



Doc. 11459

04 December 2007

Use of experience of the “truth commissions”

Report

Political Affairs Committee / Committee on General Affairs

Rapporteur: Mr Andreas GROSS, Switzerland

Summary

Over the last thirty years, a growing number of countries around the world emerging from a difficult past have made use of a mechanism known as “truth commissions”. These officially established bodies are set up to research and report on tragic violent events in the country’s past, in particular to investigate human rights abuses committed by former regimes.

International experience shows that truth commissions may be an effective mechanism for addressing past human rights violations, identifying their roots and causes and promoting necessary reforms which would prevent such violations from being repeated. By allowing the victims of abuses to be heard, truth commissions help reconstitute their sense of civic membership and thus facilitate reconciliation. They may also play a useful complementary role to criminal justice but cannot and should not be seen as an alternative to it.

The report suggests that these experiences may be useful for those Council of Europe member states where the heritage of the past still divides societies.

It further suggests that the experience of truth commissions may be of particular relevance for the Chechen Republic of the Russian Federation.



Contents	Page
A. Draft resolution	3
B. Explanatory memorandum, by Mr Andreas Gross	5
1. Introduction	5
2. Historical examples of truth commissions	5
3. Main characteristics of truth commissions	8
4. Relation between truth commissions and criminal justice	8
5. Conceptual problems of truth commissions	9
6. Political aspects of truth commissions	9
7. Reconciling potential of truth commissions	10
8. General conclusions	11
9. Possibility of establishing a truth commission in Chechnya	11

A. Draft resolution

1. Dealing with the past, establishing the truth and promoting reconciliation in war-torn, post-conflict and transitional societies is one of the key preconditions for the achievement of lasting peace and a stable future in which democracy can be built and the rule of law and respect of human rights ensured. To cope with this task, a growing number of countries emerging from a difficult past have made use of a mechanism known as “truth commissions”.
2. Increasingly accepted around the world, truth commissions have not been widely used in Europe. Yet, there are European countries and regions where past – and in some cases ongoing – violence has left deep wounds in the society which need to be dealt with, so that the future is no longer hostage of the past. The experience of truth commissions in other parts of the world could prove to be of significant political importance and a source of inspiration for those countries.
3. Truth commissions are officially established temporary non-judicial bodies set up to research and report on tragic violent events in the country's past, in particular to investigate human rights abuses committed during a particular violent period or by the former regime.
4. Truth commissions focus on a pattern of violations, look into their roots and causes and draw lessons from past abuses, thus helping create conditions to avoid such abuses in the future. The work and conclusions of truth commissions can make it possible to establish institutional responsibility and create momentum for needed institutional reforms.
5. By addressing the victims' need to be heard and to have their sufferings recognised, truth commissions can help reconstitute the sense of civic membership for those whose rights were denied, and overcome their social exclusion. In many cases, truth commissions can be a unique opportunity for the survivors to learn the fate of the disappeared loved ones, thus responding to their right to know the truth.
6. The Assembly considers that truth commissions may be an effective mechanism for addressing past human rights violations, thus bringing reconciliation to a society emerging from a difficult past. If established in accordance with basic principles of international human rights law, they may also play a useful complementary role to criminal justice but cannot and should not be seen as an alternative to it. In particular, truth commissions should not grant amnesties for crimes which fall under international law. They should function in a way which respects, protects and promotes human rights. In order to be impartial and independent, they should be established through broad consultations across the society, with participation of civil society organisations and victims.
7. A number of countries and regions of Europe still have to come to terms with the heritage of a tragic past. They should be encouraged to turn to the experiences of truth commissions, to learn from their strengths and weaknesses, and to assess whether these experiences could be adapted to their specific national contexts and help reconcile divided societies and contribute to restoring justice, confidence and hope for common future.
8. Therefore, the Assembly calls on the governments, the parliaments, the political parties and the civil society organisations of the Council of Europe member and observer states, in particular of those where the wounds of the past are still present in the society, to study the experience and the best international practice of truth commissions, and to consider whether establishing such a commission could help address the past.
9. The Assembly considers that the experience of truth commissions may be of particular relevance for the Chechen Republic of the Russian Federation. The society in Chechnya, and in the whole Russian Federation, needs to deal with the legacy of the conflict in this region, to reconstitute the history of abuses committed, and of violence and injustices suffered, by all sides involved. It further needs to provide recognition and redress to victims and to establish institutional and personal responsibilities, so as to ensure accountability of perpetrators and prevent further abuses. A truth commission could be one way of meeting those needs.
10. The Assembly recognises that a decision on the appropriateness of establishing a truth commission belongs to the authorities of the Chechen Republic of the Russian Federation. It notes at the same time that there is a growing interest in this matter, as well as the demand for truth and reconciliation, at various levels of the Chechen society.
11. To respond to this interest, the Assembly asks its Political Affairs Committee to provide, in the most suitable way, the authorities and civil society organisations of the Chechen Republic of the Russian Federation with information on experiences and best international practice of truth commissions.

