

The Council of Europe and Armed Conflicts between its Member States

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

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Abstract in French

Même si le Conseil de l'Europe ne fait pas partie des organisations de sécurité, il a un rôle à jouer à l'égard des conflits armés entre ses Etats membres. Ces conflits se sont immiscés dans le prétoire de la Cour européenne des droits de l'homme, sous l'apparat d'une multitude de requêtes interétatiques et de requêtes individuelles connexes. Ces affaires génèrent des difficultés particulières pour la Cour. Il en résulte notamment un long délai de traitement et d'importants obstacles au stade de l'exécution des arrêts. Il ne semble dès lors pas raisonnable de s'en remettre uniquement à la Cour pour faire face à de tels conflits. Une approche plus holistique, mobilisant les organes politiques du Conseil de l'Europe, paraît plus appropriée. Or, contrairement à l'Assemblée parlementaire qui a multiplié les initiatives en ce sens, le Comité des Ministres a abdiqué sa responsabilité politique en la matière. Si sa passivité a été dictée par des considérations politiques, elle a pu prendre appui sur une certaine ambiguïté au sujet du mandat du Conseil de l'Europe en ce qui concerne les conflits armés entre ses membres. Il est pourtant possible de surmonter cette ambiguïté pour faire émerger une compétence du Conseil de l'Europe s'agissant à la fois de la prévention structurelle des conflits armés et de la recherche de solutions en vue de leur règlement.

Abstract in English

Although the Council of Europe is not a security organisation, it has a role to play in relation to armed conflicts between its member states. These conflicts have reached the European Court of Human Rights in the form of a large number of interstate or related individual applications. These cases pose particular difficulties for the Court, resulting in long processing times and significant obstacles at the stage of enforcement of the Court's judgments. It therefore seems inappropriate to rely solely on the European Court to deal with such conflicts. A more holistic approach, involving the political organs of the Council of Europe, seems more appropriate. Nevertheless, unlike the Parliamentary Assembly, which has stepped up initiatives in this direction, the Committee of Ministers has abdicated its political responsibility in this area. While its passivity has been dictated by political considerations, it has to some extent relied on a certain ambiguity regarding the mandate of the Council of Europe with regard to armed conflicts between its members. And yet, it is possible to overcome this ambiguity and to establish the organisation's competence both in structural prevention and in the search for solutions for the settlement of armed conflicts.

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Warning:

This is not the original version of the article, which was written in French. It was then translated into English using DeepL, proofread by the author, and checked using DeepL Write. Despite these efforts, some nuances may have been lost in the translation. The original French version was written without the assistance of artificial intelligence, so any eventual mistakes are the author's.

Since the military aggression against Ukraine by the Russian Federation in February 2022, and even more so since the emergence of signs of disengagement by the United States from European security, "Europe" has become aware that it must redouble its efforts to ensure its own security. It is understood, as if the question did not arise, that the "Europe" in question is the European Union (hereinafter EU). However, the discussion should be broadened to include another major European organisation, the Council of Europe.

Mentioning the Council of Europe (hereinafter CoE) in connection with security in and around Europe may well surprise², for at least three reasons. Firstly, Article 1(d) of CoE Statute stipulates that "[m]atters relating to national defence do not be within the scope of the Council of Europe". This provision excludes any intervention on its part in military defence matters. Secondly, it seems clear that, apart from the North Atlantic Treaty Organisation (hereinafter NATO) and, to a lesser extent, the European Union, the organisation mandated to deal with European security issues is the Organisation for Security and Cooperation in Europe (hereinafter OSCE). Thirdly, unlike NATO and the OSCE, the geographical scope of the Council of Europe is strictly limited to the European continent. As a result, the United States only holds observer status within the latter organisation, yet it has long been – or perhaps was – considered the guarantor of European security since the end of the Second World War. All of these considerations suggest that the division of tasks between the various regional organisations consists of reserving military security for NATO and global or soft security for the OSCE, with the EU potentially intervening in both areas. The CoE, for its part, "[would] not be designed by nature to manage crises and conflicts"³. It would therefore not have a leading geopolitical role, but would rather be specialised in protecting European values, starting with human rights, mainly through legal instruments.

However, it is not absurd to think of the CoE when it comes to European security. Created after the Second World War, its ultimate goal is to prevent another war. It is therefore a project of peace. This is why the Committee of Ministers, its intergovernmental body, constantly affirms its commitment "to the standards and principles of international law, including those mentioned in the Charter of the United Nations and the Final Act of the CSCE [now OSCE], to the principle of peaceful settlement of disputes, to the independence, sovereignty and territorial integrity of all member states within their internationally recognised borders"⁴.

² In this regard, it is significant to note that the literature on regional security governance organisations ignores the Council of Europe. See, for example, A. M. KACOWICZ, G. PRESS-BARNATHAN, "Regional security governance", in T. BÖRZEL, Th. RISSE (eds.), *The Oxford Handbook of Comparative Regionalism*, Oxford University Press, 2016, Appendix, pp. 315-317.

³ Parliamentary Assembly of the Council of Europe (hereinafter PACE), Doc. 8187, 10 September 1998, General policy: Council of Europe and OSCE, Political Affairs Committee, para. 28.

⁴ CM/Del/Dec(2019)129/2_1, 17 May 2019, A shared responsibility for democratic security in Europe. Ensuring respect for rights and obligations, principles, norms and values, pt. 2.

And yet, the CoE's history is marked by armed conflicts between its member states. There have been four such conflicts to date⁵ : Turkey's military intervention in Cyprus in 1974, the brief conflict between Georgia and the Russian Federation in August 2008, the armed conflicts between Armenia and Azerbaijan in the Nagorno-Karabakh separatist region in 2020, 2022, then 2023⁶, and the ongoing conflict between Ukraine and the Russian Federation, which began with the illegal annexation of Crimea in 2014 and escalated into military aggression since February 2022.

Like other organisations competent in security matters⁷, the CoE has failed to prevent these conflicts, let alone resolve them in a lasting manner⁸. In short, it has failed to fulfil its original ambition of ensuring peace. Therefore, it is not surprising that the question of the CoE's role in managing conflicts within its field of competence, in the broad sense of prevention and resolution, has been discussed several times throughout its history. The most recent discussion occurred following the Russian Federation's invasion of Ukraine in February 2022. Since then, the Parliamentary Assembly (hereinafter PACE) - the consultative body representing the peoples of Europe - has repeatedly called for the CoE to play a stronger role in this area. It has made several proposals which reflect its growing ambition over time.

Initially, PACE emphasised the need to strengthen the CoE's action in the field of conflict prevention. In June 2022, it proposed developing early warning mechanisms and confidence-building measures, as well as improving the organisation's rapid reaction capacity⁹. The Committee of Ministers received this proposal with some interest¹⁰. Then, in October 2023, the Assembly recommended developing a "common democratic security policy aimed at stepping up the Council of Europe's efforts to protect and strengthen international security", which would include the aforementioned mechanisms¹¹. While the Assembly called for the creation of "additional tools" to overcome "the limited effectiveness of current mechanisms"¹²,

⁵ The armed conflicts resulting from the break-up of the former Yugoslavia in the 1990s are not included in this list because the States concerned were not yet members of the Council of Europe at the time. The "frozen conflict" in Transnistria is also not mentioned because it did not degenerate into an (interstate) armed conflict.

⁶ This list also excludes the conflict between these two states between 1991 and 1994 because neither Azerbaijan nor Armenia were members of the Council of Europe at the time.

⁷ See, for example, D. AVERRE, "The Ukraine Conflict: Russia's Challenge to European Security Governance," *Europe-Asia Studies*, 2016, vol. 68, no. 4, spec. pp. 710-715; H. SHELEST, "From Soft Security to Hard Security in the Black Sea Region – Does the OSCE Fit?," *Security and Human Rights*, 2022, no. 32, pp. 106-120; N. GHAZARYAN, "The EU and the Nagorno-Karabakh Conflict: The Forty-Four-Day War and its Aftermath", *European Foreign Affairs Review*, 2023, vol. 28, no. 1, pp. 53-71.

⁸ The term "conflict management" is not used by the Council of Europe. It will be used here in a broad sense, covering all activities aimed at addressing a conflict, before, during or after the "crisis peak". "Conflict management" must be distinguished from "crisis management", a concept favoured by the European Union but covering a partly different scope. On the conceptual ambiguities of "crisis management" in European Union law, see, for example, A. HAMONIC, *Les relations entre l'Union européenne et l'ONU dans le domaine de la gestion des crises*, Bruylant, Brussels, 2018, esp. pp. 61-79.

⁹ PACE, Resolution 2444 (2022), 21 June 2022, Security in Europe in the face of new challenges: what role for the Council of Europe?, paras. 9.3.4 and 9.3.5, and Recommendation 2235 (2022) on the same subject, paras. 4 and 5.5.

¹⁰ PACE, Doc. 15717, 20 February 2023, Security in Europe facing new challenges: what role for the Council of Europe? Response of the Committee of Ministers to PACE Recommendation 2235 (2022), esp. paras. 5 and 7; Reykjavik Declaration – United around our values, Fourth Summit of the Council of Europe, 16-17 May 2023, p. 9.

¹¹ PACE, Resolution 2515 (2023), 12 October 2023, The role of the Council of Europe in conflict prevention, restoring the credibility of international institutions and promoting peace in the world, para. 7, and Recommendation 2259 (2023) on the same subject, para. 4.

¹² Recommendation 2259 (2023), *ibid.*, paras. 1 and 2.

the Committee of Ministers' response was more modest, listing the measures already adopted or in the process of being adopted¹³.

PACE then called on the CoE to play a role not only in conflict prevention but also in conflict resolution. In June 2024, it asked the Committee of Ministers to establish a non-judicial mediation mechanism "to help resolve past conflicts, promote reconciliation and reparation in relation to conflicts between Council of Europe member states, and, in the long term, ensure lasting peace for the future"¹⁴. Finally, in January 2025, the Assembly urged the intergovernmental body to "take the appropriate steps to obtain recognition of the Council of Europe as a regional organisation within the meaning of Article 52, Chapter VIII of the Charter of the United Nations"¹⁵. While the Committee of Ministers has not (yet) responded to the second proposal, it has already issued a firm but reasoned rejection of the first. According to its analysis, "interstate disputes [...] are currently dealt with within the Council of Europe, mainly through political approaches, in particular within the Committee of Ministers and the Parliamentary Assembly, or through the interstate procedure before the European Court of Human Rights under Article 33 of the European Convention on Human Rights"¹⁶ (hereinafter ECHR). In short, the existing mechanisms are said to be sufficient. This argument is perplexing, as it ignores the shortcomings of the tools available to the Council of Europe to deal with armed conflicts between its member states.

In this regard, academic literature has been focused on interstate or individual applications brought before the European Court of Human Rights (hereinafter ECtHR)¹⁷. However, the political tools that could be mobilised parallel to such applications have remained outside the scope of academic analysis. This article aims to fill this gap.

At the end of 2024, the Court was dealing with 12 interstate cases and approximately 10,500 individual applications relating to international armed conflicts¹⁸. These represent around 17% of the total number of pending cases. The Court has given priority to the examination of interstate applications. As a result, the processing of related individual applications is suspended until a decision on the merits has been reached in the relevant interstate case. However, interstate applications relating to armed conflicts between States Parties pose a significant challenge to the Court. They are inherently extremely complex to process, as they involve historical political. They therefore give rise to practical and legal difficulties.

From a practical point of view, examining interstate cases is extremely time-consuming, as it involves covering a very large number of alleged human rights violations and an even greater number of disputed facts. This takes up a significant proportion of the Court's limited

¹³ PACE, Doc. 16171, 13 May 2025, The role of the Council of Europe in conflict prevention, restoring the credibility of international institutions and promoting peace in the world, Reply of the Committee of Ministers to PACE Recommendation 2259 (2023).

¹⁴ PACE, Recommendation 2281 (2024), 26 June 2024, Reparation and reconciliation processes to overcome past conflicts and build a common future of peace: the question of just and equitable reparatory measures, para. 3.

¹⁵ PACE, Recommendation 2288 (2025), 28 January 2025, The need for a new rules-based international order, para. 71. Article 52 of the United Nations Charter deals with regional arrangements or bodies for the settlement of matters affecting the maintenance of international peace and security.

¹⁶ PACE, Doc. 16116, 12 February 2025, Reparation and reconciliation processes to overcome past conflicts and build a common future of peace: the question of just and equitable reparatory measures, Reply of the Committee of Ministers to PACE Recommendation 2281 (2024), para. 3.

¹⁷ See, for example, I. RISINI, *The Inter-State Application under the European Convention on Human Rights. Between Collective Enforcement of Human Rights and International Dispute Settlement*, Brill / Nijhoff, Leiden / Boston, 2018, 278 p.; Ph. LEACH, "On Inter-State Litigation and Armed Conflict Cases in Strasbourg", *The European Convention on Human Rights Law Review*, 2021, vol. 2, no. 1, pp. 27-74; I. RISINI, T. EICKE, "Inter-State Applications under the European Convention on Human Rights – Situating the Instrument in the Current Human Rights Landscape", *International Human Rights Law Review*, 2024, vol. 13, pp. 41-73.

¹⁸ European Court of Human Rights, Annual Report 2024, p. 32.

resources, at a time when it is already under pressure to reduce the substantial backlog of individual applications. This issue is exacerbated by the additional difficulties posed by the numerous cases involving the Russian Federation, which has ceased all cooperation with the Court since ceasing to be a party to the ECHR. As a result, the Court "might not have the capacity to process even a relatively low number of interstate applications"¹⁹.

From a legal point of view, the complexity of the situations involved makes it extremely difficult to establish the facts. This is all the more true given that the European Court of Human Rights has not conducted any *on-site* investigations since 1998, due to a lack of time and resources, but also because of the reluctance of the national authorities concerned²⁰. The Court is therefore forced to rely on testimony and information gathered from the press or reports by non-governmental organisations, the credibility of which is sometimes conveniently questioned by the respondent States²¹. Additionally, the Court often needs to establish the "jurisdiction" of one of the States parties to the ECHR within the meaning of Article 1 of that text, which can prove extremely delicate²².

