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**Note verbale dated 3 March 2009 from the Permanent Mission of Georgia to
the United Nations Office and other international organizations at Geneva
addressed to the Office of the High Commissioner for Human Rights**

The Permanent Mission of Georgia to the United Nations Office and other international organizations at Geneva presents its compliments to the Human Rights Council's Universal Periodic Review Group's secretariat and has the honour to transmit the attached document and request to disseminate it as an official document of the Human Rights Council at its eleventh session under item 6.

The Permanent Mission of Georgia to the United Nations Office and other international organizations at Geneva avails itself of this opportunity to renew to the Human Rights Council's Universal Periodic Review Group's secretariat the assurances of its highest consideration.

Annex**GEORGIA'S REPLY ON PARAGRAPH 86 OF THE DRAFT REPORT
OF THE WORKING GROUP ON THE UNIVERSAL
PERIODIC REVIEW (A/HRC/WG.6/4/L.5)**

On 4 February 2009 the Human Rights Councils Universal Periodic Review Working Group reviewed the fulfilment of human rights obligations by the Russian Federation.

Minister of Justice of the Russian Federation Mr. Konovalov, who presented the national report of Russia (A/HRC/WG.6/4/RUS/1) stated, that Russia was fully committed to implementing its international obligations in the area of human rights and that key international human rights treaties had supremacy over national legislation of the Russian Federation (paragraph 6).

In the process of review the Georgian representative in accordance of the Rules of Procedures of UPR submitted the following recommendations addressed to the Russian delegation (paragraph 54, A/HRC/WG.6/4/L.5):

1. To immediately de-occupy the territories of Georgia-Abkhazia and Tskhinvali Region/South Ossetia, and until remaining in the territories under question to comply with the obligation incumbent upon the occupying power by the rules of the International humanitarian law;
2. To fully comply with the provisional measures prescribed by the International Court of Justice;
3. To implement in good faith relevant provisions of the resolution 1648 (2009) adopted by the Parliamentary Assembly of the Council of Europe;
4. To halt forced distribution of Russian passports in the territories occupied by and under effective control of the Russian Armed Forces;
5. To put an end to all practices limiting and/or violating the human rights of all ethnic groups, mostly ethnic Georgians, in the territories controlled by the Russian Armed Forces – including, but not limited to, access to education in Georgian language, freedom of movement and rights to freely choose their place of residence.

The Russian side officially responded on these recommendations with the following formulation: “in the view of the Russian Federation, the recommendations contained in the report in paragraph 54 are not relevant as they do not comply with the basis of the review stipulated in HRC resolution 5/1 “Institutional Building of the United Nations Human Rights Council” (paragraph 86, A/HRC/WG.6/4/L.5).

The Georgian side considers this assertion of the Russian side as inadequate, contradicting to the aims of HRC and UPR, having the goal to justify and hide gross and systematic violations by this State.

So far as Russian delegation made reference to the HRC resolution 5/1, further Georgian side set forth the full text as the basis of the review:

1. The basis of the review is:
 - (a) The Charter of the United Nations;
 - (b) The Universal Declaration of Human Rights;
 - (c) Human rights instruments to which a State is a party;
 - (d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council (hereinafter “the Council”).

2. In addition to the above, and given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law.

(a) The Charter of the United Nations

As it is stated in Article 1 of the Charter, the purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace (Charter of the United Nations, Chapter I, Article 1/1);

2. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations peace (Charter of the United Nations, Chapter 1, Article 2/4);

In paragraph 34 of its national report Russia declares, it is a party of Shanghai Convention. In this Convention “Separatism” is defined as any act intended to violate territorial integrity of a state including by annexation of any part of its territory or to disintegrate a state, committed in violent manner as well as planning and preparing and abetting such act.

In the same Convention “Extremism” is defined as an act aimed at seizing or keeping power through use of violence or changing violently the constitutional regime of state, as well as violent encroachment upon public security, including organization, for the above purposes of illegal armed formations and participation in them.