12. Nothing in this resolution should be interpreted as undermining the right of individuals to apply to the European Court of Human Rights.

B. Explanatory memorandum, by Mr Andreas Gross

1. Introduction

“The truth and reconciliation commission represents a compromise between those who want amnesia and those who want retribution.”

Archbishop Desmond Tutu

1. In the past three decades, spectacular progress has been achieved in many parts of the world, including in Europe, in bringing to an end dictatorships, internal violent structures and wars, and in implementing the principles of democracy, respect for human rights and the rule of law. In very general terms, this trend could be qualified as transition from violence and repression to democracy.
2. Although every transformation process has its own particular features, one of the most difficult issues for an emerging society is to come to terms with its difficult past, to deal with the legacy and the public figures of the former regime, or to rebuild the nation's unity after a civil war.
3. In order to cope with this task, a number of countries around the world have established specific bodies known as “truth commissions”. To date, some 30 countries have had this experience and a few more are considering it.
4. The term “truth commissions” generally designates officially established temporary non-judicial bodies at the national level set up to research and report on tragic violent events in the country's past, in particular to investigate human rights abuses committed during a particular violent period or by the former regime.
5. Though it is difficult to measure the extent to which a given truth commission has actually fulfilled its goals, the concept as such has become increasingly popular and is considered as an important tool, contributing to restoring justice and reconciling the nation with itself.
6. However, with a few exceptions, this model has not been widely used in Europe. Yet, there are European countries and regions where past – and in some cases ongoing – violence has left deep wounds in the society which need to be dealt with, so that the future is no longer hostage of the past. The experience of the truth commissions in other parts of the world could prove to be of significant political importance and a source of inspiration for those countries.
7. The purpose of the present report is to provide basic information on the truth commissions, draw lessons from their successes and failures, analyse their advantages and weaknesses from a political and a legal perspective, and envisage how these experiences could be implemented among the Council of Europe member states, particularly, in the Chechen Republic of the Russian Federation.
8. I wish to express my gratitude to Mrs Priscilla Hayner (International Centre for Transitional Justice, Geneva), Mrs Francesca Pizzutelli (Amnesty International, London), Mr Driss El Yzami (Human Rights Advisory Council, Morocco, formerly a member of the Justice and Reconciliation Commission), Professor Lyal Sunga (Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Sweden), and Mr Abdulla Istamulov (Centre for Strategic Studies and Promotion of Civil Society in North Caucasus, Grozny) for their participation in the hearing organised by the Political Affairs Committee on 13 September 2007. Their input was extremely helpful for my work. I am also grateful to Mr Mark Freeman (International Centre for Transitional Justice, Brussels) for his valuable contribution and comments.

