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## **Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation**

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

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

Rapporteur: Mr Stefan SCHENNACH, Austria, Socialist Group

### *Summary*

The Monitoring Committee reasserts that the illegal annexation of Crimea by the Russian Federation is a gross violation of international law, including of the United Nations Charter, the Helsinki Final Act of the OSCE as well as the Statute of the Council of Europe and Russia's accession commitments to this Organisation. In addition, the committee is extremely concerned about the developments in eastern Ukraine and condemns Russia's role in instigating and escalating these developments, including with arms supplies to insurgent forces and covert military action by Russian troops inside eastern Ukraine, which are a gross violation of international law, including the Statute of the Council of Europe as well as of the Minsk protocol, to which Russia is party. In addition, the committee expresses its dismay about the participation of large numbers of Russian "volunteers" in the conflict in eastern Ukraine without any apparent action of the Russian authorities to stop this participation, despite it being in violation of the Criminal Code of the Russian Federation itself.

In the view of the committee, no solution to the conflict in Ukraine will be possible without the full participation and commensurate political will of the Russian Federation. The Parliamentary Assembly therefore needs to maintain a constructive dialogue with the Russian delegation on this issue as well as on the honouring of its obligations and commitments to the Council of Europe. However, it emphasises that such dialogue can only take place if the Russian authorities are willing to participate, in good faith and without preconditions, in a constructive and open dialogue with the Assembly. The committee therefore proposes ratifying the credentials of the Russian delegation, but, at the same time, as a clear expression of its condemnation of the continuing grave violations of international law, suspending a number of the delegation's rights and privileges. In addition, the committee proposes that the Assembly annul the credentials of the Russian delegation at its June 2015 part-session if no progress is made with regard to the implementation of the Minsk protocols and memorandum as well as the demands and recommendations of the Assembly, as expressed in the draft resolution.

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1. Reference to committee : Assembly decision of 26 January 2015, Reference 4105.



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## A. Draft resolution<sup>2</sup>

1. On 26 January 2015, the still unratified credentials of the Russian delegation were challenged on the basis of Articles 8.1 and 8.2 of the Rules of Procedure of the Parliamentary Assembly on the grounds that the role and participation of the Russian Federation in the conflict in eastern Ukraine, as well as its continued illegal annexation of Crimea was in violation of the Statute of the Council of Europe (ETS No. 1) as well as its accession commitments to the Council of Europe, which, in general, brought into question the commitment of the Russian delegation to the principles and membership obligations of the Council of Europe.

2. The Assembly recalls its [Resolution 1990 \(2014\)](#) on the reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation. In this resolution, the Assembly considered that the illegal annexation of Crimea by the Russian Federation, and the involvement and actions of the Russian Federation in the lead up to this annexation, constituted a grave violation of international law and were a clear contradiction to the Statute of the Council of Europe and Russia's accession commitments. The Assembly strongly condemned the violation of Ukrainian sovereignty and territorial integrity by the Russian Federation, which required a strong signal of disapproval from the Assembly. At the same time, the Assembly highlighted the need for continuing dialogue with the Russian Federation, including on Russia's obligations and adherence to the values and principles of the Council of Europe. The Assembly therefore decided not to annul the credentials of the Russian delegation but to suspend, until the end of the 2014 session, the voting rights of the Russian delegation as well as its right to be represented in the Bureau, Presidential Committee and Standing Committee of the Assembly and its right to participate in election observation missions. In addition, in this resolution, the Assembly reserved the right to annul the credentials of the Russian delegation if the Russian Federation did not de-escalate the situation and reverse the annexation of Crimea.

3. The Assembly condemns the illegal annexation of Crimea and its continuing integration into the Russian Federation. It is concerned by statements by Russian political leaders that clearly imply that a resolution of this issue in line with international law and principles will not be possible in the foreseeable future. The Assembly reasserts that the illegal annexation of Crimea by the Russian Federation is a gross violation of international law, including of the United Nations Charter, the Helsinki Final Act of the Organization for Security and Co-operation in Europe (OSCE) as well as the Statute of the Council of Europe and Russia's accession commitments to this Organisation.

4. The Assembly is alarmed about the deterioration of the human rights situation in Crimea, including the deaths and disappearances of political activists who were critical of Russia's annexation of Crimea. It is equally concerned about the threats and actions against independent and critical media outlets. In this respect, the Assembly urges the Russian authorities to:

- 4.1. reverse the illegal annexation of Crimea;
- 4.2. fully and transparently investigate these deaths and disappearances as well as allegations of abuse and human rights violations by the police and (para)military forces active in this region;
- 4.3. disband all paramilitary forces in the region;
- 4.4. refrain from any pressure and threats of closure of independent media outlets and reverse the closure of the Crimean Tatar Channel, ATR.

5. The situation of minorities in Crimea, in particular the Crimean Tatar community, is of serious concern to the Assembly. It is dismayed by the raids on Tatar organisations and institutions, including the offices of the Tatar Mejlis, as well as the ban on entry into Crimea for the Crimean Tatar leaders, Mr Mustafa Dzhemilev and Mr Refat Chubarov. In addition, the Assembly expresses its concern about reports of the diminishing availability of education in the Ukrainian language in Crimea. In this respect, the Assembly calls on the Russian authorities to:

- 5.1. refrain from any harassment of, and pressure on, Crimean Tatar institutions and organisations;
- 5.2. allow the return to Crimea, and their free movement across the administrative boundary line, of Mr Mustafa Dzhemilev and Mr Refat Chubarov;
- 5.3. take all necessary measures to ensure the continued availability of education in the Ukrainian language.

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2. Draft resolution adopted by the committee on 27 January 2015.

6. The Assembly welcomes that, with few exceptions, civilians continue to move freely across the administrative boundary between Crimea and the rest of Ukraine. It calls on all authorities concerned to refrain from any undue measures that could hinder or impede this free movement of civilians.

7. The Assembly is extremely concerned about the developments in eastern Ukraine and condemns Russia's role in instigating and escalating these developments, including with arms supplies to insurgent forces and covert military action by Russian troops inside eastern Ukraine, which are a gross violation of international law, including the Statute of the Council of Europe as well as of the Minsk protocol to which Russia is a Party. In addition, the Assembly expresses its dismay about the participation of large numbers of Russian "volunteers" in the conflict in eastern Ukraine without any apparent action of the Russian authorities to stop this participation, despite it being in violation of the Criminal Code of the Russian Federation itself. It takes note of credible reports of burials of soldiers on Russian territory. The Assembly condemns the violation of the territorial integrity and borders of a Council of Europe member State by the Russian Federation. It therefore calls on the Russian authorities to immediately:

- 7.1. withdraw all its troops, including covert forces, from Ukrainian territory;
- 7.2. refrain from supplying weapons to the insurgent forces;
- 7.3. take credible measures to end the influx of Russian volunteers into the conflict in eastern Ukraine;
- 7.4. adopt amendments to the Criminal Code that criminalise participation of Russian civilians in armed conflicts abroad, also if they are not remunerated for their actions;
- 7.5. prosecute to the full extent of the Russian law, all Russian citizens who have participated as "volunteers" in the armed conflict in eastern Ukraine;
- 7.6. give its full co-operation to the investigations into the downing of Malaysian Airlines flight MH17;
- 7.7. bring the Federal Law on Defence of the Russian Federation into line with the opinion of the European Commission for Democracy through Law (Venice Commission) on this law;
- 7.8. ensure the permanent Ukrainian/Russian control of their joint State border;
- 7.9. immediately release all hostages, prisoners of war and illegally held persons.

8. In the view of the Assembly, the conflict in eastern Ukraine can only be resolved by political means. It therefore welcomes the Minsk agreement and protocols, signed by the Russian Federation and Ukraine, as well as by the self-proclaimed people's republics of Donetsk and Luhansk. It regrets the repeated violations by all sides of the ceasefire regime. It calls on all signatories to respect the ceasefire and fully implement the Minsk protocols. It particularly calls on the Russian authorities to allow and assist the Ukrainian authorities to establish full control, under international monitoring, of its entire border with Russia, which is the basis of the political solution of the conflict as foreseen in the Minsk protocols.

9. The Assembly is deeply concerned by repeated and credible reports of human rights violations, including possible war crimes, by armed insurgents as well as voluntary battalions fighting alongside the Ukrainian armed forces. The Russian and Ukrainian authorities should fully and transparently investigate any reports of human right violations and war crimes committed by their nationals and, where violations are found, prosecute them to the fullest extent of the law.

10. Underscoring the need for a negotiated solution to the conflict, the Assembly cannot but condemn the statement of the pro-Russian rebel leader, Alexander Zakharchenko, on 23 January 2015, that his forces will no longer abide by, or are interested in, a ceasefire agreement, as well as his decision to start an offensive to occupy the rest of the Donetsk region as well as the city of Mariupol. This represents a serious escalation of the conflict in eastern Ukraine. The Assembly equally condemns the rocket attack by separatist forces on the town of Mariupol that left at least 30 civilians dead. It urges Russia to use its influence to ensure that the rebel forces return to the negotiating table and fully adhere to the ceasefire agreement as foreseen in the Minsk protocols.