All these difficulties result in excessively long delays in delivering judgments. For example, in *Cyprus v. Turkey*, concerning Turkey's military intervention in Cyprus in 1974, the Court did not deliver its judgment on the merits until 2001 and its judgment on just satisfaction until 2014²³, i.e. twenty-seven and forty years after the events complained of. Similarly, in *Georgia v. Russia (II)* concerning the armed conflict between the two States in August 2008, the judgment on the merits was delivered in 2021, and the judgment on just satisfaction in 2023²⁴, thirteen and sixteen years after the events, respectively. Such delays might be more acceptable if delivering a judgment offered credible prospects for a lasting resolution of the dispute. However, this is not entirely the case, for at least two reasons.

Firstly, judgments in interstate or related cases often encounter well-known enforcement difficulties with political connotations²⁵. As a result, conflicts often continue beyond the Court's judgments due to differences of opinion regarding the most appropriate enforcement solutions. Furthermore, the slowness of the enforcement process further delays redress for victims' suffering and carries a risk of secondary victimisation of applicants. To cite just one example, the just satisfaction awarded by the Court in 2017 in the *Chiragov and Others v. Armenia* and *Sargsyan v. Azerbaijan* cases, relating to the Nagorno-Karabakh conflict²⁶, has still not been

¹⁹ K. DZEHTSIAROU, V.P. Tzevelekos, "The Aggression Against Ukraine and the Effectiveness of Inter-State Cases in Case of War", *The European Convention on Human Rights Law Review*, 2022, p. 170.

²⁰ DH-SYSC-IV(2021)02, 20 July 2021, Draft activity report 2020-2021, para. 142.

²¹ *Ibid.*, para. 140.

²² See, for example, ECtHR, GC, judgment of 21 January 2021, *Georgia v. Russia (II)* (application no. 38263/08), paras. 77-84; M. MILANOVIC, "Georgia v. Russia No. 2: The European Court's Resurrection of Bankovic in the Contexts of Chaos", *Ejil:Talk!*, 25 January 2021; K. DZEHTSIAROU, "The Judgement of Solomon that went wrong: Georgia v. Russia (II) by the European Court of Human Rights", *Völkerrechtsblog*, 26 January 2021.

²³ ECtHR, judgment of 10 May 2001, *Cyprus v. Turkey* (application no. 25781/94); ECtHR, GC, judgment of 12 May 2014, *Cyprus v. Turkey (just satisfaction)*. However, the first judgments following an individual application were delivered in 1996 and 1998: ECtHR, GC, judgment of 18 December 1996, *Loizidou v. Turkey* (application no. 15318/89); ECtHR, GC, judgment of 28 July 1998, *Loizidou v. Turkey (Article 50)*.

²⁴ ECtHR, GC, judgment of 21 January 2021, *Georgia v. Russia (II)*, *op. cit.*; ECtHR, GC, judgment of 28 April 2023, *Georgia v. Russia (II) (equitable satisfaction)*.

²⁵ For a recent overview, see PACE, Doc. 16134, 19 March 2025, Implementation of judgments of the European Court of Human Rights, Committee on Legal Affairs and Human Rights, paras. 48-52.

²⁶ ECtHR, GC, judgment of 16 June 2015, *Chiragov and Others v. Armenia* (application no. 13216/05) and ECtHR, GC, judgment of 12 December 2017, *Chiragov and Others v. Armenia (equitable satisfaction)*; ECtHR, GC, judgment of 16 June 2015, *Sargsyan v. Azerbaijan* (application no. 40167/06) and ECtHR, GC, judgment of 12 December 2017, *Sargsyan v. Azerbaijan (just satisfaction)*.

paid²⁷, more than thirty years after the events complained of and eight years after the judgment was delivered. Judgments against the Russian Federation raise additional enforcement difficulties due to that State's failure to cooperate²⁸.

Secondly, it must be borne in mind that the Court's jurisdiction is strictly limited by the scope of the ECHR. From a *ratione materiae* perspective, this means that the Court can only address disputes through the narrow lens of the rights guaranteed by the Convention, using only the remedies it considers it can derive from the Convention. From a *ratione temporis* perspective, the Court can only rule on violations that occurred after the ECHR came into force with respect to the parties to the conflict, except in cases of continuing violations. This results in a fragmented perspective, accentuated by the fact that, in principle, the Court can only rule on the legal aspects of conflict situations.

All these considerations demonstrate that the judicial solution has its limits when it comes to resolving disputes between CoE member states²⁹. The Committee of Ministers has acknowledged this, stating that "the inter-state procedure provided for in Article 33 of the Convention [...] does not address the causes of disputes or conflicts, nor does it seek to resolve them or deal with post-conflict situations unrelated to the human rights violations identified in the judgment"³⁰. Therefore, it does not seem reasonable to rely *solely* on the European Court in the presence of such conflicts.

Since the conflicts in question have a political basis, this article advocates a more holistic approach in which the organisation as a whole is involved. More specifically, it argues that the CoE's political bodies, particularly the Committee of Ministers, should attempt to prevent conflicts between member states and participate in the search for peaceful solutions if this fails. Such an approach would be entirely feasible within the CoE's framework. One of its main distinguishing features, and a key strength, is that it has developed numerous mechanisms for monitoring and ensuring compliance with its standards. These include judicial and non-judicial, legal and political mechanisms. This rich architecture would enable legal aspects of conflicts to be addressed by legal mechanisms, including the judicial mechanism established by the ECHR, while political aspects could be dealt with in parallel by political mechanisms.

For the time being, the organisation does not reflect this virtuous complementarity between the various available mechanisms. As a political body, the Committee of Ministers has refrained from playing a significant role in preventing interstate conflicts, let alone finding peaceful solutions to them. While this passivity has undoubtedly been dictated by political considerations, member states have also exploited a certain ambiguity surrounding the CoE's mandate in this area. More precisely, this ambiguity has sometimes been fuelled to conceal a lack of political will to act under the guise of legality. In the absence of political will, the Committee of Ministers has abdicated its political role, shifting responsibility for interstate conflicts to other bodies, starting with the ECtHR³¹, even if this puts the Court in a difficult position and risks its weakening. By broadening the focus, the Committee has also shifted the

²⁷ See Committee of Ministers (hereinafter CM), CM/Del/Dec(2024)1514/H46-3 and CM/Del/Dec(2024)1514/H46-10, 5 December 2024, Monitoring the execution of the judgments of the European Court - *Chiragov and Others v. Armenia* and *Sargsyan v. Azerbaijan*.

²⁸ CM, 19 March 2025, Supervision of the execution of judgments and decisions of the European Court of Human Rights, 18th Annual Report 2024, pp. 6 and 165-172; CM/Inf/DH(2025)3, 19 February 2025, Judgments of the European Court of Human Rights against the Russian Federation: measures required in pending cases.

²⁹ A parallel can be drawn, *mutatis mutandis*, with the structural limitations that restrict the ability of the International Court of Justice (ICJ) to fulfil its role in settling disputes peacefully. See, for example, R. GILADI, Y. SHANY, "The International Court of Justice," in Y. SHANY, *Assessing the Effectiveness of International Courts*, OUP, 2014, pp. 161-188.

³⁰ PACE, Doc. 16116, *op. cit.*, para. 3.

³¹ The parallel previously drawn with the ICJ ends there, as the United Nations and its member states have conferred on the latter only a "marginal [role] in the overall UN system for the maintenance of international peace and security". See R. GILADI, Y. SHANY, "The International Court of Justice", *op. cit.*, pp. 181-182.

burden of its political responsibility onto other international organisations, particularly the OSCE. Over time, this attitude has completely overshadowed the CoE's political vocation, in favour of prioritising a legal approach centred on the belief - or perhaps hope - that the judicial solution is omnipotent. In short, the CoE has placed its faith in the law and recourse to the courts. This is now its greatest strength, but also its greatest weakness in cases with strong political connotations³².

This approach may have made sense in light of the need for complementarity with the OSCE. The latter has focused on a primarily diplomatic approach and has been entrusted with a mandate for conflict prevention and resolution in Europe. This is undoubtedly because the United States, which has long been considered the guarantor of European security, has been involved. However, this rationale is no longer relevant. Firstly, it has proved ineffective in preventing and settling armed conflicts. Secondly, it threatens the effectiveness – and therefore the legitimacy and credibility – of the ECtHR. Finally, the OSCE is now weakened³³. The time has therefore come for the CoE to rethink its strategy and finally assume its political role.

It is of the utmost importance that the meaning of the politicisation of the Council of Europe, as referred to here, is clearly understood. It is crucial to understand that this does not mean reversing the judicialisation of the human rights protection mechanism established by the ECHR, as enshrined in Protocol No. 11³⁴. This development is a valuable achievement that must be preserved. Nevertheless, this progress should not have implied the exclusion of a parallel external role for the Committee of Ministers in cases of human rights violations with a fundamentally political basis. The politicisation of the CoE referred to here is therefore by no means intended to politicise the protection mechanism established by the ECHR, but rather to complement it by effectively using parallel mechanisms based on different political grounds. Nor is it aimed at replacing the legal and judicial protection of human rights with exclusively political action, but rather at combining the two methods, without ever compromising the legally binding nature of ECtHR judgments. In short, the article advocates transitioning from *the* human rights protection *mechanism* established by the ECHR to a *genuine* protection *system* characterised by a comprehensive, complementary approach involving a variety of tools with different rationales³⁵. "In a way, the organisation's entire philosophy and policy is at stake in such an undertaking"³⁶. In a nutshell, a strategic shift is needed to enable the CoE, and in particular the Committee of Ministers, to become involved in managing armed conflicts between its member states.

Two prerequisites are necessary for such a shift to be possible. First, it is vital to recognise unequivocally that the Council of Europe can claim a mandate not only for conflict prevention, but also for conflict resolution (I). Secondly, it is essential that the Committee of Ministers admit that its successive decisions to abdicate its political role have ended in failure (II). This leads to successive analyses of the legal framework and the practice of its implementation. While the approach may seem simple, but its implementation is in fact fraught

³² E. DECAUX, "The future of Inter-State Dispute Settlement Within the Council of Europe", *Leiden Journal of International Law*, 1996, vol. 9, no. 2, pp. 397, 404 and 405.

³³ The Russian Federation has been involved in most of the conflicts that have broken out between CoE member states. However, its participation in the OSCE renders the systematic practice of consensus within that organisation ineffective. Moreover, the United States' participation no longer guarantees security in Europe. See, for example, E. KROPATCHEVA, "Russia and the role of the OSCE in European security: a 'Forum' for dialogue or a 'Battlefield' of interests?", *European Security*, 2012, vol. 21, no. 3, pp. 370-394; J. KOŁODZIEJSKA, "OSCE Operational Capacity in the Regulation of Armed Conflicts in the Countries of the Former Eastern Bloc (1991-2021)", *Polish Political Science Yearbook*, 2023, vol. 52, no. 3, pp. 117-138.

³⁴ This Protocol, which came into force in 1998, notably removed the Committee of Ministers' competence to rule on the merits of applications.

³⁵ P.-H. IMBERT, "Pour un système européen de protection des droits de l'homme", *Mélanges offerts à Louis Edmond Pettiti*, Bruylant, Brussels, 1998, pp. 457 and 460.

³⁶ *Ibid.*, p. 461.

with pitfalls. The legal framework is ambiguous. Clarifying it therefore requires interpretation. However, this interpretation must take practice into account, meaning the two aspects are intertwined. This intertwining is difficult to untangle because practice is partly based on uncertainties surrounding the legal framework, which can obscure the scope of both. In other words, past choices are at least partly the result of the ambiguity that has been conveniently maintained regarding the legal possibilities offered by the CoE Statute. This complexity justifies beginning with some methodological clarifications aimed at setting out the general framework for the analysis.

Methodological preliminaries

The following analysis will be permeated by the underlying question of whether the CoE has a mandate to become involved in preventing and settling conflicts between its member states. However, the answer is not self-evident. The organisation's Statute neither explicitly grants nor explicitly denies its competence in this area. It is difficult to draw any conclusions from this, as the text outlines the CoE's mandate in such vague terms that it has been deemed that the organisation "has no precise mandate"³⁷. The constituent instrument must therefore be interpreted, without the assistance of any authority specifically empowered for that purpose. According to the customary rules of treaty interpretation, as set out in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties, a treaty should be interpreted in good faith, according to the ordinary meaning of its terms, considering the context in which they appear and the object and purpose of the treaty, as well as the subsequent practice in interpreting the treaty. These rules apply, *mutatis mutandis*, to the interpretation of an international organisation's constituent instrument.

The three-pronged method of literal, contextual and teleological interpretation could result in the identification of implied powers of the CoE in relation to conflicts between its members. Implied powers can be derived either from the powers expressly recognised as belonging to an international organisation or from the objectives assigned to it³⁸. In the present case, textual interpretation raises doubts as to whether any implied powers can be inferred from the powers expressly recognised as belonging to the CoE. Admittedly, under Article 1(d) of the Statute, "matters relating to national defence shall not fall within the competence of the Council of Europe". While this provision excludes all strictly military issues from the organisation's mandate³⁹, it would not prevent the CoE from taking an interest in the political aspects of military matters⁴⁰. Article 1 (b) of the Statute leads to more hesitant conclusions. It 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 undoubtedly a "question of common concern", it should be noted that the "political" field, which is primarily at issue here,

³⁷ A. H. ROBERTSON, *The Council of Europe. Its Structure, Functions and Achievements*, Stevens & Sons Limited, London, 2nd ed., 1961, p. 245.

³⁸ J. KLABBERS, *An Introduction to International Organizations Law*, CUP, 4th ed., 2022, pp. 53–64; H. G. SCHERMERS, N. M. BLOKKER, *International Institutional Law*, Brill/Nijhoff, Leiden/Boston, 6th ed., 2018, § 233, p. 195.

³⁹ This is why the Committee of Ministers rejected PACE's proposal to create a European army under the auspices of the CoE. See CM, Resolution (50) 48, 4 November 1950, European Army.