So far as it is unavoidable fact, that Russia is in breach of the United Nations Charter violated all the above mentioned norms, Georgia has the right to raise its recommendations. Majority of those violations are outlined in the report of Human Rights Watch, which particularly states the following:

“Human Rights Watch researches in South Ossetia and Georgia documented serious violations of International humanitarian and human rights law by Russian forces as well as Russian-backed South Ossetian militias during the August 2008 conflict with Georgia. Research indicates that Russian forces use of indiscriminate force during the conflict

killed and injured civilians and left many homeless. Russian cluster munitions attacks killed and injured civilians, putting additional civilians at risk by leaving behind unstable “minefields” of unexploded bomblets.

“Russian forces fired at convoys transporting civilians, killing and wounding them as they attempted to flee the conflict zones. **Russian forces also failed to fulfill their obligations under international humanitarian law** to ensure civilian protection in areas where they exercised effective control. Russian-backed Ossetian militias attacked, abducted and, in some instances, **killed ethnic Georgian civilians and looted and burned Georgian villages. Tens of thousands of people have been displaced from their homes as a result.** Ossetian forces, at the same times with Russian forces, arbitrarily detained over 150 ethnic Georgians, subjecting nearly all of them to **inhuman and degrading treatment and detention conditions. At least four Georgians prisoners of war were tortured, and at least three were executed.**”

HRW urged Russian government to take the following measures:

1. Publicly promote and implement the right of all persons displaced by the conflict, including ethnic Georgians, to return and live in their homes in Tskhinvali region/South Ossetia in safety and dignity, and take measures to ensure that they may return;
2. Ensure that Russian forces provide security to all persons, regardless of ethnicity, living in territories under Russia’s effective control. Specifically, to put an immediate end to South Ossetian proxy regime’s armed attacks and looting against ethnic Georgians in Akhgori district in South Ossetia;
3. Ensure a transparent and effective investigation into all violations of international humanitarian and human rights law by Russian forces and their proxies and hold perpetrators accountable;
4. Publicly undertake not to use, produce or trade in cluster munitions in the future and join the Convention on Cluster munitions;
5. Cooperate fully with the international inquiry commissioned by the European Union, including by providing full, unimpeded access to Tskhinvali region and access to all relevant persons and information for all of the inquiry’s experts and staff;
6. Reconsider the objections to OSCE activities in Georgia and facilitate OSCE monitoring in Tskhinvali region/South Ossetia, Georgia, as well as other parts of Georgia. (*Up in flames, Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia. HRW, January 2009.*)

(b) The Universal Declaration of Human Rights

In its report Russia declared that it is a democratic state based on the rule of law. As it is mentioned in paragraph 6 of the Report, Russia became a party of the Universal Declaration of Human Rights.

Russia in practice does not recognize validity of the following articles of the UDHR:

1. Article 3 which proclaims that everyone has the right to live, liberty and security of person;
2. Article 9 which states that no one shall be subjected to arbitrarily exile;
3. Article 17 (2) which states that no one shall be arbitrarily deprived of his property.

It is irrefutable fact that Russia under the false pretext of “safeguarding” the human rights of the ethnic Abkhazian and Ossetian citizens of Georgia invaded and occupied the Georgian territories, exterminated thousands of the ethnic Georgians and illegally stationed its military bases on the territory of Georgia. Hundreds of thousands of Georgians have been ethnically cleansed from their native land. Their property have been burnt and looted.

Russia fully ignored Article 30 UDHR which states that nothing in this Declaration maybe interpreted as implying for any state ... any right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms set force herein.

This fact is confirmed by Amnesty International (AI):

1. AI stated that during the conflict in Georgia that broke out in August 2008, there were incidents of indiscriminate bombing by Russian forces, including with the use of cluster bombs, in areas where civilians were also present. There have also been reports that, on occasion, Russian forces deliberately targeted civilians during hostilities. AI alleged that the Russian authorities failed to control their proxy regime’s paramilitary groups acting in areas under Russian control. AI further alleged that many of the actions of the proxy regime’s paramilitary groups were ethnically targeted against Georgian civilians in villages under Georgian administrative control prior to the conflict (paragraph 16, A/HRC/WG.6/4/RUS/3).

2. AI alleged that during the conflict in Georgia that broke out in August 2008, the destruction of civilian property by proxy regime’s paramilitary groups is occasionally reported to have taken place in the presence of Russian forces. AI stated that continuing security concerns and the destruction of houses belonging to displaced Georgians will hinder their right to a safe and sustainable return to their property (paragraph 56, A/HRC/WG.6/4/RUS/3).

