Council of Europe as well as the obligations and commitments that Georgia and Russia assumed when acceding to the Council of Europe.

45. State sovereignty, the right to, and respect for, territorial integrity as well as non-aggression, are central principles of international law. The respect thereof is a core obligation under the Charter of the United Nations Chapter I, Article 2 and Chapter VI and form part of member states' general obligations under the Statute of the Council of Europe, as well as commitments made when joining the organisation. These same principles are contained in the Declaration of Principles Guiding Relations between Participating states included in the Helsinki Final Act to which both Russia and Georgia are signatory.

46. When acceding to the Council of Europe Georgia and Russia committed themselves to settle the conflict over South Ossetia and Abkhazia by peaceful means. In addition Russia committed itself to settle outstanding border disputes according to the principles of international law and to “denounce as wrong the concept of two different categories of foreign countries, where some are treated as a zone of special influence called the “near abroad””.

47. It goes without saying that these commitments imply that both countries should maintain good neighbourly relations and respect each other’s rightful interest for peace and security.

48. South Ossetia, as well as Abkhazia, are integral parts of Georgia. Therefore the military actions undertaken by Georgian forces during the conflict took place within Georgian territory. The argument of Russia that Georgian military actions amounted to ”illegal use of force” leading to the right to self-defence under the UN Charter has therefore no legal ground, as the military actions undertaken by Georgia on its territory cannot be seen as an aggression towards Russia which would trigger the latter’s right to self-defence.

49. The assertion that Russia had to act in “self-defence” to protect its citizens residing in another state is in contravention of international law. The large-scale military action by Russia against Georgia can in no way be justified on these grounds.

50. It is clear that both Russia and Georgia have violated their commitment to settle their disputes by peaceful means.

51. As for Georgia’s actions on its own territory, they are subject to international human rights and humanitarian law, including the European Convention on Human Rights. The manner in which Georgia acted in seeking to re-gain effective control over a part of its territory is raises serious questions about its adherence to these obligations.

52. The use of indiscriminate force and weapons by both Georgian and Russian troops in civilian areas can be considered war crimes which must be fully investigated.

53. The unilateral recognition by Russia of the self-proclaimed independence of South Ossetia and Abkhazia violated the principles of the territorial integrity and sovereignty of Georgia and is in contravention of international law, the Statute of the Council of Europe and the obligations of Russia as a member state of this organisation.

54. The large-scale looting and destruction of property as well as patterns of ethnic cleansing in South Ossetia are a direct violation of international humanitarian and human rights law. It should be stressed that, even if Russian troops have not been directly involved, Russia, under international law, bears full responsibility for any crimes and human rights violations committed on the territories that are under its effective control.

5. Conclusions and recommendations

55. The outbreak of the war between the Russian Federation and Georgia poses a serious challenge to the Council of Europe and its Assembly. The Assembly cannot fail to condemn the violations of international law, the Statute of the Council of Europe and the commitments of both member states of the organisation. At the same time, it should not and cannot close the dialogue with, and between, Russia and Georgia.

56. It is clear that the war did not start on the 7 August and that the peacekeeping process had broken down before that date and tensions had seriously escalated. Peacekeepers failed in their intended role to protect the civilian population in the conflict area and to resolve the conflict between the opposing sides. As a result, mutual provocations and inter-ethnic violence prevailed over the principle of achieving a negotiated and lasting peace.

57. Taking into account the complexity of the situation, the diametrically opposed views of the parties in the conflict, the mutually exclusive national public discourses, the negation by both sides of any share of responsibility, it is essential that an independent international investigation be initiated to establish the facts regarding the exact sequence of the events on 7 and 8 August, as well as the circumstances that led to the outbreak of the war and the precise responsibility of each of the parties in this conflict. Truth is a prerequisite for reconciliation.

58. The unilateral recognition by Russia of the independence of South Ossetia and Abkhazia is a violation of international law and the principles of the Council of Europe. It must therefore be condemned. In addition, such unilateral recognition is in violation of the cease-fire agreement and hinders the resolution of the conflict The Assembly should call upon Russia to withdraw its recognition of Abkhazia and South Ossetia.

59. Both sides should fully implement the six points of the cease-fire agreement without any delays, preconditions or reservations.