⁴⁰ PACE, Doc. 1943, 21 July 1965, Report on the creation of a regional system for the settlement of disputes between member states of the Council of Europe, Political Committee, para. 40.

is not mentioned in the above list, which is no coincidence⁴¹. 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 perspective that appears more limited. The contextual and teleological methods of interpretation certainly make it easier to identify the organisation's implied powers with regard to conflicts between its members. Under the first method, it is clear that the CoE was created to promote peaceful coexistence between nations and must therefore act accordingly. This is reflected in paragraph 2 of the preamble to the Statute, in which the founding states declared themselves "convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation". The teleological interpretation seems particularly relevant here since the founding act authorises the statutory bodies to address all matters falling within the scope of the CoE's purpose⁴². It therefore envisages implied powers itself. The purpose of the organisation, as defined in Article 1(a) of the Statute, is "to achieve a greater unity between its members". It could be inferred from this that anything that helps to unify Europe falls within its mandate. It is difficult to deny that armed conflicts between member states undermine European unity and thereby jeopardise the achievement of the agreed objective⁴³.

One could easily object that "recourse to implied powers may be controversial"⁴⁴ and that doctrinal attempts to interpret the Statute could produce only fragile results⁴⁵. A more robust approach is therefore to examine practice, i.e. how the Statute has been interpreted within the Council of Europe. This ambition underpins the entire subsequent argument. However, it is important to present the general framework of the analysis at this stage in order to highlight the methodological difficulties encountered and how they were overcome.

To begin with, it should be noted that the practice of the member states, as parties to the Statute, is of no help. Their positions on the matter have always diverged. For example, during the ministerial session in May 2019, Belgium asserted that "the Council of Europe has no role to play in resolving geopolitical conflicts", whereas Azerbaijan contended that "all of [the Council of Europe's] efforts should be devoted to resolving these conflicts"⁴⁶. This divergence proves that there is no "common understanding" regarding the interpretation of the CoE's Statute, as required under Article 31 § 3 (a) and (b) of the 1969 Vienna Convention⁴⁷. Another option would be to consider using the positions of the member states, taken in isolation this time, as a complementary means of interpretation within the meaning of Article 32 of the

⁴¹ In 1950, the Committee of Ministers failed to reach an agreement on PACE's proposal to include the word "political" in the list set out in Article 1 (b) of the Statute. See PACE, Record of debates, vol. III, sittings 13 to 17, 5-15 May 1951, pp. 334-335.

⁴² According to Article 15 (a) of the Statute, "the Committee of Ministers shall consider the action required to further the aim of the Council of Europe [...]". Less obviously, Article 23 (a) of the Statute stipulates that "the Consultative Assembly [now the Parliamentary Assembly] may discuss and make recommendations upon any matter within the aim and scope of the Council of Europe as defined in Chapter I".

⁴³ PACE, Recommendation 79 (1955), 19 April 1955, Draft European Convention on the Peaceful Settlement of Disputes; PACE, Doc. 1943, *op. cit.*, para. 41.

⁴⁴ N. M. BLOKKER, "International Organizations or Institutions, Implied Powers", *Max Planck Encyclopedia of International Law*, 2021, para. 23.

⁴⁵ On the somewhat subjective aspects of the interpretation process, see, for example, C. F. AMERASINGHE, *Principles of the Institutional Law of International Organizations*, CUP, 2005, p. 33.

⁴⁶ CM/PV(2019)129-final, 4 October 2019, Minutes of the Helsinki Ministerial Session, May 2019.

⁴⁷ According to Conclusion 10 § 1 of the Draft conclusions on subsequent agreements and practice in the context of treaty interpretation, adopted by the International Law Commission in 2018, "[a]n agreement under article 31, paragraph 3 (a) and (b), requires a common understanding regarding the interpretation of a treaty which the parties are aware of and accept".

aforementioned Convention⁴⁸. However, the principle of sovereign equality of states precludes giving precedence to some of these contradictory claims over others⁴⁹.

Therefore, it is preferable to rely on a centralised interpretation, as provided by the main organs of the organisation. Here again, however, things are not simple. The organs of an international organisation may interpret its founding text through official statements or incidentally when applying it⁵⁰. These two methods will be examined in greater detail later in the first and second parts of this article, respectively. For now, it is sufficient to highlight the difficulties encountered in each case. Regarding the first means of interpretation, it is worth noting from the outset that explicit statements on the precise mandate of the CoE in the event of an armed conflict 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. Regarding the second means of interpretation, it is impossible to identify a general practice of the organisation, given that PACE's practice differs so greatly from that of the Committee of Ministers.

Most importantly, the few official statements made by the intergovernmental body that are sufficiently explicit do not always coincide with its practice. One might therefore be tempted to disregard one element in favour of the other. However, this is not obvious, since "[t]he interpretation of a treaty consists of a single combined operation", in which none of the various means of interpretation is given priority over the others in principle⁵¹. Instead, these different means should be reconciled, "giving each its proper weight in relation to the others"⁵². In the present case, this leads to the practice of the Committee of Ministers being given less weight in the process of interpreting the Statute. This choice is based, *mutatis mutandis*, on the Draft conclusions on subsequent agreements and practice in the context of treaty interpretation, adopted by the International Law Commission in 2018. According to Conclusion 6 § 1 of that text, "the identification of subsequent practice within the meaning of Article 31 § 3 [of the 1969 Vienna Convention], requires [...] determining whether the parties, through [...] practice, have taken a position on the interpretation of a treaty. Such a position is not established if the parties have merely agreed to the temporary non-application of the treaty or on a practical arrangement (*modus vivendi*)." The following analysis will demonstrate that, through its practice, the Committee of Ministers – and the contracting states, for that matter – did not take a position to the effect that the CoE lacked competence in the prevention or settlement of conflicts. Due to disagreements among the Committee's members, its practice reflects the lowest common denominator. The latter has been to refrain from exercising a competence contested by some states, for reasons of political expediency rather than legal grounds. To put it another way, the Committee of Ministers' practice does not reflect a desire to clarify the meaning of the Statute, i.e. to *interpret it*. Instead, it is driven by a lack of political consensual will to take responsibility in this area, i.e. to *apply* the Statute, without it being possible to conclude that this is the only legally permitted option⁵³.

In view of these considerations, the following discussion will be structured around a distinction, which is essential here, between establishing competence in strictly legal terms and

⁴⁸ See *ibid.*, Conclusion 4 § 3: "A subsequent practice as a supplementary means of interpretation under Article 32 consists of conduct by one or more parties in the application of the treaty, after its conclusion."

⁴⁹ E. DAVID, *Droit des organisations internationales*, Bruylant, Brussels, 2016, p. 131.

⁵⁰ A. PETERS, "L'acte constitutif de l'organisation internationale", in E. LAGRANGE, J.-M. SOREL (eds.), *Droit des organisations internationales*, LGDJ, Paris, 2013, p. 211, para. 403.

⁵¹ International Law Commission, Draft conclusions on subsequent agreements and practice in the context of treaty interpretation, *op. cit.*, Conclusion 2 § 5 and related comments, p. 22, paras. 11-12.

⁵² *Ibid.*, Comments on Conclusion 2 § 5, p. 22, para. 13.

⁵³ This means that the competence we are looking for is indeed an implied power derived from the interpretation of the Statute, rather than a customary power resulting from subsequent practice within the Organisation. On this distinction, see H. G. SCHERMERS, N. M. BLOKKER, *International Institutional Law*, *op. cit.*, § 232, pp. 194-195.

noting that the Committee of Ministers has not used this competence in practice for reasons of political expediency.

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

An analysis of the positions taken by the CoE's bodies reveals that the breadth of its competence with regard to conflicts between its member states has been questioned throughout its history, at varying levels of intensity and from different perspectives depending on the period. This has resulted in an evolving understanding of the organisation's recognised competencies in this area. Originally, the CoE claimed a "general" competence, in the sense that it covered all types of conflicts between its members. However, the breadth of this general competence has evolved from conflict resolution (in general) to a probable priority of preventing armed conflicts (A). This evolution followed the CoE's reformulation of priorities in the 1990s. Since then, it has certainly been able to claim at least residual competence in conflict resolution. This competence is described as "specialised" because it is intended to apply primarily, if not exclusively, to certain types of conflict, namely interstate armed conflicts (B).

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

Historically, the question first arose as to whether the CoE could claim general competence in the settlement of interstate disputes. A clear affirmative answer quickly emerged. Then, changes in the geopolitical context led to this competence being toned down in favour of emphasising a general competence for the structural prevention of armed conflicts.

As early as 1957, a European Convention for the Peaceful Settlement of Disputes was adopted under the auspices of the CoE⁵⁴. It is difficult to imagine that the member states of an international organisation would adopt, under its auspices, a treaty in an area which they consider to be outside its sphere of competence. Therefore, the mere existence of this convention must be accepted as proof of the CoE's general competence in settling disputes between its members. This has been confirmed by the CoE's main bodies. The Secretary General has stated that "the competence of the Council of Europe in the peaceful settlement of conflicts [...] is established by the European Convention" for the peaceful settlement of disputes⁵⁵. In connection with the same convention, the Parliamentary Assembly (then the Consultative Assembly) affirmed that "the peaceful settlement of disputes *should be* one of the most important tasks of the Council of Europe"⁵⁶. The Committee of Ministers amplified this statement, asserting that "the peaceful settlement of disputes *is* one of the most important tasks of the Council of Europe"⁵⁷. Some twenty years later, the Committee of Experts on International Law reiterated that, "although the Statute of the Council of Europe contains no provisions dealing directly with this question, the Committee of Ministers and the Consultative Assembly [...] may endeavour to settle a dispute peacefully"⁵⁸. An implied power was therefore inferred from the Statute.

⁵⁴ STE No. 23. This Convention was adopted on 29 April 1957 and entered into force on 30 April 1958.

⁵⁵ CM(65)145, 28 October 1965, Evolution of relations between the Council of Europe and the United Nations. Note by the Secretary General, p. 1.

⁵⁶ PACE, Recommendation 426 (1965), 27-28 September 1965, Creation of a regional system for the settlement of disputes between Council of Europe member states, para. 2 (not underlined in the original).

⁵⁷ Concl(67)160, Conclusions of the 160th meeting of the Ministers' Deputies, 19-22 April 1967, Reply of the Committee of Ministers to PACE Recommendation 426 (1965), p. 71 (not underlined in the original).

⁵⁸ Committee of Experts on International Law, CJ-DI(89)4add, 15 March 1989, The peaceful settlement of disputes between Council of Europe member states, para. 2.

Nevertheless, the end of the Cold War and the collapse of the Soviet bloc caused profound upheaval to the geopolitical context, particularly in Europe. Pan-European mechanisms for the peaceful settlement of disputes were then established within the framework of the CSCE/OSCE, which was also assigned an enhanced role in conflict prevention and peacekeeping. The CoE therefore sought to carve out a niche for itself. In this new configuration, the first Summit of heads of state and government, held in Vienna in 1993, confirmed the organisation's strategy of enlargement to the Central and Eastern European States "to strengthen peace and stability on the European continent". Consequently, the CoE was assigned the new task of "contributing [...] to democratic security" in Europe⁵⁹.

This is where things became complicated, because the concept of "democratic security" has no precise official definition. It is generally used without any explanation of its deeper meaning, which appears to be a deliberate choice.

Since 1993, the concept has been used to define the CoE's role with regard to security in or of Europe⁶⁰. In this sense, it is generally associated with the goal of ensuring European peace and stability⁶¹. In its intergovernmental use, it is frequently replaced by "democratic stability"⁶² for that matter. In order to achieve this objective, the concept of "democratic security" is based on a broader conception of security than the Westphalian model, which focuses on state security and the military dimension⁶³. It is thus closer to "human security", which focuses on the individual⁶⁴, and "soft security"⁶⁵, which aims to address non-military threats. The CoE's scope of action is therefore very different from that of NATO, which is responsible for military security ("hard" security). On the other hand, it clearly overlaps with that of the OSCE. The CoE's specificity⁶⁶ lies in having created a link with "genuine democracy", which, according to the preambles of the Statute and the ECHR, is the foundation of human rights and the rule of law, and encapsulates the CoE's central mission. The organisation is therefore tasked with establishing a democratic culture, which is seen as a guarantee of long-term security. This connection between security and democracy "is based on the idea that democratic states are less likely to go to war with each other and more resistant to

⁵⁹ CM, Decl(09/10/93), Vienna Declaration, First Summit of the Council of Europe, pp. 1 and 2.

⁶⁰ CM(95)140, 2 November 1995, Democratic security – Progress and problems in implementing the concept, p. 2; CM, Decl(11/10/1997), Final Declaration of Strasbourg, Second Summit of the Council of Europe, p. 2; PACE, Recommendation 2259 (2023), *op. cit.*, para. 3.

⁶¹ See, for example, Vienna Declaration, First Summit, *op. cit.*, pp. 1 and 2; PACE, Doc. 8187, *op. cit.*, para. 28; SG(2015)1, 29 April 2015, Situation of democracy, human rights and the rule of law in Europe - Democratic security, a shared responsibility, Report of the Secretary General, p. 8; Reykjavik Declaration – United in our values, Fourth Summit, *op. cit.*, p. 9; Towards a new Democratic Pact for Europe, Annual Report of the Secretary General, May 2025, p. 46.

⁶² See, for example, CM, Decl(11/10/1997), Strasbourg Action Plan, Second Summit, preamble; CM, Warsaw Declaration, Third Summit of the Council of Europe, 16-17 May 2005, preamble, para. 4 and para. 6; CM, Decl(03/05/2002), Vilnius Declaration on regional cooperation and the consolidation of democratic stability in Greater Europe.

⁶³ Directorate of Policy Planning, Council of Europe Debates on Democratic Security (2015-2017) – Concept paper, 20 May 2015.

⁶⁴ PACE, Doc. 15541, 3 June 2022, Security in Europe facing new challenges: what role for the Council of Europe, Political Affairs and Democracy Committee, para. 19; R. C. JOHANSEN, "Real Security is Democratic Security", *Alternatives: Global, Local, Political*, vol. 16, no. 2, pp. 211 and 236. On the concept of human security, see in particular J. F. RIOUX (ed.), *La sécurité humaine : une nouvelle conception des relations internationales*, L'Harmattan, Paris, 2002, 368 p.; R. KHERAD (ed.), *La sécurité humaine – Théorie(s) et pratique(s). En l'honneur du Doyen Dominique Breillat*, Pedone, Paris, 2010, 264 p.

