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Political Affairs Committee

Reconciliation and political dialogue between the countries of the former Yugoslavia²

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Revised Memorandum

¹ This revised memorandum has been made public by decision of the Political Affairs Committee dated 18 November 2010

² The Rapporteur uses the term "the former Yugoslavia" to describe the territory that up until 25 June 1991 was known as the Socialist Federal Republic of Yugoslavia (SFRY).

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1. Introduction

1. It is over fifteen years since the end of the conflicts that ravaged the territory of the former Yugoslavia. The purpose of this report is to consider bilateral relations between the countries that emerged from the former Yugoslavia and to find out what the Council of Europe could offer to the process of reconciliation and political dialogue in the region. It was my view from the outset that we should not be the protagonists and that reconciliation cannot be imposed. On the contrary, it is our role to assist and facilitate initiatives that originate from citizens, governments and NGOs of the states of the former Yugoslavia. It is my intention to underline the positive actions undertaken at a political level to overcome the legacy of the past and foster reconciliation between the neighbouring states.

2. By default, all the states which emerged from the Socialist Federal Republic of Yugoslavia (SFRY) will be discussed, to some degree, in this explanatory memorandum. However, in reality, the main focus of the report will be on relations between Bosnia and Herzegovina, Croatia, Serbia and, to some extent, Montenegro.

3. I do not wish to deal with the question of Kosovo³ in any great detail here. The Assembly has covered this elsewhere and I refer the reader to Mr von Sydow's excellent report on *The situation in Kosovo and the role of the Council of Europe*⁴. The Council of Europe applies a policy of status neutrality towards Kosovo, and in Resolution 1739 (2010), the Assembly emphasised that the focus of the Council of Europe's attention as regards Kosovo should not be on status but on standards. That said, the issue of the status of Kosovo has affected relations between the states of the former Yugoslavia and will be considered in this regard. Also, while this report focuses only on the consequences of the wars between 1991 and 1995, some of the statistics contained in it will be affected by the later conflict in Kosovo.

4. It may be useful to describe the different stages in the preparation of this report. I was appointed Rapporteur for the preparation of this report on 22 June 2009. The Political Affairs Committee was invited by the Serbian delegation to the Parliamentary Assembly of the Council of Europe to hold its committee meeting at the Serbian Parliament on 6-7 September 2010. On 6 September, the Committee held an exchange of views with government ministers and the Speaker of Parliament. In the afternoon, the sub-committee on conflict prevention through dialogue and reconciliation held a hearing on *Peace-building in the countries of the former Yugoslavia*, where I was able to present an introductory memorandum on the subject. We then heard views from several NGOs as well as Mr Dorić, who will be presenting a report to the Assembly on *The obligation of member states of the Council of Europe to co-operate in prosecution of war crimes*, at the January 2011 part-session. I took advantage of this opportunity to carry out a mission in Belgrade on 7 and 8 September 2010, where I met with government ministers, parliamentarians, the UNHCR and a number of NGOs.

5. I subsequently visited Zagreb on 28-29 October 2010, where I met with parliamentarians, government officials, the office of the Attorney General, the Ombudsman and several NGOs. On 22-23 November I will also carry out a fact-finding visit to Bosnia and Herzegovina. I met also with the Croatian and Serbian delegations to the Assembly during the June 2010 part-session and the Slovenian delegation during the October 2010 part-session in Strasbourg. The discussions I had with my colleagues have greatly informed this report.

2 Overcoming the legacy of the war

6. The conflicts that ravaged the territory of the former Yugoslavia, between 1991 and 1995 were the deadliest in Europe since the Second World War. They were characterised by heinous war crimes, including genocide, ethnic cleansing and rape being used as an instrument of warfare. They provoked mass population displacement, within the region and beyond. According to estimates, the wars cost the lives of approximately 140,000 people, a quarter of whom simply disappeared.⁵ Fifteen years since the end of the war, 340,808 persons are internally displaced and there are over 120,000 refugees, unable or unwilling to return to the areas they lived in before the outbreak of war. The identification of missing persons and the discovery of mass graves is still ongoing, but approximately 17,000 people are still unaccounted for.

³ Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁴ Doc. 12281.

⁵ International Committee of the Red Cross (ICRC) 2010 estimates.

7. When my colleagues and I initially tabled the motion for resolution on 22 January 2009, which led to this report, relations between the states of the former Yugoslavia looked weak. Many of the deep wounds caused by the conflicts seemed to have no prospect of healing. Indeed, from the outside, it appeared that, as the states of the former Yugoslavia made progress towards further European Union (EU) integration and entertained greater dialogue with Brussels, their bilateral relations were at a standstill and, in some cases, deteriorating. Ambassadors of the neighbouring countries were being withdrawn or expelled and we were particularly concerned about strong public statements and discourses that were being made by nationalistic politicians which reinforced old divisions.

8. Nevertheless, I was encouraged by what I saw on my visits to the region. I found that, since the Committee embarked on this project, the governments concerned have made many positive steps, which indicate a greater willingness to overcome the legacy of the past. There was an abundance of positive examples of people working together for change: there has been an intensification of relations between Zagreb and Belgrade; Bosnia and Herzegovina and Serbia pledged to overcome their historic differences when issuing the Istanbul Declaration; and states are beginning to agree to have outside bodies arbitrate over border disagreements. The region has come a long way and these positive developments should be acknowledged and supported by the international community.

9. This, however, does not prevent us from looking at the problems that persist in the region. The principal problem among them is the constitutional deadlock, which continues to be an obstacle impeding Bosnia and Herzegovina from moving forwards towards a fully-fledged democracy, and a solution also needs to be found for the refugees and internally displaced persons (IDPs), who remain the most visible reminder of the conflicts.

3. Nationalism, ethnicity and civic states

10. The conflicts in the former Yugoslavia were characterised by inter-ethnic violence and mass population transfers between the new states that emerged from the former Yugoslavia, as people were either forcibly moved or fled to neighbouring states where they felt that they would be better protected.