2. Historical examples of truth commissions

9. A quick look at the most prominent truth commissions, namely those in Argentina, Chile, El Salvador, South Africa and Guatemala, gives an opportunity to understand in which circumstances these bodies are established.
10. The National Commission on the Disappearance of Persons in Argentina was created in December 1983 by then-President Raul Alfonsín, shortly after the restoration of democracy, in order to investigate the fate of the victims of forced disappearance and other human rights violations – estimated at between 10 000 and 30 000 – carried out during the military dictatorship (1976-83). Democratic institutions were weak, and the military, which retained strong positions, actively resisted accountability for past crimes. Before restoring civilian rule, the military rulers granted themselves immunity from prosecution. The commission was composed of 16 members, and included public and religious personalities and parliamentarians. The results

of the research on some 9 000 disappeared persons were documented in the *Nunca más* (Never again) report released in September 1984, which was followed by the annulment of amnesties granted and trials of the key leaders of military juntas. However, under the threat of a new military coup, laws were subsequently enacted which limited prosecutions. Moreover, in 1989 and 1990 President Carlos Menem issued two pardons for a number of officers still facing trials as well as for those already convicted. In the late 1990s, laws limiting prosecution were invalidated, and several cases were reopened.

11. In Chile, the eight-member National Commission for Truth and Reconciliation was established in 1990 by then-President Patricio Aylwin. The commission's mandate encompassed human rights abuses resulting in death or disappearance during years of military rule under Augusto Pinochet from September 1973 until March 1990. The report of the commission, known as the Rettig report, was made public in February 1991. It established that some 2 300 persons were killed for political reasons. In about 640 cases, the commission could not conclusively determine that the person was killed for political reasons. A new effort to come to terms with the legacy of Pinochet's rule was made at the beginning of this century, by the National Commission on Political Imprisonment and Torture established by President Ricardo Lagos. However, testimony collected by this commission is classified for fifty years. Therefore, the information cannot be used in trials concerning human rights violations, nor can it be made public.

12. The Commission on the Truth for El Salvador was mandated by the 16 January 1992 UN-brokered peace agreements ending the civil war in that country. It was set up in July 1992 and composed of former Colombian President Belisario Betancur, former Venezuelan Foreign Minister Reinaldo Figueredo Planchart and Thomas Buergenthal, George Washington University law professor. The commission's report on serious acts of violence since 1980, entitled "From madness to hope: the 12-year war in El Salvador: report of the Commission on the Truth for El Salvador," was released on 15 March 1993 at the United Nations.

13. The case of Guatemala, where the truth commission was established as part of the internationally sponsored peace process, deserves special attention. The Historical Clarification Commission (Comisión para el Esclarecimiento Histórico, CEH) was established on 23 June 1994, as part of the "Oslo Accords", peace agreements between the Guatemalan Government and the National Guatemalan Revolutionary Unit (URNG), to investigate human rights violations committed by both sides in the thirty-six-year armed conflict in this country during which an estimated 200 000 people lost their lives.

14. The commission's terms of reference, set forth by the Oslo Accords, were as follows:

"I. To clarify with all objectivity, equity and impartiality the human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed conflict.

II. To prepare a report that will contain the findings of the investigations carried out and provide objective information regarding events during this period covering all factors, internal as well as external.

III. Formulate specific recommendations to encourage peace and national harmony in Guatemala. The commission shall recommend, in particular, measures to preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights and to strengthen the democratic process."

15. The commission was chaired by German law professor Christian Tomuschat of Berlin's Humboldt University, and included two Guatemalans: lawyer Edgar Balsells, and Otilia Lux Coti, a Mayan woman and university professor of pedagogy.

16. The commission heard testimony from thousands of survivors and attended exhumations of clandestine graves; it also interviewed former heads of state and high-ranking members of the armed forces. The final report, entitled "Guatemala: memory of silence", was made public in February 1999. It identified a total of 42 275 named victims; of these, 23 671 were victims of arbitrary executions, and 6 159 were victims of forced disappearances. It found that Maya Native Americans accounted for 83% of the victims, and that 93% of the atrocities committed during the war had been the work of the armed forces.

17. The report was handed over to representatives of the Guatemalan Government and the URNG, as well as those of the UN Secretary-General, who was charged with its public release.

18. Perhaps the most remarkable example is the Truth and Reconciliation Commission (TRC) set up in 1995 by the South African Parliament to investigate human rights violations during the apartheid era between 1960 and 1994. Its mandate was to bear witness to, record and, in some cases, grant amnesty to the perpetrators of crimes relating to human rights violations, and to provide reparation and rehabilitation to the victims.

