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Visit of the Presidential Committee to Georgia to discuss the implementation of Assembly Resolution 1633 (2008) on "the consequences of the war between Georgia and Russia"

Addendum to the report
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1. Introduction

1. Following the adoption of Assembly Resolution 1633 (2008) on "The consequences of the war between Georgia and Russia", the Bureau of the Assembly, at its meeting on 3 October 2008, decided to place on the agenda of the Standing Committee meeting in Madrid, on 27 November 2008, an item on "the follow-up given to Resolution 1633 (2008)" and to include in the preliminary draft agenda of the Assembly's January 2009 part-session a report on the implementation of Assembly Resolution 1633 (2008). The Monitoring Committee was seized on this matter for report and the Political Affairs Committee and the Committee on Legal Affairs and Human Rights for opinion. The Bureau also asked the Committee on Migration, Refugees and Population to prepare a report on the "humanitarian consequences of the war between Georgia and Russia" which could also be debated during the January 2009 part-session. In addition, the Bureau decided to instruct the Presidential Committee to visit Tbilisi and Moscow to discuss with the authorities, at the highest level, the implementation of Assembly Resolution 1633 (2008) and to report back to the Standing Committee on the follow-up given to this resolution.

2. The visit to Tbilisi took place from 30 to 31 October 2008.

3. During the visit to Tbilisi, the delegation met with the Speaker of the Parliament, Mr David Bakradze; the Minister of Internal Affairs, Mr Ivane Merabishvili; the Deputy Minister of Foreign Affairs, Mr Giga Bokeria; the Deputy State Minister for Reintegration, Mr Dimitri Manjavidze; the Secretary of the National Security Council, Mr Alexsander Lomaia; the Prime Minister designated, Mr Grigol Mgalobishvili; as well as with the members of the Georgian delegation to the Assembly. In addition, the delegation met with Ambassador Mr Hansjoerg Haber, Head of the EU Monitoring Mission and Mr Gottfried Hanne, Deputy Head of the OSCE Mission in Georgia. The President of Georgia, Mr Mikheil Saakashvili, was, together with the Minister of Foreign Affairs, on an official State visit to Norway during the time of our visit and they could therefore not meet us. Unfortunately, alternative dates for our visit proposed by the Georgian authorities were not convenient for the majority of the members of the Presidential Committee.

4. I wish to thank the Parliament of Georgia, as well as the Special Representative of the Secretary General in Georgia and his staff, for the excellent programme and support provided to the delegation.

2. Recent developments

5. In the view of the Georgian authorities, with Resolution 1633 (2008) the Assembly has taken a well balanced and impartial position towards the war between Georgia and Russia. Even if the Georgian authorities do not agree with all its conclusions, they feel that the Resolution provides a concrete and constructive contribution to the international efforts to resolve the current crisis between the two countries. Therefore, the authorities expressed their clear commitment to fully implement the demands made by the

Assembly from the Georgian authorities. I welcome this clear expression of political will, as well as the constructive and realistic approach towards the many challenges as a result of the war, which was displayed by the Georgian authorities during our visit.

6. An independent international investigation into the precise circumstances surrounding the outbreak of the war, as well as the exact sequence of events in August, is one of the key demands of the Assembly expressed in Resolution 1633 (2008). The Georgian authorities reiterated their full support for the establishment of such an independent international inquiry, as well as their readiness to give it their full co-operation. Different formats for such an investigation are currently being discussed. One of the possibilities circulating is for the investigation to be carried out by the Geneva based Humanitarian Fact-Finding Commission. However, by its mandate, an investigation carried out by this body would be limited to humanitarian issues, would only be based on information provided by the two parties, and its conclusions would be confidential. Under those conditions, an inquiry carried out by this body would not meet the PACE requirements for such an investigation.

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

8. The commission started its work on 10 October and, to date, has heard testimonies from, inter alia, the Minister of Integration, the Minister of Foreign Affairs, the Secretary of the National Security Council and the Head of the Security Services, the Chief of Staff of the Georgian Armed Forces and the former Prime Minister. The ruling party has publicly stated that any of its officials that fail to fully co-operate with the inquiry commission will face dire political consequences. While the Commission does not have the Constitutional power to summon the President to testify, the Chairman of the Commission considered it unlikely that President Saakashvili would refuse an invitation to appear before it. Indeed, on 8 November, at a meeting of the Anti Crisis Council, President Saakashvili stressed that “not a single official is immune” from being questioned by the inquiry commission and that he would be ready “to come and answer all questions” put to him by the commission.