⁶⁵ PACE, Doc. 14396, 15 September 2017, Call for a Council of Europe summit to reaffirm European unity and defend and promote democratic security in Europe, Political Affairs and Democracy Committee, para. 46, note 12; M. BOND, *The Council of Europe. Structure, history and issues in European politics*, Routledge, 2013, pp. 4 and 6.

⁶⁶ PACE, Resolution 2186 (2017), 11 October 2017, Call for a Council of Europe summit to reaffirm European unity and to defend and promote democratic security in Europe, para. 5.

internal conflicts"⁶⁷, a theory known as "democratic peace"⁶⁸. In short, "democratic security" can be understood as a fusion of the concepts of "human security" and "democratic peace"⁶⁹.

Thus conceived, "democratic security has many dimensions"⁷⁰. While the ECHR plays a "central role" here⁷¹, the concept actually covers all of the CoE's activities, which can be summarised by the triptych "democracy, human rights and the rule of law"⁷². Thus, the European Social Charter is also linked to "democratic security", as "social justice" is "essential" to the latter⁷³. As a result, the CoE's quest for peace encompasses not only "negative peace", which implies the absence of war or violent conflict, but also "positive peace", characterised particularly by social justice and socio-economic development⁷⁴. Incidentally, "prosperity in Europe" is another objective that has recently been added to "democratic security"⁷⁵. Ultimately, the concept of "democratic security" appears to be a rhetorical tool used to transform the CoE's mandate into a security issue, reminiscent of the concept of "securitisation"⁷⁶.

While these clarifications suggest that the CoE has a role to play in the European security architecture, they only provide partial information on the exact scope of that role. In other words, the "democratic security" mandate is ambiguous with regard to the precise competence it confers on the CoE in relation to conflicts that concern it. This can be illustrated by a statement made in 2018 by the Chair of the Committee of Ministers: "The Council of Europe [...] has no direct responsibility for establishing security and preventing armed conflicts. However, the Organisation has worked in this field. It can [...] mobilise its expertise to strengthen democratic security [...] – and thus, in the long term, defuse or prevent an armed conflict"⁷⁷. Despite the prevailing vagueness, which appears deliberate, the "democratic security" mandate seems to revolve mainly around armed conflicts, from two perspectives. Firstly, it is a mandate aimed at preserving peace by promoting and protecting democracy, human rights and the rule of law. The CoE is therefore empowered to strive to prevent any conflict – whether internal or international – that could threaten peace, and this mainly refers to armed conflicts. In this sense, PACE has stated that "the Council of Europe is a project for peace which aims to tackle, in a structural and systematic manner, the root causes of tensions and disputes before they degenerate into conflicts"⁷⁸. Secondly, it is a mandate aimed at positive

⁶⁷ Towards a new Democratic Pact for Europe, Annual Report of the Secretary General, *op. cit.*, p. 46.

⁶⁸ See esp. M. SMALL, D. SINGER, "The war-proneness of democratic regimes, 1816-1965", *Jerusalem Journal of International Relations*, 1976, vol. 1, no. 4, pp. 50-69; M. DOYLE, "Kant, liberal legacies, and foreign affairs", *Philosophy & Public Affairs*, 1983, pp. 205-235; M. DOYLE, "Liberalism and world politics", *American Political Science Review*, 1986, vol. 80, no. 4, pp. 151-169.

⁶⁹ C. KUTZ, "Democratic Security," in C. M. BAILLIET (ed.), *Security: A Multidisciplinary Normative Approach*, Martinus Nijhoff, Leiden/Boston, 2009, p. 236.

⁷⁰ PACE, Doc. 15541, *op. cit.*, para. 11.

⁷¹ Reykjavik Declaration – United in our values, Fourth Summit, *op. cit.*, Annex IV, p. 17.

⁷² PACE, Recommendation 1367 (1998), 22 April 1998, United Nations reform, para. 13; Towards a new democratic pact for Europe, Annual Report of the Secretary General, *op. cit.*, p. 46; CMDel/Dec(2025)134/3, 14 May 2025, Implementation of the Reykjavik Declaration – follow-up decisions, 134th session of the Committee of Ministers, preamble.

⁷³ Reykjavik Declaration – United in our values, Fourth Summit, *op. cit.*, p. 6.

⁷⁴ On the distinction between "negative peace" and "positive peace", see in particular J. GALTUNG, "Violence, peace and peace research", *Journal of Peace Research*, 1969, vol. 6, no. 3, pp. 167-191.

⁷⁵ See, for example, Reykjavik Declaration – United in our values, Fourth Summit, *op. cit.*, p. 9; CMDel/Dec(2025)134/3, *op. cit.*, preamble.

⁷⁶ T. BALZACQ, *Théories de la sécurité. Les approches critiques*, Presses de Science Po, Paris, 2016, p. 193: securitisation is "an essentially linguistic enterprise which, through political rhetoric, transforms a given issue into a security problem".

⁷⁷ CM/AS (2018) 8, 11 October 2018, Communication on the activities of the Committee of Ministers, Address by the Chair of the Committee of Ministers to the Parliamentary Assembly, 10 October 2018.

⁷⁸ PACE, Resolution 2515 (2023), *op. cit.*, para. 4.

peace and stability. It can be inferred that it 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 conflict"⁷⁹.

Once this general competence for the prevention of armed conflicts has been established, the question arises as to whether it is supplementary to, or actually replaces, the initial general competence for the peaceful settlement of disputes. This question was addressed at the third Summit of heads of state and government, which took place in Warsaw in May 2005. During the preparatory work, Azerbaijan clearly stated its support for the organisation having a mandate in the field of conflict resolution. According to its representative, "given the urgency and importance of the issue of conflict resolution, it must be included on the Summit agenda" so that the Summit "can consider how the Council of Europe can contribute to conflict resolution at the regional level, within the framework of its specific mandate"⁸⁰. Consequently, the draft agenda presented two options: the first limited the CoE's involvement to "conflict prevention" and "post-conflict reconciliation", while the second extended it to "the creation of conditions conducive to their resolution"⁸¹. The documents issued by the Summit provided a somewhat ambiguous answer to this issue: the CoE's role in conflict prevention is mentioned in the main body of the documents, whereas its contribution to the political resolution of protracted conflicts is only mentioned in the preamble⁸². This may suggest that the CoE's general competence in conflict *prevention* has been prioritised, without abandoning its involvement in conflict *resolution*. In this sense, the CoE's competence in conflict resolution can be described as residual. It is also a specialised competence, as it is primarily envisaged in relation to interstate armed conflicts.

B. A specialised residual competence: contribution to the settlement of interstate armed conflicts

Whether the CoE can be involved in settling conflicts between its member states is a highly sensitive question and the subject of much debate. Nevertheless, at least two legal bases for such competence can be identified.

The subject raises few doubts on the part of PACE. Following the armed conflict between Georgia and the Russian Federation in 2008, for example, the Assembly considered that it should "play a role in conflict prevention and resolution"⁸³. Following the annexation of Crimea by the Russian Federation in 2014, the Assembly also considered that it "could serve as a unique platform for dialogue and interparliamentary cooperation and make a positive contribution to the peaceful solution of the conflict"⁸⁴.

However, this matter has been a source of division among government representatives. While some have readily acknowledged the CoE's competence in conflict resolution, others

⁷⁹ PACE, Recommendation 1381 (1998), 22 September 1998, General policy: Council of Europe and OSCE, para. 6; CM(98)178, 20 October 1998, Final report of the Committee of Wise Persons to the Committee of Ministers, para. 29.

⁸⁰ GT-SOM3(2004)11, 14 April 2004, Third Summit of the Council of Europe: proposals from Azerbaijan. In the same vein, SUM(2005)PV-final, 17 May 2005, Minutes of the Third Summit of the Council of Europe, Warsaw, No. 28, Statement by the representative of Georgia.

⁸¹ GT-SOM3(2004)10rev2, Agenda and possible outcomes of the Third Summit: priorities for future action by the Council of Europe, Joint draft submitted by the Netherlands and the Chair of GT-SOM3, pt. C.3.

⁸² Third Summit of the Council of Europe, Warsaw, 16-17 May 2005, Final Declaration, para. 3 and preamble, para. 4; Action Plan, pt. III-6.

⁸³ PACE, Resolution 1633 (2008), 30 September and 2 October 2008, Consequences of the war between Georgia and Russia, para. 32.

⁸⁴ PACE, Resolution 2132 (2016), 12 October 2016, Political consequences of Russia's aggression in Ukraine, para. 15.

have not⁸⁵. Others have adopted an ambiguous stance, stating that "the Organisation has a role to play" in "ongoing conflicts in Europe"⁸⁶, for example. It would appear that the Committee of Ministers has not taken a firm and definitive position on the matter as a collegial body. Practice, which will be analysed later, shows that this option has proven unattainable, given the Committee's tendency to favour consensual solutions. Nevertheless, this intergovernmental body has occasionally taken a position in favour of the CoE's competence in this area. With regard to the conflict in Nagorno-Karabakh, for instance, it emphasised that, at the Third Summit, the heads of state and government had "affirmed their willingness to work together [...] for political solutions in accordance with the norms and principles of international law and the principles of the "⁸⁷. During the same period, the Committee stated that it "stands ready to continue contributing, within its mandate and wherever possible, to the efforts for finding a settlement to the Cyprus problem"⁸⁸.

This last statement is problematic in that it limits the Committee's potential intervention within the framework of the CoE's mandate, without specifying its boundaries. This parenthetical phrase can be understood as a reference to the "democratic security" mandate. For the Parliamentary Assembly, this mandate extends beyond conflict prevention to include conflict resolution⁸⁹. However, it is more difficult to determine the Committee of Ministers' view on the exact implications of this mandate. Given this uncertainty, it seems preferable, at least at this stage, to seek other legal bases for the CoE's competence in conflict resolution.

The above-mentioned statement then brings to mind the process of focusing the CoE's mandate on what it considers to be its core values, namely democracy, human rights and the rule of law⁹⁰, with a stated priority for the promotion and protection of human rights. Given this focus, it is now inconceivable for the CoE to be involved in settling all types of conflict between its member states. However, it cannot exclude all kind of role for the organisation in the settlement of conflicts that threaten the achievement of its priority objectives, which is by nature the case for all armed conflicts. In this sense, the CoE's competence in conflict resolution must now be understood as a specialised competence, limited to certain types of conflict. By the way, in practice, the question has arisen mainly in relation to interstate armed conflicts, and more specifically in relation to "frozen conflicts". Within this tightened mandate, two legal instruments with different scopes can provide a basis for the CoE's competence in settling interstate armed conflicts.

The first derives from the ECHR, the effectiveness of which must be collectively guaranteed by the contracting states. Regarding armed conflicts between member states, the Steering Committee on Human Rights (CDDH) has repeatedly stated that "[w]hile the Court addresses legal questions pertaining to the Convention, the political dimension is left to political authorities and the existing European bodies and mechanisms", as it is the "collective responsibility of the Council of Europe to address the root causes and consequences [of such

⁸⁵ The second part of the article provides examples of both sides.

⁸⁶ CM/PV(2020)130-final, 1st October 2021, Minutes of the 130th session of the Committee of Ministers, Athens, 4 November 2020, Statement by the representative of Latvia.

⁸⁷ PACE, Doc. 10685, 26 September 2005, The Nagorno-Karabakh conflict dealt with by the OSCE Minsk Conference, Reply of the Committee of Ministers to PACE Recommendation 1690 (2005), para. 1. With the same wording, see also PACE, Doc. 15033, 20 January 2020, Unrestricted access of the human rights monitoring bodies of the Council of Europe and the United Nations to member states, including to "grey areas", Reply of the Committee of Ministers to PACE Recommendation 2140 (2018), para. 5.

⁸⁸ PACE, Doc. 10500, 11 April 2005, Situation in Cyprus, Reply of the Committee of Ministers to PACE Recommendation 1642 (2004), para. 2.

⁸⁹ PACE, Recommendation 1367 (1998), *op. cit.*, para. 13; PACE, Recommendation 2288 (2025), *op. cit.*, para. 7.1.

⁹⁰ See CM, Res(74)4, 24 January 1974, on the future role of the Council of Europe, pt. I.a; CM(90)PV6, Final communiqué of the 87th session of the Committee of Ministers, Rome, 6 November 1990, Appendix 2, para. 14; CM, Warsaw Declaration, Third Summit, *op. cit.*, para. 1.

conflicts] [...] and explore avenues for dialogue"⁹¹. Consequently, the Committee of Ministers "commits itself to reviewing the political tools at its disposal in relation to interstate disputes"⁹². It undoubtedly did not deny its competence in this area. However, the wording chosen differs from that proposed by the CDDH in that the Committee did not include a reference to the objective of "stimulating political dialogue between the States Parties to interstate cases"⁹³. This change to the text has created ambiguity as to whether the Committee's commitment is limited to monitoring the execution of the Court's judgments or whether it also encompasses the Committee's broader, more political role under the CoE Statute.

The CoE Statute actually provides the organisation with a second legal basis for settling armed conflicts between member states, beyond the narrower framework of the ECHR. This legal basis stems, more specifically, from the practice of commitments initiated in the early 1990s. To avoid the organisation's standards being lowered as a result of its rapid enlargement towards the East, candidate states were asked to commit to specific reforms. In the case of Russia, Georgia, Armenia and Azerbaijan, these commitments included the peaceful resolution of the "frozen conflicts" in which they were involved. Russia, for example, undertook to "settle international and internal disputes by peaceful means (an obligation incumbent on all Council of Europe member states), resolutely rejecting any threat of force against its neighbours; [to] settle remaining international border disputes in accordance with the principles of international law [...] ; [and to] denounce as erroneous the concept of two different categories of foreign countries, which consists of treating some of them, known as "near abroad countries", as a special sphere of influence"⁹⁴.