19. The TRC was set up under the Promotion of National Unity and Reconciliation Act,¹ which set forth its terms of reference as follows:

“The objectives of the commission shall be to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by:

- establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;*
- facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this act;*
- establishing and making known the fate or whereabouts of victims and by restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims, and by recommending reparation measures in respect of them;*
- compiling a report providing as comprehensive an account as possible of the activities and findings of the commission contemplated in paragraphs a, b and c, and which contains recommendations of measures to prevent the future violations of human rights.”*

20. The TRC was composed of 17 high-profile members and was chaired by Archbishop Desmond Tutu. The commission held public hearings throughout South Africa at which former victims of human rights abuses told their stories. Its work was accomplished through three committees. The Human Rights Violations Committee investigated human rights abuses that occurred between 1960 and 1994. The Reparation and Rehabilitation Committee was charged with restoring victims' dignity and formulating proposals to assist with rehabilitation. The Amnesty Committee considered applications from individuals who applied for amnesty in accordance with the provisions of the commission's founding act.

21. In order to avoid victor's justice, no side was exempt from appearing before the commission, which heard reports of human rights violations and considered amnesty applications from all sides, from the apartheid state to the liberation forces including the African National Congress.

22. The commission was empowered to grant amnesty to those who committed abuses during the apartheid era, as long as the crimes were politically motivated, proportionate and there was full disclosure by the person seeking amnesty. It received more than 7 200 applications by perpetrators of human rights abuses; about 850 applicants were granted amnesty and more than 5 400 were refused amnesty.

23. The commission's report was presented to President Mandela in October 1998. However, the Amnesty Committee is currently continuing to process applications for amnesty.

24. The TRC was seen by many as a crucial component of the transition to full and free democracy in South Africa.

25. More recently, more or less successful examples of truth commissions may be found in Peru, Timor-Leste, Sierra Leone and Morocco.

26. The European experience of truth commissions is very limited. One should perhaps mention the Enquet Kommission Aufarbeitung von Geschichte und Folgen der SED-Diktator in Deutschland (Study Commission for the Assessment of History and Consequences of the SED Dictatorship in Germany), set up by members of the German Parliament in March 1992 to investigate human rights violations under communist rule in East Germany from 1949 to 1989. The 27-member body was headed by East German parliamentarian and human rights activist Rainer Eppelmann. There are doubts as to whether this parliamentary project should be considered as a truth commission, even if a number of experts believe it was.

27. In the Federal Republic of Yugoslavia, the authorities set up in March 2001 the Truth and Reconciliation Commission in an attempt to come to terms with the legacy of the wars in the Balkans. The commission, composed of 15 members, was asked to investigate war crimes committed in Slovenia, Croatia, Bosnia and Kosovo in the 1990s. Most experts consider that this initiative was a failure. The commission was appointed without due consultation in the country, had very little civil society support and clearly lacked credibility. Its

1. <http://www.justice.gov.za/legislation/acts/1995-034.pdf>.

composition prevented it from being seen as an impartial body. As a result of its inadequate conception, and the lack of the political will on the part of the authorities to deal with the past in a responsible way, the commission was dissolved in 2003 without having produced any results.

28. Nonetheless, the concept of a truth commission as a tool to investigate the past and help reconcile the society is now more widely known and gets growing support in Europe; ideas of establishing a truth commission have been debated in a number of European countries, including the United Kingdom (Northern Ireland), Spain, Bosnia and Herzegovina and Estonia.

3. Main characteristics of truth commissions

29. A universal formula of an ideal truth commission does not exist. A country considering establishing a truth commission must create its own model appropriate to its local circumstances. It is nevertheless possible to single out a number of common features and formulate principles which should govern the setting up of such a body.