11. At the end of the conflicts, the solution proffered by the international community was the concept of civic states, whereby citizens and public officials owed their allegiance to the newly formed state institutions rather than to the ethnic group to which they were perceived to belong. In principle, this was a positive basis from which to begin the peace-building process in the region. However, in practice, minorities have often been discriminated against or have been unable to participate in public life in the way that they should, which has hampered reconciliation in the region. This is particularly the case in Bosnia and Herzegovina, where the complex constitutional architecture that it was left with following the 1995 Dayton Peace Agreement, has facilitated voting along ethnic lines. Furthermore, minorities or the "others" that do not belong to the "three constituent peoples" (Bosniaks, Croats and Serbs), are unable to stand in elections for the House of Peoples or the Presidency, which has recently been held to be in violation of the European Convention on Human Rights.⁶

12. Steps have been taken across the region to bring in measures to combat discrimination. All states are party to the Framework Convention for the Protection of National Minorities⁷ and Protocol No. 12 to the European Convention on Human Rights⁸, which, among other things, prohibits discrimination on grounds such as race, colour, language, national or social origin and association with a national minority. Croatia, Montenegro, Serbia and Slovenia have all ratified the European Charter for Regional or Minority Languages⁹. Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia" are signatories but have yet to ratify it.

13. Anti-discrimination laws have been adopted in Bosnia and Herzegovina (2009), Croatia (2008), Serbia (2009) and "the former Yugoslav Republic of Macedonia" (2010), whilst Montenegro is currently in the process of drafting one with the assistance of the Venice Commission. National minority councils have also been established in Bosnia and Herzegovina and Serbia to represent the rights and interests of minorities. The passing of these laws is a positive development as it goes some way towards ensuring that minorities are represented and their voices are heard. This is essential in countries that were, at one time, engulfed in inter-ethnic violence.

⁶ *Sejdic and Finci v Bosnia and Herzegovina*, judgment of 22 December 2009 (Application Numbers 27996/06 and 34836/06).

⁷ ETS No. 157.

⁸ CETS No. 177.

⁹ ETS No. 148.

4. Main issues affecting reconciliation and political dialogue

4.1. Missing persons

14. At the end of the conflicts, there were over 34,000 people reported as missing. The unearthing of mass graves and DNA assisted identifications have shed light on the fate of many of them. Yet over 17,000 people remain unaccounted for and mass graves continue to be discovered.¹⁰ Each missing person has left behind a spouse, mother, father, brother, sister, child or some other loved one, who still does not know the fate of their loved one and who are unable to claim inheritances or sell property while their whereabouts remain unknown. One cannot fail to be moved by the stories of those who are still searching for missing relatives.¹¹

15. The problem is particularly acute in Bosnia and Herzegovina, where 11,426 are listed as missing.¹² The International Committee for the Red Cross (ICRC) has been assisting the Bosnian authorities in building up the capacity of the National Institute for Missing Persons and has published a list of the names of those that remain missing on its website.¹³ At entity level, Republika Srpska is supporting a parallel entity entitled the Republika Srpska Operative Team for Finding Missing Persons. It is positive that in 2009, the fate of 970 missing persons was resolved.

16. In 2009, the Croatian and Serbian governments resumed meetings to exchange information on missing persons in relation to the conflicts in Croatia, from which some 1997 people are still missing. Files on missing persons, whose families now live in Serbia, were passed over to the Serbian government.¹⁴ Meeting in Vukovar on 4 November 2010, the Serbian President Tadic and Croatian President Josipovic spoke in favour of resolving the fate of missing persons during the conflicts of the 1990s and considered that much remained to be done on the reconciliation of the two states. On 10 March 2010, at the presentation of the second edition of the ICRC Book of missing persons on the territory of the Republic of Croatia, Croatian Prime Minister Jadranka Kosor, stressing the appeal „*Nemojmo ih zaboraviti!*“ (Let us not forget them!), delivered a promise on behalf of the Croatian government to make greater efforts to complete the search for the missing persons on the territory of the Republic of Croatia.

4.2. Refugees and long-term displaced persons

17. The wars in the former Yugoslavia were marked by mass population movements. Between 1991 and 1995, over two million people from Bosnia and Herzegovina and Croatia were displaced, both within and beyond the region. Since the end of these conflicts in 1995, many have decided to settle permanently in the places they fled to, whilst others have returned to their homes and communities.

18. Nevertheless, a solution has yet to be found for the approximately quarter of a million refugees and internally displaced persons (IDPs) that remain. The majority are confronted by inadequate housing, poverty and unemployment. Integration into their new communities has not always been facilitated by the authorities. Many across the region continue to live in collective centres in appalling conditions. Fifteen years after the end of the conflicts, the problem is particularly acute in Serbia which continues to host 82,603 refugees, the vast majority of whom had fled from Croatia (61,186). According to the government, there are a further 204,753 IDPs in Serbia as a result of the Kosovo conflict. Bosnia and Herzegovina has yet to resolve the plight of the 113, 465 IDPs in its territory.¹⁵

¹⁰ ICRC estimates 2010.

¹¹ The International Committee of the Red Cross has recently produced a book entitled *Missing Lives* which collates 15 stories of people who are still searching for their families.

¹² ICRC Annual Report 2009.

¹³ ICRC Family Links Website.

¹⁴ ICRC, ICRC Annual report 2009 Regional delegation in Western Balkans, Regional delegation in Western Balkans.

¹⁵ The UNHCR office in Belgrade provided the Rapporteur with these figures and they were estimates as at 30 June 2010

Table 1: Refugees and IDPs as a result of the conflicts in the former Yugoslavia¹⁶

Location	Refugees	IDPs	Total
Bosnia and Herzegovina	7,064	113,465	120,529
Croatia	986	2,199	3,185
Montenegro	16,451	0	16,451
Serbia	82,603	204,753 ¹⁷	287,356
Kosovo	233	19,399	19,632
"the former Yugoslav Republic of Macedonia"	1,564	621	2,185
Totals	108,901	340,447	449,338

19. The UNHCR provides assistance to those who wish to return. Yet there are many obstacles for those who wish to return to their former homes including poor economic prospects, lack of documentation, legal impediments to repossessing their property, not to mention the hostile attitudes of local communities.