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

10. From our meetings with the Chairman of the commission, I am convinced of the clear political will of the Committee to fully investigate the circumstances of the war and to address the many questions that have been raised in its context. If the commission follows its stated intention to hear all those that may have relevant information, including the President and those that have been critical of the government’s actions, the inquiry commission will be an important instrument not only to provide more clarity regarding the circumstances and conduct of the war, but also to strengthen the democratic processes in Georgia itself.

11. In the view of the Georgian authorities, the war was also a direct attack on the democratic nature of the Georgian society. In response, it was decided by the authorities to strengthen the functioning of democratic institutions and to give a new impetus to the further consolidation of democracy in Georgia. A comprehensive package of democratic reforms was therefore adopted with the view to, inter alia, strengthen the institutional role of the parliament vis-à-vis the executive, strengthen the role if the opposition in the work of the parliament, as well as in state oversight institutions – including in those that oversee the defence and national security sectors -, strengthen the independence of the judiciary, enhance media pluralism and improve the election code.

12. The Prime Minister of Georgia was dismissed just before our visit to Georgia. In Tbilisi we held an informal exchange of views with the Prime Minister designate Mr Grigol Mgaloblishvili, who till the time of his nomination had been Georgia’s Ambassador to Turkey.

13. The 6 point Ceasefire agreement that was signed on 12 August foresees, inter alia, the withdrawal of Georgian military forces to their usual bases and the withdrawal of Russian military forces to the lines they held before the hostilities broke out. Following a delay in the implementation of the cease fire agreement by Russia, in particular with respect to the withdrawal of troops from Georgian territory, President Sarkozy,

together with Mr José Manuel Barroso, Mr Javier Solana, and Mr Bernard Kouchner, travelled to Moscow on 8 September 2008 to press the Russian authorities to unconditionally implement the Ceasefire agreement, as well as to discuss the initial phase of its implementation. In the agreement reached at this meeting, the so-called Medvedev-Sarkozy agreement, the Russian the Russian authorities reaffirmed their commitment to fully implement the 6-point Ceasefire agreement and agreed, inter alia, 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.

14. In line with the Ceasefire agreement, Georgian troops have in general withdrawn to their usual bases, with the exception of those that are in areas that are under the control of the Russian Federation.

15. On 9 October, the Russian Federation completed its withdrawal of troops from the zones adjacent to South Ossetia and Abkhazia, after the deployment of the EU observers in these areas on 1 October 2008. However, Russian Forces maintain a checkpoint in Perevi on the administrative border with South Ossetia, but within Georgia proper, in violation of both the ceasefire and Sarkozy-Medvedev agreements.

16. A main issue of concern is the continuing presence, and even strengthening, of Russian troops in the break-away regions of South Ossetia and Abkhazia over and above the positions and numbers allowed in the Ceasefire agreement. However, the Russian authorities assert that, with the recognition of the independence of South Ossetia and Abkhazia by the Russian Federation, the presence of Russian troops in these two regions is now governed by bilateral agreements with the de facto authorities of these regions. Therefore, they maintain that, with the withdrawal from the zones adjacent to these regions, Russia has fulfilled its obligations under the Ceasefire agreement.

17. It is clear that the continued presence of Russian troops over and above the positions ex ante the war are in direct violation of the Ceasefire agreement as well as the Assembly demands expressed in Resolution 1633 (2008). However, this issue also highlights the controversy regarding the exact status of the Sarkozy-Medvedev agreement of 8 September. While the international community and the Georgian authorities insist that the 8 September agreement outlines the first phase of the implementation of the 12 August Ceasefire agreement and in no manner supersedes it, the Russian position seems to be that this agreement replaces certain aspects of the Ceasefire agreement, most notably with regard to the withdrawal of Russian troops. This was also clear during the Assembly's debate on the consequences of the war between Georgia and Russia, when the Russian delegation attempted to replace references to the Ceasefire agreement with references to the "Sarkozy-Medvedev" agreement of 8 September 2008.

18. In line with the Sarkozy-Medvedev agreement of 8 September the UNOMIG mandate was extended by the UN Security Council, allowing the continuing presence of UN monitors in Abkhazia. However, Russian and the de facto Authorities in South Ossetia have refused access of OSCE observers to South Ossetia, in violation of the Sarkozy-Medvedev agreement as well as PACE demands, and EU observers have not been granted access to South Ossetia and Abkhazia, as demanded by the international community, including the Assembly in Resolution 1633 (2008).

