

Published in: *Revue générale de droit international public* (RGDIP), 2025, t. 129, No. 2, pp. 241-278.

The Council of Europe and Armed Conflicts between its Member States

Analysis alongside the cases brought before the European Court of Human Rights

ABSTRACT

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Although the Council of Europe (CoE) is not a security organisation, it certainly has a role to play in relation to armed conflicts between its member states. Throughout its history, the CoE has been confronted with several such conflicts, namely Turkey's military intervention in Cyprus in 1974, the war between Russia and Georgia in 2008, recurrent clashes between Armenia and Azerbaijan over Nagorno-Karabakh from the 1990s to 2023, and Russia's military intervention in Ukraine from 2014 onwards.

These conflicts have resulted in a large number of interstate or related individual applications reaching the European Court of Human Rights (ECtHR). However, these cases pose particular difficulties for the Court.

In light of these challenges, the article asserts that it is misguided to rely solely on the ECtHR to address such conflicts. A more holistic approach, involving the CoE's political organs, would be more appropriate. Nevertheless, unlike the Parliamentary Assembly (PACE), which has initiated steps in this direction and repeatedly sought to expand the CoE's role in conflict prevention and resolution, the Committee of Ministers has largely refrained from political engagement and has abdicated its political responsibility in this area. While the Committee's inaction has certainly been dictated by political considerations, it has relied to some extent on a certain ambiguity regarding the CoE's mandate with regard to armed conflicts between its members. And yet the article demonstrates that it is possible to overcome this ambiguity. The CoE's mandate can legitimately be interpreted as extending not only to the prevention of armed conflicts but also to their settlement, even if member states have failed to operationalise it consistently.

The present abstract is divided into four main sections. The first section briefly addresses the challenges faced by the ECtHR in cases related to armed conflicts between contracting states. The second part establishes the CoE's competence both in preventing and settling such conflicts. The third section illustrates how successive decisions by the Committee of Ministers to abdicate its political role in relation to these armed conflicts have resulted in failure. The fourth part calls for a holistic approach to conflict prevention and resolution within the framework of the CoE. The abstract concludes with some key takeaways.

I. The challenges faced by the ECtHR in cases related to armed conflicts between contracting states

One of the most visible ways in which the CoE has become involved in armed conflicts is through the ECtHR. Interstate and related individual applications arising from armed conflicts between contracting states now account for nearly one-fifth of the Court's caseload. However, the Court's involvement is fraught with difficulties. Cases are extremely complex, often involving thousands of victims, allegations of widespread violations, and politically sensitive questions of jurisdiction. Establishing the facts is particularly challenging, given the absence of on-site investigations since 1998 and the refusal of some states, notably the Russian Federation, to cooperate.

This results in excessive delays: in the *Cyprus v. Turkey* case, for example, the Court issued its merits judgment 27 years after the events, and in *Georgia v. Russia (II)*, 13 years. Even when judgements are delivered, they are often not enforced promptly, leaving reparations unpaid for decades. These difficulties weaken the Court's credibility and frustrate victims. Furthermore, the ECtHR can only address issues within the scope of the European Convention on Human Rights (ECHR), meaning broader aspects of conflicts, such as root causes, remain unaddressed.

Consequently, the article underscores that the judicial solution alone cannot resolve armed conflicts. Reliance on the Court alone risks overburdening it and eventually diminishing its legitimacy. A complementary political response is therefore essential, requiring active engagement from the CoE's political organs. This presupposes unequivocal recognition that the CoE can claim a mandate not only for conflict prevention, as it has already done, but also for conflict resolution, which is more controversial.

II. The CoE's competence both in the prevention and settlement of armed conflicts between its member states

The article begins by framing the central question: **does the CoE have a mandate to intervene in the prevention and settlement of armed conflicts between its member states?** This raises a complex legal issue which the article addresses by proposing a legal framework.

II.1. A Complex Legal Issue

The CoE's founding Statute does not contain an explicit provision conferring on the organisation a mandate to prevent and/or settle armed conflicts, but it does not explicitly exclude it either. This ambiguity has long fuelled debates and uneven practices among the organisation's bodies.

In order to answer the said question, the author applies classical interpretative methods drawn from the 1969 *Vienna Convention on the Law of Treaties*:

- **Literal interpretation:** According to Article 1 (d) of the Statute, “[m]atters relating to national defence do not fall within the scope of the Council of Europe”. This provision requires that all strictly military issues be excluded from the Organisation's mandate. However, the Committee of Ministers long ago agreed that this provision does not prevent PACE - and thus the CoE - from taking an interest in the political aspects of military matters.