- *Bosnia and Herzegovina*

20. At the end of the conflict, the international community provided Bosnia and Herzegovina with assistance to build a total of 300,000 housing units to alleviate the problem of refugees and IDPs under the "Property Implementation Plan".¹⁸ This Plan was largely completed in 2003 and, since then, nearly 200,000 homes, including roughly equal numbers of private and socially owned properties, were returned to their pre-war residents. This facilitated the return of some one million persons, being almost a half of the population displaced by the conflict, to their original homes.¹⁹ Despite this, 113,465 people remain displaced in Bosnia and Herzegovina, 7,500 of whom live in collective centres.

21. There was an issue with refugees from Croatia. At the height of the conflict, there were estimated to be between 40,000 and 45,000 Croatian refugees in Bosnia and Herzegovina. Many decided to return to Croatia and only 6,951 are left in Bosnia and Herzegovina. Voluntary repatriation continues, albeit in small numbers (975 returned in 2006, 466 in 2007, 425 in 2008 and 620 in 2009). The majority of those remaining intend to stay in Bosnia and Herzegovina and the UNHCR has been assisting the most destitute. However, needs far outstrip the resources available.

- *Croatia*

22. Approximately 550,000 people were displaced within Croatia from 1991-1992. At the same time, 400,000 refugees from Bosnia and Herzegovina fled to Croatia. It is estimated that 120,000 of these, who were mainly of Croat origin, went on to acquire Croatian citizenship. In recent times, the Croatian government has taken steps to assist non-Croat refugees to acquire nationality and since March 2009, non-Croat refugees from Bosnia and Herzegovina have been able to access legal status and initiate the naturalisation process under preferential terms, on the condition that they have lived there for over five years. All refugees are entitled to housing assistance and have access to the labour market.

23. The numbers of refugees and IDPs are significantly smaller today than they were in the 1990s. I was told that housing solutions are being found for the 1,017 refugees and 2,199 IDPs that remain.

24. By far the largest problem in Croatia is that of those who wish to return from Serbia. The Croatian authorities have registered over 132,400 returnees belonging to the Serb minority, which, according to UNHCR estimates, amounts to approximately half of those who fled to Serbia before 1995.

25. There were significant delays in the restitution of property for those returning from Serbia who had lived in privately owned accommodation before the war. The delay was found to be in violation of the

¹⁶ This table is based on statistics provided to the Rapporteur by UNHCR (September 2010).

¹⁷ Figure provided by the Serbian government to the UNHCR.

¹⁸ See *PLIP Inter-Agency Framework Document (2000) and "New Strategic Direction" (2002)*.

¹⁹ See *Solving property issues of refugees and displaced persons* Doc.12106 8 January 2010 – Committee on Migration, Refugees and Population, p.16.

European Convention on Human Rights.²⁰ The process of private property restitution, however, has now largely been completed and approximately 20,000 properties have been repossessed, mainly by ethnic Serbs. At the same time, the Croatian government has provided resources for the reconstruction of 146,000 houses or flats.

26. That said, no legal remedies have been offered to the estimated 30,000 Serb families, who had to flee from socially owned apartments and who were stripped of their occupancy/tenancy rights as a result. Some 6,400 families are still awaiting resolution of their claims. On my visit to Zagreb, government officials informed me of a recent law passed in September 2010, which opens the possibility for former occupancy/tenancy rights holders, beneficiaries of the Housing Care Programme, to purchase their allocated flats outside the "areas of special state concern". However, the economic crisis has put a break on all programmes. While returnees no longer consider the security situation of prime concern in Croatia, the social and economic situation in war affected areas remains an issue.²¹

27. According to UNHCR data (September 2010), the 80,000 Croatian refugees still registered in neighbouring countries are a reminder that closing the refugee file remains a humanitarian and political challenge in the region.

- *Serbia*

28. According to the UNHCR, at the end of the conflicts, Serbia hosted some 520,000 refugees, 44% of whom had fled Bosnia and Herzegovina and 56% Croatia. 145,000 are thought to have returned to Bosnia and Herzegovina and Croatia and between 250,000 to 370,000 are thought to have been naturalised by Serbia. There are approximately 82,603 that remain, 72% of whom originated from Croatia. Research conducted by the UNHCR and the Serbian Commissioner for Refugees indicated that some believe that it is important to maintain their refugee status so that they are able to access assistance for property reconstruction in their country of origin, as well as for housing programmes in Serbia. However, it is thought that as little as 5% of those left are considering returning to their country of origin.

29. Refugees are among the most vulnerable people in Serbia. Many are still accommodated in the 42 collective centres throughout Serbia. The unemployment rate is significantly higher among the refugee community than in the general population. On my visit to Belgrade, I heard how extremist nationalistic parties have attempted to capitalise on the plight of refugees.

4.3. Steps towards finding a solution

30. On 31 January 2005, Bosnia and Herzegovina, Croatia, and the erstwhile Serbia and Montenegro came together and signed the so-called "Sarajevo Declaration" in which they agreed to find a solution to the problem of IDPs and refugees by the end of 2006²². "Road maps" were created for each of the state parties but little action was subsequently taken to find a durable solution. An International Conference on "Durable Solutions for Refugees and Displaced Persons" was convened in Belgrade on 25 March 2010, and Ministers from Bosnia and Herzegovina, Croatia, Montenegro and Serbia attended. A follow-up meeting was held on 16 September 2010 in Podgorica where concrete plans to find a durable solution were drafted. An international donor conference will be held in December 2010 to discuss the setting up of a multi-donor fund to assist in the process of return or local integration of refugees and IDPs, the closure of collective centres and the provision of assistance to the neediest.²³

31. Refugees and IDPs represent the most visible reminder of the horrors and grave injustices that characterised the war. I was told by a number of interlocutors that their plight is often seized upon by extremist parties, particularly in Serbia, for their own purposes. Full reconciliation in the region can only be achieved once the numerous issues surrounding displacement in the region have been resolved.

32. I strongly believe it is high time for a solution to be found for the almost 450,000 refugees and IDPs and I encourage the governments of the states concerned to commit their energies to implementing any action plans created as a result of the resurrected Sarajevo Declaration. Furthermore, I urge the international community to provide the financial assistance to turn the plans into concrete action and ensure that these

²⁰ *Kunic v. Croatia*, judgment of 11 January 2007 (Appl. No. 22344/02); *Radanovic v. Croatia*, judgment of 21 December 2006 (Appl. No. 9056/02).

²¹ UNHCR, Briefing note - Refugee protection and humanitarian work in Croatia : an overview of UNHCR's operations in the past 19 years, September 2010.

