



**Doc. 15933 – Compendium of written amendments**  
26/06/2024

**(Final version)**

## **Reparation and reconciliation processes to overcome past conflicts and build a common peaceful future – the question of just and equal redress**

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## A. Draft Resolution

1. The Parliamentary Assembly regrets the sad reality that wars and violent conflicts cause great human suffering as well as the destruction of property, homes and the environment.
2. The Assembly emphasises that negotiations and processes seeking to address the damage caused by conflict and move towards reconciliation are crucial for lasting peace through relevant tools under international law, which may vary depending on the context, and may include truth-seeking initiatives, justice, reparations, recognition and guarantees of non-repetition. However, often such processes do not lead to adequate results due to a lack of an acceptable, achievable, enforceable and implementable package towards reconciliation and redress following a conflict. This can create a feeling of injustice which can, in turn, perpetuate conflict or even lead to a resumption of hostilities.
3. The Assembly recalls the terms of the preamble to the Statute of the Council of Europe (ETS No. 1) which stipulates that the States parties are "convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation". The Organisation is thus well-placed to promote solutions to foster justice, co-operation and peace in Europe.
4. The Assembly notes that notwithstanding the existing tools at the disposal of the Council of Europe to facilitate finding solutions to post-conflict disputes – including through political discourse within the Assembly and within the Committee of Ministers, and through the jurisdiction of the European Court of Human Rights – problems persist. Such tools often do not provide an adequate, enforceable and timely response to the challenges of disputes between member States, particularly following a conflict situation.
5. The Assembly reiterates the important role that courts can play in finding just solutions, whilst regretting that often courts lack jurisdiction, for example due to the doctrine of State immunity; are unable to fully address the overall complexity of the problem, for example due to their remit or limits of the available remedies; or their judgments are not enforced. Even the European Court of Human Rights is a limited tool in achieving reconciliation and reparation following a conflict, given that its remit is restricted to specific human rights violations, given the limited range of remedies available to it, and given the difficulties in enforcing, in particular, just satisfaction judgments in interstate cases. There is thus a strong case for a more effective and more adaptive mechanism for resolving interstate disputes following a conflict between Council of Europe member States, and for improving the enforcement of any awards.
6. The Assembly recognises that the topic of reparation and reconciliation in post-conflict situations can be a highly sensitive matter requiring careful political as well as legal expertise, in order to find solutions that are fair, respect

the principles of the rule of law, justice and human rights, promote truth and reconciliation, and safeguard peace. Any approach needs to be firmly based on the principle of State responsibility, under international law. The Assembly also insists that it is particularly important that victims and other affected groups, as well as State actors, are involved in the process of finding adequate solutions that best respond to the needs of those affected. The Assembly underlines the importance of striving to find an acceptable, achievable, enforceable and implementable package that is well-adapted to the context of a particular situation.

7. The Assembly firmly believes that there is therefore a strong case for more action by the Council of Europe, through a mediated process under the auspices of the Organisation, to help to address the conflicts of the past, and to promote reconciliation and reparation in relation to conflicts between Council of Europe member States. It is only by addressing these issues that we can move forward towards peaceful co-operation for the future and thus establish better upstream tools to prevent future conflicts. Such an initiative by the Council of Europe would help to fill a lacuna in the rules-based international order, to make the most of the Organisation's unique role and to promote regional peace.
8. The Assembly considers that a mediated solution could help to look holistically at resolving highly complex matters between States by involving a neutral third party in finding solutions. In particular, a mediated solution might stand a better chance of securing greater buy-in from States and victims and thus a greater chance of enforcement. A mediator could be chosen from a panel of international mediators or conciliators, perhaps from former Secretaries General of the United Nations or of the Council of Europe, or judges of international renown. Mediated solutions must be achievable, enforceable and implementable.
9. The Assembly considers that a mediation process under the auspices of the Council of Europe should include the following elements:
  - 9.1. A system should be established to enable member States to submit disputes as to reparations and remedies to mediation.

**Amendment 1**  
**Tabled by the Committee on Political Affairs**  
**and Democracy**

*In the draft resolution, after paragraph 9.1, insert the following paragraph:*

*"The mediation mechanism should avoid duplication of or conflict with any other existing processes and should not be used to bypass or undermine such processes, including in the framework of the United Nations, as well as the procedures before, and the implementation of judgments of, the European Court of Human Rights."*