11. The Assembly expresses serious concern about the imprisonment and indictment by the Russian Federation of Ms Nadiya Savchenko, who is now a member of the Assembly. The Assembly considers her transfer by Ukrainian insurgents to the Russian Federation and subsequent imprisonment by the Russian authorities to be in violation of international law amounting to her *de facto* kidnapping. The Assembly calls on the Russian authorities to immediately release Ms Savchenko and allow her to return to Ukraine.

12. Russia's actions in Ukraine demonstrate its lack of willingness to honour its accession commitments with regard to its relations with neighbouring countries. The Assembly therefore calls on the Russian authorities to dispel such concerns by:

12.1. implementing [Resolution 1633 \(2008\)](#) on the consequences of the war between Georgia and Russia, [Resolution 1647 \(2009\)](#) on the implementation of [Resolution 1633](#) and [Resolution 1683 \(2009\)](#) on the war between Georgia and Russia: one year after, and reversing the ethnic cleansing and the occupation of the Georgian provinces of Abkhazia and South Ossetia and allowing access to European Union monitors to these regions;

12.2. removing any obstacles to the free movement of civilians across the administrative boundary lines between South Ossetia and Abkhazia and the rest of Georgia;

12.3. implementing without delay its accession commitment to withdraw the 14th Army and its equipment from the territory of the Republic of Moldova;

12.4. promptly implementing the ruling of the European Court of Human Rights in the case of *Catan and others v. the Russian Federation and the Republic of Moldova* related to the right to education in Latin-script schools in Transnistria, and refraining from boycotting Moldovan products with the objective of unduly influencing the Republic of Moldova's foreign policy choices;

12.5. continuing its constructive engagement in the OSCE Minsk Group in order to find a peaceful solution to the conflict over Nagorno-Karabakh and suspending the sale of offensive weaponry to Armenia and Azerbaijan until such time as this conflict has been resolved.

13. In the view of the Assembly, no solution to the conflict in Ukraine will be possible without the full participation and commensurate political will of the Russian Federation. The Assembly therefore needs to maintain a constructive dialogue with the Russian delegation on this issue as well as on the honouring of its obligations and commitments to the Council of Europe. However, it emphasises that such dialogue can only take place if the Russian authorities are willing to participate, in good faith and without preconditions, in a constructive and open dialogue with the Assembly, including on those issues where the views of the Assembly and Russia differ. While, to the Assembly's regret, its offer in [Resolution 1990 \(2014\)](#) for such a dialogue was originally rejected by the State Duma, there have been clear signals that the Duma is now willing to engage in such a constructive dialogue with the Assembly.

14. In order to foster the dialogue with the Russian Federation, the Assembly for now resolves to ratify the credentials of the Russian delegation. But, at the same time, as a clear expression of its condemnation of the continuing grave violations of international law in respect of Ukraine by the Russian Federation, including the Statute of the Council of Europe and Russia's accession commitments to this Organisation, the Assembly resolves to suspend the following rights of the Russian delegation for the duration of the 2015 session of the Assembly:

14.1. the right to be appointed rapporteur;

14.2. the right to be member of an ad hoc committee on observation of elections;

14.3. the right to represent the Assembly in Council of Europe bodies as well as external institutions and organisations, both institutionally and on an occasional basis.

15. In addition to the sanctions outlined in paragraphs 14.1 to 14.3, the Assembly resolves to suspend the voting rights and right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee of the Russian delegation to the Assembly at the opening of its June 2015 part-session, if Russia has not made marked and measurable progress towards implementing the demands of the Assembly formulated in this resolution in paragraphs 4.1 to 4.4, paragraphs 5.1 to 5.3, paragraphs 7.1 to 7.9, paragraph 11 and paragraphs 12.1 to 12.4; and has not given its full co-operation to the working group mentioned in paragraph 17 of this resolution.

16. The Assembly resolves to annul the credentials of the Russian delegation at its June 2015 part-session if no progress is made with regard to the implementation of the Minsk protocols and memorandum as well as the demands and recommendations of the Assembly as expressed in this resolution, in particular with regard to the immediate withdrawal of Russian military troops from eastern Ukraine.

17. The Assembly invites the Bureau of the Assembly to consider setting up, pending the agreement of the parliaments concerned, a special working group with the participation of the Speakers of the Russian State Duma and the Ukrainian Verkhovna Rada, or their representatives, to formulate possible action by the Parliamentary Assembly in support of the implementation of the Minsk protocols.

## B. Explanatory memorandum by Mr Schennach, rapporteur

### 1. Introduction

1. On 26 January 2015, Mr Robert Walter (United Kingdom, European Conservatives Group) with the support of more than 30 members belonging to at least five national delegations challenged the still unratified credentials of the Russian delegation on the basis of Articles 8.1 and 8.2 of the Rules of Procedure of the Parliamentary Assembly on the grounds that the role and participation of the Russian Federation in the conflict in eastern Ukraine, as well as its continued illegal annexation of Crimea were in violation of the Statute of the Council of Europe as well as its accession commitments to the Organisation, which, in general brought into question the commitment of the Russian delegation to the principles and membership obligations of the Council of Europe. In line with Article 8.3 of the Rules of Procedure, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) was seized for report and the Committee on Rules of Procedure, Immunities and Institutional Affairs for opinion.

2. At its meeting on 26 January 2015, the Monitoring Committee appointed me rapporteur for the present report.

3. On 10 April 2014, the Assembly adopted [Resolution 1990 \(2014\)](#) on the reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation. In this resolution, the Assembly considered that the illegal annexation of Crimea by the Russian Federation, and the involvement and actions of the Russian Federation in the lead up to this annexation, constituted a grave violation of international law and were in clear contradiction to the Statute of the Council of Europe and Russia's accession commitments.<sup>3</sup> The Assembly strongly condemned the violation of Ukrainian sovereignty and territorial integrity by the Russian Federation, which required a strong signal of disapproval from the Assembly. At the same time, the Assembly highlighted the need for continuing dialogue with the Russian Federation, including on Russia's obligations and adherence to the values and principles of the Council of Europe.<sup>4</sup> The Assembly decided therefore not to annul the credentials of the Russian delegation but to suspend, until the end of the 2014 session, the voting rights of the Russian delegation as well as its right to be represented in the Bureau, Presidential Committee and Standing Committee of the Assembly and its right to participate in election observation missions.

4. Already concerned about the developments in eastern Ukraine, that were to escalate soon afterwards, the Assembly expressed its concern about the intentions of the Russian Federation in the light of the steady and noticeable build-up of military forces along the Russian–Ukrainian border. Also in that context, the Assembly explicitly reserved the right to annul the credentials of the Russian delegation if the Russian Federation did not de-escalate the situation or reverse the annexation of Crimea.<sup>5</sup>

5. In addition to its condemnation of the annexation of Crimea and concerns about developments in Crimea and eastern Ukraine, the Assembly also expressed its deep apprehension about the failure of the Russian Federation to implement [Resolutions 1633 \(2008\)](#), [1647 \(2009\)](#) and [1683 \(2009\)](#) on the war between Russia and Georgia, as well as the state of the freedom of the media and freedom in expression in Russia, especially in the context of the ongoing crackdown on the independent media, including online media and journalists.<sup>6</sup>

6. In the sections below, I will outline the main developments with regard to Crimea and eastern Ukraine. Furthermore, I will include a short section on developments concerning other obligations and commitments of the Russian Federation that are relevant in this context. An assessment of the willingness of the Russian Federation, and especially the State Duma and Council of the Federation, to address the concerns and demands of the Assembly, and to engage in an open and constructive dialogue about these concerns, should be an important factor when assessing the current challenge of the credentials of the Russian delegation. I have outlined the developments in that respect in a separate section.

### 2. Developments with regard to Crimea

7. In [Resolution 1990 \(2014\)](#), the Assembly reserved the right to annul the credentials of the Russian delegation if the Russian Federation did not de-escalate the situation and reverse the annexation of Crimea.

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3. [Resolution 1990 \(2014\)](#), paragraphs 3 and 4.

4. *Ibid.*, paragraphs 13 and 14.

5. *Ibid.*, paragraph 16.

6. *Ibid.*, paragraphs 9 and 10.

8. Since the adoption of [Resolution 1990 \(2014\)](#), the full integration of Crimea into the Russian Federation has continued unabated. The irreversibility of the annexation of Crimea by the Russian Federation was underlined in the annual address of President Putin to the Russian Federal Assembly, in which he called the annexation of Crimea a “historical unification” stating that Crimea was “the spiritual source of the development of a multifaceted but solid Russian nation and a centralised Russian State”. Underlining this position, he continued that “Crimea, the ancient Korsun or Chersonesus, and Sevastopol have invaluable civilisational and even sacral importance for Russia, like the Temple Mount in Jerusalem for the followers of Islam and Judaism” adding that “And this is how we will always consider it”.<sup>7</sup>

9. The ongoing annexation by the Russian Federation of Crimea continues to be a violation of international law, including the United Nations Charter, the Helsinki Act of the OSCE as well as the Statute of the Council of Europe and Russia’s accession commitments to this Organisation.

10. International organisations as well as civil society organisations have expressed their concern about the deterioration of the human rights situation in Crimea.