30. Experts outline the following main characteristics² of truth commissions:

- focus on the past. The events may have occurred in the recent past, but a truth commission is not a standing body similar to a human rights commission, which looks at ongoing and future violations as and when they occur;
 - investigation of a pattern of abuse over a set period of time rather than a specific event. In its mandate, the truth commission is given the parameters of its investigation both in terms of the time period covered as well as the type of human rights violations to be explored;
 - temporary body, usually operating over a period of six months to two years and completing its work by submitting a report. These parameters are established at the time of the commission's formation, but often an extension can be obtained to wrap things up;
 - official establishment or empowerment by the state. This, in principle, allows the commission to have greater access to information, greater security, and increased assurance that its findings will be given serious consideration. Official sanction from the government is crucial because it represents an acknowledgement of past wrongs and a commitment to address the issues and move on. Furthermore, governments may be more likely to enact recommended reforms if they have established the commission.
31. The operation of a truth commission usually includes the following elements:
- taking individual statements from the victims, surviving members of families, witnesses, and possibly perpetrators;
 - in-depth research and investigation in a limited number of particularly important cases;
 - holding of a public hearing, so as to allow the whole society to have a look at its recent history and come to terms with the past;
 - publication of a final report, which should be made public and widely circulated, and would contain conclusions and recommendations for reform and action by the government.

4. Relation between truth commissions and criminal justice

32. Truth commissions have as their main goal establishing what happened in the past. They are not courts, though, and hence do not have the power to prosecute. A truth commission should be seen as a method of justice seeking which is distinctive from, but complementary to, and in no case alternative to, criminal justice.

33. By focusing on a pattern of abuses rather than on isolated cases, a truth commission is an opportunity not only to look at what actually happened, but also to reflect on the roots and causes of events. Truth commissions look at the "big picture" and provide a larger historical and chronological perspective of events.

2. Hayner, P.B., *Unspeakable truths*, Routledge, New York, 2001, p. 14.

34. This approach, which makes it possible to establish institutional responsibility and create momentum for needed institutional reforms, can be more far-reaching, in political terms, than criminal prosecution with its emphasis on individual responsibility. Moreover, the purpose of a truth commission is not simply to investigate the past but to draw lessons from past abuses and help create conditions to avoid such abuses in the future.

35. Another major difference between a truth commission and criminal procedure is the victim-oriented approach. Interviews and public hearings are, for the victims and survivors, an opportunity to speak about what they suffered, which may have a moral healing effect on them and help restore their sense of dignity. In turn, the fact that a truth commission is an officially established state body is a form of recognition, by the state, of its wrongdoings. Large involvement of the victims and their families in the truth-seeking process can help reconstitute the sense of full civic membership for those who were denied the protection of the law in the past. Moreover, truth commissions have the power to recommend reparations, compensation, physical and psychological rehabilitation, public apologies and other forms of redress to victims.

36. A truth commission therefore may be a helpful tool of transitional justice in circumstances where criminal justice cannot function in a proper way, which is often the case in transitional societies. It can also support criminal prosecutions by exposing and documenting the truth more effectively.

5. Conceptual problems of truth commissions

37. However, some aspects of the functioning of truth commissions may be questioned from the legal point of view.

38. One of the most controversial issues is related to the power of some truth commissions to grant amnesties. International legal experts and human rights activists strongly oppose such practice, arguing that blanket amnesties contradict the principle of individual criminal responsibility and undermine the fight against impunity. On the other hand, amnesties could make the work of a truth commission much more effective as alleged perpetrators are more prepared to co-operate if granted some form of immunity, or at least a deal softening the punishment.

39. I believe that the right attitude would be not to allow amnesties for crimes under international law. At the same time, conditional, case-by-case amnesties for less serious crimes could be acceptable. Moreover, in order to reintegrate displaced civilians and former fighters, carefully designed amnesties should be encouraged. In addition, in order to protect the rights of those who may be compelled to testify against themselves, a truth commission may have the power to grant use immunity that is acceptable under international law. Individuals granted use immunity are assured that information they provide will not be used against them in any criminal proceedings.