²² Declaration, Regional Ministerial Conference on Refugee Returns (Sarajevo, January 2005).

²³ The European Union, UNHCR and the OSCE stand together in supporting this goal.

long-suffering victims of the war are finally able to settle. A solution for the refugees and IDPs needs to be found not only for humanitarian reasons, but also to provide stability to the region.

4.4 *Erased people in Slovenia: an issue solved*

33. Almost 26,000 people, mainly nationals of other former Yugoslav republics were removed from Slovenia's permanent residents register in 1992 as a result of a law that was enacted following its secession from the Socialist Federal Republic of Yugoslavia. They either did not request Slovenian citizenship within the time limit or were not granted it following a request.²⁴ Many left and others were deported as a result, but those that stayed were evicted from apartments, unable to work or travel and ended up living in hardship.

34. The Slovenian government attempted to resolve this anomaly in 1999, when it enacted the *Act regulating the legal status of citizens of the Former SFRY living in the Republic of Slovenia*. However, the Act only gave foreign nationals three months within which to register and as a consequence was subsequently annulled by the Constitutional Court in 2003 for violating provisions of the Constitution, following a complaint by the Ombudsman.²⁵ A July 2010 judgment of the European Court of Human Rights found that Slovenia's treatment of the "erased people" amounted to a violation of the ECHR.²⁶ The Court concluded that it was necessary for Slovenia to pass legislation to regulate the situation of the several thousand people that are estimated to be in the category of "erased" and issue them with retroactive permanent residence permits.

35. The Slovenian National Assembly adopted the *Act Amending the Act regulating the Legal Status of Citizens of Former Yugoslavia living in the Republic of Slovenia*, on 8 March 2010, which entered into force on 24 July 2010. The new Act provides for the restoration of the residency status and registration of permanent residence with retroactive effect, under certain conditions, for all citizens of the former Yugoslavia, whose names were removed from the population register in 1992. Permanent residence permits will also be made available to "erased persons" who do not live in Slovenia, if it is established during the procedure that they have been absent for well-founded reasons that do not terminate the actual residence requirement as defined by the Act.²⁷

4.5 *Negotiations over territorial borders*

36. Owing to the complicated history of the former Yugoslavia, there are a number of ongoing territorial negotiations between the various states. Recently, states have agreed to resolve their border disputes. An Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on resolving the border dispute was signed in on 4 November 2009. Both parliaments have ratified the agreement, however the two countries have not yet exchanged the notes on ratification, which are necessary for the entry into force of the agreement. Discussions are still ongoing.

37. Similarly, Croatia and Montenegro have agreed to take a case to the International Court of Justice to resolve their border dispute and are currently cooperating on preparing their submissions.

38. There are further border disputes between Bosnia and Herzegovina and Croatia, Croatia and Serbia and Bosnia and Herzegovina and Serbia, which need to be resolved in order to give certainty and facilitate reconciliation the region.

4.6 *The constitutional impasse in Bosnia and Herzegovina*

39. Bosnia and Herzegovina is at the centre of the question of reconciliation and ethnic divisions are still strong. The general elections held in Bosnia and Herzegovina on 3 October 2010 nevertheless did represent some degree of progress. The climate of the election campaign was peaceful and the polling and vote counting on election day took place in a calm, organised manner. However, the Parliamentary Assembly ad hoc committee I was a member of, concluded that the elections were once again conducted with ethnicity and residence-based limitations to active and passive suffrage rights imposed by the Dayton Accords. As such, the extant legal framework continues to violate Article 14 of the European Convention on Human Rights, and also Article 3 of Protocol No. 1 and Article 1 of Protocol No. 12.

²⁴ *Kuric and Others v Slovenia*, judgment of 13 July 2010 (Appl. No. 26828/06).

²⁵ Decision Number: U-I-246/02-28 of 3 April 2010.

²⁶ *Kuric and Others v Slovenia*, judgment of 13 July 2010 (Appl. No. 26828/06).

²⁷ Report of the Working Group on the Universal Periodic Review: Slovenia, 23 March 2010, UN Document No. A/HRC/14/15/Add.1 and further information provided by the Slovenian delegation to PACE on 2 November 2010.

40. Since Bosnia and Herzegovina joined the Council of Europe in 2002, the Assembly has been repeatedly calling for the implementation of a constitutional reform with a view to improving the functioning of the country's democratic institutions, ensuring compliance with the ECHR and speeding up the necessary reforms to complete the fulfillment of its remaining commitments and obligations.

41. In its Resolution 1701 (2010) on the functioning of democratic institutions in Bosnia and Herzegovina, the Assembly called on the key political stakeholders to engage in meaningful and constructive dialogue about concrete proposals for constitutional amendments, with a view to adopting a comprehensive reform package, removing in particular the constitutional discrimination against the so-called "others" as well as the members of the constituent peoples who do not reside in the entity where their ethnic group is largely represented, before the calling of the October 2010 general elections. This message was reiterated in Resolution 1725 (2010) on the urgent need for constitutional reform in Bosnia and Herzegovina, adopted in April 2010.

42. I very much regret that the required constitutional reform was not in place in time to be applied for the October elections. That said, the Council of Europe has been invited by the authorities of Bosnia and Herzegovina to take part in the meetings of the working group set up to prepare the constitutional reform, having regard to the European Commission for Democracy through Law's (Venice Commission's) expertise on this subject.

43. As stressed by the Committee of Ministers in September 2010, political forces in the country should work constructively towards a consensus to address urgently this very serious situation and allow constitutional reform to be taken forward as rapidly as possible,²⁸ also to avoid the risk that the country slides into a dormant, frozen conflict.

5. Accepting the past while looking at the future

5.1. Identifying individual responsibilities: investigation and prosecution of war crimes

44. Justice and accountability for war crimes committed during the conflicts that occurred on the territory of the former Yugoslavia are an essential precondition for regional reconciliation. The process of bringing to justice those responsible for the most serious crimes was spearheaded by the International Criminal Tribunal for the former Yugoslavia (ICTY), which was established by the UN Security Council in 1993 in order to bring to justice those responsible for serious violations of international humanitarian law. Since its inception, it has indicted 161 individuals and has secured the convictions of over 64 wartime criminals.²⁹ In doing so, it has contributed to creating an indisputable historical record about the crimes committed during the 1990s.