11. In his report following his mission to Kyiv, Moscow and Crimea, the Commissioner for Human Rights of the Council of Europe, Mr Nils Muižnieks, expressed his concern about the reports of deaths and disappearances under suspicious circumstances of civil activists who were critical of the developments in Crimea.<sup>8</sup> Mr Muižnieks exhorted the *de facto* authorities in Crimea to fully investigate these deaths and disappearances, as well as allegations about abuses by the police and (para) military forces that were active in the region. Moreover, he expressed concern with regard to the freedom of the media in Crimea. A number of media outlets that did not support the annexation of Crimea were closed down or their journalists and editorial staff put under pressure. The Crimean Tatar television channel ATR was warned by the authorities that the content of its broadcasts and the views expressed in its programmes could be interpreted as extremist activity.

12. The situation of minorities in Crimea, especially of the Crimean Tatar community, is a point of concern.

13. The Crimean Tatar population in general opposes the annexation of Crimea by the Russian Federation and the Tartar Mejlis<sup>9</sup> called for a boycott of the illegal referendum on Crimea’s secession from Ukraine as well as the local elections that were organised on 14 September 2014.

14. Crimean Tatar organisations and religious institutions, as well as businesses and private homes of members of the Tatar community have been raided by Russian forces, on the pretext of searching for extremist propaganda. These searches were denounced by the Council of Europe Human Rights Commissioner as “disproportional and excessive”.<sup>10</sup> In addition, the leader of the Crimean Tatars, Mr Mustafa Dzhemilev, and his successor as Chairman of the Mejlis, Mr Refat Chubarov, were declared *persona non grata* by the Russian authorities and banned from entering the territory of Crimea. Reportedly, the books written by Mr Dzhemilev, a well-known Soviet dissident, are considered extremist literature and banned. On 16 September 2014, the offices of the Tatar Mejlis were raided by the Russian authorities and computers and documents confiscated, which had a chilling effect on the Tatar community in Crimea.

15. For their part, the Russian authorities have asserted that the average income, especially of pensioners and persons working in the public sector, has increased exponentially in Crimea. In addition they assert that they have taken several measures to improve the social and economic status of the Crimean Tatar community, including protection of their language as well as by a “land amnesty” to address their housing problems.

16. The ethnic Ukrainian minority has expressed its concern about the diminishing availability of Ukrainian language education and the general sense of insecurity. This in turn has led a number of ethnic Ukrainian families to leave Crimea for other areas of Ukraine. In January 2015, the UNHCR reported that there were close to 20 000 registered IDPs from Crimea in Ukraine, mostly of Tatar and ethnic Ukrainian origin. Given that not everyone registers as IDP when relocating to mainland Ukraine the real number is certainly higher.

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7. Presidential address to the Federal Assembly, 4 December 2014.

8. CommDH(2014)19, paragraphs 12-19.

9. The Tatar Mejlis is the highest executive-representative body of the Crimean Tatars in the periods between sessions of the Qurultay (Congress) of the Crimean Tatar People. It is formally recognised and its status was legalised by decree of the President of Ukraine in 1999.

10. CommDH(2014)19, paragraph 22.

17. The movement of citizens over the administrative border is relatively unrestricted. However, checkpoints at both sides of the boundary line and vehicle controls reportedly make the crossing cumbersome and time consuming, especially for cargo transport. The law on “legal guarantees of people’s rights and freedoms on the temporarily occupied territories of Ukraine” that was adopted by the Verkhovna Rada following the annexation of Crimea by Russia, does not place any restrictions on the movement of Ukrainian citizens over the administrative boundary line. It does however require that foreigners obtain a special permit to do so. This, together with legal and political considerations, has limited the access of international organisations to Crimea. To my best knowledge, no restrictions are placed by the Russian authorities on movement across the boundary line by Ukrainian citizens. Most foreigners now need a Russian visa to enter Crimea, which is an obstacle for the access of international organisations to the region. Until recently, public transport continued to cross the boundary line. However, in December 2014, the Ukrainian authorities suspended bus and train services, citing the security environment.

18. The Ukrainian authorities have continued to supply water and electricity to Crimea. However, they stopped supplying electricity in December 2014, due to power cuts in Ukraine, which depends on coal from the Donbas region – now no longer available – for its electricity production. Russia, in response, announced that it would resume coal and electricity supplies to Ukraine without advance payment by the latter.<sup>11</sup>

### 3. Developments in eastern Ukraine

19. The escalation of the conflict in eastern Ukraine, and the role of the Russian Federation in it, has eclipsed and overshadowed the annexation by Russia of Crimea and the subsequent developments in that region. It is beyond the scope and purpose of this report to outline in detail the events in eastern Ukraine since the April 2014 part-session of the Assembly. In this section I will limit myself to the main developments in Ukraine that are relevant for this report.

20. Following the referendum in Crimea, several demonstrations and protest rallies were organised in eastern Ukraine (Kharkiv, Odessa, Mariupol, Donetsk and Luhansk) calling for the organisation of similar referenda in eastern Ukraine with the aim of these oblasts seceding from Ukraine and possibly joining the Russian Federation. Large demonstrations in favour of Ukraine unity were also organised.

21. These pro-Russian protests turned increasingly more violent with local city councils being stormed. There were often clashes between competing demonstrations. Many observers and journalists noted that the pro-Russian protests were well orchestrated and apparently centrally organised, lacking the spontaneity of a mass movement.<sup>12</sup> Others highlighted the participation of considerable numbers of Russian citizens in these protests. The Ukrainian authorities pointed in this respect to the fact that in Kharkiv the protesters stormed the local theatre, mistaking it for the city council.<sup>13</sup> On 18 March 2014, Prime Minister Yatsenyuk announced that his government would initiate the decentralisation of central government including through the adoption of a new Constitution. By 28 March 2014, the Minister of the interior announced that the number of pro-Russian demonstrations in eastern Ukraine was diminishing considerably.

22. The armed insurgency formally started on 7 April 2014, when around 1 000 protesters stormed the SBU offices in Donetsk and Luhansk taking control of the armouries in these offices. The, now armed, protesters announced that a referendum on independence, and subsequent integration into the Russian Federation should be organised by 11 May at the latest. In response to these developments, acting-President Turchynov announced the start of an anti-terrorist operation (ATO) in eastern Ukraine with the aim of re-establishing full control of the central government in these regions.

23. The situation escalated dramatically on 12 April 2014, when masked and armed men under the command of the former Russian Federal Security Service (FSB) officer Igor Girkin<sup>14</sup> stormed the police station, the local SBU office and other municipality buildings, first in Sloviansk and then in Kramatorsk in an attempt to re-enact the same scenario he had helped implement in Crimea in February 2014. Following this, armed groups started seizing buildings in *inter alia* Druzhkivka, Horlivka, Mariupol and Yenakieve, as well as in the city of Donetsk proper. Many members of Mr Girkin’s groups were “volunteers” from Russia and Crimea aided by a relatively small number of volunteers from eastern Ukraine<sup>15</sup>.

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11. [www.reuters.com/article/2014/12/27/us-ukraine-crisis-russia-coal-idUSKBN0K508F20141227](http://www.reuters.com/article/2014/12/27/us-ukraine-crisis-russia-coal-idUSKBN0K508F20141227).

12. [www.economist.com/news/briefing/21599413-russia-wants-divided-ukraine-and-despite-promise-revolution-it-may-well-get](http://www.economist.com/news/briefing/21599413-russia-wants-divided-ukraine-and-despite-promise-revolution-it-may-well-get).

13. [www.themoscowtimes.com/news/article/protesters-storm-kharkiv-theater-thinking-it-was-city-hall/497709.html](http://www.themoscowtimes.com/news/article/protesters-storm-kharkiv-theater-thinking-it-was-city-hall/497709.html).

14. Also known under the alias of Strelkov (the shooter).

24. According to the Ukrainian Ministry of the Interior the occupations of local government buildings were aided if not orchestrated by Russian Special Forces operating on Ukrainian territory. This is strongly denied by the Russian authorities who claim that no Russian troops were operating on Ukrainian territory. After a number of Russian soldiers were captured by Ukrainian military, Russia admitted that Russian military were fighting in Ukraine on a voluntary basis while on leave from their regiment. On the other hand, Mr Girkin has been quite open about his role in the escalation of the conflict in eastern Ukraine. In an interview he stated “I am the one who pulled the trigger of war. If our squad had not crossed the border, it all would have ended like in Kharkiv or Odessa. There would have been a few dozen killed, burned, and arrested. And that would have ended everything,” continuing: “Our squad set the flywheel of war in motion. We reshuffled all the cards on the table.”<sup>16</sup>

25. The ATO operation launched against these seizures of local government buildings ran into problems when initially a number of soldiers deserted from their battalions or defected to the pro-Russian<sup>17</sup> separatists.

26. On 17 April 2014, representatives of Russia, Ukraine, the United States and the European Union met in Geneva in order to find a negotiated solution to the escalating insurgency in eastern Ukraine. During this meeting the participants adopted the “Geneva Statement on Ukraine”, in which they agreed *inter alia* to:

- dissolve all illegal military formations in Ukraine
- end the occupation of local government buildings and require the protesters to disarm
- adopt an amnesty for all anti-government protesters
- amend the constitution of Ukraine in an inclusive, transparent and accountable manner

It was agreed that the dissolution of illegal armed formations and the end to the occupation of government buildings would be overseen by monitors from the OSCE.