In order to ensure that these commitments do not remain empty words, PACE⁹⁵ and the Committee of Ministers⁹⁶ have established political monitoring procedures. These procedures were endorsed by the organisation's first three Summits⁹⁷. By doing so, the member states confirmed the statutory responsibility of these two bodies to ensure full compliance with the commitments made. They therefore accepted, implicitly but necessarily, that these bodies should be involved in settling "frozen conflicts" by monitoring compliance with these

⁹¹ CM(2023)21-add2, 31 January 2023, Report of the CDDH on the effective handling and resolution of cases concerning interstate conflicts, para. 70. See already CM(2015)176-add1final, 3 February 2016, The longer-term future of the European Convention on Human Rights system, Report of the CDDH, paras. 88 and 198 iv).

⁹² CM, Decl(05/04/2023), Declaration on the treatment and effective resolution of cases concerning interstate conflicts, para. 7. See already CM/Del/Dec(2016)1252/4.3-app5, 1 April 2016, Measures to follow up on the CDDH report on the longer-term future of the ECHR system, para. 5.

⁹³ CM(2023)21-add1rev2, 28 March 2023, Draft Declaration of the Committee of Ministers on the effective handling and resolution of cases concerning interstate conflicts, para. 5.

⁹⁴ PACE, Opinion 193 (1996), 25 January 1996, Russia's request for membership of the Council of Europe, paras. 10.7, 10.8 and 10.11; CM, Res(96)2, 8 February 1996, Invitation to the Russian Federation to become a member of the Council of Europe. For other states, see respectively PACE, Opinion 209 (1999), 27 January 1999, Georgia's application for membership of the Council of Europe, para. 10.5 (a) and CM, Res(99)4, 24 March 1996, Invitation to Georgia to become a member of the Council of Europe; PACE, Opinion 221 (2000), 28 June 2000, Armenia's application for membership of the Council of Europe, para. 13.2 (a), (b) and (c) and CM, Res(2000)13, 9 November 2000, Invitation to Armenia to become a member of the Council of Europe; PACE, Opinion 222 (2000), 28 June 2000, Azerbaijan's application for membership of the Council of Europe, para. 14.2 (a) and (b) and CM, Res(2000)14, 9 November 2000, Invitation to Azerbaijan to become a member of the Council of Europe.

⁹⁵ PACE, Directive 485 (1993), 3 February 1993, General policy of the Council of Europe; PACE, Directive 488 (1993), 29 June 1993, Compliance with commitments made by new member states; PACE, Directive 508 (1995), 26 April 1995, Compliance with the obligations and commitments entered into by the member states of the Council of Europe; PACE, Resolution 1115 (1997), 29 January 1997, Compliance with the obligations and commitments entered into by the member states of the Council of Europe.

⁹⁶ CM, Decl(10/11/94), Declaration on the observance of the undertakings made by the member states of the Council of Europe and Decl(20/04/1995), Arrangements for the implementation of the Declaration of 10 November 1994.

⁹⁷ Vienna Declaration, First Summit, *op. cit.*, p. 1; Strasbourg Action Plan, Second Summit, *op. cit.*, pt. I.3; Warsaw Declaration, Third Summit, *op. cit.*, para. 5 and ActionPlan2005, Warsaw Action Plan, pt. I.4.

commitments. For that matter, the Committee of Ministers has occasionally linked its monitoring procedure to conflict resolution, notably in the case of Nagorno-Karabakh. In 2005, for example, it stated that it was “continuing its efforts to promote a [...] peaceful solution [to this conflict] as part of its monitoring of the commitments made by Armenia and Azerbaijan within the Council of Europe”⁹⁸. It is worth noting that the Committee of Ministers has linked its monitoring procedure to the CoE's "democratic security" mission⁹⁹. This suggests that this mission ultimately extends to conflict resolution. In other words, "democratic security" could well be, in the final analysis, one of the legal bases for the organisation's competence in settling of armed conflicts.

The extent of the CoE's potential involvement in this area remains to be determined. Clearly, it cannot be solely responsible for settling armed conflicts between its members. Nevertheless, it can make a contribution. There are a number of possibilities, some of which are legal and may border on humanitarian action, while others are technical or political. The work of the European Court and the Commissioner for Human Rights exemplifies the first two options. Confidence-building measures, which “aim to promote dialogue and cooperation between populations separated by conflict”¹⁰⁰, are technical solutions that straddle the line between the prevention and settlement of armed conflicts. More intensive involvement requires political action. From this perspective, PACE and the Committee of Ministers could respond firmly to any deviation that calls into question the States’ willingness to settle their disputes peacefully, if necessary through a range of graduated sanctions. The use of armed force is undoubtedly one such scenario. Still on the political level, an even more active involvement would be for the CoE’s political organs to contribute to the search for appropriate solutions. The rationale behind monitoring is to help member states comply with their commitments¹⁰¹, not to punish non-compliance, which supports the latter option. However, in practice, the Committee of Ministers has preferred to abdicate its political role and retreat to legal and technical options.

II. The Committee of Ministers’ repeated abdication of its political responsibility in preventing and settling interstate armed conflicts

As the CoE’s decision-making body, the Committee of Ministers "bears the heaviest responsibilities" for settling disputes between member states¹⁰². To this end, it has at its disposal a wide range of tools, including good offices, conciliation, mediation and investigation, which it can use in conjunction with the Secretary General and/or the Commissioner for Human Rights as necessary. However, the intergovernmental body has confined itself to a very modest, if not derisory, role. This can be seen by comparing what it has done with what it could have done. To this end, the Committee's practice will be examined alongside the proposals and initiatives of the Parliamentary Assembly, a body that has always been more proactive. This comparison reveals the Committee of Ministers’ constant reluctance on this issue, which has manifested itself in different ways over time. The 1990s were a turning point in this respect: the Committee, which had previously been passive, finally took some action, before giving up. Its lack of

⁹⁸ PACE, Doc. 10685, *op. cit.*, para. 5.

⁹⁹ CM, Decl(10/11/94), *op. cit.*, preamble, para. 1.

¹⁰⁰ GR-DEM(2017)CB1, 23 January 2017, Minutes of the meeting of 17 January 2017 of the Group of Rapporteurs on Democracy (GR-DEM), para. 8.

¹⁰¹ See, for example, CM, Decl(10/11/94), *op. cit.*, preamble, paras. 3 and 5; PACE, Doc. 8057, 2 April 1998, Evolution of the Assembly’s follow-up procedures (April 1997-April 1998), Report of the Monitoring Committee, para. 15.

¹⁰² PACE, Doc. 1943, *op. cit.*, para. 45.

political commitment prior to the 1990s (A) thus evolved into political disengagement from the following decade onwards (B).

A. *A lack of political commitment on the part of the Committee of Ministers before the 1990s*

Prior to the 1990s, the Committee of Ministers refused to establish a dispute settlement system within the CoE and refrained from any involvement in settling the conflict between Turkey and Cyprus, despite the Organisation's competence in this area being expressly recognised at the time.

Very early on, PACE launched a series of initiatives aimed at establishing a European dispute settlement system within the CoE. As early as 1950, PACE invited the Committee of Ministers "to consider the expediency of extending effectively to all the Members of the Council of Europe the principle of the mandatory procedure of conciliation set out in article 8 of the Brussels Treaty"¹⁰³. In 1951, it recommended that the Committee establish "a single European Court of Justice", designed to settle disputes between member states and to advise the Committee of Ministers and the Assembly¹⁰⁴. Finally, in 1952, the Assembly proposed the adoption of a European Act for the peaceful settlement of disputes¹⁰⁵. These initiatives led to the adoption of the European Convention for the Peaceful Settlement of Disputes in 1957.

This Convention could have served as a springboard for the establishment of a regional dispute settlement system. In 1965, Sweden and PACE made proposals to this effect. Sweden suggested amending the Convention to give the Committee of Ministers the power to make arbitration compulsory in disputes it identified¹⁰⁶. This proposal was opposed by some state representatives who argued that there was no statutory legal basis for doing so¹⁰⁷, a view that was contradicted by the Director of Legal Affairs¹⁰⁸. As a compromise, the Assembly then proposed the creation of a Special Committee for the Settlement of Disputes, which "would have the power to consider any dispute or threat of a dispute among Council of Europe member states, with a view to making suggestions and proposals for their solution"¹⁰⁹. After much procrastination, the Committee of Ministers finally concluded that "no action on its part is required to revise [...] the institutional framework offered by the Council of Europe to its member states for the settlement of their disputes", while affirming its willingness to contribute to the matter¹¹⁰.

The subject resurfaced in September 1974, two months after Turkey's military intervention in Cyprus. Considering that "the Strasbourg Organisation is an appropriate forum in which the two parties concerned could bring their dispute", PACE members proposed

¹⁰³ PACE, Recommendation 56 (1950), 24 November 1950, Creation of a permanent body for the peaceful settlement of disputes between members of the Council of Europe.

¹⁰⁴ PACE, Recommendation 22 (1951), 11 December 1951, Establishment of a single European court.

¹⁰⁵ PACE, Recommendation 36 (1952), 27 September 1952, Establishment of a European Court of Justice and of a European Act for the Peaceful Settlement of Disputes.

¹⁰⁶ CM(65)99, 30 June 1965, Memorandum concerning the proposals of the Swedish Government with a view to strengthening the European Convention on the Peaceful Settlement of Disputes, esp. p. 4. The Convention in question establishes an obligation for the States Parties to submit "all legal disputes arising out of international law" to the International Court of Justice. For other types of dispute, the Convention encourages recourse to either conciliation or arbitration.

¹⁰⁷ See Concl(65)144, Conclusions of the 144th meeting of the Ministers' Delegates, 20-25 September 1965, p. 221, statement by the Delegate of Italy; Concl(65)145, Conclusions of the 145th meeting of the Ministers' Delegates, 25-29 October 1965, p. 248, statement by the Delegate of France.

¹⁰⁸ Concl(66)148, Conclusions of the 148th meeting of the Ministers' Deputies, 18-22 January 1966, p. 29.

¹⁰⁹ PACE, Recommendation 426 (1965), *op. cit.*, para. 9.3.

¹¹⁰ Concl(67)160, *op. cit.*, pp. 72 and 71.

establishing a Court of Arbitration within the CoE¹¹¹. However, it was not even possible to discuss this with the Committee of Ministers¹¹², as discussions along the same lines had already been initiated within the CSCE. According to the Committee of Ministers, this "argued [...] in favour of caution and restraint regarding the advisability of a new initiative within the Council of Europe"¹¹³. Finally, a pan-European system for the peaceful settlement of disputes, including a Conciliation and Arbitration Court, was established under the auspices of the CSCE, which became the OSCE¹¹⁴. As a result, the European Convention on the Peaceful Settlement of Disputes has only been ratified by a small number of CoE member states¹¹⁵.

Despite this, the Assembly has consistently recommended that the Committee of Ministers "play [...] a more active role in the settlement of disputes between Council of Europe member states"¹¹⁶. However, its repeated calls have been hampered by differences of opinion between member states¹¹⁷. The group of delegations opposed to strengthening the role of the intergovernmental body, for reasons of political expediency rather than law, included "major contributors". These are the states whose compulsory contribution to the CoE's ordinary budget is the highest, giving them *de facto* decisive influence over the organisation's strategic orientations¹¹⁸. For example, while the United Kingdom "d[id] not deny that the Committee of Ministers may have a role to play in the settlement of certain disputes between member states", it expressed "doubts as to whether it would be appropriate for it to play a greater role in many cases"¹¹⁹. Similarly, the Federal Republic of Germany considered that "it would not be appropriate to entrust further tasks in the field of dispute settlement to the Committee of Ministers"¹²⁰. France, for its part, was even opposed to the subject being studied in greater depth¹²¹.

In light of these views, it is hardly surprising that the Committee of Ministers adopted a passive stance in the "Cyprus case", which in 1974 resulted in the first armed conflict between two CoE member states, Cyprus and Turkey¹²². For a long time, this organisation was the only

¹¹¹ PACE, Doc. 3502, 28 September 1974, Proposal for a recommendation on the peaceful settlement of disputes, paras. 2 and 4.

¹¹² PACE, Doc. 4406, 24 September 1979, Report on the peaceful settlement of disputes, Committee on Legal Affairs, pt. II.1, para. 4.

¹¹³ PACE, AS/Jur(32)36, 21 April 1981, Peaceful settlement of disputes, Reply of the Committee of Ministers to PACE Recommendation 878 (1979).

¹¹⁴ See, for example, L. CAFLISCH (ed.), *Peaceful Settlement of Disputes between States: Universal and European Perspectives*, Kluwer Law International, The Hague/London/Boston, 1998, pp. 45–94; Ch. LEBEN, "La mise en place de la Cour de conciliation et d'arbitrage au sein de l'OSCE", *RGDIP*, 1996, No. 1, pp. 135–148.

¹¹⁵ Even today, only fourteen states have ratified the Convention, with almost all of these ratifications dating from before 1980. Few of the States Parties have accepted the Convention in its entirety.

¹¹⁶ See in particular PACE, Recommendation 426 (1965), *op. cit.*, para. 9.1; PACE, Recommendation 878 (1979), 4 October 1979, Peaceful settlement of disputes, para. 8 (a).

¹¹⁷ See European Committee on Legal Co-operation, CDCJ(80)58AddendumIV, 17 December 1980, Opinion on PACE Recommendation 878 (1979) on the peaceful settlement of disputes, para. 2.

¹¹⁸ See A. AILINCAI, "Combien valent les droits de l'homme, la démocratie et l'Etat de droit ? A propos du budget du Conseil de l'Europe pour le biennium 2024-2025", *RDLF*, 2024, chron. No. 49.

¹¹⁹ CM/Del/Concl(81)330, Conclusions of the 330th meeting of the Ministers' Deputies, 23–27 February 1981, p. 79.

¹²⁰ European Committee on Legal Co-operation, CDCJ(80)56, 24 November 1980, Opinion requested by the Committee of Ministers on PACE Recommendation 878 (1979). Note by the delegation of the Federal Republic of Germany, p. 2.

