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## Reconsideration of previously ratified credentials of the Russian delegation on substantive grounds

### Report<sup>1</sup>

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

Rapporteur: Mr Andreas GROSS, Switzerland, Socialist Group

### Summary

The Monitoring Committee considers that the recent war between two member states of the Organisation constitutes in itself a serious violation of the Statute of the Council of Europe.

However, the committee finds it essential at this stage to ensure that dialogue and mutual building of trust can be pursued between the two sides, but also between each of them and our Assembly. In order for this dialogue to be constructive and meaningful, it is essential that Russia implements the EU-brokered cease-fire agreement and in particular withdraws its troops to positions *ex ante* the war and allows the deployment of European Union and OSCE monitors.

The present report proposes thus to the Assembly to confirm the ratification of the credentials of the Russian delegation, it being understood that the Assembly can be seized again of the matter at any moment in accordance with its Rules.

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1. Reference to committee: Reference No. 3488 of 29 September 2008



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## A. Draft resolution

1. On 12 September 2008, 24 members of the Parliamentary Assembly signed a motion asking for the reconsideration of previously ratified credentials of the Russian delegation for a resolution on substantial grounds under Rule 9 of the Rules of Procedure of the Assembly and, in particular, “on the grounds of serious violations of the basic principles of the Council of Europe mentioned in the Preamble to the Statute” in relation with “the conflict opposing two member states of the Council of Europe in the South Caucasus”.
2. The Assembly considers that the recent war between Russia and Georgia, two member states of the Organisation, constitutes in itself a serious violation of the Statute of the Council of Europe and has led to further infringements by Russia, as well as Georgia, of their obligations and commitments as member states of the Council of Europe.
3. However, the Assembly finds it essential at this stage to ensure that dialogue and mutual building of trust can be pursued between the two sides, but also between each of them and our Assembly. In order for this dialogue to be constructive and meaningful, it is essential that Russia implements the EU-brokered cease-fire agreement and in particular withdraws its troops to positions *ex ante* the war and allows the deployment of EU and OSCE monitors.
4. The Assembly, having examined the matter and it being understood that it can be seized again of the matter at any moment in accordance with its Rules, decides to confirm the ratification of the credentials of the Russian delegation.

## **B. Explanatory memorandum by Mr Gross, rapporteur**

### **1. Introduction**

1. On 12 September 2008, 24 members of the Assembly signed a motion asking for the reconsideration of the previously ratified credentials of the Russian delegation to the Assembly on substantial grounds under Rule 9 of the Rules of Procedure of the Assembly. In particular, the signatories expressed their serious concern “about the conflict opposing two member states of the Council of Europe in the South Caucasus” and asked for the reconsideration of the credentials of the Russian delegation “on the grounds of serious violations of the basic principles of the Council of Europe mentioned in the Preamble to the Statute”.

2. In accordance with Rule 9.2, the Bureau of the Assembly, at its meeting in the morning of 29 September 2008, referred this motion to the Monitoring Committee for report and to the Committee on Rules of Procedure for opinion. The Assembly ratified this referral at the opening of its fourth part-session on the same day.

3. The Monitoring Committee appointed me rapporteur at its first meeting a couple of hours later and asked me to prepare a report within 24 hours namely for adoption at its meeting on 30 September 2008 at 2 pm with a view to an Assembly debate on 1 October 2008. This accelerated procedure was decided in accordance with Rule 9.2 calling for a debate on the issue of credentials of a delegation “as soon as possible”.

4. At the same time, the Assembly, at the opening of its fourth part-session, on 29 September 2008, ratified the proposal made by the Bureau, at its meeting on 5 September 2008, to hold a debate under urgent procedure on “the consequences of the war between Georgia and Russia” and referred this matter for report also to the Monitoring Committee and to other committees for opinion.