45. At the time that the ICTY was set up, national courts were either unwilling or unable to carry out this process and national authorities' co-operation with the ICTY was not always forthcoming. However, co-operation has improved markedly over the years and the vast majority of indictees have now been transferred into ICTY custody. Notably, the capture and handing over to the ICTY of the wartime leader of Republika Srpska, Radovan Karadžić, by the Serbian authorities in 2008, demonstrates that key actors are trying to overcome the legacy of the past. Only two indictees, Ratko Mladić and Goran Hadžić, remain at large.

46. It is expected that the ICTY will have completed the majority of its trials and appellate work by the end of 2013. The ICTY has never had sole jurisdiction to try those responsible for the crimes committed, but shares it with the national courts of the countries concerned. As the Tribunal prepares to close its doors, it has been assisting the national authorities in building up the capacity of the national courts to deal with prosecutions of crimes committed during the war. In general, I felt that there was willingness on the part of the authorities to persevere with prosecutions at the national level.³⁰

47. These processes are important. The Assembly pointed out in Resolution 1564 (2007) on the *Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia* that 'justice is an indispensable ingredient in the process of reconciliation for the victims, communities and countries concerned and that it is essential to resolutely fight impunity, which is

²⁸ See the reply from the Committee of Ministers adopted at the 1091st meeting of the Ministers' Deputies (16 September 2010) to the PACE Recommendation 1914 (2010).

²⁹ ICTY's website accessed on 5 November 2010.

³⁰ The Rapporteur met with the Serbian War Crimes Prosecutor, Vladimir Vukčević, on 7 September 2010 and with the Attorney General of the Republic of Croatia, Mladen Bajić, on 29 October 2010.

unacceptable'. There have been a number of important steps forward stemming from the process of national prosecutions. For instance, in April 2009, an investigation into the Bukovica case in Montenegro was completed and seven officers were indicted over the deportation of Bosnian civilians in 1992. The Montenegrin Government has agreed to pay an out-of-court settlement to the survivors and victims of these deportations.³¹

48. The process of trying crimes committed during the war in the national courts has also meant that the states concerned have had to co-operate with one another. For example, the so-called "Palić Process" has promoted inter-state dialogue and judicial cooperation in war crimes proceedings by bringing together relevant judicial and state administration actors from Bosnia and Herzegovina, Croatia, Montenegro and Serbia.³²

49. That said, the process has not been without difficulties, which the Assembly has been concerned with for some time.³³ Mr Gardetto's report on *The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*, highlights the difficulties caused by the inadequate protection of witnesses in the region. He points out that the testimonies of witnesses have been indispensable to both the work of the ICTY and that of the national courts. They have made an essential contribution to justice and reconciliation in the region, since their testimonies not only form the basis of court judgments but also reveal to those who live in the region and beyond the truth about the crimes committed. Although there have been many improvements in recent times, due to threats, intimidation and fears for their safety, many witnesses decide not to testify. Without the protection and support that witnesses need to be able to testify, prosecutions cannot be completed and therefore justice and reconciliation cannot be achieved.

50. Mr Dorić, in *The obligation of member states of the Council of Europe to co-operate in prosecution of war crimes*, explains how some prosecutions in the national courts have been hampered as over 100 indictees have emigrated beyond the states of the former Yugoslavia in an attempt to evade justice. Some applications for extradition have been accepted whilst others have not. Host states have a duty to extradite war crimes suspects or investigate them for the crimes committed. Mr Doric argues that there should be not a situation whereby, as the immunity gap closes in the Balkans, it is able to open up in other parts of the globe.

51. I urge members of the Assembly to support the draft Resolutions and Recommendations tabled by Mr Gardetto and Mr Dorić. The states of the former Yugoslavia should be given all the assistance necessary to bring the perpetrators of war crimes committed during the wars to justice.

5.2. *Attempts to identify state responsibilities: applications before the International Court of Justice (ICJ)*

52. There have been attempts to identify state responsibility for crimes committed in applications made to the ICJ. In February 2007, the ICJ pronounced its judgment on the application made by Bosnia and Herzegovina against, what was then, Serbia and Montenegro for breaches of the UN Convention on the Prevention and Punishment of the Crime of Genocide.³⁴ The Court held that genocide had occurred in Srebrenica, but that Serbia was not responsible. It went on to find, however, that Serbia had violated its obligations under the Convention for failing to prevent the acts committed and for not acting to bring the perpetrators to justice.

53. Croatia has also brought an application to the ICJ against Serbia for violations of the Genocide Convention. In January 2010, Serbia presented its written submissions on the case, making a counter-complaint against Croatia for crimes of genocide against Serbia. The case is pending. However, there are ongoing discussions between the Croatian and Serbian governments to see whether the two parties can come to an out-of-court settlement on the issue (see also below).

5.3. *Public discourse concerning the war*

³¹ See European Commission (2009) Montenegro 2009 Progress Report, Com (2009) 533, p.18

³² See introductory memorandum (AS/Jur (2010) 14 – declassified) by Mr Miljenko Dorić (Croatia, ALDE) on *The obligation of member states of the Council of Europe to co-operate in prosecution of war crimes* (Committee on Legal Affairs and Human Rights). See Resolution 1564 (2007) and the report (Doc. 11281) on *Prosecution of offences falling within the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY)* by Tony Lloyd, United Kingdom, SOC. See Doc....(AS/Jur (2010) 26 declassified) by Mr Jean-Charles Gardetto (Monaco, EPP/CD) on *The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*.

³³ See Mr Lloyd's report on *The Prosecution of offences falling within the jurisdiction of the ICTY*, Doc 1128.

³⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007.

54. Although judgments from the ICTY and the ICJ have clarified the historical truth to a certain degree, it is common for politicians to seize on nationalist rhetoric, particularly in election periods, which has the effect of distorting the truth about what happened during the war. As one of my interlocutors pointed out, it is the responsibility of politicians in the region to replace the language of hatred and difference with the language of rapprochement and reconciliation.