¹²¹ CDCJ(80)58AddendumIV, *op. cit.*, para. 6; CM/Del/Concl(81)330, *op. cit.*, p. 80.

¹²² Following the signing of the Zurich and London Agreements in 1959 by representatives of the United Kingdom, Greece, Turkey and the two Cypriot communities (Greek and Turkish), the Republic of Cyprus gained independence in 1960. The 1960 Cypriot Constitution provided for both communities to participate in all institutions of the new Republic. At the end of November 1963, clashes broke out between the two Cypriot communities following a proposal to amend the Constitution, prompting the Security Council to address the issue. On 15 July 1974, the Cypriot National Guard staged a coup d'état with the backing of the military junta in power

regional forum to bring together the four states most concerned: Cyprus, and the three States that have been guarantors of the 1960 Cyprus Constitution – Greece, Turkey and the United Kingdom. This would have justified a major commitment by the Committee of Ministers to settling this conflict. However, the Committee of Ministers and PACE held different views on this matter.

From January 1964 onwards, PACE emphasised repeatedly that "the Council of Europe cannot lose interest in a conflict affecting several of its members"¹²³. "Aware of its political responsibilities and considering that it must spare no effort to contribute to a just and lasting settlement of the Cyprus crisis"¹²⁴, it stepped up its initiatives to this end¹²⁵, in close cooperation with the UN Secretary General. At the same time, the Assembly strongly urged the Committee of Ministers to also become involved in the search for a solution to the conflict¹²⁶.

However, the Committee did not serve as a forum for discussion between the concerned states and did not take a clear position on the conflict, even though the Cyprus issue has remained permanently on its agenda. Two sets of obstacles, one legal and the other political, prevented it from taking any significant action.

The first set of obstacles consisted of two legal arguments of unequal weight, which were successively put forward in an effort to paralyse the Committee of Ministers. In the 1960s, the majority of government representatives considered that Article 1 (c) of the Statute precluded any initiative by the CoE on the grounds that it would compromise the UN's efforts¹²⁷. This argument seems like a pretext. According to this article, "[p]articipation in the Council of Europe shall not affect the collaboration of its members in the work of the United Nations". This cannot mean that the regional organisation is prohibited from intervening in any matter within the global organisation's remit, as this would render the former meaningless. In this sense, Turkey's representative argued that "the Council of Europe may take action parallel to that of the United Nations", in order to facilitate its task¹²⁸.

From the 1970s onwards, the statutory argument was replaced by a more serious problem of representativeness. From August 1974 onwards, Turkey "categorically opposed the participation of a member of the Greek Cypriot community in the Committee of Ministers, who claimed to represent the Cypriot Government"¹²⁹. It demanded that the Turkish Cypriot

in Greece. Turkey intervened militarily in Cyprus on 20 July 1974, and its armed forces occupied the northern third of the island from August 1974 onwards. While Turkey's military intervention was based on rights recognised by the 1959 guarantee treaty, the other two guarantor powers were not consulted. In 1983, representatives of the Turkish Cypriot community unilaterally proclaimed the independence of the Turkish Republic of Northern Cyprus (TRNC). The Security Council condemned this proclamation, and as a result, the international community, with the exception of Turkey, refused to recognise the TRNC.

¹²³ PACE, Resolution 266 (1964), 15 January 1964, Situation in Cyprus, para. 3.

¹²⁴ PACE, Directive 345 (1974), 25 September 1974, Situation in Cyprus, para. 3; PACE, Resolution 657 (1977), 8 July 1977, Situation in Cyprus, para. 3.

¹²⁵ See in particular PACE Resolution 816 (1984), 21 March 1984, Situation in Cyprus, para. 12; PACE Resolution 1054 (1995), 2 February 1995, Situation in Cyprus (recent political developments), para. 6.2; PACE, Resolution 1267 (2002), 22 January 2002, Situation in Cyprus, para. 9; PACE, Resolution 1362 (2004), 28 January 2004, Situation in Cyprus, para. 12; PACE, Resolution 1628 (2008), 1st October 2008, Situation in Cyprus, paras. 11-15.

¹²⁶ See in particular PACE Recommendation 387 (1964), 24 February 1964, The situation in Cyprus, para. 7; PACE Recommendation 734 (1974), 29 July 1974, The situation in Cyprus and the eastern Mediterranean, para. 2; PACE, Recommendation 736 (1974), 25 September 1974, Situation in Cyprus, para. 4 (c); Resolution 615 (1976), 30 January 1976, Situation in Cyprus, para. 7 (b); PACE, Recommendation 1259 (1995), 2 February 1995, Situation in Cyprus (recent political developments), para. 7.7; PACE, Recommendation 1642 (2004), 28 January 2004, Situation in Cyprus, para. 3.

¹²⁷ CM(64)75, 16 April 1964, Situation in Cyprus. Note by the Ministers' Delegates, pt. I, para. 4 and pt. II; CM(64)PV1, Minutes of the 34th session of the Committee of Ministers, 20 April 1964, pp. 76 and 78; CM(64)PV2, Minutes of the 35th session of the Committee of Ministers, 18 December 1964, p. 299.

¹²⁸ CM(64)PV1, *ibid.*, p. 76.

¹²⁹ Concl(74)234, Conclusions of the 234th meeting of the Ministers' Delegates, 21-22 August 1974, p. 1.

community also be represented in the Committee "on an equal footing"¹³⁰ with the Greek Cypriot community. According to the Secretary General and the Director of Legal Affairs of the CoE, Article 14 of the Statute legally precluded acceptance of this request unless there was formal and unanimous agreement to the contrary by the delegations¹³¹. With the exception of Turkey, all the other delegations were recognising the representativeness of the Cypriot delegation¹³² and, fearing that this would give rise to some form of recognition of the Turkish Republic of Northern Cyprus, they never agreed to Turkey's demands¹³³.

This problem could have been circumvented. The Secretary General proposed appointing a special representative of the Committee of Ministers to "help find a solution to the problem as quickly as possible"¹³⁴. However, this proposal encountered a political obstacle resulting from persistent differences of opinion among state representatives regarding the role that the CoE should play in this matter. Some called for a specific role that was complementary to that of the UN¹³⁵, while others were content with a bland role that simply involved relaying UN initiatives¹³⁶. Turkey was part of the first group, while the second included the other three states primarily involved. The Committee of Ministers finally resorted to the lowest common denominator among its members. It therefore opted for the second, less ambitious approach¹³⁷. By doing so, the Committee implicitly acknowledged that it had no active role to play in promoting a peaceful solution to the Cyprus issue. In short, it abdicated its political role¹³⁸, leaving the matter to the ECtHR.

One might have expected the CoE enlargement to include states already involved in "frozen conflicts" to prompt the Committee of Ministers to play a more active role in resolving these conflicts through the political monitoring it established in 1994. However, the few initial initiatives taken in this direction were short-lived, and the intergovernmental body eventually withdrew politically.

¹³⁰ Concl(74)239, Conclusions of the 239th meeting of the Ministers' Deputies, 25-26 November 1974, pp. 284-287; CM(75)PV1, 20 May 1975, Minutes of the 56th session of the Committee of Ministers, p. 6; CM/Del/Concl(83)EXT18/11, Minutes of the extraordinary meeting of the Ministers' Deputies on Cyprus on 18 November 1983, reproduced in CM/Del/Concl(83)364, Conclusions of the 364^e meeting of the Ministers' Deputies, 8-10 November 1983, pp. A43-A44.

¹³¹ Concl(74)239, *ibid.*, pp. 289 and 290. According to Article 14 of the Statute, "[e]ach member shall be entitled to one representative on the Committee of Ministers [...]".

¹³² Concl(74)234, *op. cit.*, p. 2; CM(87)67, 22 April 1987, Situation in Cyprus. Written question No. 298, Information gathered by the Secretariat (Political Affairs Directorate), para. 4.

¹³³ CM, Res(83)13 on Cyprus, 24 November 1983.

¹³⁴ Concl(74)239, *op. cit.*, pp. 292-293.

¹³⁵ See, for example, CM(64)PV1, *op. cit.*, pp. 76, 77 and 78 (Turkey); Concl(65)139, Conclusions of the 139th meeting of the Ministers' Deputies, 1-6 March 1965, p. 47 (Austria and Turkey); CM(74)PV5, Minutes of the 55th session of the Committee of Ministers, 28 November 1974, p. 13 (Turkey, Germany and Iceland) and p. 15 (Switzerland); CM(83)PV3, Minutes of the 73rd session of the Committee of Ministers, 24 November 1983, pp. 20 and 24 (Switzerland).

¹³⁶ See note CM(64)PV1, *ibid.*, p. 76 (Cyprus), p. 77 (Greece) and p. 78 (Ireland); CM(74)PV5, *ibid.*, p. 10 (Cyprus), p. 11 (Greece); CM(83)PV3, *ibid.*, p. 24 (United Kingdom); CM/Del/Act(95)547, 14 November 1995, Minutes of the 547th meeting of the Ministers' Deputies, 16-19 October 1995, p. 16 (Cyprus).

¹³⁷ See, for example, CM(64)PV1, *ibid.*, pp. 76 and 78; CM/Del/Concl(76)253, Conclusions of the 253rd meeting of the Ministers' Deputies, 12-22 January 1976, Appendix X, p. 110; CM(83)PV3, *ibid.*, p. 25; PACE, Doc. 7423, 25 October 1995, Reply of the Committee of Ministers to PACE Recommendation 1259 (1995) on the situation in Cyprus (recent political developments), para. 4.

¹³⁸ At the same time, the Committee of Ministers took an equally questionable stance when called upon to fulfil the legal role assigned to it at the time by Article 32 of the ECHR in three out of four cases brought by Cyprus against Turkey before the European Commission of Human Rights. See, for example, P. LEUPRECHT, "The Protection of Human Rights by Political Bodies - the Example of the Committee of Ministers of the Council of Europe", in M. NOWAK, D. STEURER, H. TRETTER (eds), *Progress in the Spirit of Human Rights: Essays for Felix Ermacora*, NP Engel Verlag, Kehl, 1988, pp. 99-105.

B. *The Committee of Ministers' political disengagement from the 2000s onwards*

During the Council of Europe's enlargement phase, the Committee of Ministers paid close attention to the need to peacefully resolve frozen conflicts. The commitments made in this regard by Georgia, Armenia and Azerbaijan – but not the Russian Federation – were therefore made a prerequisite for their accession to the organisation¹³⁹. At the first Summit, the heads of state and government also declared themselves "determined to make full use of the political forum provided by the Committee of Ministers [...] to promote [...] the strengthening of democratic security in Europe"¹⁴⁰. This gave the impression that the intergovernmental body would become more involved in settling conflicts between member states. However, this initial momentum quickly lost steam under the weight of geopolitical considerations. The Committee of Ministers' reactions to the armed conflicts that broke out between member states from the 2000s onwards bear witness to this. A comparison with PACE's approach highlights not only the former's shortcomings, but also its limiting, even inhibiting, effect on the latter.

In chronological order, the first of these armed conflicts broke out in August 2008, involving the Russian Federation and Georgia¹⁴¹. Given that this was considered a "serious violation" of the two States' obligations and commitments¹⁴², PACE swiftly took up the matter. Determined to play a role in resolving the conflict, PACE addressed specific requests to both States¹⁴³, strengthened its monitoring procedure in relation to them¹⁴⁴ and set up an *ad hoc* committee to enable Russian and Georgian parliamentarians to seek solutions together¹⁴⁵. However, unlike Georgia, the Russian Federation deliberately ignored the vast majority of the Assembly's requests¹⁴⁶. Nevertheless, the Assembly never decided to suspend the Russian delegation's participation in its work as a sanction, on the grounds that this would hinder dialogue aimed at progressing the settlement of the conflict¹⁴⁷. The Russian delegation's change of attitude, which saw them go from being eager to engage in dialogue in January 2009 to publicly opposing the Assembly's requests in September 2009¹⁴⁸, did not alter this. It cannot be ruled out that this change, as well as the Assembly's decision to abandon its efforts, is linked to the Committee of Ministers softening its position towards the Russian Federation during the same period.

¹³⁹ PACE, Doc. 7263, 3 March 1995, Reply of the Committee of Ministers to PACE Recommendation 1247 (1994) on the enlargement of the Council of Europe, para. 3.

¹⁴⁰ CM, Decl(09/10/93), Vienna Declaration, *op. cit.*, p. 2.

¹⁴¹ This conflict arose in one of Georgia's two separatist regions, Abkhazia and South Ossetia, which had officially been part of Georgia following the dissolution of the USSR. Following repeated provocations, Georgia launched an artillery assault on the main town in South Ossetia. Russia responded militarily, crossing well beyond the administrative border of the separatist region. It still occupies around 20% of the Georgian territory today. Shortly afterwards, Russia formally recognised the independence of the two separatist republics.

¹⁴² PACE, Resolution 1631 (2008), 1 September 2008, Review, for substantial reasons, of the already ratified credentials of the Russian delegation, para. 2.

¹⁴³ PACE, Resolution 1633 (2008), *op. cit.*, para. 32 and paras. 22-23.

¹⁴⁴ *Ibid.*, para. 25; PACE, Resolution 1647 (2009), 28 January 2009, Implementation of Resolution 1633 (2008) on the consequences of the war between Georgia and Russia, para. 19; PACE, Resolution 1687 (2009), 1st October 2009, Reconsideration, for substantial reasons, of the already ratified powers of the Russian delegation, para. 8.

¹⁴⁵ PACE, Resolution 1647 (2009), *ibid.*, para. 15.

¹⁴⁶ *Ibid.*, paras. 8.1 and 9; PACE, Resolution 1683 (2009), 29 September 2009, The war between Georgia and Russia: one year after, paras. 10-11; PACE, Resolution 1896 (2012), 2 October 2012, Respect for the obligations and commitments of the Russian Federation, paras. 18 and 25.1.

¹⁴⁷ PACE, Resolution 1631 (2008), *op. cit.*; PACE, Resolution 1687 (2009), *op. cit.*, paras. 5-6.

¹⁴⁸ See respectively PACE, Resolution 1647 (2009), *op. cit.*, para. 9.2 and PACE, Resolution 1683 (2009), *op. cit.*, para. 11.