5. The Monitoring Committee, at its meeting on 11 September, appointed, in anticipation of the Assembly’s decision co-rapporteurs for this report Mr Mátyás Eörsi, one of its co-rapporteurs for the monitoring of Georgia, and Mr Luc van den Brande, one of its co-rapporteurs for Russia. Mr Eörsi and Mr Van den Brande, have been asked to prepare a report also for the meeting of the Monitoring Committee on 30 September. Their report, as well as the opinions prepared by other Assembly committees on more specific issues, are the basis of a wider debate on the consequences of the war both for the two states concerned and the entire region, as well as for follow-up action required by the Council of Europe and the international community at large to put an end to this unacceptable war and the human suffering caused by it. I do not therefore intend to repeat what will be found in Mr Eörsi’s and Mr van den Brande’s report or in other committee’s opinions on this.

6. My task is facilitated by the fact that I had the occasion to visit Russia and Georgia, including the so-called “buffer zone” and South Ossetia, from 21 to 26 September 2008 as part of the Ad Hoc Committee set up by the Bureau to study the situation on the ground in the two countries in the context of the war between them. I participated in this Ad Hoc Committee in my capacity of Chairman of the Socialist Group of the Assembly. Mr Van den Brande has prepared a memorandum on the visit of the Ad Hoc Committee which the Bureau examined and declassified at its meeting on 29 September and which reflects to a large extent my own position on this issue.

7. My own specific mandate as rapporteur on the issue of credentials of the Russian delegation is limited to providing an answer to the question put before us as to whether the credentials of our Russian colleagues should be confirmed, annulled or confirmed subject to restrictions, according to Rule 9.4.

### **2. The commitments and obligations put into question**

8. Let me first of all state that the escalation of what used to be called by some a “frozen conflict” into a war between two member states of the Organisation is simply unacceptable.

9. Since the early 1990’s, the various parties to the conflict had numerous opportunities to de-escalate the conflict and put an end to human hardship. Instead, they pursued various forms of provocation leading to a deterioration in the security situation.

10. It is clear that the recent war between two member states of the Organisation constitutes in itself a serious violation of the Statute of the Council of Europe and has led to further infringements of the obligations and commitments that both Russia and Georgia took on when acceding to the Council of Europe.

11. Although my mandate is limited to examining the Russian delegation's credentials, since this has been done in the context of the war with Georgia, I cannot refer to the violations committed by the Russian side without making any reference to those committed by the Georgian side.

12. To start with and pending a full investigation into the exact facts and precise circumstances leading to the outbreak of the war, it is quite clear that the outbreak of the war was the result of a serious escalation of tensions which had started much earlier than on 7 August 2008. However, the indiscriminate attack on Tshkinvali by Georgian troops on 7 August added a further level of escalation, that of open and full-fledged warfare. For its part, Russia's counter-attack on Georgian territory on 8 August went far beyond what was needed to stop the hostilities and protect civilians. I have personally witnessed the level of destruction of a Georgian village in South Ossetia where two bombs were dropped on poor farmers and eight innocent persons were killed. Hundreds of civilians lost their life, were seriously wounded or were forced to leave their homes. Some 31,000 persons will probably not be able to return in the short or medium-term. Furthermore, the bombing of Poti, as well as the destruction of bridges and railroad connections, constituted attacks on the economic and strategic infrastructure of Georgia.

13. Therefore, both states are, to different degrees, responsible for the disproportionate use of armed force, including in civilian areas. This is a violation of international law principles, as well as of the obligation and commitment of the two states, as member states of the Council of Europe, to resolve conflicts by peaceful means.

14. In this respect, I fully support the proposal made by Mr Eörsi and Mr Van den Brande that the facts surrounding the outbreak of the war must be established, in an objective manner, by an independent international investigation. I welcome the fact that both the Georgian and Russian sides seem to have indicated their support for this proposal.