27. Despite the Geneva agreement, the occupation of government buildings continued unabated and none of the illegally armed insurgent groups disarmed. On the contrary, the conflict showed that the insurgents were increasingly armed with advanced weaponry, such as artillery, tanks and surface to air missiles, which were supplied by the Russian Federation. The influx of this type of weaponry into the conflict, which was matched by the Ukrainian armed forces, exponentially increased the lethality of the conflict and collateral damage among civilians.

28. The Russian authorities have denied that they supplied weaponry to the armed insurgents and have asserted that their arms came from arms caches left behind or captured from the Ukrainian army. However, a number of European governments and military experts have pointed out that the insurgents have access to Russian-made weaponry, including tanks and missile systems that were never bought by, or supplied to, the Ukrainian armed forces.

29. With the conflict escalating and fighting increasing exponentially on a daily basis, President Putin asked, on 7 May 2014, for the insurgents to delay the referenda on the status of the Donetsk and Luhansk Oblasts that were foreseen for 11 May 2014. However, this was rejected by the insurgents. The lateness of the request by President Putin and the speed by which it was rejected by the insurgents, raised some questions about the sincerity of this proposal, especially with the Ukrainian Government.

30. The so-called referenda on the status of the Donetsk and Luhansk Oblasts took place on 11 May 2014. They were not observed by credible independent international organisations, but journalists reported that the conduct of the referenda was questionable in the extreme: there were no voters’ lists and persons were allowed to vote as many times as they wanted.<sup>18</sup> According to the insurgents’ leadership, the turnout in Donetsk Oblast was 75% and in Luhansk 81%, with around 90% of the voters supporting independence for the self-proclaimed Luhansk and Donetsk People’s Republics. These referenda are illegal under Ukrainian law and their conduct and declared results are not recognised by the international community, which denounced them as an unnecessary escalation of the tensions.

15. In an interview in the magazine *Zavtra*, Mr Girkin estimated that his group was joined by 200 local men when he stormed to police station and municipality buildings in Sloviansk.

16. <http://zavtra.ru/content/view/kto-tyi-strelok/> quoted in <http://blogs.reuters.com/great-debate/2014/11/25/should-putin-fear-the-man-who-pulled-the-trigger-of-war-in-ukraine/>.

17. There is some debate on what to call these groups, ranging from terrorists to Federalists to pro-Russian separatist or simply separatists or insurgents. While at a later stage the separatists’ claimed to favour independence from Ukraine, initially the stated objective was unification with the Russian Federation. To underline this point: the groups led by Mr Girkin flew Russian flags on their headquarters and on buildings they seized.

18. [www.tagesanzeiger.ch/ausland/europa/Laecherlich-aber-brandgefaehrlich/story/16073354](http://www.tagesanzeiger.ch/ausland/europa/Laecherlich-aber-brandgefaehrlich/story/16073354).

31. The Anti-Terrorist Operation (ATO) gained momentum, with the Ukrainian military becoming increasingly better organised and recapturing towns that were previously under separatist control. Important political and economic interests became more vocal in their support for Ukrainian unity. On 15 May 2014, Rinat Akhmetov, an influential businessman from the Donbas region, expressed his support for Ukrainian unity and ordered his workers in Mariupol to patrol the city jointly with the local police. As a result of this, the occupation of government buildings in Mariupol had ended by 16 May 2014.

32. The Anti-Terrorist Operations gained a new impetus after President Poroshenko was elected with a large majority on 25 May 2014. On 20 June 2014, President Poroshenko announced a comprehensive 15 point peace plan.<sup>19</sup> As part of this plan, President Poroshenko announced a week-long unilateral ceasefire, which was later extended by three days. Regrettably, the insurgents rejected the ceasefire and continued their armed attacks on Ukrainian military forces. After a rocket attack that left 19 Ukrainian soldiers dead, President Poroshenko ended the unilateral ceasefire.

33. On 17 July 2014, in a lamentable and tragic development, Malaysian Airlines Flight MH17, flying from Amsterdam to Kuala Lumpur, was shot down by an anti-aircraft missile, killing all 283 passengers and 15 crew on board. At the request of the Ukrainian authorities,<sup>20</sup> the Dutch Safety Board was appointed as the lead agency investigating the crash. In its preliminary report,<sup>21</sup> published on 9 September 2014, the Dutch Safety Board concluded that flight MH17 had disintegrated in mid-air as a result of a large number of impacts (forward fuselage and cockpit) of high velocity objects from outside the aircraft. The Dutch Safety Board is continuing its investigation into the source of these objects, but many experts have noted that these impacts, and their pattern, are consistent with the explosion of a surface-to-air anti-aircraft missile. A number of European countries, as well as the USA, Ukraine and NATO have alleged, based on intelligence available to them as well as in the public domain, that flight MH17 was shot down by a missile fired from a mobile BUK M1 missile launcher, supplied by the Russian Federation, from the nearby town of Snizhne, which is in rebel-held territory. A number of military experts and a journalist have noted that BUK missile systems are complex weaponry, which can only be operated by skilled technicians. They therefore concluded that the BUK missile system was not only supplied by the Russian Federation, but in all likelihood also operated by Russian military personnel, reportedly coming from the 53rd Anti-aircraft Missile Brigade based in Kursk.<sup>22</sup> The Russian authorities strongly denied any role in the downing of flight MH17, either of their military or of the insurgents. During a press conference organised by the Ministry of Defence on 21 June 2014, the Russian authorities alleged that flight MH17 had been downed by a SU25 ground attack plane from the Ukrainian armed forces. However, several military experts pointed out that this type of plane neither has the technical capabilities, nor the adequate weaponry, to down a Boeing 777 flying at 33 000 feet (approximately 10 060 meters). It is important to note that the Dutch Government has indicated that it intends to prosecute the downing of flight MH17 as a war crime.

34. Following the end of ceasefire that was declared by President Poroshenko, the Ukrainian military launched a counter offensive to recapture the land and cities that were under the control of the insurgents. This counter-offensive was largely successful. By the end of August 2014, Ukrainian military troops had

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19. The 15 points of the peace plan were ([www.president.gov.ua/en/news/30566.html](http://www.president.gov.ua/en/news/30566.html)):

1. *Security guarantees for all the participants of negotiations.*
2. *Amnesty for those who laid down weapons and did not commit serious crimes.*
3. *Liberation of hostages.*
4. *Establishment of a 10-kilometre long buffer zone on the Ukrainian-Russian border. Withdrawal of illegal armed formations.*
5. *Secure corridor for the escape of Russian and Ukrainian mercenaries.*
6. *Disarmament.*
7. *Establishment of units for joint patrolling in the structure of the MIA.*
8. *Liberation of illegally seized administrative premises in Donetsk and Luhansk regions.*
9. *Restoration of functioning of local government.*
10. *Restoration of central television and radio broadcasting in Donetsk and Luhansk regions.*
11. *Decentralization of power (through the election of executive committees, protection of Russian language; draft amendments to the Constitution).*
12. *Coordination of governors with representatives of the Donbas before the elections*
13. *Early local and parliamentary elections.*
14. *Program of creating jobs in the region.*
15. *Restoration of industrial objects and objects of social infrastructure.*

20. The largest numbers of victims, 183, were Dutch citizens.

21. [www.onderzoeksraad.nl/uploads/phase-docs/701/b3923acad0ceprem-rapport-mh-17-en-interactief.pdf](http://www.onderzoeksraad.nl/uploads/phase-docs/701/b3923acad0ceprem-rapport-mh-17-en-interactief.pdf).

22. <https://mh17.correctiv.org/english/>.

recaptured large parts of the rebel held territory, with troops in the outskirts of Luhansk and Donetsk, raising the spectre of the Ukrainian authorities regaining full control over their territory. However, an increasing influx of Russian military personnel and advanced heavy weaponry in aid of the insurgents was noted.<sup>23</sup>

35. On 25 August 2014, the insurgents unexpectedly started a counter-offensive with the covert aid of Russian military troops in eastern Ukraine. At the same time, Russian artillery was firing on Ukrainian military positions from within Russia itself. Within several days the insurgents managed to regain a considerable part of lost territory as well as to open a new front towards the city of Mariupol.

36. On 31 July 2014, new peace negotiations started in Minsk under the auspices of the OSCE. On 5 September, the Minsk protocols were signed by representatives of Ukraine, Russia and the OSCE as well as the self-proclaimed People's Republics of Donetsk and Luhansk. This protocol established, *inter alia*, an immediate ceasefire in eastern Ukraine. The modalities of these protocols were outlined in a memorandum that was signed by these participants in Minsk on 19 September 2014. The text of the Minsk protocol and memorandum is appended to this report in Appendix 1.