- 9.2. The Committee of Ministers, the Parliamentary Assembly or the Secretary General of the Council of Europe should be able to initiate this mediation process in the absence of consent by both parties. In the case of the Assembly this could be through a Recommendation.
- 9.3. The process should apply to matters within the geographic and temporal limits of the Council of Europe. It should only apply to conflicts between States who were not members of the Council of Europe at the relevant time with their express consent. Moreover, for reasons of enforceability, it should not apply to States who are no longer members of the Council of Europe.
- 9.4. This system should be available for interstate disputes relating to post-conflict situations or other disputes that could risk escalating into tensions.
- 9.5. This process should also be available for identifying a package of reparations and remedies in relation to interstate cases before the European Court of Human Rights, where a given case could benefit from a broader toolkit for proposing solutions that are better adapted to addressing the complexities of post-conflict situations and the needs of victims.
- 9.6. The approach should be victim-centred, involving consultation with victims and other affected groups as well as with the States concerned.
- 9.7. There should be an obligation on member States to engage with a mediation process in good faith. As a matter of propriety, policy and principle, member States should be co-operating with the Council of Europe to resolve issues that impact on the human rights of individuals. This is implicit in the general obligation of States to collaborate sincerely and effectively and to co-operate in good faith, as well as in the specific obligations under the European Convention on Human Rights (ETS No. 5). In particular, the nature of collective enforcement under the Convention implies an obligation of co-operation between States. There should thus be potential repercussions for a State that is considered not to have engaged with the process in good faith.

**Amendment 2**  
**Tabled by the Committee on Political Affairs and Democracy**

*In the draft resolution, replace paragraph 9.2 with the following paragraph:*

*"The Committee of Ministers, the Parliamentary Assembly or the Secretary General of the Council of Europe may invite member States to resort to the mediation under the auspices of the Council of Europe. However, the mediation process may only be initiated with the full consent of all parties involved."*

**Amendment 3**  
**Tabled by the Committee on Political Affairs and Democracy**

*In the draft resolution, paragraph 9.7, replace the sentence "There should be an obligation on member States to engage with a mediation process in good faith." with the following sentence:*

*"Member States which resort to the mediation process should commit to engage with it in good faith."*

**Amendment 4**  
**Tabled by the Committee on Political Affairs and Democracy**

*In the draft resolution, paragraph 9.7, delete the following sentence:*

*"There should thus be potential repercussions for a State that is considered not to have engaged with the process in good faith."*

- 9.8. There should be a duty on States to co-operate sincerely with the results of mediation and there should be potential consequences for unreasonable failure to do so.
- 9.9. Much of this can be achieved using the existing legal tools at the disposal of the Council of Europe, such as the Statute, the European Convention on Human rights, and ways of working under those founding instruments, in addition to political and diplomatic pressure using tools at the disposal of the Council of Europe. In a serious case of non-compliance, use of the Complementary joint procedure could be considered, as well as potential suspension where a breach would constitute a serious violation of Article 3 of the Statute of the Council of Europe (namely a serious violation of the principles of the rule of law, human rights and sincere and effective collaboration in the realisation of the aims of the Organisation).
- 9.10. The Council of Europe should develop an improved toolkit and standards for reparation and reconciliation in order to find solutions that are best adapted to addressing the complexities of a post-conflict situation. Such a toolkit should be non-exhaustive, adaptable to new situations, should avoid a one-size-fits-all approach and should instead offer a number of ideas for potential use in mediated solutions.
10. The Assembly strongly calls on member States to:
- 10.1. accept the compulsory jurisdiction of relevant international tribunals such as the International Court of Justice in order to facilitate the peaceful resolution of disputes between member States;
- 10.2. ratify the European Convention for the Peaceful Settlement of Disputes (ETS No. 23), as a useful tool for the settlement of disputes, whether through recourse to the International Court of Justice, the use of conciliation, or recourse to arbitration;
- 10.3. undertake all necessary actions to establish a functional system of mediation to help resolve disputes between member States by peaceful and democratic means, in full respect for human rights, the rule of law and with the involvement of those affected by a conflict situation, including victim groups.

**Amendment 5  
Tabled by the Committee on Political Affairs  
and Democracy**

*In the draft resolution, paragraph 9.9, delete the following sentence:*

*"In a serious case of non-compliance, use of the Complementary Joint Procedure could be considered, as well as potential suspension where a breach would constitute a serious violation of Article 3 of the Statute of the Council of Europe (namely a serious violation of the principles of the rule of law, human rights and sincere and effective collaboration in the realisation of the aims of the Organisation)."*

## B. Draft Recommendation

1. Referring to its Resolution... (2024) "Reparation and reconciliation processes to overcome past conflicts and build a common peaceful future – the question of just and equal redress", the Parliamentary Assembly regrets the great suffering caused by conflicts and lack of adequate effective mechanisms for providing redress. The Assembly considers that part of an improved upstream policy of conflict prevention involves adequately addressing past harms.
2. Recalling that truth-seeking initiatives, justice, reparations, recognition and guarantees of non-repetition are crucial to lasting peace and reconciliation, the Assembly calls on the Committee of Ministers to develop improved mechanisms to this end.
3. The Assembly firmly believes that there is a strong case for increased action by the Council of Europe, through a mediated process under the auspices of the Organisation, to help to address the conflicts of the past, to promote reconciliation and reparation in relation to conflicts between Council of Europe member States, and to ensure a durable peace for the future.
4. The Assembly considers that a mediated solution could help to look contextually and holistically at resolving highly complex matters between States in order to find achievable, enforceable and implementable solutions for the benefit of victims and of lasting peace. Such a mechanism should include the perspective and needs of victims in order to find a just and meaningful solution and should ensure adequate mechanisms for implementing and distributing any awards amongst victims, having regard to both collective and individual interests.
5. The Assembly recommends that the Committee of Ministers undertake work to establish a mediation process under the auspices of the Council of Europe which should include the following elements:
  - 5.1. A system should be established to enable member States to submit disputes as to reparations and remedies to mediation.