55. On the other hand, there have been a number of recent encouraging public statements, which indicate a more conciliatory attitude in the region. In March 2010, the Serbian Parliament passed a resolution condemning the massacre of 8,000 Bosnian Muslims at Srebrenica in 1995 and stating that Serbia should have done more to prevent it. Furthermore, the heads of state from all the states of the former Yugoslavia, including Serbian President Tadic, attended a memorial in Srebrenica in July 2010 to commemorate the massacre.

56. In April 2010, Croatian President Josipovic, made a speech to the two houses of parliament of Bosnia and Herzegovina. In his address, he stressed the need to promote regional cooperation, presented his condolences for the victims of the war and expressed regrets for Croatia's role in the conflict.

57. On 4 November 2010, President Tadic visited Vukovar (Croatia), the most destroyed town in the war, and laid a wreath at Ovcara, a farm where members of paramilitary formations and the Yugoslav People's Army (JNA) killed more than 200 Croat prisoners in 1991. He also visited with his Croatian counterpart, President Josipovic, the settlement of Paulin Dvor, near Osijek, where Serb civilians, mostly women and old people, were killed during the war. On this occasion President Tadic said "*The President of Croatia and I have a duty and obligation to turn this whole process which received its tragic dimension during the 1990s into a process of reconciliation and better understanding. For this to take place, it is necessary to shine the truth on the 1990s, for no one who is guilty to remain unpunished, for no one who is innocent to be unjustly convicted and for every uncertainty about the people for which there is a search to this day to dispel*".

5.4. History teaching about the war

58. Despite these positive signs, during my visits to Serbia and Croatia, several interlocutors acknowledged that the public discourse on the war remains separate with each country having its own truth and interpretation of the conflict. I believe that this can be a potential source of hatred and further conflict. As argued by the philosopher, Raimon Panikkar, lasting peace requires more than nuclear, military, or economic disarmament. Peace can be obtained only by a cultural disarmament, which will require that absolution be abandoned for true reconciliation through ongoing intercultural dialogues.³⁵

59. It is therefore critical in my view to promote and support a public discourse about the war that departs from nationalist rhetoric, in particular in the teaching of the younger generations. A number of NGOs from the region as well as many fellow parliamentarians, in particular my Croatian colleague, Mr Flego, Chairperson of the Committee on Culture, Science and Education, shared my views.

60. Although joint textbooks have been mentioned also by some politicians, the obstacles are numerous and the wounds fresh. I am well aware that war is still recent and a period of time is needed to allow for the development of a common understanding and interpretation of the events. As a matter of fact, the teaching of history must be based on documented research and must reflect the different perspectives of the various national and ethnic groups in the region if lasting results are to be achieved in promoting reconciliation and improving inter-ethnic relations.³⁶

61. In my research, I came across a number of interesting co-operation projects and exchanges between universities and historians that exist in the region, which are worth mentioning. For one, the Centre for Democracy and Reconciliation in Southeast Europe (CDRSEE) set up a "Joint History Project" (JHP) to encourage debate, celebrate diversity and recognise shared suffering and achievements through a participative approach to history teaching, in order for students and teachers to develop the understanding and skills needed for sustainable peace and a democratic future. The JHP aims in the long-term to revise ethnocentric school history teaching by avoiding the production of stereotypes, by identifying attitudes that encourage conflict, by suggesting alternative teaching methods and by promoting the idea of multiple interpretations of one event.

³⁵ Raimon Panikkar, *Cultural disarmament*, Westminster John Knox Press, 1995.

³⁶ See also European Parliament resolution of 24 April 2009 on consolidating stability and prosperity in the Western Balkans (2010/C 184 E/21).

62. I was also pleased to learn that the Council of Europe is organising with the Slovenian authorities, in the framework of the United Nations Alliance of Civilisations, a conference entitled '*Reform of History Teaching Methods and Pedagogy in History Teaching in South Eastern Europe*' in December 2010. Bringing together teachers and teacher trainers for mutual discussion can be acceptable even in very difficult situations, in which it is more appropriate to focus on what unites rather than on what divides and on social and cultural rather than political history.³⁷

63. I believe that the Council of Europe should support the work carried out by local actors to foster a more pluralistic view of the past and present events. It could also organise conferences/round tables with recognised historians from the region around some key dates in history and a book of essays could be compiled as an interesting piece of additional material.

5.5. *The proposal of a truth commission*

64. Truth and reconciliation commissions have proved to be an important component in peace building across the globe in regions that are emerging from conflict. The Assembly recognised in Resolution 1613 (2008) that '*[d]ealing with the past, establishing the truth and promoting reconciliation in war-torn, post-conflict and transitional societies are key preconditions for the achievement of lasting peace and a stable future in which democracy can be built and the rule of law and the respect for human rights ensured.*'

65. I agree with Mr Gross' conclusions, in *The use of truth commissions*,³⁸ that '*international experience shows that truth commissions may be an effective mechanism for addressing past human rights violations, identifying their root causes and promoting necessary reforms which would prevent such violations from being repeated. By allowing the victims of abuses to be heard, truth commissions help reconstitute their sense of civic membership and thus facilitate reconciliation. They may also play a complimentary role to criminal justice but cannot and should not be seen as an alternative.*'

66. There have been several failed attempts to create such a commission in different parts of the Balkans. In March 2001, the authorities in the then Federal Republic of Yugoslavia set up a Truth and Reconciliation Commission in an attempt to come to terms with the legacy of the wars in the Balkans. The Commission was tasked with investigating war crimes committed in Slovenia, Croatia, Bosnia and Herzegovina and Kosovo during the 1990s. Unfortunately, at the time, there was a lack of will on the part of the authorities to deal with the past in a reasonable way. It is widely thought that the Commission failed in its task because it was appointed without due consultation, had very little support from civil society and lacked credibility.

67. Only one commission, the Srebrenica Commission, established by the Republika Srpska, managed to produce any conclusive findings. Its final report, published in 2004, constituted the first public admission on the part of the authorities that its security forces had killed over 7,000 Bosniaks in Srebrenica. Although these findings were crucial, it only represented a part of what went on in the conflicts in the former Yugoslavia.