37. The ceasefire that was agreed upon in Minsk continues to be in place at the moment of writing of this report. However, international monitors deployed by the OSCE report that the ceasefire continues to be violated by both sides on a regular, almost systematic, basis. Since the beginning of January 2015, violations of the ceasefire seem to have exponentially increased. Regrettably, in what would appear to be in clear contradiction of the protocols and memorandum it signed in Minsk, the Russian Federation reportedly has continued to supply weaponry to the insurgents and deployed military personnel inside the sovereign territory of Ukraine. The OSCE monitoring mission warned of the risk of escalation of the conflict and, on 12 November 2014, NATO Secretary General Mr Jens Stoltenberg called upon Russia to pull back its forces.<sup>24</sup>

38. The Russian authorities continue to deny the presence of any Russian military in Ukraine. However this seems to be belied by the fact that a considerable number of Russian citizens, who identified themselves as Russian military personnel, were captured deep inside Ukrainian territory by the Ukrainian military.<sup>25</sup> On 28 August 2014, NATO released satellite images conclusively showing the presence of Russian military personnel within the sovereign territory of Ukraine.<sup>26</sup> These conclusions were further confirmed by an independent analysis commissioned by Amnesty International of commercially available satellite images, backed up by reports by their researchers, which clearly establish the presence of Russian military troops inside Ukraine.<sup>27</sup>

39. It should be emphasised that the presence of Russian military troops in Ukraine without the authorisation of the Ukrainian authorities or UN Security Council – can be interpreted as an act of aggression under the UN Charter and a violation of international law as well as of the Statute of the Council of Europe and Russia's accession commitments to this Organisation. In addition it also violates Russian legislation as, on 25 June 2014, the Russian parliament revoked its much criticised authorisation to President Putin to deploy Russian troops inside Ukraine if he so wished<sup>28</sup>. The assembly should require that Russia should immediately withdraw all of its military troops from Ukrainian soil and end the supply of arms to the insurgents.

40. Article 208 of Russia's Criminal Code prohibits the creation of unlawful armed groups and Article 359 the recruitment, training, financing and using mercenaries. However, none of the voluntary fighters that Russia has admitted participate in the conflict, have been charged under these articles, ostensibly because it is impossible to prove that anyone was paid for their participation in military operations inside Ukraine. Surprisingly in this context, Russia's Investigative Committee filed charges under Article 359 against Roman Zheleznov, a Russian citizen who had joined the Azov voluntary battalion that fights alongside the Ukrainian military. The Russian parliament should, without further delay, adopt amendments to the Criminal Code with a view to criminalising any participation in a private capacity of Russian citizens in armed conflicts overseas, whether they are remunerated or not.

41. The conflict in eastern Ukraine has resulted in enormous suffering and loss of life. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), by 9 January 2015, more than 4 800 persons were killed because of the conflict.<sup>29</sup> In addition, UNHCR reported that by 9 January 2015

23. [www.cnn.com/id/101921973#\\_gus](http://www.cnn.com/id/101921973#_gus).

24. [www.bbc.com/news/world-europe-30025138](http://www.bbc.com/news/world-europe-30025138).

25. Russian officials stated that these persons had got "lost" during a Russian military exercise and "accidentally" crossed the border with Ukraine.

26. [www.nato.int/cps/ar/natohq/photos\\_112202.htm](http://www.nato.int/cps/ar/natohq/photos_112202.htm).

27. [www.amnesty.org/en/news/ukraine-mounting-evidence-war-crimes-and-russian-involvement-2014-09-05](http://www.amnesty.org/en/news/ukraine-mounting-evidence-war-crimes-and-russian-involvement-2014-09-05).

28. [www.reuters.com/article/2014/06/25/us-ukraine-crisis-russia-parliament-idUSKBN0F00VG20140625](http://www.reuters.com/article/2014/06/25/us-ukraine-crisis-russia-parliament-idUSKBN0F00VG20140625).

more than 630 000 persons were internally displaced, in addition to the approximately 245 000 persons who fled to Russia.<sup>30</sup> The humanitarian consequences of the conflict in eastern Ukraine and the annexation of Crimea are comprehensively outlined in the excellent report by my colleague Mr Jim Sheridan, on the “Humanitarian situation in Ukraine”<sup>31</sup> that will be discussed by the Assembly during this January part-session, and whose conclusions and recommendations I wholeheartedly support.

42. The co-rapporteurs of the Monitoring Committee for Ukraine, Ms Mailis Reps and Ms Marietta de Pourbaix-Lundin, expressed on a number of occasions their deep concern for the credible reports of grave human rights violations, including possible war crimes, in areas under the control of the self-proclaimed People’s Republics of Luhansk and Donetsk, as well as in areas under the control of some of the voluntary brigades fighting alongside the Ukrainian military forces.<sup>32</sup> Similar concerns were expressed by the Council of Europe Commissioner for Human Rights, Nils Muižnieks, following his visit to Ukraine from 30 November to 5 December 2014.<sup>33</sup>

43. A specific case is that of former Ukrainian pilot Nadiya Savchenko who fought in one of the volunteer battalions in eastern Ukraine. On 18 June 2014, she was captured by armed insurgents fighting for the self-proclaimed “People’s Republic of Luhansk”. On 24 June 2014, she was illegally transferred to the Russian Federation<sup>34</sup> and charged by the Russian Investigative Bureau for complicity in the killing of two Russian journalists who died during a mortar attack outside Luhansk in Ukraine. It should be noted that this transfer and her being charged by the Russian authorities is a direct violation of the Minsk protocol. Moreover, the crimes of which she is accused took place inside Ukraine and outside the jurisdiction of the Russian courts, which raises questions as to the legality of her continuous detention. On 26 October 2014, Ms Nadiya Savchenko was elected to the Ukrainian Parliament on behalf of the *Batkivshchyna* Party. On 25 December 2014, she was appointed a member of the Ukrainian delegation to our Assembly. It is unacceptable that a member of our Assembly is illegally held captive by another Council of Europe member State. I therefore call upon the Russian authorities to immediately release her and allow her return to Ukraine.

44. The re-establishment of full control by the Ukrainian authorities, under international supervision, of its entire border with the Russian Federation is a key precondition for a political resolution of the conflict, as highlighted in the Minsk protocol. The fulfilment of this requirement depends largely, if not solely, on Russian co-operation and political will.

45. On the initiative of President Poroshenko, a summit was to be held on 15 January 2015, in Astana (Kazakhstan) between President Poroshenko, President Putin, President Hollande and Chancellor Merkel – the so-called Normandy format – to discuss solutions to end the conflict in eastern Ukraine. However, on 10 January 2015, Chancellor Merkel told President Putin she would not participate in the summit if no clear progress was visible with regard to the implementation of the Minsk agreements, including full control by the Ukrainian authorities over Ukraine’s external borders. A similar statement was also made by President Hollande. On 12 January 2015, amid an increase in the number of violations of the ceasefire agreement, and in the absence of any real prospect for progress, the Ministers of Foreign Affairs of the Normandy format countries decided to cancel the summit of 15 January. On 16 January President Poroshenko and President Nazarbayev of Kazakhstan announced that they now planned to convene the summit by the end of January, if developments warranted it.

46. On 22 January 2015, the Ukrainian authorities announced that they had had to withdraw their military from its positions at Donetsk airport, which were on its side of the line of contact agreed in the Minsk negotiations, due to heavy shelling by separatist forces.

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29. <http://reliefweb.int/sites/reliefweb.int/files/resources/Sitrep%2023%20-%20Ukraine%20-%209%20January.pdf>.

30. <http://unhcr.org/ua/en/who-we-help/internally-displaced-people>.

31. Doc. 13651 (2014), Humanitarian situation in Ukraine, Committee on Migration, Refugees and Displaced Persons.

32. <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5322&lang=2&cat=3>.

33. [www.coe.int/en/web/commissioner/-/conflict-in-eastern-ukraine-has-dire-impact-on-human-rights?inheritRedirect=true&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Fukraine%3Fp\\_p\\_id%3D101\\_INSTANCE\\_PwOwYulLuc5b%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-1%26p\\_p\\_col\\_count%3D1](http://www.coe.int/en/web/commissioner/-/conflict-in-eastern-ukraine-has-dire-impact-on-human-rights?inheritRedirect=true&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-report%2Fukraine%3Fp_p_id%3D101_INSTANCE_PwOwYulLuc5b%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1).

34. The Russian authorities stated that she voluntarily crossed the border as a refugee. However, press releases by the insurgents as well as a number of video news casts show her in rebel captivity during the days before she suddenly showed up in Russia.

47. On 23 January 2015, the pro-Russian rebel leader Alexander Zakharchenko announced that his forces would no longer abide by, or were interested in, a ceasefire agreement with the Ukrainian authorities and that his forces would start an offensive to occupy the rest of the Donetsk region. This is a clear violation of the Minsk protocols and represents a serious escalation of the conflict in Eastern Ukraine

#### 4. Developments on other commitments and obligations of the Russian Federation

48. As already argued in [Resolution 1990 \(2014\)](#) and in the previous sections of this report, Russia's actions in Crimea, as well as its role and participation in the conflict in eastern Ukraine, are in direct violation of the Statute of the Council of Europe as well as the country's accession commitments, in particular, paragraphs 10.7, 10.8 and 10.11 of Assembly [Opinion 193 \(1996\)](#).<sup>35</sup> In addition, the events in Ukraine have exacerbated a number of negative tendencies – often related to the increasing importance of the ideology of “Eurasianism” – in the Russian Federation with regard to other obligations and commitments that are of relevance to this report. These tendencies have led to an increasingly marginalised political opposition, increased control over the media and the stifling of independent voices in civil society.