40. At the end of the day, it is up to national decision makers to determine the powers of the truth commission, striking the best possible balance between respecting universal principles and taking into account local realities and national interests. In practice, the only truth commission that has had the power to grant amnesty was the South African one; it examined applications for amnesty on a case-by-case basis, and the majority of such applications were rejected.

41. Another issue which poses a problem is the capacity of a truth commission to “name names”, that is, to disclose, in public hearing or in its report, names of individuals who are believed to be responsible for human rights abuses. As a truth commission is not a judicial body, such a mention does not constitute declaring someone guilty. However, for the public perception, it may have exactly the same effect as if the person concerned were found guilty by a court. Such situations may have direct consequences on the person and therefore pose a problem of due process. Additionally, the work of the truth commission may be blocked if challenged in a court.

6. Political aspects of truth commissions

42. Obviously, in order to achieve a real political transition, and to turn the page of the former regime or situation, the issue of dealing with the legacy of the past must be addressed in some form. The European experience has so far privileged the judicial approach.

43. However, governments emerging from transition often lack a solid political base and must look for some form of compromise with elements of the former regime. In many cases, they would give priority to restoring the unity of the nation by bringing former enemies together, rather than risking a civil war by bringing to justice perpetrators of past human rights abuses which may have retained significant power or influence. In addition, judicial systems in transitional countries are often too weak, or simply inappropriate, for such a task.

44. On the other hand, national traditions and mentalities may in many cases favour a co-operative and compromise-seeking approach to an adversarial one proper to the court procedures. As was argued by a number of former members of truth commissions, it is often more important for society to find reconciliation, to allow a maximum of victims to speak out, than to concentrate on a limited number of criminal trials.

45. In these circumstances, establishing a truth commission would be a way to introduce some degree of accountability without undermining national peace, and actually to contribute to reconciliation by clarifying facts and responsibilities.

46. Additionally, the work of a truth commission could weaken positions, and eventually allow criminal prosecution of those in power related to the old regime or to human rights violations, by publicly exposing their role in the past events. However, whether a truth commission should publicly “name names” is a matter of controversy in terms of procedural fairness.

7. Reconciling potential of truth commissions

47. International experience shows that a truth commission can be an effective tool of justice and reconciliation only when the conflict is over. It would indeed be difficult to undertake the necessary inquiries if the conflict is still ongoing, or if the transition is not achieved and significant power remains with elements of the former regime.

48. The decision to opt for a truth commission as a way to deal with the past, as well as the mandate, the powers and the scope of past abuses to be dealt with, belongs to the country concerned. It must be taken at the highest political level (president, government and/or parliament) and gather the support of the main political forces. Genuine political will on the part of all stakeholders is crucial for the commission to be effective and to have full access to official documents. It is even more necessary at the stage of implementing the commission’s recommendations.

49. A truth commission should not be viewed as a body imposed from the outside, but as a well-thought out national decision. While international advice and assistance could play a helpful role, decision making should be left to the national stakeholders. The national ownership of a truth commission procedure is essential for its effectiveness as it is a necessary part of the self-reflection and self-assessment process.

50. Furthermore, in order to be independent and impartial, and be perceived as such, a truth commission should be set up through broad consultations with society as a whole, and include well-respected public figures with high-profile and solid reputations.

51. The work of the truth commission should be conducted in as non-politicised way as possible. In fact, some truth commissions were used solely to discredit the old regime and to legitimise the new one. Such an attitude, which could be qualified as “victor’s justice”, would polarise society instead of bringing reconciliation. It would be particularly damaging in a case of a civil war, where both sides have “their own truths”.

52. Although most of the truth commissions have sought to bring reconciliation as one of their main aims, it must be stressed that the process of rebuilding national unity often requires much more than establishing the truth and/or naming and punishing those responsible for past abuses. One cannot decide it by decree, or by issuing a report. Reconciliation is a long process, where a truth commission plays an important role, but the results may take years to come. Accordingly, one should avoid raising expectations too high, which could prove to be harmful to the process, especially at the stage of implementing its recommendations.