(c) Human rights instruments to which a State is party

One of the primary basis of the Review is the International Covenant on Civil and Political Rights (ICCPR) as a human right instrument to which the state under review (i.e. Russian Federation) is party too. Article 2 of the Covenant as interpreted by the Human Rights Committee in General Comment 31 determines state’s human rights obligations as far as the state exercises jurisdiction over the territory, even beyond its sovereign one. Respect for human rights within the occupied territories by an occupying power has been widely accepted by the Human Rights Council as well as United Nations Human Rights Treaty Bodies and stand as an example obliging the Russian Federation to apply the rules of ICCPR in extra-territorial treatment of non-nationals.

In addition, the complementary nature of the international humanitarian law stands as a reinforcement of the rule obliging any occupying power to respect the public order and secure safety of the local population.

Russia is a party of International Convention on the Elimination of All Forms of Racial Discrimination and as it declares, actively cooperates with regional human rights institutions and mechanisms, in particular, with the Council of Europe.

As for International Convention on the Elimination of All Forms of Racial Discrimination, CERD noted with concern reports about searches of Georgian businesses, police demands for lists of names of Georgian students, identity checks, destruction of identity papers, detention in inhumane conditions, deportations under a simplified procedure and other repressive measures against the Georgian nationals and ethnic Georgians in 2006 (paragraph 61, A/HRC/WG.6/4/RUS/2).

The International Court of Justice (ICJ), the principal judicial organ of the United Nations, issued its Order on the request for the indication of provisional measures submitted by Georgia to the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation).

In its Order, the Court

“Reminding the Parties of their duty to comply with their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination,

Indicates the following provisional measures:

Both Parties, within South Ossetia and Abkhazia and adjacent areas in Georgia, shall

- (1) Refrain from any act of racial discrimination against persons, groups of persons or institutions;
- (2) Abstain from sponsoring, defending or supporting racial discrimination by any persons or organizations,
- (3) Do all in their power, whenever and wherever possible, to ensure, without distinction as to national or ethnic origin,
 - (i) Security of persons;
 - (ii) The right of persons to freedom of movement and residence within the border of the State;
 - (iii) The protection of the property of displaced persons and of refugees;
- (4) Do all in their power to ensure that public authorities and public institutions under their control or influence do not engage in acts of racial discrimination against persons, groups of persons or institutions;

Both Parties shall facilitate, and refrain from placing any impediment to, humanitarian assistance in support of the rights to which the local population is entitled under the International Convention on the Elimination of All Forms of Racial Discrimination;”

As for Council of Europe, the Parliamentary assembly of this organization states the following:

“The Assembly calls on Russia and the de facto authorities in South Ossetia and Abkhazia to:

25.1. Guarantee the safety and security of all persons under their de facto control, not only in South Ossetia and Abkhazia but also in the occupied territories of the Akhlagori district and Perevi, and in the Kodori Valley;

25.2. Ensure that no further measures are taken which have the effect of forcing persons to leave their homes and homelands, contributing to ethnic cleansing;

25.3. Stop, prevent and protect against onward going lawlessness, including physical assaults, robberies, intimidation, harassment, looting, kidnapping, torching and destruction of property, and prosecute all those involved in such acts;

25.4. Support a new, enhanced, replacement mandate for UNOMIG in Georgia, including in Abkhazia and possibly also in South Ossetia, and allow EUMM to carry out its mandate.” (Resolution 1648 (2009), the Parliamentary Assembly of the Council of Europe)

(d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council

Russia has made no pledges neither commitments when it became member of Human Rights Council, therefore Georgia’s recommendations shall not be considered incongruous with paragraph (d) of the review stipulated in HRC resolution 5/1.

Proceeding from all above-mentioned, the Georgian side considers that its recommendations are corresponded to the basis of UPR and that assertion of the Russian side is groundless. This state in fact implements effective control over the Georgia’s international recognized territory in breach of all norms and principles of the International Law, and in process of the occupation breaches all fundamental norms of Human Rights and Humanitarian Law.