49. As stated in Assembly [Resolution 1990 \(2014\)](#), control of information has been at the heart of the conflict in Ukraine, notably with the adoption of a series of measures that have further eroded freedom of information and reinforced government control of the Internet.<sup>36</sup> These encroachments on media pluralism, Internet freedom and the right to freedom of expression are serving the propaganda war, and allow for a biased coverage of the situation by the Russian State-controlled media. By adding media-support NGOs to the “foreign agents” list, the authorities have further aggravated the decrease in freedom of information in Russia.

50. While there is arguably wide public support in Russia for its involvement in the conflict in Ukraine – also as a result of the monolithic media coverage of these events – these views are not shared by all and a number of civil society organisations have questioned Russia's role and participation in the conflict. In that context, the concerns expressed<sup>37</sup> about the situation of NGOs and human rights defenders over the past year, with legislative changes<sup>38</sup> mutually reinforce a chilling effect on the exercise of freedom of expression along with freedom of association. The new legislation on NGOs does not comply with international standards in respect of democracy and human rights.<sup>39</sup> However, despite the widespread criticism about the NGO legislation, a number of organisations were nevertheless included by the Russian authorities in the register of “foreign agents” and inspections continue. The Minister of Justice registered as “foreign agents” several NGOs including the NGO “Soldiers' Mothers” of St Petersburg” after this NGO had raised the issue of the death of Russian soldiers fighting in Ukraine against the Ukrainian forces and had demanded that these deaths be investigated.

51. A number of measures have been taken to increase the Russian authorities' ability to control public discourse and freedom to demonstrate. Laws were passed to criminalise non-authorized street protests, setting high penalties<sup>40</sup> including enormous fines, forced labour and prison sentences (up to five years). Opposition leaders, such as Alexei Navalny, were put under house arrest or sent to prison. Such measures are clear attempts to deter participation in demonstrations and open political debate. In the case *Nemtsov v. Russia*, the European Court of Human Rights<sup>41</sup> acknowledged the arbitrary interference with the right to freedom of assembly in violation of Article 11 of the ECHR.

35. [Opinion 193 \(1996\)](#), paragraph 10.7: “to settle international as well as internal disputes by peaceful means (an obligation incumbent upon all member states of the Council of Europe), rejecting resolutely any forms of threats of force against its neighbours”; paragraph 10.8: “to settle outstanding international border disputes according to the principles of international law, abiding by the existing international treaties”; paragraph 10.11 “to denounce as wrong the concept of two different categories of foreign countries, whereby some are treated as a zone of special influence called the “near abroad”.

36. Amendments increasing the sentence for “Public appeals for actions violating the Russian Federation's territorial integrity”; Blogger Law; Law on storage of personal data.

37. Commissioner for Human Rights' report CommDH(2014)19 of 27 October 2014, following his mission in Kyiv, Moscow and Crimea, from 7 to 12 September 2014; Venice Commission Opinion No. 716-717/2013 of 27 June 2014.

38. “Law on Foreign Agents”; “Law on non-commercial organisations”; “Law on treason”.

39. Expert Council on NGO Law, “Opinion on the law introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of non-commercial organisations performing the function of foreign agents”, OING Conf/Exp (2013)1 of August 2013; Recommendation adopted by the Standing Committee on behalf of the Conference of INGOs on 30 September 2013, CONF/PLE(2013)REC5; “Opinion of the Commissioner for Human Rights on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards”, CommDH(2013)15 of 15 July 2013, paragraph 78; Venice Commission Opinion, No. 716-717/2013 of 27 June 2014.

40. In contradiction with the recommendations of the 2013 Venice Commission's Opinion.

41. *Nemtsov v. Russia*, Application No. 1774/11, judgment of 31 July 2014.

52. The *ad hoc* Sub-Committee on “Russia’s neighbourhood policy towards other Council of Europe member States” of the Monitoring Committee has discussed a number of recommendations with the Russian Federation, the implementation of which could be considered a clear signal that the Russian Federation is willing to honour its accession commitments with regard to its relations with its neighbouring countries. These recommendations are reflected in the next paragraphs.

53. In [Resolution 1990 \(2014\)](#), the Assembly expressed its concern about “by the continuous failure of the Russian Federation to implement [Resolution 1633 \(2008\)](#) on the consequences of the war between Georgia and Russia, [Resolution 1647 \(2009\)](#) on the implementation of [Resolution 1633](#) and [Resolution 1683 \(2009\)](#) on the war between Georgia and Russia: one year after, by the occupation of the Georgian provinces of Abkhazia and South Ossetia by Russian troops and by the refusal of the Russian Federation to allow European Union monitors and to reverse ethnic cleansing”.<sup>42</sup> Regrettably no progress on this issue has been made since April 2014 and I continue to urge the authorities to comply with the resolutions of the Assembly in this respect. An important issue, the resolution of which would constitute an important step forwards, is the free movement of civilians over the administrative boundary lines (ABL) between South Ossetia, Abkhazia and the rest of Georgia, which are controlled by the Russian Federation. The continuing borderisation of the ABL increasingly impedes civilians at both sides of the border from visiting their properties and tending the graves of family members, as well as for residents of South Ossetia and Abkhazia to have access to health and other social services including for emergencies. If only for humanitarian reasons, any obstacles to the free movement of civilians across the AOB should be removed by the Russian Federation and the *de facto* authorities of South Ossetia and Abkhazia. In November 2014, Russia signed an agreement for “alliance and co-operation” with the self-proclaimed “Republic of Abkhazia. This treaty is a sign of the gradual annexation of the Georgian regions of South Ossetia and Abkhazia by the Russian Federation and deepens the barriers between the population residing in these break away regions and those residing in the rest of Georgia.

54. With regard to the Republic of Moldova, when becoming a member of the Council of Europe, Russia committed itself to withdrawal of the 14th Army and its equipment from the territory of Moldova within a time-limit of three years from the date of signature of the agreement<sup>43</sup> that was signed 19 years ago. It is therefore high time that the Russian authorities completed the withdrawal of the remaining Russian military forces and their equipment from the territory of the Republic of Moldova without further delay. Russia and the *de facto* authorities of Transnistria should implement, without delay the ruling of the European Court of Human Rights in the case of *Catan and others v. the Russian Federation and the Republic of Moldova* related to the right to education in Latin-script schools, and comply with the decision of the Committee of Ministers.<sup>44</sup> In addition, the Russian authorities should lift the embargo on export of Moldovan products to the Russian Federation. This embargo is widely perceived as an attempt to put pressure on the Moldovan authorities with regard to the Association Agreement it signed with the European Union in June 2014 and as a means to influence the parliamentary elections of 30 November 2014. It is worth noting that this embargo does not apply to the products of the Autonomous Territorial Unit of Gagauzia-Yeri, which, on 2 February 2014, held an unconstitutional referendum whereby 98% the voters expressed their will to join Russia’s Customs Union.<sup>45</sup>

55. With regard to Armenia, the Russian authorities, and especially former President, and current Prime Minister, Medvedev, overall have played a constructive role towards finding a solution for the Nagorno-Karabakh conflict in the framework of the OSCE Minsk Group. That notwithstanding, it was noted that the Russian Federation continues to supply arms, including offensive weaponry, to both Armenia and Azerbaijan and has used the supply of arms as a mechanism for putting pressure on both countries to align themselves with Russia’s foreign policy goals, as was recently the case in relation to Armenia’s joining the Eurasian Union. I call upon the Russian Federation to cease the supply of offensive weapons to both Armenia and Azerbaijan.

## 5. Dialogue

56. In [Resolution 1990 \(2014\)](#), the Assembly stated that it believed that “dialogue should remain the preferred way to find a political compromise” and for that reason decided not to suspend the credentials of the Russian delegation, as that would make “dialogue impossible” and impede the Assembly from “keeping the

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42. [Resolution 1990 \(2014\)](#), paragraph 10.

43. [Opinion 193 \(1996\)](#), paragraph 10.9

44. See the [decision](#) of the Committee of Ministers of 6 June 2014.

45. [AS/Mon \(2014\) 21 rev.](#)

Russian delegation accountable on the basis of the Council of Europe's values and principles" The sanctions applied by the Assembly in April 2014 were therefore seen by the Assembly as a minimal response designed to keep the avenues of dialogue and communication open.

57. Regrettably, on 18 April 2014 the Russian Duma adopted a declaration on "the anti-Russian resolution of the Parliamentary Assembly of the Council of Europe". The text of this statement is appended to this report in Appendix 2. In this declaration, the Duma considered that the adoption of [Resolution 1990 \(2014\)](#) was a display of "double standards" and "discrimination" against the Russian delegation. The criticism expressed of the actions of the Russian Federation in the debate on the Russian credentials as well as in the debate on the Maidan events in Ukraine, were considered by the State Duma "Russophobic rhetoric and direct insults to the Russian Federation" by members who "have no moral right to judge Russia and to adopt sanctions against it". The State Duma therefore resolved that it would only be able to participate in the work of the Assembly when the rights of the Russian delegation were fully restored and given the possibility to participate in the decision-making processes. In addition it declared that "any proposal to resume dialogue against the background of the sanctions and discrimination against Russia is not acceptable".