53. The truth commission’s final report constitutes its legacy. In addition to summarising its findings and outlining patterns of past abuses, the report gives an opportunity to analyse the causes of these abuses, to establish institutional responsibilities for what happened, and make recommendations to the authorities that would make such abuses impossible in the future, and eventually help rebuild the society. Such recommendations may suggest judicial, military or police reforms, and even broader measures implying constitutional changes.

54. It is important that these recommendations are duly followed up and implemented. However, since the work of the truth commission usually ends with the publication of its report, the question arises as to who is going to monitor its follow-up. If no specifically designated body exists, that role may be assumed by the parliament, or by civil society. It is necessary therefore that the truth commission be specific and realistic in its recommendations. It is also useful to associate, as early as possible, potential actors in implementation. Furthermore, a broad political consensus on suggested reforms would facilitate implementation.

55. Finally, one may wonder if dealing with the past by way of a truth commission could be conceived of in the context of an inter-state conflict. Although there have been no such cases in international practice to date, such a possibility should not be excluded. Certainly, it is hard to imagine a state agreeing to investigation by a truth commission set up by another state. Nonetheless, if truth commissions are established in two states and work in co-operation, on the basis of terms of reference agreed by common accord, they could contribute to reconciliation and restoration of good-neighbourly relations much more than procedures in a court. The issue needs further reflection but should not be rejected just because it has never happened before.

8. General conclusions

56. Dealing with the past and establishing the truth in war-torn, post-conflict and transitional societies is one of the key preconditions for the achievement of lasting peace and a stable future, which are in turn necessary for building democracy and ensuring the rule of law and respect for human rights.

57. The truth commissions may be an effective mechanism for addressing past human rights violations, thus bringing reconciliation to a society emerging from a difficult past. If established in accordance with basic principles of international human rights law, they may also play a useful complementary role to criminal justice.

58. A number of countries and regions of Europe still have to come to terms with the heritage of a tragic past. They should be encouraged to turn to the experiences of truth commissions, to learn from their strengths and weaknesses, and to assess whether these experiences could be adapted to their specific national contexts and help reconcile divided societies and restore justice, confidence and hope for a common future.

9. Possibility of establishing a truth commission in Chechnya

59. One of my objectives as rapporteur on this issue has been to examine whether the experience of truth commissions could in practice contribute to peace, justice and reconciliation in the Chechen Republic of the Russian Federation. With this in mind, a number of representatives of the authorities and of civil society of Chechnya were invited to a hearing held by the Political Affairs Committee on 13 September 2007. On the one hand, it would have allowed them to familiarise themselves with the concept of truth commissions and obtain information on lessons learned from best international practice in this field, and, on the other hand, to express their opinions on the relevance of such experiences for Chechnya.

60. Unfortunately, four of the five participants invited from the Chechen Republic could not attend the hearing. Nevertheless, during preparations for the hearing, they showed real interest in the idea of a truth commission.

61. I therefore believe that the committee should make a new effort in order to bring information on the experiences of truth commissions to both the Chechen authorities and society. This could be done by organising a seminar in Chechnya involving leading international experts on truth commissions, with the broad participation of the Chechen authorities and local civil society organisations.

62. At present, I would refrain from drawing a definitive conclusion on whether establishing a truth commission in Chechnya is timely and feasible. Moreover, it is not for me, or for the Assembly, to decide that such a commission should be established.

63. Clearly, the society in Chechnya, and in the whole Russian Federation, needs to deal with the legacy of the conflict in this region, to reconstitute the history of abuses committed, and violence and injustices suffered, by all sides involved – many of which are still largely ignored – and establish institutional and personal responsibilities. This task is far above the capacities of the judiciary, be it at national or at European level. A truth commission could be an appropriate answer to that need.

64. However, international experience shows that, for a truth commission to be effective, certain minimum conditions must exist in the society. Those include, *inter alia*:

- a clear break with past violence, and a real positive transition;
- credible political authorities and an active civil society.

65. Though a number of significant changes in Chechnya could be observed during my last visit to Grozny (November 2006), I have some doubts as to the extent to which these basic criteria are met today.