Article 1 (b) of the Statute may lead to more hesitant conclusions. This provision authorises the CoE to act through "discussion of questions of common concern, [...] [the conclusion of] agreements and common action in economic, social, cultural, scientific, legal and administrative matters", as well as "the maintenance and further realisation of human rights and fundamental freedoms". While conflicts between member states are indisputably a "question of common concern", it should be noted that the "political" field, which is primarily at issue here, was deliberately omitted from the above list. That being said, the conflicts in question obviously constitute an obstacle to the protection of human rights, which may justify the CoE's concern, albeit from a more limited human rights perspective.

- **Contextual interpretation:** The preamble of the Statute highlights peace as a fundamental purpose of the CoE, stating that “the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation”. Therefore, it is clear that the CoE was created to promote peaceful coexistence between its member states and it must act accordingly. This strongly suggests that preventing conflicts and achieving peaceful settlements fall within the organisation's implicit mandate.
- **Teleological interpretation:** According to Article 1 (a) of the Statute, the ultimate purpose of the CoE is “to achieve a greater unity between its members”. Since armed conflicts directly undermine unity, a teleological reading supports the conclusion that the CoE cannot be indifferent to them.

Thus, it can be argued that the CoE has implied powers in relation to conflicts between its member states. Yet this reasoning may be deemed fragile, as reliance on implied powers is sometimes controversial. To provide greater certainty, the article stresses the need to examine practice, i.e. how the CoE's member states and organs have interpreted and applied the Statute over time.

But things are not simple, since practice is divided and somewhat inconsistent:

- **Member states' positions** diverge widely, with some (e.g. Belgium in 2019) denying any role for the CoE in conflict settlement and others (e.g. Azerbaijan) insisting that conflict resolution is central to its mission. This divergence proves that there is no “common understanding” regarding the interpretation of the CoE’s Statute, as required under the 1969 Vienna Convention (Article 31 § 3 a) and b)).
- **Organs' positions:** Statements explicitly setting out the CoE's precise mandate in the event of armed conflicts are relatively rare, particularly with regard to the Committee of Ministers. However, it is important to emphasise that the research has not identified any instances of any of its organs categorically denying the CoE's competence in this area. Moreover, it is impossible to identify a general practice of the organisation, given that the Parliamentary Assembly’s practice differs significantly from that of the Committee of Ministers. PACE has consistently adopted a proactive stance, pressing for preventive and mediatory roles. In contrast, the Committee of Ministers has generally refrained from intervening, with some member states conveniently invoking the lack of an explicit mandate.

The methodological challenge is therefore to reconcile text, purpose, and practice. Importantly, the article argues that the Committee of Ministers’ passivity does not prove the absence of CoE theoretical competence to address armed conflict-related issues, but rather reflects member states’ political reluctance to do so in practice.

II.2. The legal framework resulting from the analysis

The article first analyses the positions taken by the CoE's main bodies over time. It reveals that the breadth of the organisation’s competence in dealing with conflicts between its member states has been questioned throughout its history. This has resulted in an evolving understanding of the organisation's recognised competence in this area. Over time, the CoE’s mandate has shifted from dispute settlement, as a general competence covering all types of conflicts between member states, to an approach focused on preventing armed conflicts without abandoning interstate armed conflicts settlement.

II.2.1. A general competence: from dispute settlement to the priority prevention of armed conflicts

In its early decades, the CoE explicitly claimed a role in the peaceful settlement of conflicts. The adoption of the *European Convention for the Peaceful Settlement of Disputes* under its auspices in 1957 clearly demonstrates that member states recognised the organisation’s competence in this area. At the time, the Secretary General, the Parliamentary Assembly, and the Committee of Ministers all confirmed that peaceful settlement of conflicts was among the CoE’s most important tasks.

However, this initial general competence was gradually redefined after the Cold War. Since pan-European mechanisms for the peaceful settlement of disputes were then established within the framework of the CSCE/OSCE – an organisation that was also

assigned an enhanced role in conflict prevention and peacekeeping – the CoE repositioned itself. At the 1993 Vienna Summit, the heads of state and government introduced the doctrine of “democratic security”. This concept reflects the “democratic peace” theory, which claims that democracies are less likely to go to war with each other.