58. I cannot but regret and reject this declaration of the Russian Duma, which effectively closed the avenues for dialogue that the Assembly had explicitly left open by not deciding to suspend the credentials of the Russian delegation. This declaration notwithstanding, the Parliamentary Assembly continued to deploy a number of initiatives that aimed to continue the dialogue, inter alia by the Presidential Committee and by the Monitoring Committee.

59. Individual Assembly political group leaders maintained contacts with the Russian State Duma and in particular with its President, Mr Sergey Naryshkin. At the same time the President of the Assembly, Ms Anne Brasseur, had a number of telephone conversations with Mr Naryshkin, urging the State Duma to enter into a dialogue and to participate in the work of the Assembly, unless the Russian delegation wished to further isolate itself from the Assembly. Following a visit of individual political group leaders to Moscow it was agreed to set up a meeting between Mr Naryshkin and the Presidential Committee in Paris in September 2014. As a result of that meeting the Russian authorities agreed to drop their objections to a planned visit of the co-rapporteurs for Russia of the Monitoring Committee, agreed to the participation of the Russian members in the Monitoring Committee and its *ad hoc* Sub-Committee on "Russia's Neighbourhood Policy" and allowed Ms Olga Kazakova, to present the opinion of the Committee on Equality and Non-Discrimination on the report on "Counteraction to manifestations of neo-Nazism" during the September 2014 part-session of the Assembly. Further meetings between Mr Naryshkin and the Presidential Committee subsequently took place to discuss the relations between the Assembly and the Russian delegation.

60. The Monitoring Committee has been playing an active role in establishing a dialogue with the Russian delegation. In [Resolution 1990 \(2014\)](#) on "Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation", the Monitoring Committee was invited to consider setting up an *ad hoc* sub-committee to follow the developments related to the conflict. When introducing this proposal to both the committee and the Assembly, I, as the rapporteur and Chair of the Monitoring Committee, made it clear that the intended purpose of this *ad hoc* sub-committee was to bring together the committee's co-rapporteurs for Russia, Ukraine, Armenia, Azerbaijan, Georgia and Republic of Moldova, with representatives of the Russian delegation, in order to discuss Russia's neighbourhood policy with regard to these countries, as well as the conflicts involving these countries in which the Russian Federation is either a direct party and/or acts as mediator/peace-keeper. This proposal was based on my conviction that a new challenge to the credentials of the Russian delegation was to be expected on the grounds that Russia's actions towards Ukraine and its neighbourhood policy to other former Soviet republics would continue to violate its obligations and accession commitments to this Organisation.

61. Therefore, following my proposal, the committee decided on 26 June 2014, to establish an *ad hoc* Sub-Committee on Russia's Neighbourhood Policy with regard to other Council of Europe member States, consisting of the Chairpersons of the political groups of the Assembly and the rapporteurs of the Monitoring Committee for Armenia, Azerbaijan, Georgia, the Republic of Moldova, Ukraine and Russia, as well as the Chair of the Monitoring Committee and two members of the Russian delegation to the Assembly.

62. The *ad hoc* sub-committee met on 22 September 2014 in Vienna, on 2 December 2014 in Berlin and on 20 January 2015 in Paris. I would like to express my gratitude to the German Bundestag and Austrian Parliament for hosting these meetings in their parliament and assisting it in this important work. In a positive development, both Mr Slutsky and Mr Pushkov participated in all the meetings of the sub-committee and actively contributed to the discussions on a far from easy subject matter. At its third and last meeting in Paris on 20 January 2015, the sub-committee discussed a number of recommendations on Russia's policy towards its neighbours that were included in the previous section.

63. In the context of the challenge of the credentials of the Russian delegation, it is important to stress the need to maintain dialogue with the Russian authorities and the Russian delegation. Russia is undoubtedly part of the problem with regard to the developments in Ukraine, and therefore, any resolution of the conflict in eastern Ukraine will depend on its participation. The Council of Europe and its Assembly should play an active role in the solution of the conflict in Ukraine, and for that it would need to maintain a constructive dialogue with the Russian delegation. However, it is equally important to stress that in order to maintain a dialogue between two actors, the participation – in good faith – of both actors is necessary. It is therefore important that the Russian Parliament and its delegation express their unequivocal willingness to enter into a dialogue, without preconditions, with the Assembly on Russia's compliance with the obligations and honouring of commitments to the Council of Europe, including with regard to its policy towards its neighbouring States. It should be stressed that the acceptance of such a dialogue is a basic tenet of membership of the Parliamentary Assembly incumbent on all delegations.

64. It should be noted that the Russian authorities considered the current relations between the Russian parliament and the Assembly as primarily an issue between those two entities, which does not affect Russia's co-operation with and participation in other bodies and institutions of the Council of Europe. Russia has continued to play an active role in the work of the Committee of Ministers and has developed a constructive and fruitful relationship with the Council of Europe Office in Moscow on the implementation of the co-operation programmes of the Council of Europe.

## 6. Sanctions by the Assembly

65. In line with the Rule 10 of the Assembly's Rules of Procedure, a report submitted to the Assembly on the challenge of the credentials of a delegation under Rules 7, 8 or 9 shall propose one of the following three options: a) to ratify or confirm the credentials; b) not to ratify or confirm the credentials; c) to ratify or confirm the credentials together with depriving or suspending the exercise of some of the rights of participation or representation of members of the delegation concerned in the activity of the Assembly and its bodies.

66. On 11 April 2014, the Bureau of the Assembly invited the Committee on Rules of Procedure, Immunities and Institutional Affairs to "elaborate a list of rights of participation or representation that may be deprived or suspended in the context of a challenge or reconsideration of credentials ...". On 30 September 2014, the committee approved an opinion for the Bureau<sup>46</sup> on this subject, prepared by Ms Nataša Vučković (Serbia, SOC). This opinion was approved by the Bureau of the Assembly at its meeting on 30 September 2014.

67. In her opinion Ms Vučković stressed that it would be impossible to give an exhaustive list of the rights of participation<sup>47</sup> or representation<sup>48</sup> that could be suspended or deprived, as this would in practice only be limited by the inventiveness and creativity of the members.<sup>49</sup> However, her explanatory memorandum also stated that any sanctions applied should be based on the principles of consistency and legal certainty of sanctions as well as the principle of proportionality to the seriousness of the infringement in question.

68. The principles of legal certainty and proportionality are therefore important criteria when discussing and deciding on possible sanctions against the Russian parliamentary delegation. Legal certainty in this context implies that similar violations should lead to similar sanctions if repeated, and that similar actions by other delegations should lead to sanctions of similar gravity. Proportionality implies that when deciding on applying sanctions, these sanctions – or the absence thereof – cannot be so severe, or so light, that it would make it impossible on future occasions for the Assembly to apply sanctions for more serious, or less severe violations of a given country's membership obligations and accession commitments.

## 7. Conclusions

69. From the above, it is clear that with regard to Crimea, as well as the developments in eastern Ukraine, Russia is violating international law, the Statute of the Council of Europe and its accession commitments to this Organisation. This cannot be left unaddressed by the Assembly.

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46. AS/Pro (2014) 10 final.

47. Inter alia, the right to vote, to speak, to table amendments or motions, to be appointed as President or Vice President of the Assembly or one of its committees, to be a rapporteur, to be a member of a committee etc.

48. Inter alia, representation on the Bureau, Presidential Committee, Standing Committee or joint committee or representing the Assembly on external events and other bodies, etc.

49. AS/Pro (2014) 10 final, paragraph 12.

70. However, while Russia is undoubtedly part – and in many respects even the cause – of the developments in eastern Ukraine and Crimea, it is clear that no resolution will be found to the conflict in eastern Ukraine without the full participation and commitment of the Russian Federation. The Assembly therefore needs to maintain a constructive dialogue with the Russian delegation on this issue as well as the honouring of its obligations and commitments to the Council of Europe. That is now more necessary than ever. While this dialogue was originally rejected by the State Duma, there have since been clear signals that the Duma is willing to engage in such a constructive dialogue with the Assembly.

71. I therefore propose that, in order to foster such a dialogue, the Assembly ratify the credentials of the Russian delegation. As I stated in [Resolution 1990 \(2014\)](#), only if the Russian delegation participates in the work of the Assembly, will the Assembly be able to keep the Russian delegation accountable on the basis of the Council of Europe's principles and values. At the same time, the Assembly cannot but maintain a number of sanctions to express its condemnation of Russia's continuing grave violations of the Council of Europe Statute and its accession commitments, but without impeding the necessary dialogue. I therefore propose that the Assembly suspend the following rights of the Russian delegation for the duration of the 2015 session: the right to be appointed rapporteur; the right to be member of an ad hoc committee on observation of elections as well as the right to represent the Assembly in Council of Europe bodies, external institutions and organisations, both instructionally and on an occasional basis.

72. It is evident that the Assembly expects its clear emphasis on dialogue to be reciprocal and to lead to concrete results. It cannot accept that its offer for dialogue be refused or that Russia continue to ignore its basic obligations and membership commitments to the Council of Europe. Therefore, in addition to the sanctions outlined above, the Assembly should consider the possibility of suspending the voting rights and right to be represented in the Bureau of the Assembly, the Presidential Committee and the Standing Committee of the Russian delegation to the Assembly at the opening of its June 2015 part-session, if Russia has not made marked and measurable progress towards improving the human rights situation in Crimea, withdrawn its military forces from Ukraine and stopped supplying arms to the rebels; made marked and measurable progress with regard to fulfilling its membership obligations towards neighbouring countries as outlined in paragraphs 53 to 55 or fails to give its full co-operation to the initiatives of the Assembly to support the implementation of the Minsk protocols.