In September 2008, government representatives deemed that "the Council of Europe could provide an appropriate forum for political dialogue" on the conflict¹⁴⁹. They therefore called for a "specific response" from the Committee of Ministers, as the executive body responsible for ensuring compliance with the organisation's Statute¹⁵⁰. The Chair of the Committee then listed three possible courses of action¹⁵¹. The first was to activate Article 8 of the Statute, which provides a procedure for suspending and then excluding a member state in the event of a serious violation of the Statute. The second was to enhance the monitoring of the implementation of the two states' obligations and commitments. This would have involved the Committee of Ministers initiating a monitoring procedure with regard to Russia and strengthening the limited monitoring to which Georgia had already been subject since 2003¹⁵². The third option was to wait for interstate applications to be brought before the European Court of Human Rights, in which other states could potentially intervene. Initially, a general consensus emerged around the second option¹⁵³, but ultimately, the third option prevailed.

On 14 October 2008, a draft Action Plan, setting out political monitoring by the Committee of Ministers was circulated¹⁵⁴. Despite lengthy discussions, however, the plan was never adopted. This is hardly surprising, given that the Ministers' Deputies refused to put the plan to a vote in November 2008¹⁵⁵. Therefore, the document had to be adopted by consensus, i.e. with the agreement of the two states to be monitored. However, the Russian Federation opposed this¹⁵⁶. It argued that the CoE's role in armed conflicts was limited to the protection of human rights, and that "it must not encroach on the roles assumed by other international organisations"¹⁵⁷. Despite many other delegations disagreeing with this interpretation of the Statute¹⁵⁸, in May 2009 the Committee of Ministers finally decided not to initiate a political monitoring procedure with regard to Russia, nor to strengthen monitoring with regard to Georgia¹⁵⁹. Instead, the Secretary General was asked to prepare regular reports on the conflict in Georgia¹⁶⁰, the scope of which has been limited as the Russian Federation opposed the Secretary General and other CoE bodies having access to the separatist regions of Abkhazia

¹⁴⁹ CM/Inf(2009)25, 5 May 2009, Information note from the Chair of the Committee of Ministers on the Council of Europe's action following the conflict in Georgia.

¹⁵⁰ CM/Del/Dec(2008)1033-Add, 8 September 2008, The Council of Europe and the conflict in Georgia. Summary by the President; SecCM/Inf(2008)21, 26 September 2008, Informal meeting of Council of Europe Ministers of Foreign Affairs (New York, 24 September 2008) – Summary by the President.

¹⁵¹ SecCM/Inf(2008)20, 26 September 2008, Report of the Chairman of the Committee of Ministers to the informal meeting of Council of Europe Ministers of Foreign Affairs (New York, 24 September 2008).

¹⁵² CM/Del/Dec(2003)826/2.1a, 7 February 2003, Activities for the development and consolidation of democratic stability – Georgia, para. 4; CM/Del/Dec(2004)892/2.1a, 12 July 2004, Activities for the development and consolidation of democratic stability – Georgia, para. 5.

¹⁵³ SecCM/Inf(2008)21, *op. cit.*; CM(2008)150-rev, 5 November 2008, The Council of Europe and the conflict in Georgia – Action plan for the promotion of Council of Europe values and standards in Georgia and the Russian Federation – Proposals by the Chairmanship, para. 15.

¹⁵⁴ CM(2008)150-rev, *ibid.*, pt. B and appendix 1.

¹⁵⁵ CM/Notes/1042/2.1, 25 November 2008, The Council of Europe and the conflict in Georgia.

¹⁵⁶ CM/Notes/1040/2.1-Add, 18 November 2008, The Council of Europe and the conflict in Georgia; CM/Del/Act(2010)1085-final, 11 June 2010, Proceedings of the 1085th meeting of the Ministers' Deputies, 26 May 2010, pt. 2.1, The Council of Europe and the conflict in Georgia, Statement by the Delegate of Georgia.

¹⁵⁷ CM(2009)PV-final, 3 December 2009, Minutes of the 119th session of the Committee of Ministers, Madrid, 12 May 2009, pt. 70, Statement by the Russian Federation.

¹⁵⁸ See *ibid.*, in particular the statements by the Delegates of Estonia, Luxembourg, Moldova and Georgia.

¹⁵⁹ CM(2009)PV add1-Item 3, 12 May 2009, The Council of Europe and the conflict in Georgia, para. 1.

¹⁶⁰ CM/Del/Dec(2009)1048/2.1, 11-12 February 2009, The Council of Europe and the conflict in Georgia, para. 1; CM/Del/Dec(2010)1080/2.1, 24 and 26 March 2010, The Council of Europe and the conflict in Georgia.

and South Ossetia¹⁶¹. Finally, in 2012, Georgia declared that it no longer considered itself subject to monitoring by the Committee of Ministers¹⁶².

By choosing to use consensus to initiate its monitoring procedure, the Committee of Ministers collectively shirked its statutory responsibility to ensure that member states comply with their obligations and commitments. This decision has had very serious consequences. In the short and medium term, the Committee of Ministers has refrained from playing any significant political role in settling the conflict in Georgia. In the longer term, it has deprived itself of the opportunity to foster an environment that could have deterred future conflicts and, more broadly, prevented serious violations of member states' obligations and commitments. The Committee of Ministers has thus undermined the credibility of the entire organisation, especially since it has never had the political courage to break away from the extremely harmful precedent it set. In that sense, the Committee of Ministers' response to the most recent armed conflicts is merely a confirmation, or rather a continuation, of what happened in the Georgian case.

Clearly, the concessions made to the Russian Federation in 2009 could not have deterred it from illegally annexing Crimea in 2014. The day after the annexation, the Committee of Ministers adopted a decision condemning the annexation by an overwhelming majority. This decision emphasised the commitments to the peaceful settlement of disputes, and called on the two states in conflict to comply "without delay" with the interim measures ordered by the European Court of Human Rights¹⁶³. However, the Russian Federation quickly demanded recourse to consensus, stating that "any attempt to politicise the activities of the Committee of Ministers because of the situation in Ukraine risks depriving the Council of Europe of the possibility of becoming genuinely involved in the settlement of the Ukrainian crisis"¹⁶⁴. Despite strong opposition from several national delegations, consensus was then imposed by the Chair of the Committee of Ministers¹⁶⁵. 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 meetings¹⁶⁶.

PACE attempted to take up the baton, but the Committee of Ministers thwarted its ambitions. In contrast to the previous case of the Georgian conflict, this time it suspended some of the parliamentary rights of the Russian delegation as a sanction, effective from April 2014¹⁶⁷. The Russian Federation then challenged the legality of the Assembly's sanctions system through budgetary blackmail. The Committee of Ministers sided with Russia once again, thus distancing itself from the Parliamentary Assembly. This approach was again underpinned by disagreements among government representatives regarding the precise scope of the CoE's

¹⁶¹ SG/Inf(2010)7, 22 March 2010, Summary report on the post-conflict situation in Georgia. Diagram, pt. 4; CM/Del/Dec(2024)1489/2.1, 7 May 2024, The Council of Europe and the conflict in Georgia, para. 27. On this subject, see A. FORDE, *European Human Rights Grey Zones. The Council of Europe and areas of conflict*, CUP, 2024, 251 p.

¹⁶² GR-DEM(2012)CB5, 3 April 2012, Minutes of the GR-DEM meeting of 27 March 2012, para. 11.

¹⁶³ CM/Del/Dec(2014)1195/1.7, 19-20 March 2014, Situation in Ukraine. This decision was adopted with 42 votes in favour, 2 against and one abstention.

¹⁶⁴ CM/Del/Act(2014)1195-final, 9 April 2014, Proceedings of the 1195th meeting of the Ministers' Deputies, 19-20 March 2014, Statement by the Delegate of the Russian Federation.

¹⁶⁵ CM/Del/Act(2014)1198-final, 19 June 2014, Proceedings of the 1198th meeting, 29-30 April and 2 May 2014, pt. 1.5, Preparation of the 124th Session of the Committee of Ministers, Vienna, 5-6 May 2014.

¹⁶⁶ *Ibid.*, Statement by the Delegate of Ukraine.

¹⁶⁷ PACE, Resolution 1990 (2014), 10 April 2014, Re-examination, for substantial reasons, of the powers already ratified of the Russian delegation, paras. 4 and 15; PACE, Resolution 2034 (2015), 28 January 2015, Challenge, on substantial grounds, of the not yet ratified credentials of the delegation of the Russian Federation, paras. 14 and 15; PACE, Resolution 2063 (2015), 24 June 2015, Consideration of the annulment of the already ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of Resolution 2034 (2015)), para. 9.

mandate in the event of armed conflicts between its members states¹⁶⁸. As the Committee of Ministers has been unable to take a formal stance on this long-standing and controversial issue due to the consensus practice, it instead expressed, somewhat ironically, its concern that "the system of the [ECHR] continues to face significant challenges, in particular those related to [...] the situation in areas of unresolved conflicts"¹⁶⁹. Under pressure from the Committee of Ministers, PACE finally amended its sanctions system and restored all the Russian delegation's rights in June 2019¹⁷⁰.

Less than three years later, the Russian Federation launched a military attack on Ukraine, prompting the Committee of Ministers to finally agree to respond swiftly. The problem is that its previous apathy forced it to resort to the most powerful weapon at its disposal, namely the exclusion of a member state under Article 8 of the Statute. This option has the disadvantage of preventing individuals under the jurisdiction of the affected state from bringing their cases before the ECtHR. Since then, the CoE has played no visible role in the political discussions on this conflict, even though the Court continues to deliver judgments that the Russian Federation is supposed to enforce. Instead, the organisation has utilised its legal and technical expertise to set up a Register of Damage Caused by the Aggression against Ukraine and a Special Tribunal for the Crime of Aggression. It has also helped Ukraine meet the conditions for EU accession and become involved in the issue of the illegal deportation of Ukrainian children¹⁷¹.

Unsurprisingly, the Committee of Ministers' leniency towards the Russian Federation¹⁷² has impacted the CoE's ability to respond to the armed clashes that broke out in the secessionist region of Nagorno-Karabakh between Armenia and Azerbaijan¹⁷³. The first armed conflict occurred between 1991 and 1994, following Nagorno-Karabakh's declaration of independence, but before Armenia and Azerbaijan joined the CoE in 2001. Negotiations between the two states were then initiated under the auspices of the OSCE Minsk Group. Nevertheless, the CoE could have taken additional action to support the OSCE's efforts. This would have been all the more justified given that "the simultaneous accession of the two countries to the Organisation was decided in the hope that it would contribute to establishing the climate of trust necessary for a peaceful solution to the conflict in Nagorno-Karabakh"¹⁷⁴. Actions to this end were initially launched. However, this momentum stalled, meaning the CoE was unable to respond in a politically meaningful way to Azerbaijan's military operations in 2020, 2022 and, to a lesser extent, 2023.

The Committee of Ministers made Armenia's and Azerbaijan's accession to the CoE conditional on the establishment of a monitoring procedure for them, entrusted to the *ad hoc*

¹⁶⁸ See CM/PV(2019)129-final, *op. cit.*, in particular the statements by the representatives of Romania, Belgium, Azerbaijan and Armenia.

¹⁶⁹ CM/Del/Dec(2019)129/3, 17 May 2019, Ensuring the continued effectiveness of the European Convention on Human Rights system, 129th session of the Committee of Ministers, Helsinki, para. 3.

¹⁷⁰ PACE, Resolution 2287 (2019), 25 June 2019, Strengthening the decision-making process of the Parliamentary Assembly concerning powers and voting; PACE, Resolution 2292 (2019), 26 June 2019, Challenge, on substantial grounds, to the powers not yet ratified of the parliamentary delegation of the Russian Federation, para. 10.

¹⁷¹ See Three years of Russia's war of aggression. Action by the Council of Europe in support of Ukraine, Report by the Secretary General, March 2025; CMCM/Del/Dec(2025)134/2a, 14 May 2025, Role of the Council of Europe in the new geopolitical context. Action by the Council of Europe in support of Ukraine: present and future.

¹⁷² In this regard, see also E. BATES, K. DZEHTSIAROU, A. FORDE, *Russia, the Council of Europe and the European Convention on Human Rights. A Troubled Membership and Its Legacy*, Bristol University Press, 2025, 248 p.

¹⁷³ In 1920, Stalin attached the region of Nagorno-Karabakh, also known as Artsakh or Nagorno-Karabakh, to Azerbaijan, even though its population was predominantly Armenian. When Azerbaijan gained independence in 1991, Nagorno-Karabakh was included in its internationally recognised borders. However, supported by Armenia, the Republic of Nagorno-Karabakh proclaimed its independence in the same year. Three decades later, the Republic of Nagorno-Karabakh announced its dissolution with effect from 1 January 2024. In March 2025, Armenia and Azerbaijan announced that they had reached a peace agreement.

¹⁷⁴ PACE, Doc. 10685, *op. cit.*, para. 4.

subsidiary body GT-SUIVI.AGO¹⁷⁵. This body apparently made the closure of the monitoring process conditional on an agreement being reached regarding the Nagorno-Karabakh conflict¹⁷⁶. Initially, the Committee of Ministers itself was able to take a position on the conflict and call for an active search for a peaceful solution, overriding the reservations of the states involved if necessary¹⁷⁷. However, it fell silent when Armenia opposed this practice¹⁷⁸. From April 2009 onwards, Azerbaijan and Armenia expressed reservations about being subject to a monitoring procedure¹⁷⁹. It would appear that their criticism was based on the fact that the Russian Federation had escaped an equivalent procedure at the same time, which undermined the equal treatment of member states¹⁸⁰. As a result, the GT-SUIVI.AGO was dissolved suddenly in 2010¹⁸¹. Monitoring was continued for a while by another subsidiary body: the Group of Rapporteurs on Democracy (GR-DEM)¹⁸². However, attention to the Nagorno-Karabakh conflict declined, apparently due to Armenia's opposition to the CoE's involvement in the peace process¹⁸³. In a striking echo of the Russian Federation's position, Armenia argued that "the Council of Europe is not a security organisation; all security issues must be addressed from a human rights perspective"¹⁸⁴. Finally, monitoring of Armenia ceased in April 2019¹⁸⁵ and the Committee of Ministers terminated all its country-monitoring procedures in April 2021¹⁸⁶. The Committee thus abandoned any attempt to ensure compliance with the obligations and commitments made at the time of accession, including with regard to the peaceful settlement of conflicts. In this context, and in the absence of consensus among its members, the Committee of Ministers did not react publicly as a collegial body to Azerbaijan's military offensive in Nagorno-Karabakh in September 2020, nor to subsequent offensives. The

¹⁷⁵ CM/Del/Dec(2001)737/1.5b, 17 January 2001, Accession of Armenia and Azerbaijan, para. 2; GT-SUIVI.AGO(2001)1, 15 January 2001, Report submitted to the Ministers' Delegates (737th meeting); PACE, Doc. 9312, 14 January 2002, The evolution of the Assembly's follow-up procedure (2000-2001), Reply of the Committee of Ministers to PACE Recommendation 1536 (2001), para. 9.