19. Following the withdrawal of the Russian troops from the zones adjacent to the break-away regions of South-Ossetia and Abkhazia, Georgian Police Forces moved into these zones to ensure the security in those areas. In general, the situation in these regions is relatively calm although there are increasing reports of violent incidents and provocations along the administrative borders of the two break-away regions. International monitors have reported several incidents of shootings with small arms and grenade launchers on Georgian villages and police posts, as well as kidnappings of Georgian citizens by South Ossetian marauders. Allegations of similar shootings of Ossetian villages and checkpoints from the Georgian side can not be verified by international monitors due to due to the refusal by Russia and the de facto authorities in South Ossetia and Abkhazia to allow access of EU and OSCE monitors to these territories.

20. The incidents and provocations are clearly increasing the tension in the zones around the administrative borders of the break-away regions. In our meetings with the international monitors, it was mentioned that the number of reported incidents and provocations started to approach the levels seen in the months before the outbreak of the military hostilities in August, raising fears for a possible new escalation in these volatile regions. The Georgian authorities informed us that the Georgian Police Forces are under strict orders not to respond to any provocations ad to refrain from any actions that could heighten the tension around the administrative borders. That notwithstanding, it is clear that the access of international observes to South Ossetia and Abkhazia would dramatically reduce tensions and increase the overall security situation long the administrative borders.

21. Following the re-establishment of a security environment in the zones adjacent to the break-away regions of Abkhazia and South Ossetia many IDPs have returned to these regions. However, the return of IDPs to Georgian ethnic villages in South Ossetia and Abkhazia is considerably more difficult, if not impossible. Amidst reports of acts of ethnic cleansing, most IDPs fear for their safety if they return, especially in the absence of independent international monitors from the EU and OSCE. In addition, most ethnic Georgian villages in South Ossetia have been looted and razed.

22. The return of ethnic Georgian IDPs is further complicated by the insistence of the de facto authorities that IDPs returning to the breakaway region accept the Abkhaz or South Ossetian nationality and rescind the Georgian one. On a limited number of "border points", mostly in the Akhalgori district of South Ossetia, civilians from neighbouring villages are reported to be allowed to cross the administrative border into South Ossetia. However, they have reportedly been told that as from 1 January they will need a visa to cross the administrative border.

23. The situation in the Akhalgori district of South Ossetia, which is a predominantly ethnic Georgian area that was not directly affected by the war in August and prior to the war never under the control of the de facto authorities, is a matter of special concern. Many ethnic Georgians have left the area out of safety concerns, while more are expected to leave as a result of the requirement to accept South Ossetian citizenship.

24. The deputy Minister of Integration informed us that most IDPs had returned to the former "buffer zones". A priority for the Ministry is the reconstruction of houses and reestablishment of social services in these areas. The relations between ethnic Georgians and Ethnic Ossetians living in these areas were good and no problems or tensions were reported. The main challenges at this moment are the return of IDPs from Abkhazia and South Ossetia and the situation of ethnic Georgians still living in the two break away regions. The return of IDPs to these areas is for the moment impossible and temporary shelters had to be constructed rapidly before the winter would start. The main problems with regard to the ethnic Georgians still living in South Ossetia are the continuing acts of ethnic cleansing which have led to a new influx of IDPs. In mixed villages in South Ossetia, the situation was somewhat better. A main problem for the ministry was the lack of access to South Ossetia, including by civilians with agricultural lands in the two break-away regions. It was feared that that situation would exacerbate with the replacement of military personal on the checkpoints by Russian border guards as foreseen in the recently ratified friendship and co-operation agreements between Russia and the two break-away regions.

25. The deputy Minister of Integration expressed his deep appreciation for the financial support agreed on the donor conference, which greatly assisted the Ministry in its reconstruction and IDP return efforts. As a reconciliation measure, it had been considered to use part of the financial support for the reconstruction of Ossetian villages destroyed in the War. However, this idea has currently been shelved, due to the refusal of the South Ossetian de facto authorities to give access to ministry officials to the break-away region, or to allow aid coming in via, and from, Georgia. In addition, it is felt that such programmes should be conditional on the possibility for ethnic Georgians to return to their villages in South Ossetia, as well as on the freedom of movement over the administrative border.

26. Humanitarian aid has been arriving in the two break away regions, but significant obstacles remain for the access of humanitarian organisations and aid, as a result of the insistence of Georgia that access to the two break-away regions takes place via Georgia on the one hand, and the insistence of Russia and the de facto authorities that cess takes place via Russia on the other hand. In this respect, I raised my concerns about the possible negative impact on humanitarian situation by the draft law on the Occupied Territories that is being discussed in the Georgian Parliament.