## Appendix 1

### **Protocol on the results of consultations of the Trilateral Contact Group' in relation to mutual steps directed to implementation of the Peace Roadmap of Ukrainian President P. Poroshenko and initiatives of Russian President V. Putin**

The Trilateral Contact Group consisting of representatives of Ukraine, Russian federation and Organization for Security and Cooperation in Europe, having considered and discussed proposals advanced by participants of consultations in Minsk of September 1, achieved understanding in need to take the following steps:

1. Provide immediate bilateral ceasefire
2. Provide OSCE monitoring and verification of the ceasefire regime observance by the conflict sides.
3. Kiev authorities are to decentralise power, including the adoption of the Ukrainian law on temporary order of local self-government in separate districts of the Donetsk and Lugansk regions.
4. OSCE officials are to ensure the permanent monitoring and verification on the Ukrainian-Russian state border with creation of the security zone in border areas of Russia and Ukraine
5. Immediate release of all hostages and illegally held persons
6. Enact a law prohibiting the prosecution and punishment of persons in connection with the events that took place in certain areas of the Donetsk and Lugansk regions of Ukraine
7. Continue an "inclusive nationwide dialogue
8. Take measures for the improvement of the humanitarian situation in Donbas,
9. Ensure early local elections in accordance with the Law of Ukraine "Concerning the temporary status of local self-government in certain areas of the Donetsk and Lugansk regions" (Law on Special Status).
10. Withdraw illegal armed groups, military equipment and militants and mercenaries from Ukraine.
11. Adopt a program for Donbass' economic development and restoration of vital activity of the region
12. Provide personal security guarantees for the participants of the consultations.

#### *Participants of the Trilateral Contact Group:*

Heidi Tagliavini, the Ambassador

Leonid Kuchma, the Second President in Ukraine

Mikhail Zurabov, the Russia's Ambassador to Ukraine

Alexander Zakharchenko

Igor Plotnitsky.

### **Memorandum with respect to the performance of the provisions of the Protocol of the results of consultations of the Trilateral Contact Group with respect to the steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko and the initiatives of the President of Russia, V. Putin**

In accordance with Paragraph 1 of the Protocol of the results of consultations of the Trilateral Contact Group with respect to the joint steps aimed at the implementation of the Peace Plan of the President of Ukraine, P. Poroshenko and the initiatives of the President of Russia, V. Putin ([executed in] the city of Minsk, Republic of Belarus, [on] September 5, 2014) the participants of the Trilateral Contact Group, consisting of the representatives of Ukraine, the Russian Federation and the Organization for Security and Cooperation in Europe ["OSCE"], and the representatives of the certain areas of the Donetsk and the Lugansk regions have reached an understanding with respect to the following measures, aimed at securing the agreement regarding the bilateral cessation of the use of weapons.

1. The cessation of the use of weapons shall be considered to be common [for both parties].
2. The stopping of the units and military formations of the sides at the line of their contact as of September 19, 2014.

3. The prohibition on the use of all types of weapons and the conduct of offensive operations.
4. Within twenty four hours from the moment of the adoption of this Memorandum – the withdrawal of the means of destruction of calibre above 100 mm to the maximum distance of their firing range, and, in particular:
  - 100 mm cannon MT-12—9 km; 120 mm mortars—8 km; 122 mm howitzer D-30 (2S1 Gvozdika)—16 km; 152 mm 2S5 Giatsint-S (2S3 Akatsiya, 2S19 Msta-S, 2A65 Msta-B)—33 km; MLRS 9K51 Grad—21 km; 9K57 Uragan—36 km; 9K58 Smerch—70 km; MLRS Tornado-G—40 km; MLRS Tornado-U—70 km; MLRS Tornado-S—120 km;
  - tactical missile systems—120 km.
5. Under the monitoring of the OSCE, the prohibition on the placement of heavy weaponry and military hardware in the area limited by the settlements of Komsomolskoye, Kumachevo, Novoazovsk, Sakhanka.
6. The prohibition on the placement of new landmine-explosive engineering barriers within the boundaries of the security area. The obligation to remove the previously placed landmine-explosive barriers within the security area.
7. The prohibition, from the moment of the adoption of this Memorandum, of the flights of combat aircraft and foreign unmanned aerial vehicles (“UAV”), with the exception of the UAVs used by the monitoring (observer) mission of the OSCE, along the entire line of contact between the sides in the area of the cessation of the use of weapons, to the width of not less than 30 km.
8. Within twenty-four hours from the moment of the adoption of this Memorandum, the deployment in the area of the cessation of the use of weapons of a monitoring (observer) mission of the OSCE, consisting of groups of observers of the Organization. The above-noted area should be divided into sectors, the number and the boundaries of which shall be agreed upon in the course of preparation for the work of the monitoring (observer) mission of the OSCE.
9. The removal of all foreign armed groups, military hardware, as well as militants and mercenaries from the territory of Ukraine, to be monitored by the OSCE.

*Participants of the Trilateral Contact Group:*

Ambassador Heidi Talyavini (*signed*)

Second President of Ukraine, L.D. Kuchma (*signed*)

Ambassador of the Russian Federation in Ukraine, M.Y. Zurabov (*signed*)

A.V. Zakharchenko (*signed*)

I.V. Plotnitskiy (*signed*)

Minsk, 19 September 2014

## Appendix 2

Unofficial translation from Russian

### DECLARATION BY THE STATE DUMA

*On the anti-Russian resolution adopted by the Parliamentary Assembly of the Council of Europe*

The State Duma of the Federal Assembly of the Russian Federation expresses its categorical rejection of the use of double standards and discrimination with regard to the Russian Federation as evidenced by the adoption by the Parliamentary Assembly of the Council of Europe on April 10, 2014 of [Resolution 1990 \(2014\)](#) "Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation."

Guided by the political forces which consider the developments of recent months in Ukraine in the light of a new Cold War pattern, the PACE imposed sanctions on the delegation of the Federal Assembly of the Russian Federation until the end of the 2014 session. Opting for an approach of ultimatums and bans, suspending the rights of the Russian parliamentarians to vote, to be represented in the PACE governing bodies and to participate its observation missions, the PACE members who supported the introduction of such sanctions have thus deprived themselves and the Assembly of the possibility to participate in the process of finding solutions to the most complex problems related to peace and security that have emerged in the context of the Ukrainian crisis and a threat of civil war in the center of Europe.

Russophobic rhetoric and direct insults towards the Russian Federation and its people that were voiced in the Assembly and were condoned by its leaders make us doubt as to the PACE capability to maintain a European interparliamentary dialogue in compliance with the ideals and principles of the Council of Europe.

During the debate on the situation in Ukraine most PACE members consciously preferred the distortion and denial of evident facts, shutting their eyes to the blatant manifestations of racism and xenophobia on the part of ultranationalist organizations, to the unconstitutional shift in power in Ukraine, to the murders and apparent violations of human rights and freedoms committed by the advocates of the self-proclaimed Kiev authorities, to their refusal to carry out an independent and unbiased investigation of Maidan bloodshed, thus the majority of the Assembly members betrayed the principles of the rule of law and respect for human rights and fundamental freedoms. Namely, these are the principles that the Assembly is designed to protect.

There are sober-minded members of the Assembly who suggested looking into the substance of the developments in Ukraine in an unbiased manner and insisted on not closing the door to a meaningful dialogue with Russia by depriving the delegation of the Federal Assembly of the Russian Federation of most of its rights in the PACE. However, the Assembly chose a different path.

At the same time, Deputies of the State Duma note that Russia was most vigorously criticized by representatives of the states which participated in the aggression against Iraq and the occupation of that country, in the bombing of Serbia and its capital – Belgrade, and which having grossly distorted the provisions of the UN Security Council Resolution conducted a missile and bomb warfare against Libya. During the past years these states have repeatedly and deliberately violated international law; their actions resulted in massive bloodshed as well as in dozens and hundreds of thousands of victims and huge destructions. Therefore, they have no moral right to judge Russia and to adopt sanctions against it.

Deputies of the State Duma declare that in the context of the reprisals and restrictions introduced against the delegation of the Federal Assembly of the Russian Federation its further constructive participation in the PACE activities cannot be possible. The budgetary funding allocated by the Russian Federation to finance the Council of Europe and the PACE as its parliamentary body could be used in a more efficient way within the Russian Federation.

In order to ensure Russia's full-scale work in the PACE it is necessary to fully restore the rights of the delegation of the Federal Assembly of the Russian Federation and to provide for the possibility for the delegation to participate in the Assembly's decision-making process.

Any proposals to "resume dialogue" against the background of the sanctions and discrimination against Russia are not acceptable. The PACE should realize that only a constructive participation of Russia in the activities of the Assembly can ensure that it plays a role as European interparliamentary body to promote the principles of equality, the rule of law and respect for human rights and fundamental freedoms. All other paths will lead to a political impasse.

Chairman

The State Duma

The Federal Assembly of the Russian Federation