Since then, “democratic security” has been used to define the CoE’s role with regard to security in or of Europe. This is where things became complicated, as the concept is generally used without any explanation of its deeper meaning and the precise powers it confers on the CoE with regard to conflicts between its member states. Despite the prevailing vagueness, the mandate of ensuring “democratic security” seems to revolve mainly around armed conflicts, from two perspectives. Firstly, it is a mandate aimed at preserving peace through the promotion and protection of democracy, human rights and the rule of law. The CoE is therefore empowered to strive to prevent any conflict that could threaten peace, which mainly refers to armed conflicts. Secondly, it is a mandate aimed at achieving positive peace and stability. It can be inferred that this empowers the organisation to intervene not only before armed conflicts occur, but also after they have happened. Accordingly, since the 1990s, the CoE has developed activities focusing on both structural conflict prevention and political and institutional rehabilitation after conflicts.

At the 2005 Warsaw Summit, the heads of state and government reaffirmed the organisation’s general competence in preventing armed conflicts, though they left the door open to involvement in conflict resolution.

II.2.2. A specialised competence: contribution to the settlement of interstate armed conflicts

Despite the emphasis on conflict prevention, the CoE can claim a specialised competence regarding the peaceful settlement of interstate armed conflicts between its members.

Two main legal bases support this competence:

- **The European Convention on Human Rights:** The Steering Committee on Human Rights (CDDH) has repeatedly stressed that, while the ECtHR addresses the legal aspects of armed conflicts under the ECHR, the political dimensions must be handled by political authorities, notably the Committee of Ministers. Consequently, in 2016 and again in 2023, the latter undertook to review the political tools at its disposal in relation to interstate conflicts. It undoubtedly did not deny its competence in this area.
- **The Statute of the CoE, and more specifically the monitoring of accession commitments and “democratic security” derived therefrom:** During the 1990s enlargement, states such as Russia, Georgia, Armenia, and Azerbaijan undertook explicit commitments to resolve their “frozen conflicts” peacefully. The Parliamentary Assembly and the Committee of Ministers have established monitoring procedures to ensure that these commitments do not remain empty words. These procedures were endorsed by the first three Summits of the organisation. Member states therefore accepted, implicitly but necessarily, that these bodies should be involved in settling the “frozen conflicts” by monitoring compliance with these commitments. For that matter, the Committee of Ministers has at times linked its monitoring procedure to

conflict settlement, particularly in the case of Nagorno-Karabakh. It is also worth noting that the Committee has connected its monitoring procedure with the CoE's "democratic security" mission. This suggests that the latter could ultimately provide another legal basis for the organisation's competence in the settlement of armed conflicts.

To sum up, the ECHR and the Statute, as interpreted to establish the political monitoring procedures and the "democratic security" mandate, provide sufficient legal bases for the CoE's competence in the settlement of interstate armed conflicts. And yet the organisation's contribution to conflict resolution has been modest at best so far.

III. The Committee of Ministers' repeated abdication of its political responsibility

The article devotes significant attention to the behaviour of the Committee of Ministers. Although it has tools such as mediation, conciliation, and political monitoring at its disposal, the Committee has consistently refrained from engaging meaningfully in the settlement of the armed conflicts between member states. This pattern reflects political calculations rather than legal barriers, as influential member states have preferred to avoid confrontation.

Prior to the 1990s, the Committee rejected PACE's proposals to set up a CoE-based dispute settlement system. Instead, a European system for the peaceful settlement of disputes was established under the auspices of CSCE/OSCE. Furthermore, the Committee of Ministers adopted a passive stance on the Cyprus case, which in 1974 led to the first armed conflict between two CoE member states, Cyprus and Turkey. Despite the Cyprus issue remaining permanently on its agenda, the Committee of Ministers has never reached a meaningful decision. Instead, it was left to the ECtHR to deal with the matter.

Following the enlargement of the 1990s, when states such as Russia, Georgia, Armenia, and Azerbaijan joined with "frozen conflicts", the Committee of Ministers briefly appeared to assume a more active role through its monitoring mechanisms, before quickly giving up.

In the 2008 Georgia-Russia conflict, the Committee failed to place Georgia and Russia under its political monitoring in May 2009, as it refused to put the decision to a vote and consensus was difficult to reach due to Russia's opposition. Instead, the Secretary General was asked to prepare regular reports on the conflict. The scope of these reports was limited, however, as the Russian Federation opposed any CoE bodies having access to the separatist regions of Abkhazia and South Ossetia. Once again, the ECtHR was left to deal with the matter.

