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

Committee Opinion

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Christos POURGOURIDES, Cyprus, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights shares the Monitoring Committee's assessment that Russia has failed to fulfil most of the demands made in [Resolution 1633 \(2008\)](#), whereas Georgia has fulfilled most of them.
2. In view of the importance of these demands, which, following an actual war between them, were addressed to the two member states of the Council of Europe by an overwhelming majority of the Assembly, the committee is disappointed that the draft resolution does not in any way refer to the consequences the Assembly intends to attach to a continued failure by both sides to fully implement the Assembly's road map to lasting peace based on law.
3. The committee therefore submits a number of amendments aimed at clarifying and strengthening the message that the Assembly will send to both sides. In view of the Bureau's request of 3 October 2008 that it examine questions relating to human rights in the region, the committee intends to assess, where necessary, whether the continued failure of one or both sides to the conflict to implement the Assembly's demands amounts to a "serious violation of the basic principles of the Council of Europe mentioned in Article 3 of, and the Preamble to, the Statute" (Rule 8.2.a. of the Rules of Procedure). Such a violation would justify launching a motion for a resolution to reconsider the credentials of either delegation on substantive grounds (Rule 9.1.a of the Rules of Procedure).
4. Finally, the committee takes the view that it should remain seized for opinion as regards the consequences of the war between Georgia and Russia, given the important legal and human rights aspects of this matter.

B. Amendments proposed to the draft resolution

Amendment A (to the draft resolution)

In paragraph 1 of the draft resolution, reformulate the end of the third sentence and the beginning of the fourth sentence as follows: "[...] and in Abkhazia, which it reaffirms in full. The Assembly has thus provided [...]"

Explanatory note: This amendment is intended as a clarification, as the existing text does not make it sufficiently clear that [Resolution 1633 \(2008\)](#) and the demands it places on both Georgia and Russia do not belong only to the past, but that they are still fully applicable, as is the Assembly's "transparent, impartial and concrete road map to address the consequences of the war", in the words of the final sentence of paragraph 1.



Amendment B (to the draft resolution)

In paragraph 2.4., *in fine*, of the draft resolution, add the following words: “the Council of Europe shall continue to fulfil its own responsibilities concerning this conflict between two of its member states”.

Explanatory note: This amendment is a reminder that the Council of Europe, as a whole, must not become a passive recipient of reports prepared by others, such as the EU mission, but shall continue to fulfil its own responsibilities concerning this conflict involving two of its member states, not only at the level of the Assembly, but also at the level of, for example, the Committee of Ministers, the European Court of Human Rights and the Commissioner for Human Rights.

Amendment C (to the draft resolution)

In paragraph 3 of the draft resolution, replace the second sentence with the following text:

“The Assembly supports the principle that representatives of the inhabitants of South Ossetia and Abkhazia at the beginning of August 2008, both supporters of the de facto authorities and those that favour reintegration with Georgia, should participate in these talks”.

Explanatory note: This amendment is a clarification, as the existing formulation referring to the “South Ossetian and Abkhaz peoples” could be misinterpreted as an implicit recognition that both of the two break-away regions have a “people”, a key component of statehood.

Amendment D (to the draft resolution)

In paragraph 3 of the draft resolution, rephrase the beginning of the third sentence as follows: “It also insists that their status [...]”.

Explanatory note: This amendment simplifies and strengthens the existing formulation (“It also considers legitimate the demand of the Georgian authorities [...]”).

Amendment E (to the draft resolution)

In paragraph 6 of the draft resolution, first sentence, delete the word “ongoing” before the words “ethnic cleansing”.

Explanatory note: The ethnic cleansing of the Georgian villages in South Ossetia, which have been totally burnt down and emptied of their inhabitants, is now complete.

Amendment F (to the draft resolution)

In paragraph 6 of the draft resolution, replace the second sentence with the following text:

“The Assembly reiterates that, under international law, Russia bears full responsibility for violations of human rights and humanitarian law in these areas which are under its de facto control.”

Explanatory note: This amendment expresses more clearly that the sentence is not intended merely as an abstract statement of law, but as a concrete reminder of the fact that Russia is indeed responsible because of its actual de facto control over this region.

Amendment G (to the draft resolution)

Reformulate paragraph 8.5. of the draft resolution as follows:

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

Explanatory note: The existing formulation (“participate unconditionally in the negotiations with a view to renewing”) does not make sufficiently clear that the key obstacle to the renewal of the OSCE mission is Russia’s refusal to recognise that the breakaway regions are a part of Georgia according to international law.

Amendment H (to the draft resolution)

In paragraph 8.8 of the draft resolution, replace the words “to bring to an immediate halt all acts of ethnic cleansing” by the words “ensure that there are no more acts of ethnic cleansing”.

Explanatory note: No acts of ethnic cleansing are currently taking place (see explanatory note to Amendment E), but there is a fear that such acts may take place in the Akhalgori district in the future.

Amendment I (to the draft resolution)

In paragraph 13, first sentence, insert the following words at the end: “provided the minimum conditions for meaningful dialogue as defined in [Resolution 1633 \(2008\)](#), paragraph 30 are met”.

Explanatory note: Paragraph 13 reproduces the first part of paragraph 30 of [Resolution 1633 \(2008\)](#), but not the final part, which defines in fairly clear terms the conditions that must be met for a meaningful dialogue to take place. A failure to refer back to these conditions now would jeopardise the Assembly’s credibility.

Amendment J (to the draft resolution)

In paragraph 13, second sentence, insert the words “in due course” between the words “to set up” and the words “a special ad hoc committee”.

Explanatory note: This is a consequence of the previous amendment.

Amendment K (to the draft resolution)

In paragraph 14 of the draft resolution, in the first sentence, replace the words “at a future part-session” by the words “at the second part-session in April 2009”.

Explanatory note: The amendment intends to avoid that this important issue is postponed *sine die*.

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

Committee for opinion: Committee on Legal Affairs and Human Rights.

Reference to committee: Reference No. 3496 of 28 November 2008.

Opinion approved by the committee on 27 January 2009.

Secretariat of the committee: Mr Drzemczewski, Mr Schirmer, Ms Maffucci-Hugel, Ms Heurtin.