60. It is clear that both sides did not do enough to prevent the war and that grave human rights violations were committed and continue to be committed up to this day. There can be no impunity for these violations and alleged ethnic cleansing. The Council of Europe has an important role to play in this respect. All alleged human rights violations should be investigated and perpetrators held to account before the courts. In this respect it is clear that the Russian Federation bears full responsibility for the protection of civilians in the territories that are under its effective control and therefore for the crimes and human rights violations that are committed against them. The use of indiscriminate force and weapons by both Georgian and Russian troops in civilian areas can be considered war crimes that need to be fully investigated.

61. The war between Russia and Georgia has undeniably geopolitical consequences and will have a profound effect on international relations with the Russian Federation. The opinion of the Political Affairs Committee will contain a detailed analysis of these issues. However, it is clear to us that this war and the reaction of the international community, including that of the Assembly, will have a direct impact on other unsolved conflicts in our continent. The Assembly should make it univocally clear that any escalation of these conflicts into war is unacceptable.

62. The Assembly is convinced that the establishment of a dialogue is the best way forward for the solution of any conflict and for fostering stability in the long-term. This holds true for this particular conflict. However, dialogue requires political will on both sides and cannot be pursued in isolation of concrete actions. Therefore, some basic conditions for the dialogue have to be established and observed. Full implementation of the peace plan, including withdrawal of the Russian troops to positions *ex ante* the conflict, full deployment of EU and OSCE monitors into South Ossetia and withdrawal by Russia of the recognition of independence of South Ossetia and Abkhazia, would be minimum conditions in this respect.

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

Reference to committee: Ref. No. 3489 of 29 September 2008

Draft resolution unanimously adopted by the committee on 30 September 2008

Members of the committee: Mr Serhiy **Holovaty** (Chairperson), Mr György **Frunda** (1st Vice-Chairperson), Mr Konstantin **Kosachev** (2nd Vice-Chairperson), Mr Leonid **Slutsky** (3rd Vice-Chairperson), Mr Aydin Abbasov, Mr Avet **Adonts**, Mr Pedro Agramunt, Mr Miloš Aligrudić, Mrs Meritxell Batet Lamaña, Mr Ryszard Bender, Mr József Berényi, Mr Aleksandër **Biberaj**, Mr Luc **Van den Brande**, Mr Jean-Guy Branger, Mr Mevlüt **Çavuşoğlu**, Mr Sergej Chelemendik, Ms Lise **Christoffersen**, Mr Boriss **Cilevičs**, Mr Georges Colombier, Mr Telmo Correia, Mr Valeriu Cosarciuc, Mrs Herta Däubler-Gmelin, Mr Joseph Debono Grech, Mr Juris Dobelis, Mrs Josette Durrieu, Mr Mátyás **Eörsi**, Mrs Mirjana Ferić-Vac, Mr Jean-Charles Gardetto, Mr József Gedei, Mr Marcel Glesener, Mr Charles Goerens, Mr Andreas **Gross**, Mr Michael Hagberg, Mr Holger Haibach, Ms Gultakin Hajiyeva, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mr Andres **Herkel**, Mr Raffi Hovannisian, Mr Kastriot **Islami**, Mr Miloš Jevtić, Mrs Evguenia Jivkova, Mr Hakki **Keskin**, Mr Andros Kyprianou, Mr Jaakko Laakso, Mrs Sabine Leutheusser-Schnarrenberger, Mr Göran **Lindblad**, Mr René **van der Linden**, Mr Eduard Lintner, Mr Younal Loutfi, Mr Pietro Marcenaro, Mr Mikhail Margelov, Mr Bernard

Marquet, Mr Dick Marty, Mr Miloš **Melčák**, Mrs Assunta Meloni, Mrs Nursuna **Memecan**, Mr João Bosco Mota Amaral, Mr Theodoros Pangalos, Ms Maria Postoico, Mr Christos Pourgourides, Mr John **Prescott**, Mr Andrea Rigoni, Mr Armen **Rustamyan**, Mr Indrek **Saar**, Mr Oliver Sambevski, Mr Kimmo **Sasi**, Mr Andreas Schieder, Mr Samad Seyidov, Mrs Aldona Staponkienė, Mr Christoph **Strässer**, Mr Mihai Tudose, Mr Egidijus **Vareikis**, Mr Miltiadis Varvitsiotis, Mr José Vera Jardim, Mrs Birutė Vėsaitė, Mr Piotr Wach, Mr Robert **Walter**, Mr David **Wilshire**, Mrs Renate **Wohlwend**, Mrs Karin S. **Woldseth**, Mr Boris Zala, Mr Andrej Zernovski.

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

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