68. A coalition of about 950 NGOs from Bosnia and Herzegovina, Croatia and Serbia have proposed the creation of a Regional Commission for Establishing the Facts about the War Crimes in the former Yugoslavia (RECOM³⁹). The purpose of the proposed commission would be to collate the facts established by the ICTY and national prosecutions of war crimes. However, this in itself is not enough to create a factual record of everything that happened in the armed conflicts in the former Yugoslavia. RECOM advocates believe that only a war crimes victim-centred body would investigate and disclose the facts about everything that happened in the recent past. They claim that it is necessary to document all crimes in order to honour and acknowledge all victims and to guarantee that, in the future, no further crimes will be committed.

69. Many victims still live in poverty with no hope that their life can get any better. The organisers believe there is very little empathy and solidarity for the victims from other ethnic groups, there is no significant societal dialogue about the past. It is hoped that RECOM could act as a forum where victims would be able to have their voices heard. One of the ideas is that the Commission could help uncover the remaining mass graves and therefore be able to name all victims as a part of the process of reconciliation. The organisers believe that a regional approach is the best strategy for facing the legacy of the past.

³⁷ Guidelines for writing and evaluation of history textbooks for primary and secondary schools in Bosnia and Herzegovina were also published in 2005.

³⁸ Doc 11459

³⁹ The Political Affairs Committee heard from two of RECOM's organisers, Natasa Kandić, Director of the Humanitarian Law Centre in Belgrade and Vesna Terselić, Director of Documenta-Centre for Dealing with the Past in Zagreb, at the *Hearing on peace-building in the countries of the former Yugoslavia*, 6 September 2010, whom I also met in Zagreb on 28 October 2010.

70. However, I must report that some of my interlocutors in the region were cautious. Though they acknowledged the important role of the NGOs during 1990s, they also believed that it is now up to the competent institutions and bodies to deal with the past crimes and atrocities. Furthermore, many see relations in the region improving and might not want to drag up the past and see these good relations deteriorating. In Croatia, in particular, I had the impression that the majority of the institutional actors I met were more prone to turning towards the present/future rather than the past.

71. I was told on a number of occasions that the only way that the Commission could be established would be through international pressure. Members of the European Parliament expressed their support for RECOM at a meeting that the Human Rights Subcommittee held on 16 September 2010. In my view, the Parliamentary Assembly could encourage the establishment of the Commission.

72. That said, the organisers of RECOM have made it clear that the initiative must come from the region and that there must be voluntary acceptance of it, in order for it to achieve its purpose. RECOM is due to launch the statute of the Commission for investigating and disclosing the facts on 5-6 February 2011, in Sarajevo. They then hope to collect one million signatures from citizens across the region in support of establishing the Commission, which they will then present to the governments of the region.

73. The proposals have received support from both the Croatian President Ivo Josipović on 31 August 2010 and the Serbian President Boris Tadić on 1 September 2010. The organisers feel strongly that the establishment of the Commission should be something separate from the process of European integration. It is a process in itself and could spark a change of mentality if it is set up.

74. Rightly, the UN Security Council imposed the ICTY on the countries of the former Yugoslavia in 1993. The rigour with which it has carried out its work means that its judgments and the facts established therein cannot be denied. Nevertheless, it is an external body that sits outside of the region. The advantage of a regional truth and reconciliation commission that receives support from politicians and the general population is that it would bring justice back home and could potentially facilitate a discussion about what went on during the war. The findings of the Commission could be used to create a regional history textbook. Perhaps more importantly, a regional commission with political support, could counteract some of the nationalistic rhetoric that continues to be used by some politicians in the region.

6. The wider context

6.1. The process of EU integration

75. Maintaining the European perspective for the countries of the Western Balkans could potentially be the most important incentive for the success of the process of reconciliation in the former Yugoslavia.

76. The states of the former Yugoslavia are in different situations with regard to the process of EU integration. Slovenia has been a member of the EU since 2004, whilst Croatia and "the former Yugoslav Republic of Macedonia" have been candidate countries for membership since 2004 and 2005 respectively. Bosnia and Herzegovina, Montenegro and Serbia are all potential candidates for membership. On 25 October 2010, the European Council decided to refer Serbia's application for membership of the EU to the European Commission for an opinion. In doing so, it set out precise conditions as regards co-operation by Serbia with the ICTY. The European Union has constantly promised states the potential to join the EU once they are considered to be ready.

77. Currently, Bosnia and Herzegovina's prospects of EU membership are being hampered by the constitutional deadlock and an unclear vision of its political leadership over its EU aspirations. The European Commission has said that it will not consider Bosnia and Herzegovina's application for membership until the Office of the High Representative has been closed.

78. The European Commission has also made it clear that border issues must be resolved before states can join the EU. This has held back Croatia's candidacy but, as discussed above, the situation now looks to be about to be resolved and Croatia's accession talks to join the EU may be completed towards the end of 2011. However, while important progress has been made,⁴⁰ more concrete reforms are needed, in particular

⁴⁰ Since the start of negotiations 34 (out of 35) chapters have been opened for negotiations and 25 chapters have been provisionally closed. See Council of the European Union, Twelfth meeting of the Accession Conference at Deputy level with Croatia, Brussels, 5 November 2010

with regard to chapter 23 (entitled 'Judiciary and Fundamental Rights') of Croatia's accession negotiations on fighting corruption and the full co-operation with the ICTY.

79. In 2008, a visa liberalisation dialogue was opened with a number of countries of the former Yugoslavia, Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Montenegro and Serbia - and roadmaps for visa liberalisation were established. The decisions on visa free access to the Schengen area are based on the progress made by the countries concerned in implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration and the improving of their administrative capacity in border control and security of documents. "The former Yugoslav Republic of Macedonia, Montenegro and Serbia already joined the visa free regime on 19 December 2009 and Bosnia and Herzegovina on 8 November 2010.

80. All of states of the former Yugoslavia are members of the Council of Europe. Bosnia and Herzegovina, Montenegro and Serbia are under the Assembly monitoring procedure, while "the former Yugoslav Republic of Macedonia" is under post-monitoring dialogue. Compliance with the commitments made when joining the Council of Europe is seen by the European Union as fundamental to candidacy.

6.2. Inter-parliamentary dialogue

81. I take the view that inter-parliamentary dialogue should be supported at regional level and I stress the importance of fully involving the national parliaments of the countries of the former Yugoslavia in the process of European integration.