66. Yet I believe that initiating a public discussion within Chechnya on a possible truth commission is timely, as it brings to public attention the problem of dealing with the past. Moreover, the attitude that the political authorities take regarding this idea could indicate whether or not their commitment to seek justice and reconciliation is real.

Reporting committee: Political Affairs Committee.

Reference to committee: Reference No. 3130 of 1 September 2005.

Draft resolution unanimously adopted by the committee on 13 November 2007.

Members of the committee: Mr Abdülkadir **Ateş** (Chairperson), Mr Konstantin Kosachev (Vice-Chairperson) (alternate: Mr Victor **Kolesnikov**), Mr Zsolt Németh (Vice-Chairperson), Mr Giorgi Bokeria (Vice-Chairperson), Mr Miloš **Aligrudić**, Mr Claudio Azzolini, Mr Denis Badré, Mr Radu Mircea **Berceanu**, Mr Andris Bērziņš, Mr Alexandër Biberaj, Mrs Guðfinna Bjarnadóttir, Ms Raisa Bohatyryova, Mr Predrag Bošković, Mr Luc **Van den Brande**, Mr Lorenzo Cesa, Mr Mauro Chiaruzzi, Ms Elvira Cortajarena, Ms Anna **Čurdová**, Mr Noel Davern, Mr Dumitru Diacov, Mr Michel Dreyfus-Schmidt, Ms Josette Durrieu, Mr Joan Albert Farré Santuré, Mr Pietro Fassino (alternate: Mr Pietro **Marcenaro**), Mr Per-Kristian **Foss**, Ms Doris Frommelt, Mr Jean-Charles Gardetto, Mr Charles Goerens, Mr Andreas **Gross**, Mr Davit Harutiunyan, Mr Jean-Pol Henry, Mr Serhiy Holovaty, Mr Joachim Hörster, Mrs Sinikka **Hurskainen**, Mr Tadeusz **Iwiński**, Mr Bakir Izetbegović, Mrs Corien W.A. Jonker, Ms Darja Lavtižar-Bebler, Mr Göran **Lindblad**, Mr Younal Loutfi, Mr Mikhail **Margelov**, Mr Tomasz Markowski, Mr Dick Marty, Mr Frano Matušić, Mr Murat **Mercan**, Mr Mircea **Mereută**, Mr Dragoljub Mićunović (alternate: Mr Željko **Ivanji**), Mr Jean-Claude Mignon (Mr Laurent **Béteille**), Ms Nadezhda Mikhailova, Mr Aydin Mirzazada, Mr João Bosco **Mota Amaral**, Ms Natalia Narochitskaya, Mrs Miroslava **Němcová**, Mr Hryhoriy Nemyrya, Mr Fritz Neugebauer, Mrs Kristiina Ojuland (alternate: Mr Andres **Herkel**), Mr Theodoros Pangalos (alternate: Mr Konstantinos **Vrettos**), Ms Elsa **Papadimitriou**, Mr Christos **Pourgourides**, Mr John **Prescott**, Mr Gabino Puche (alternate: Mr Pedro **Agramunt**), Mr Lluís Maria **de Puig**, Mr Jeffrey Pullicino Orlando, Mr Andrea **Rigoni**, Lord **Russell-Johnston**, Mr Oliver **Sambevski**, Mr Ingo Schmitt, Ms Hanne **Severinsen**, Mr Samad Seyidov, Mr Leonid Slutsky, Mr Rainer Steenblock, Mr Zoltán Szabó, Baroness Taylor of Bolton (alternate: Mr John **Austin**), Mr Mehmet **Tekelioğlu**, Mr Mihai Tudose, Mr José Vera Jardim, Ms Birutė Vésaitė, Mr Björn Von Sydow, Mr Harm Evert Waalkens, Mr David **Wilshire**, Mr Wolfgang Wodarg, Ms Gisela Wurm, Mr Boris Zala, Mr Krzysztof Zaremba.

Ex officio: MM. Mátyás **Eörsi**, Tiny Kox.

NB: The names of those members present at the meeting are printed in bold.

The draft resolution will be discussed at a later sitting.