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

28. All Georgian authorities stressed the potential importance of the Geneva talks foreseen in the Ceasefire agreement, not only as a mechanism to address the long term consequences of the war, as well as the relation between Georgia and Russia, but also as an important instrument to improve the situation and stability on the ground within Georgia. However, the authorities doubted that the upcoming round of talks in Geneva, foreseen for 17 November 2008, would lead to any results due to Russia's insistence that the representatives of the de facto authorities of Abkhazia and South Ossetia would be given the same status as those of Russia and Georgia, which is unacceptable for Georgia as well as the co-sponsors of the Geneva talks. This issue had been the main stumbling point behind the breakdown of the talks on 15 October 2008. The Georgian authorities reiterated that they did not object to the participation of the representatives of the de

facto authorities in the informal working groups that are part of the talks, but on the condition that all representatives of the South Ossetian and Abkhazian peoples would be able to participate in these working groups, including those that favour integration of the two regions with Georgia.

29. Similarly, the Georgian authorities were open to initiatives in the field of parliamentary diplomacy under the aegis of the Assembly, but were sceptical that such initiatives would make any concrete contribution to the improvement of the current situation, given that the recognition of the independence of the two break away regions had been initiated by the Federal parliament of the Russian Federation and that the State Duma and Council of the Federation had recently unanimously ratified the Friendship and Co-operation Treaties signed between Russia and the two break-away regions, despite the demands made by the Assembly.

30. It is clear that the recognition of the independence of Abkhazia and South Ossetia not only violates the Cease fire agreement, as well as international law and Russia's obligations to the Council of Europe, but is also an impediment to the resolution of the current situation, including the implementation of the Ceasefire agreement, which is affecting the stability in the region.

3. Conclusions

31. I welcome the constructive and realistic approach taken by the Georgian authorities in regard to the current situation. The same holds for their preparedness to engage in a constructive dialogue with the international community and the other parties to the conflict, to address the many challenges facing the country, and to ensure the stability within Georgia as well as in the wider region. I made a statement to this effect at the end of our visit. It is attached to this memorandum.

32. As a result of our visit, I am satisfied that Georgia has fully complied with the demands of the Assembly expressed in Resolution 1633 with regard to:

– the unconditional implementation of the six point Ceasefire agreement (§ 22.1 of the Resolution);

– allowing full access of, and giving its fullest co-operation to, international monitors to the territories under its control (§ 22.2 and 23.3);

– taking measures to ensure the safety – including from mines and unexploded ordnances – of citizens in, and allowing for the voluntary return of IDPs to, the territories under its control (§ 23.1, 23.2 and 23.4);

– allowing free access by the press to the part of the conflict zone under its control (§ 22.9);

– making full use of available means of peaceful conflict resolution (§ 22.10);

– working towards a new peace-keeping format and working to internationalise the peace keeping force (§ 22.4);

– participating unconditionally in the Geneva negotiations foreseen in point 6 of the Ceasefire agreement (§ 22.5).

With respect to § 22.5, the condition from the Georgian authorities that the participation of the *de facto* authorities of the two break-away regions should not be taken to signify any implicit recognition of them, is justified and does not contradict the Assembly's corresponding demand.

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

34. The Georgian authorities have taken concrete measures fully and effectively to implement the six principles formulated by the Council of Europe Commissioner for Human Rights, in compliance with § 23.7 of Resolution 1633 (2008). However, I take note of the fact that the exchange of prisoners of war and persons detained as a result of the conflict – as also raised in § 23.5 – and the provision of adequate housing to IDPs who cannot return to their place of original residence are still ongoing. In his report the Human Rights Commissioner expressed concern that certain provisions in the draft law on the occupied territories may be at odds with principles of international human rights law, including the European Convention on Human Rights. I would therefore recommend that the Georgian authorities submit this draft law to the Venice Commission for opinion, and implement its recommendations. This would also ensure full compliance with § 22.7 of Resolution 1633 (2008).

35. The Assembly has demanded that Georgia investigate all allegations of Human Rights violations committed by it in the course of the war and its aftermath, and that the country hold any perpetrators to account before a domestic court (§ 22.8). The resolve of the Georgian Parliament to investigate the conduct and causes of the war is commendable. The Chairman of the ad hoc Inquiry Commission informed us that the committee would look into allegations of human rights abuses committed by Georgia in the course of the war. This Commission has the power to refer any indications of criminal behaviour encountered by it to the General Prosecutor for investigation. However, I am not aware that the Inquiry Commission has started any such investigation into alleged human rights abuses by the Georgian side. Furthermore, to my knowledge no independent investigation has been commenced by the General Prosecutor. I therefore consider full compliance with § 22.8 still pending.

36. Regrettably, Georgia has not yet signed the United Nations Convention on Cluster Ammunitions and its rhetoric vis-à-vis Russia is still very much influenced by the war. I therefore consider that Georgia at this moment has not yet complied with § 22.6 and 22.11.