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Unlimited access to member States, including “grey zones”, by Council of Europe and United Nations human rights monitoring bodies

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A. Draft Resolution

1. The Parliamentary Assembly notes with concern the speeches addressed by Mr Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, to the 33rd, 35th and 38th sessions of the United Nations Human Rights Council, in which he drew attention to difficulties encountered by his own Office and other United Nations human rights monitoring bodies in obtaining access to the territory of numerous States, including certain Council of Europe member States. It recalls that Council of Europe monitoring bodies have encountered similar problems, often in relation to the same situations or geographical locations.
2. The Assembly reaffirms the legal obligations on Council of Europe member States to co-operate fully and in good faith with those international human rights monitoring mechanisms, including those of the Council of Europe and the United Nations, whose mandates they have accepted, in compliance with the established conditions and procedures of the relevant bodies. It deplores all instances of States' failures to co-operate with international human rights monitoring mechanisms and insists that any member State concerned should engage in full, unconditional co-operation without delay. It fully supports the relevant bodies in their efforts to fulfil their mandates.
3. The Assembly considers that activities of human rights monitoring bodies with respect to territories under the control of de facto authorities, including their contacts with such authorities and visits to the territories in question, do not constitute and should not be presented as recognition of those authorities' legitimacy under international law. It does, however, consider that exercise of de facto authority brings with it a duty to respect the rights of all inhabitants of the territory in question, as those rights would otherwise be respected by the authorities of the State of which the territory is a part; even illegitimate assumption of the powers of the State must be accompanied by assumption of the corresponding responsibilities of the State towards its inhabitants. This includes a duty to co-operate with international human rights monitoring mechanisms. The Assembly also calls on third States which exercise effective control over territories where local de facto authorities operate to exercise their influence so as to enable effective monitoring by international human rights bodies.
4. The Assembly welcomes instances where Council of Europe and United Nations monitoring bodies have obtained access to "grey zones" (territories of States within the mandates of those bodies that are under the control of de facto authorities). It emphasises that such activity requires a constructive attitude on the part of both the central de jure and local de facto authorities: in particular, the former must allow a proper dialogue to develop between the monitoring body and the local de facto authorities, and the latter must accept that monitoring visits take place in full compliance with the mandate of the relevant monitoring body. The Assembly

Amendment 2

Tabled by Ms Tamar CHUGOSHVILI, Ms Eka BESELIA, Ms Nino GOGUADZE, Ms Sofio KATSARAVA, Mr Zviad KVATCHANTIRADZE

In the draft resolution, paragraph 3, last sentence, delete the word "third".

Amendment 3

Tabled by Ms Tamar CHUGOSHVILI, Ms Eka BESELIA, Ms Nino GOGUADZE, Ms Sofio KATSARAVA, Mr Zviad KVATCHANTIRADZE

In the draft resolution, paragraph 4, third sentence, replace the word "Abkhazia" with the words "occupied Abkhazia, Georgia (2009)".

thus especially welcomes the visits by the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Transnistria and Abkhazia and encourages the respective de facto authorities, along with the legitimate authorities of the Republic of Moldova and Georgia respectively, to work towards a resumption of CPT monitoring in those territories. It also encourages the de facto authorities of South Ossetia to co-operate with the CPT. The Assembly welcomes the willingness of those "grey zones" that have co-operated with the Office of the United Nations High Commissioner for Human Rights and other international human rights monitoring mechanisms aimed at better protection of human rights in conflict zones.

5. The Assembly also supports the efforts of other monitoring bodies to examine the situation in territories to which access has been denied, or allowed only on conditions that would be politically unacceptable or incompatible with the body's mandate. It welcomes the efforts of the Council of Europe's Advisory Committee for the Protection of National Minorities to examine the situation in Crimea following its illegal annexation by the Russian Federation, despite being unable to access the Crimean peninsula. It underlines, however, that such activities, whilst still valuable, cannot fully substitute for monitoring conducted in full compliance with the mandate of the relevant body, including fact-finding visits where relevant.
6. The Assembly favours an approach whereby States are presumed to have consented to visits by human rights monitoring bodies both on a regular basis and in circumstances where there is reason to believe that there are serious violations of fundamental human rights and dignity such as threats to life, torture, inhuman or degrading treatment or denial of basic humanitarian needs. Such a presumption could be made practicable by allowing States to rebut it in exceptional circumstances, for instance where denial of access is necessary for reasons relating to national defence, public safety or serious local public disorder. It would, however, be for the State to raise such objections upon being informed of a monitoring body's intention to visit in circumstances that invoke the presumption of consent.