¹⁷⁶ CM(2009)180, 4 December 2009, Monitoring Group (GT-SUIVI.AGO) – Report on a visit by a delegation of the Ago Group to Armenia and Azerbaijan (20-25 November 2009), para. 41.

¹⁷⁷ CM/Del/Dec(2001)761/2.6, 23 July 2001, Monitoring Group (GT-SUIVI.AGO) – Progress report, para. 5; PACE, Doc. 9212, 21 September 2001, Recognition of the territorial integrity of Azerbaijan by Armenia, para. 7; CM/Del/Dec(2001)776/2.3, 6 December 2001 and CM/Notes/776/2.3, 23 November 2001, Declaration by Azerbaijan on a military settlement of the Nagorno-Karabakh conflict.

¹⁷⁸ CM/Del/Act(2006)983/2.1b, 13 December 2006, Declaration by the Chairman of the Committee of Ministers on the "constitutional referendum" held in Nagorno-Karabakh on 10 December 2006, Statement by the Delegate of Armenia; CM/Del/Dec(2008)1018/3.2, 22 February 2008, Written questions from members of the Parliamentary Assembly to the Committee of Ministers – Communication from the President of the Delegates to the President of the Parliamentary Assembly.

¹⁷⁹ GR-DEM(2009)CB5, 29 April 2009, Minutes of the GR-DEM meeting of 23 April 2009, para. 18.

¹⁸⁰ CM/Del/Act(2010)1085-final, *op. cit.*, pt. 2.1 bis (b), Current political issues, Statement by the Delegate of Armenia; CM/Del/Act(2010)1101-final, 6 January 2011, Proceedings of the 1101st meeting of the Ministers' Deputies, 8 December 2010, Statement by the Delegate of Armenia.

¹⁸¹ Compare CM/Notes/1101/2.3, 3 December 2010, Monitoring Group (GT-SUIVI.AGO) – Review of activities and decisions on the follow-up to be given and CM/Del/Dec(2010)1101/2.3, 10 December 2010, Monitoring Group (GT-SUIVI.AGO) – Review of activities and decisions on the follow-up to be given, para. 1.

¹⁸² CM/Del/Dec(2010)1101/2.3, *ibid.*, para. 1; CM/Del/Dec(2013)1170/2.1bis(a), 7 May 2013, Activities for the development and consolidation of democratic stability – GR-DEM Sub-Group on Armenia and Azerbaijan, para. 1.

¹⁸³ CM(2009)PV-final, *op. cit.*, Statement by the representative of Armenia; CM/Del/Act(2010)1085-final, *op. cit.*, pt. 2.1 bis (b), Current political issues, Statement by the Delegate of Armenia; GR-DEM(2015)15, 26 June 2015, Status of the implementation of the commitments made by Azerbaijan, paras. 123 and 125.

¹⁸⁴ CM/PV(2019)129-final, *op. cit.*, statement by the representative of Armenia.

¹⁸⁵ CM/Del/Dec(2019)1343/2.1bis(a), 4 April 2019, Current political issues, para. 3.

¹⁸⁶ CM(2021)50-final, 28 April 2021, Report on the follow-up to the Council of Europe – strengthening cohesion and synergy, 131st session of the Committee of Ministers, Hamburg, 21 May 2021, para. 11.

Committee also confined itself to discussing the interim measures relating to the conflict notified to it by the European Court, but was unable to provide any political support¹⁸⁷.

For very different reasons, PACE was also initially deprived of any meaningful capacity to react. It could only respond to the humanitarian consequences of the 2020 military operation¹⁸⁸, and the 2022 offensive prompted only a written statement from a few members of the Assembly¹⁸⁹. At the time, the Assembly's political legitimacy and credibility were undermined by an ethical scandal known as "Caviargate". In 2018, an independent commission of inquiry found that most of the rapporteurs responsible for the parliamentary monitoring of Azerbaijan between 2010 and 2016 had been involved in a corrupt operation led by that country to influence the Assembly's work on the country¹⁹⁰. As a result, PACE had been very lenient with Azerbaijan for a decade, and no comprehensive report on the country's compliance with its accession commitments could be adopted between 2012 and 2023¹⁹¹. Therefore, it was necessary to wait until the Assembly had restored its legitimacy before it could sanction Azerbaijan in January 2024, notably due to its latest military offensive in Nagorno-Karabakh in September 2023¹⁹². In the wake of this, PACE asked the Committee of Ministers to reactivate its own monitoring procedure with regard to Azerbaijan¹⁹³, but the Committee did not publicly react. In the absence of political support at the intergovernmental level, the Assembly's sanctions proved ineffective and perhaps even counterproductive: Azerbaijan ceased all cooperation with not only PACE, but also the European Committee for the Prevention of Torture¹⁹⁴.

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The CoE Statute "was drafted in such broad and vague terms that it was open to development in several directions"¹⁹⁵. Based on this, the organisation recognised its competence in the structural prevention of armed conflicts. It could also contribute to settling armed conflicts between its member states. This second aspect is variously assumed. The Committee of Ministers has refrained from any significant political involvement in settling such conflicts, not primarily due to the limits imposed by the Statute, but rather due to a lack of political will. This absence is attributable to some of the states involved in armed conflicts, as well as to other member states that have bowed to their wishes, sometimes to the detriment of the other party

¹⁸⁷ DH-SYSC-IV(2022)03, 12 July 2022, Compilation of comments from member states on the CDDH draft report on the effective handling and resolution of cases concerning interstate conflicts, Comments from Armenia, pp. 3-4; PACE, Doc. 15662, 30 November 2022, Humanitarian consequences of the conflict between Armenia and Azerbaijan / the Nagorno-Karabakh conflict, Reply of the Committee of Ministers to PACE Recommendation 2209 (2021), para. 5.

¹⁸⁸ PACE, Resolution 2391 (2021), 21 September 2021, Humanitarian consequences of the conflict between Armenia and Azerbaijan / the Nagorno-Karabakh conflict.

¹⁸⁹ PACE, Doc. 15640, 18 October 2022, Condemnation of Azerbaijan's aggression against the sovereign territory of the Republic of Armenia, Written Declaration No. 755. The Declaration was signed by 47 parliamentarians out of 612.

¹⁹⁰ Report of the Independent Investigation Group on allegations of corruption within the Parliamentary Assembly, 15 April 2018, pp. 24, 128-131.

¹⁹¹ At the same time, no comprehensive follow-up report on Armenia's compliance with its obligations and commitments was adopted between 2007 and 2024.

¹⁹² PACE, Resolution 2527 (2024), 24 January 2024, Challenge, on substantial grounds, of the not yet ratified credentials of the parliamentary delegation of Azerbaijan, para. 7.

¹⁹³ PACE, Recommendation 2260 (2023), 12 October 2023, Humanitarian situation in Nagorno-Karabakh, para. 4.

¹⁹⁴ CPT/Inf(2024)24, 3 July 2024, Public statement on Azerbaijan; PACE, Record of the debates of 1st October 2024, sitting no. 27.

¹⁹⁵ C. WALTER, "Interpretation and Amendments of the Founding Treaty", in S. SCHMAHL, M. BREUER (eds), *The Council of Europe. Its Law and Policies*, OUP, 2017, p. 29, para. 2.16.

to the conflict. For its part, PACE has tried to contribute to the search for appropriate solutions, but in the absence of political will from the states involved¹⁹⁶ and support from the Committee of Ministers, its initiatives have been ineffective. All of this has seriously undermined the credibility of the CoE.

In the absence of political commitment from its member states, the organisation has retreated into its legal and technical role. With regard to armed conflicts specifically, the has played a modest role in the broad field of confidence-building measures, enabling the Committee of Ministers to claim that the organisation is making "a valuable contribution to the conflict settlement processes on the European continent"¹⁹⁷. More recently, the CoE has sought to develop its early warning and rapid reaction capabilities. PACE has initiated efforts to this end¹⁹⁸. The Commissioner for Human Rights has also been encouraged to increase his visits to conflict zones. Yet he lacks the means to impose his presence in separatist regions¹⁹⁹. While all this is commendable, alerts must be followed up with action. This requires sufficient political support to enable action to be taken²⁰⁰. Ultimately, the member states have, albeit unwittingly for some of them, given the ECtHR huge responsibilities in relation to armed conflicts, which exposes it to great difficulties and the double risk of disappointment and criticism.

Recently, the member states have committed themselves to "strengthening the role of the Council of Europe in the European multilateral architecture"²⁰¹. Therefore, the context seems conducive to enhancing the organisation's political weight by consolidating its role in not only preventing, but also settling, armed conflicts. To this end, refining the available legal and technical instruments may still be useful. However, these are unlikely to be fully effective without political support from the Committee of Ministers. Thus, the most important thing would be to revitalise the latter's political tools. The Committee must respond promptly to warning signs from other CoE bodies that a conflict may be looming, and even more so to the outbreak of an armed conflict. One possible response would be to reactivate intergovernmental political monitoring, which would send a strong political signal, provided the pitfall of "double standards" is avoided. The formalisation of a mediation mechanism, as proposed by the Parliamentary Assembly, could also prove useful, provided the same condition is scrupulously respected. The formalisation of such a mechanism would create a clear framework for high-level discussions. However, the Committee of Ministers' formal and informal meetings already provide a forum for discussion, and the intergovernmental could appoint a mediator if necessary, for example the Secretary General. If discussions within the CoE are rejected, the Committee, the Assembly or the Secretary General should activate the complementary (joint) procedure. This was created in 2020 to enable the organisation's main bodies to exert joint political pressure on states that flagrantly disregard common values and standards²⁰². However,

¹⁹⁶ The experience of the Sub-Committee on Conflicts between Member States of the Monitoring Committee, established in 2015 and abolished in 2024, is significant in this regard. See PACE, Doc. 15211, 11 January 2021, The evolution of the Assembly's monitoring procedure (January-December 2020), Monitoring Committee, spec. para. 159.

¹⁹⁷ PACE, Doc. 15717, *op. cit.*, para. 7.

¹⁹⁸ See in particular PACE, Resolution 2515 (2023), *op. cit.*, para. 14.3; PACE, Resolution 2534 (2024), 26 January 2024, The evolution of the Assembly's monitoring procedure (January-December 2023), para. 8.

¹⁹⁹ CM, Decl(21/01/2004), Declaration on the protection of human rights during armed conflicts and in cases of internal disturbances and tensions, paras. 11-12; SG(2019)1, 1 April 2019, Meeting the challenges ahead – Strengthening the Council of Europe, Report of the Secretary General, p. 55.

²⁰⁰ T. KOX, "The Strategies and Tools of the Council of Europe to ensure the respect of Human Rights, Rule of law and Democracy obligations in the Resolution of Conflicts", Speaking Notes, 4 December 2023, pp. 6-8.

²⁰¹ Reykjavik Declaration – United in our values, Fourth Summit, *op. cit.*, p. 8.

²⁰² PACE, Resolution 2319 (2020), 29 January 2020, Joint complementary procedure between the Committee of Ministers and the Parliamentary Assembly in the event of serious breach by a member state of its statutory obligations; CM/Del/Dec(2020)1366/1.7-app, 5 February 2020, Supplementary procedure between the Committee

it has never been applied. Where appropriate, this procedure should be accompanied by the gradual implementation of graduated sanctions aimed at ensuring compliance with the statutory obligations of member states, thus avoiding the need to resort to Article 8 of the Statute.

While these proposals are not new, they would not work unless the Committee of Ministers reconsidered its practice of consensus, which is not required by the Statute. It is understandable that consensus should be sought on solutions to a conflict, as these would not be viable without the agreement of the states involved. However, unless we abandon the idea that the CoE should be a political community, consensus should not be imposed at an early stage to initiate discussions or choose a discussion framework. It is also essential that the organisation conveys a common message and seeks synergies between the Committee of Ministers and PACE, involving the Secretary General and the Commissioner for Human Rights in the process.

In short, a more holistic approach to armed conflicts between member states is needed. This would enable the ECtHR to be backed by a genuine European system for the protection of human rights, alleviating the difficulties it has faced. It would also enable the CoE to establish itself as a player in European security governance. After all, regional governance "is increasingly being provided not only by security-focused regional organisations [...] but also by multi-purpose regional organisations"²⁰³.

However, at this stage, it must be acknowledged that this direction remains hypothetical, as some of the most influential member states clearly disagree. Indeed, at the CoE's fourth Summit in May 2023, the French President made the following statement: "We have other forums for discussing armed conflicts and major strategic balances, and the European Political Community, which we founded in Prague [...], is a place where we can fully address all of these issues"²⁰⁴. The decision was therefore taken to create a new political forum, the European Political Community, rather than give the CoE a (geo)political role. Why improve what already exists when you can create something new?

of Ministers and the Parliamentary Assembly in the event of a serious breach by a member state of its statutory obligations.

²⁰³ A. M. KACOWICZ, G. PRESS-BARNATHAN, "Regional security governance", *op. cit.*, p. 300.

²⁰⁴ SUM(2023)PV, 27 March 2024, Minutes of the 4th Summit of Heads of State and Government of the Council of Europe, Reykjavik, 16-17 May 2023.