15. As regards the actions of the Russian side in the context of the war, its large-scale military intervention which led to the occupation of a significant part of Georgia, as well as the subsequent recognition of independence of South Ossetia and Abkhazia have clearly violated the international law principles, which are also embodied in the Council of Europe's Statute, of state sovereignty, the right to, and respect for, territorial integrity, as well as the inviolability of frontiers.

16. When acceding to the Council of Europe, Russia more specifically 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 zone of special influence called the 'near abroad'". Both specific accession commitments have been breached by the action of Russian forces on Georgian territory.

17. Moreover, both sides have committed human rights and humanitarian law violations in the context of the war, such as the intentional or avoidable killing or wounding of civilians, as well as destruction of property. Russia further appears to have failed in its duty under international law to prevent looting, maintain law and order and protect property in the areas under the *de facto* control of its forces. Russia bears responsibility in such areas also for acts prompted by the *de facto* authorities in Tshkinvali.

### 3. Proposed action and conclusions

18. On the basis of the above-mentioned considerations, there appear to be good reasons for sanctioning both Russia and Georgia, the latter at least as regards the outbreak of an open war.

19. However, is that what we really want to achieve with this debate? Do we want quickly to punish the Russian parliamentarians in order to show our determination and prove the efficiency of our sanctions system? Or do we want to study more carefully the situation and try to understand what really happened prior to, and during, the outbreak of the war, and what were the underlying causes of it and, especially, how we can prevent an escalation of existing conflicts elsewhere into open warfare in the future?

20. I think it is essential at present to put an end to this war, as well as the human rights and humanitarian law violations. We must stop the human suffering pending the outcome of an independent international investigation, which could shed light on the exact circumstances surrounding the outbreak of the war.

21. The added value of the Council of Europe and of our Assembly, in particular, is that both Russia and Georgia are part of it. By punishing one of the two delegations at this stage we would simply amputate ourselves and deprive ourselves of the possibility of a dialogue. I believe that it would be more important to ensure that dialogue can be pursued between the two sides, but also between each of them and our Assembly.

22. At the same time, we need to spell out a road-map to overcome the crisis in the short, medium and long-term. This has been the task of the co-rapporteurs on the consequences of the war between Georgia and Russia and I fully subscribe to the concrete proposals they have made.

23. However, both sides should now show political will to respect this road-map. It is of the utmost importance in this respect that Russia implements the cease-fire agreement and in particular withdraws its troops to positions *ex ante* the conflict, allows the deployment of EU and OSCE monitors in South Ossetia and Abkhazia and withdraws its recognition of independence of the two regions, which at present hinders the implementation of the cease-fire agreement and the provision of humanitarian aid to these areas.

24. I fully subscribe to the proposal made by Mr Eörsi and Mr Van den Brande that the Assembly should convene an international conference to reflect on establishing and improving existing early warning systems to prevent the escalation of conflicts into full-fledged wars.

25. In this respect, I also wish to stress that Russia is now urgently expected to play a constructive role and demonstrate its will to contribute to the peaceful settlement of other conflicts on the territory of former Soviet republics. This is in particular the case of Sevastopol as well as of Nagorno-Karabakh. The Assembly should look closely into action taken by Russia in this respect and support any approach which is in the mutual interest of all those concerned.

26. In view of the above-mentioned considerations, I propose to the Assembly to confirm at present the ratification of the credentials of the Russian parliamentary delegation, it being understood that, at any moment, members can seize the Assembly of the matter of the credentials, in accordance with the Rules, if there are indications that steps to implement the action required by the Russian authorities in the implementation of the road-map are not taken or that progress is too slow or insufficient.

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

*Reference to committee:* Reference No. 3488 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 **Fruna** (1<sup>st</sup> Vice-Chairperson), Mr Konstantin **Kosachev** (2<sup>nd</sup> Vice-Chairperson), Mr Leonid **Slutsky** (3<sup>rd</sup> 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 **MotaAmaral**, 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 Vésaitė, 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