In the Ukraine-Russia conflict, the Committee of Ministers managed to condemn Russia's annexation of Crimea in March 2014 by an overwhelming majority. However, Russia quickly requested recourse to consensus, which was then imposed by the Chair of the Committee of Ministers in June 2014, despite strong opposition from several national delegations. As a result, the Committee of Ministers could no longer take a collective position on the situation in Ukraine, or even formally include the subject on the agenda of

its meetings. The matter was left to the ECtHR, as usual. When Russia launched a full-scale military attack on Ukraine in February 2022, the Committee of Ministers' previous apathy forced it to resort to the most powerful – but also the most detrimental – weapon at its disposal: the exclusion of a member state under Article 8 of the Statute.

Regarding the Nagorno-Karabakh conflict, the Committee of Ministers initially established an *ad hoc* monitoring procedure for Armenia and Azerbaijan in 2001, which was entrusted to the GT-SUIVI.AGO. This body apparently made the closure of the monitoring process conditional upon an agreement being reached regarding Nagorno-Karabakh. Initially, the Committee of Ministers itself was able to call for an active search for a peaceful solution, overriding the reservations of the states involved if necessary. However, from April 2009 onwards, Azerbaijan and Armenia expressed reservations about being subject to a monitoring procedure because the Russian Federation escaped an equivalent procedure at the same time. As a result, the GT-SUIVI.AGO was suddenly dissolved in 2010. Attention to the Nagorno-Karabakh conflict subsequently declined, apparently due to Armenia's opposition to the CoE's involvement in the peace process. Eventually, monitoring of Armenia ceased in April 2019, and the Committee of Ministers terminated all its country-monitoring procedures in April 2021. The Committee of Ministers did not even publicly react to Azerbaijan's military offensive in Nagorno-Karabakh in September 2020 or subsequent offensives. Once again, it fell to the ECtHR to deal with the matter.

In contrast, the Parliamentary Assembly has consistently advocated for increased CoE involvement in all these conflicts and has taken steps to achieve peaceful solutions. However, without support from the Committee of Ministers, such proposals have had little impact. As a consequence, the Committee's abdication has left the Court to handle disputes that it cannot resolve alone, while deeply undermining the CoE's credibility as a political actor.

IV. Towards a holistic approach to conflict prevention and resolution

Against this background, the article calls for a strategic shift in the CoE's approach to armed conflicts, from relying solely on judicial solutions to adopting a genuinely holistic system that combines legal, political, and technical tools. This does not mean politicising the ECtHR or weakening the binding nature of its judgements. Rather, it requires the Committee of Ministers to resume its political responsibilities, thus providing the missing counterpart to the Court's legal role. The CoE's architecture already offers a wealth of instruments, ranging from confidence-building measures and mediation to monitoring and sanctions. What is lacking is the political will to make use of them.

To achieve a holistic approach, two essential conditions are highlighted. First, member states must acknowledge that the CoE has a mandate not only for conflict prevention, but also for conflict resolution. Second, the Committee of Ministers must recognise that its strategy of deferring responsibility to the ECtHR – and other international organisations – has failed. Revitalising political monitoring, formalising mediation mechanisms, and adopting graduated sanctions short of expulsion could all strengthen the CoE. Most

importantly, the rigid insistence on consensus must be reconsidered, as it is not required by the Statute. While consensus is vital for implementing peaceful solutions, it should not prevent discussions from being initiated or responses being framed.

Ultimately, the article calls for the CoE to reclaim its vocation as a peace project. Embracing a holistic approach would enable the CoE as a whole to better support the Court, alleviate its caseload, and establish itself as a player in European security governance. Yet political realities remain challenging. Some influential states, especially France, have recently preferred to create a new forum – the European Political Community – rather than empower the CoE. This raises the question of whether member states will seize the opportunity to reinvigorate the CoE's role, or continue to sideline it in Europe's evolving context.

Key Takeaways

- Although not a security organisation, the CoE can claim a mandate to engage not only in conflict prevention but also in conflict resolution. Whether or not it exercises this competence depends on the political will of the member states.
- The Committee of Ministers has consistently abdicated its political role so far, preferring to rely on the ECtHR and other international organisations.
- The Parliamentary Assembly has been more proactive, but its initiatives lack impact without intergovernmental support.
- Reliance solely on the ECtHR is inadequate because judicial mechanisms cannot address the political roots of armed conflicts.
- A holistic approach combining existing legal, political, and technical instruments under the CoE framework is needed.
- Revitalising the CoE requires overcoming consensus paralysis and reasserting its identity as a peace-oriented political community.