Amendment 4

Tabled by Ms Tamar CHUGOSHVILI, Ms Eka BESELIA, Ms Nino GOGUADZE, Ms Sofio KATSARAVA, Mr Zviad KVATCHANTIRADZE

In the draft resolution, paragraph 4, third sentence, replace the words "de facto authorities" with the words "authorities exercising effective control".

Amendment 5

Tabled by Ms Tamar CHUGOSHVILI, Ms Eka BESELIA, Ms Nino GOGUADZE, Ms Sofio KATSARAVA, Mr Zviad KVATCHANTIRADZE

In the draft resolution, paragraph 4, replace the fourth sentence with the following sentence: "It calls on the Russian Federation, exercising effective control over the occupied Tskhinvali region/South Ossetia, Georgia to cooperate with the CPT and other international monitoring mechanisms."

Amendment 6

Tabled by Ms Tamar CHUGOSHVILI, Ms Eka BESELIA, Ms Nino GOGUADZE, Ms Sofio KATSARAVA, Mr Zviad KVATCHANTIRADZE

In the draft resolution, paragraph 4, delete the last sentence.

Amendment 1

Tabled by Ms Olena SOTNYK, Mr Vladyslav GOLUB, Mr Leonid YEMETS, Mr Serhii KIRAL, Mr Serhii SOBOLEEV

In the draft resolution, paragraph 6, first sentence, delete the words "both on a regular basis and".

7. The Assembly welcomes the established, ongoing co-operation between Council of Europe and United Nations human rights monitoring bodies, with a view to maximising the impact, efficiency and effectiveness of their respective activities, by benefitting from one another's knowledge, experience and expertise. It encourages all efforts to enhance such co-operation in the future.

B. Draft Recommendation

1. The Parliamentary Assembly recalls its Resolution ... (2018) on unlimited access to member States, including "grey zones", by Council of Europe and United Nations human rights monitoring bodies.
2. The Assembly calls on the Committee of Ministers to hold an urgent discussion whenever a Council of Europe human rights monitoring body is denied access, or allowed access only on conditions that are politically unacceptable or incompatible with the body's mandate, to all or part of a member State's territory. Such a discussion should aim at finding rapid, effective solutions to such situations, where appropriate by applying diplomatic pressure on the responsible authorities, including, where applicable, through the State exercising effective control over a territory and its de facto authorities.
3. The Assembly also calls on the Committee of Ministers to consider the introduction within the Council of Europe of a presumption that all member States consent to visits by Council of Europe and United Nations human rights monitoring bodies in circumstances where there is reason to believe that there are serious violations of fundamental human rights and dignity such as threats to life, torture, inhuman or degrading treatment or denial of basic humanitarian needs. Such a presumption could be rebuttable in exceptional circumstances, for instance where denial of access is necessary for reasons relating to national defence, public safety or serious local public disorder. It would, however, be for the State concerned to raise such objections upon being informed of a monitoring body's intention to visit in circumstances that invoke the presumption of consent.
4. The Assembly further calls on the Committee of Ministers to undertake a detailed, systematic review of the state of co-operation between Council of Europe and United Nations human rights monitoring mechanisms, in co-operation with the United Nations, with a view to enhancing co-ordination and maximising synergies. Such a review should include exploration of possibilities for reinforcing the overall human rights monitoring of "grey zones" (States' territories that are under the control of de facto authorities) within Council of Europe member States, including through joint activities of bodies responsible for monitoring comparable human rights issues, whilst respecting the particularities of those bodies' mandates, composition, structures and working methods. The review could also engage with relevant monitoring mechanisms of other international organisations, including the Organization for Security and Co-operation in Europe.

Amendment 7

Tabled by Ms Tamar CHUGOSHVILI, Ms Eka BESELIA, Ms Nino GOGUADZE, Ms Sofio KATSARAVA, Mr Zviad KVATCHANTIRADZE

In the draft recommendation, paragraph 2, last sentence, replace the word "through" with the word "on".