82. In 2008, the European Parliament (EP) and former Yugoslavia parliamentarians shared experiences on EU integration and debated economic, security and justice issues. While I welcome this initiative, I also believe that the nature of the EP inter-parliamentary meetings should be improved in order to provide a functional, regular and effective system for more focused and practice-oriented debates.⁴¹ This could be easily done by ensuring a better co-ordination with the Parliamentary Assembly of the Council of Europe and the national delegations of the former Yugoslavia's national parliaments.

6.3. Regional integration

6.3.1. The Brdo process

83. The conference "Together for the European Union: the Contribution of the Western Balkans to the European Future", which took place on 20 March 2010 in Brdo pri Kranju, jointly organised by Croatia and Slovenia, represented a fresh start of co-operation in the Western Balkans. The intention was to send to Europe a message that:

- the leaders of the Western Balkan countries that emerged from the former Yugoslavia and Albania can reunite around the same table and share the same goals;
- these countries can move beyond disagreements and historical grudges and work together for peace and the future of the region;
- all countries are ready to cooperate on their path towards the EU.

84. The conference was also seen as the initiation of the so-called Brdo Process. All participating countries (Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Slovenia and "the former Yugoslav Republic of Macedonia") agreed that they will "provide each other with mutual support and an exchange of experience gained during the integration processes" and that they will "promote good neighbourly relations, through [their] continuous work on projects of common interest and invest best efforts in addressing open bilateral issues in a European spirit."⁴² Serbia is expected to join the process in the future. The so-called Višegrad Group was taken as a model for cooperation within the Brdo Process, since this type of cooperation implies that none of the countries assumes a leading or predominant role in the region.

6.3.2. Other regional initiatives

85. The European Commission has stated that regional cooperation between the states of the Western Balkans is key to future membership of the EU. There are a number of regional initiatives that the states of

⁴¹ See also European Parliament resolution of 24 April 2009 on consolidating stability and prosperity in the Western Balkans (2010/C 184 E/21).

⁴² Joint declaration "Together for the European Union: Contributions of the Western Balkans to the European future", Brdo pri Kranju, 20 March 2010.

the former Yugoslavia are part of that may help to facilitate reconciliation in the region including: the Central European Free Trade Agreement (CEFTA), the objective of which is to expand trade in the region; the Regional Co-operation Council (RCC) which has the purpose of supporting European and Euro-Atlantic integration; the South East European Cooperation Process, which is tasked with promoting multilateral cooperation, strengthening stability, security and good-neighbourly relations in the region and the Regional School for Public Administration (ReSPA), a EU financed project, which aims to assist the states of Western Balkans, to train public functionaries for European accession.

86. I support these regional initiatives and I believe that they play a key role in strengthening regional ownership and in serving as key interlocutors for the EU and other international organisations.

6.3.3. *Impact of the situation in Kosovo*

87.. In June 2010, the Assembly debated a comprehensive report on *The situation in Kosovo and the role of the Council of Europe*,⁴³ to which I refer the readers' attention. It is clear that the Kosovo Assembly's unilateral declaration of independence from Serbia in February 2008 adversely affected reconciliation in the region to some degree as Ambassadors were declared *persona non grata* in Belgrade, and Serbia decided to withdraw its Ambassadors from neighbouring states that had recognised Kosovo as an independent state. Full diplomatic relations were subsequently reinstated.

88. It may be noted in this context that the International Court of Justice (ICJ), in its long anticipated Advisory Opinion on the declaration of independence delivered on 22 July 2010, found that the declaration did not violate any applicable provision of international law.⁴⁴ Following the publication of the Advisory Opinion, the Serbian government went on to work collaboratively with the EU to table a Resolution at the UN General Assembly on the issue. The Resolution, adopted on 9 September 2010, encourages negotiation. It "[W]elcomes the readiness of the European Union to facilitate a process of dialogue between the parties" and affirms that "*the process of dialogue in itself would be a factor for peace, security and stability in the region, and that dialogue would be to promote cooperation, achieve progress on the path to the European Union and improve the lives of the people.*"⁴⁵

89. I was pleased to hear, during the course of my conversations with senior government ministers, that Serbia was intent on resolving the impasse over Kosovo through dialogue with the authorities in Pristina, a dialogue which will be led by the EU. The announcement of early elections in Kosovo to be held on 12 December 2010 will inevitably delay the start of such a dialogue, but hopefully not for too long. I also find particularly encouraging the recent statement by Mr Mićunović, Head of the Serbian delegation to PACE, expressing the view that Serbs in Kosovo should not boycott the elections.

6.4. *The reality on the ground*

90. Discussions about reconciliation at a political level can have the effect of ignoring the impact of ordinary people on the process. As the authorities and politicians slowly begin to reconcile their differences with their counterparts in the region, the general public is already one step ahead. This is something that particularly struck me on my visits to the region. One can often get the impression from the outside that people stick to the countries that they live in. It can easily be forgotten how interlinked the countries were before the outbreak of the conflict. I was encouraged to hear about Croatian businesses opening up in Serbia; Croatian artists performing in Belgrade; and Serbs holidaying in Croatia. I was told that it is now common to see Croatian number plates on cars in Serbia; this was something that simply did not exist until a short while ago.

91. However, I also believe that much remains to be done. The violence by some Serbian extremist fans, driven by ultra-nationalist sentiments and inciting racial, national and religious hatred at a recent football match in Italy on 12 October 2010, has provoked anger and dismay in Serbia itself and led to official apologies by the Serbian foreign minister, Vuk Jeremic.

92. A renewed effort by all governments in the region, in co-operation with the international community, remains of critical importance if we are to continue the ongoing process of political as well as cultural disarmament.

⁴³ See Resolution 1739 (2010) and report (Doc. 12281) on *The situation in Kosovo and the role of the Council of Europe* by Mr Björn von Sydow (Sweden, SOC).

⁴⁴ ICJ Judgment *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* 22 July 2010.

⁴⁵ UN General Assembly Resolution 64/298 (A/RES/64/298).

7. Next steps

93. Following my forthcoming visit to Sarajevo on 22-23 November 2010, I intend to submit a draft report, including a preliminary draft resolution, to the Committee at its meeting in December 2010. If adopted, my report will be debated at the 2011 January part-session of the Assembly, in principle alongside those of my colleagues Dorić and Gardetto.