### **Amendment 6 Tabled by the Committee on Political Affairs and Democracy**

*In the draft recommendation, after paragraph 5.1, insert the following paragraph:*

*"The mediation mechanism should avoid duplication of or conflict with any other existing processes and should not be used to bypass or undermine such processes, including in the framework of the United Nations, as well as the procedures before, and the implementation of judgments of, the European Court of Human Rights."*

- 5.2. The Committee of Ministers, the Parliamentary Assembly or the Secretary General of the Council of Europe should be able to initiate this mediation process in the absence of consent by both parties. In the case of the Assembly this could be through a Recommendation.
- 5.3. The process should apply to matters within the geographic and temporal limits of the Council of Europe. It should only apply to conflicts between States who were not members of the Council of Europe at the relevant time with their express consent. Moreover, for reasons of enforceability, it should not apply to States who are no longer members of the Council of Europe.
- 5.4. This system should be available for interstate disputes relating to post-conflict situations or other disputes that could risk escalating into tensions.
- 5.5. This process should also be available for identifying a package of reparations and remedies in relation to interstate cases before the European Court of Human Rights, where a given case could benefit from a broader toolkit for proposing solutions that are better adapted to addressing the complexities of post-conflict situations and the needs of victims.
- 5.6. The approach should be victim-centred, involving consultation with victims and other affected groups as well as with the States concerned.
- 5.7. There should be an obligation on member States to engage with a mediation process in good faith. As a matter of propriety, policy and principle, member States should be co-operating with the Council of Europe to resolve issues that impact on the human rights of individuals. This is implicit in the general obligation of States to collaborate sincerely and effectively and to co-operate in good faith, as well as in the specific obligations under the European Convention on Human Rights (ETS No. 5). In particular, the nature of collective enforcement under the Convention implies an obligation of co-operation between States. There should thus be potential repercussions for a State that is considered not to have engaged with the process in good faith.

**Amendment 7**  
**Tabled by the Committee on Political Affairs and Democracy**

*In the draft recommendation, replace paragraph 5.2 with the following paragraph:*

*"The Committee of Ministers, the Parliamentary Assembly or the Secretary General of the Council of Europe may invite member States to resort to the mediation under the auspices of the Council of Europe. However, the mediation process may only be initiated with the full consent of all parties involved."*

**Amendment 8**  
**Tabled by the Committee on Political Affairs and Democracy**

*In the draft recommendation, paragraph 5.7, replace the sentence "There should be an obligation on member States to engage with a mediation process in good faith." with the following sentence:*

*"Member States which resort to the mediation process should commit to engage with it in good faith."*

**Amendment 9**  
**Tabled by the Committee on Political Affairs and Democracy**

*In the draft recommendation, paragraph 5.7, delete the following sentence:*

*"There should thus be potential repercussions for a State that is considered not to have engaged with the process in good faith."*

- 5.8. There should be a duty on States to co-operate sincerely with the results of mediation and there should be potential consequences for unreasonable failure to do so.
- 5.9. Much of this can be achieved using the existing legal tools at the disposal of the Council of Europe, such as the Statute, the European Convention on Human rights, and ways of working under those founding instruments, in addition to political and diplomatic pressure using tools at the disposal of the Council of Europe. In a serious case of non-compliance, use of the Complementary joint procedure could be considered, as well as potential suspension where a breach would constitute a serious violation of Article 3 of the Statute of the Council of Europe (namely a serious violation of the principles of the rule of law, human rights and sincere and effective collaboration in the realisation of the aims of the Organisation).
- 5.10. The Council of Europe should develop an improved toolkit and standards for reparation and reconciliation in order to find solutions that are best adapted to addressing the complexities of a post-conflict situation. Such a toolkit should be non-exhaustive, adaptable to new situations, should avoid a one-size-fits-all approach and should instead offer a number of ideas for potential use in mediated solutions.

**Amendment 10**  
**Tabled by the Committee on Political Affairs**  
**and Democracy**

*In the draft recommendation, paragraph 5.9, delete the sentence:*

*"In a serious case of non-compliance, use of the Complementary joint procedure could be considered, as well as potential suspension where a breach would constitute a serious violation of Article 3 of the Statute of the Council of Europe (namely a serious violation of the principles of the rule of law, human rights and sincere and effective collaboration in the realisation of the aims of the Organisation)."*