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## **The role of the Council of Europe in preventing conflicts, restoring credibility of international institutions and promoting global peace**

### **Report<sup>1</sup>**

Committee on Political Affairs and Democracy

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### *Summary*

The cost of a war always exceeds the cost of preventing it. While defence is explicitly excluded from its scope of responsibility, throughout its 74 years of history, the Council of Europe has played a key role in preventing conflicts on the European continent, contributing to democratic security. This role is even more crucial in the security context fraught with risks.

The Council of Europe should strengthen the tools at its disposal and launch a common democratic security policy with a view to ensuring a comprehensive use of early warning and confidence-building measures, improving policy making, strengthening accountability and preventing future conflicts.

The Parliamentary Assembly should contribute to the reform of the global security architecture and make greater use of parliamentary diplomacy, as the outcome will have a direct impact on the democratic security of Council of Europe member States.

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1. Reference to committee: [Doc. 15479](#), Reference 4643 of 28 April 2022.



<b>Contents</b>	<b>Page</b>
A. Draft resolution .....	3
B. Draft recommendation .....	6
C. Explanatory memorandum by Ms Lesia Vasylenko, rapporteur .....	7
1. Introduction .....	7
2. Challenges to democratic security .....	7
3. Common democratic security policy .....	9
4. Renewing impetus for preventive action .....	10
4.1. Early warning .....	10
4.2. Confidence building-measures .....	10
4.3. Duty to prevent aggression .....	11
5. Facilitating balanced policy making .....	11
6. Promoting multilateralism .....	11
6.1. Inter-institutional co-ordination .....	12
6.2. Rethinking dialogue .....	12
6.3. Adherence to the rules .....	12
6.4. A more equal and effective UN .....	13
7. Enhancing accountability .....	13
7.1. Strengthening international justice .....	13
7.2. Expanding the jurisdiction of the International Criminal Court .....	13
7.3. Ad hoc tribunals .....	14
7.4. Economic sanctions policy .....	14
8. Enforcing the duty to compensate .....	15
9. Conclusions .....	15

## A. Draft resolution<sup>2</sup>

1. The price of every war will always be many times higher than that of its prevention. Throughout its 74 years of history, the Council of Europe has played a key role in preventing conflicts on the European continent, employing a panoply of tools, such as early warning and monitoring, confidence-building, and the promotion of common values. Recently, however, peace has been fundamentally challenged.
2. After a gradual decline, the number of armed conflicts in the world began to rise again in 2010. Some 35 are currently ongoing. Contributing factors to this rise include the breakdown in the rule of law, weak State institutions, unsustainable exploitation of natural resources that exacerbates climate change, erosion of social welfare, the weakening of multilateralism and the passivity of the international community towards emerging threats – all of which might contribute to the rise of authoritarian regimes. The international order has been put under an existential threat as a result of the ongoing Russian aggression against Ukraine launched on 20 February 2014 and drastically escalated on 24 February 2022.
3. The Statute of the Council of Europe (ETS No. 1) begins with a preambular paragraph declaring that “the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation”. According to Article 1 of the Statute, “the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress”. However greater unity can not be achieved without peace.
4. Indeed, the Council of Europe is a peace project, aimed at tackling, in a structural and systematic way, the root causes of tensions and disputes before they erupt into conflicts.
5. The Parliamentary Assembly recalls that security is a wider concept than defence and rests to a great extent on compliance with democratic processes, human rights and the rule of law. While national defence is explicitly excluded from its scope of responsibility, the Council of Europe is a frontrunner in protecting democratic security. This notion, first endorsed by the Heads of State and Government of the Council of Europe at the 1993 Vienna Summit, as well as the concept of “indivisible security”, included in the Charter for European Security of the Organization for Security and Co-operation in Europe (OSCE) (Istanbul, 1999), are today as relevant as ever.
6. In this new security context fraught with risks, Council of Europe member States should renew their commitment to the values of democracy, human rights and the rule of law. They should reiterate their support for the Council of Europe as the cornerstone European organisation to develop a shared space where these values can thrive, in the pursuit of peace based upon justice and international co-operation.
7. The Assembly believes that the Council of Europe should develop additional tools to promote democratic security, namely a common democratic security policy which would aim at intensifying the efforts of the Council of Europe in protecting and strengthening international security. The policy should ensure a comprehensive use of early warning and confidence-building measures, improve policy making, strengthen accountability and prevent future conflicts. This policy should be elaborated and implemented within the legal and political mandate of the Council of Europe, in complementarity with the activities of the other international organisations competent in this field.
8. The Assembly should fully use its high potential to contribute to the reform of the global security architecture, as its good functioning will have a direct impact on the democratic security of Council of Europe member States. In doing so, the Assembly should promote co-ordination and co-operation between the Council of Europe and other international organisations.
9. The Assembly also underscores the importance of the complementary joint procedure, enabling the Council of Europe’s statutory organs to take action together in case of a blatant violation by a member State of its obligations under the Statute.
10. In addition, the Assembly underlines the role of national parliaments in fulfilling their key function to uphold representative democracy in Europe, to reflect and advise on the best ways in which modern democracies might advance and democratic security be preserved.

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2. Draft resolution adopted unanimously by the committee on 11 May 2023.

11. In light of these considerations, as regards democratic security and democratic resilience, the Assembly recommends that Council of Europe member States:
  - 11.1. ensure adherence to the rule of law and to fundamental rights and freedoms, so as to build trust in public institutions in every member State;
  - 11.2. engage in a dialogue on the state of democracy in Europe, so as to consolidate the Council of Europe's role as the guardian of democracy throughout greater Europe;
  - 11.3. consider the ways in which public debate can be organised in member States in order to raise awareness about democratic security and to explore ways to strengthen democratic resilience;
  - 11.4. prioritise good neighbourly relations, and commit to resolving disputes and disagreements through dialogue and diplomacy;
  - 11.5. give priority to the use of early warning and confidence-building measures;
  - 11.6. commit to peaceful settlement of disputes by recognising as compulsory the jurisdiction of international tribunals, strengthening their capacities and streamlining their procedures;
  - 11.7. ensure early access of decision makers to international legal expertise to guide national policies;
  - 11.8. intensify co-operation with the European Commission for Democracy through Law (Venice Commission) and support its activities;
  - 11.9. support cross-border co-operation and other efforts to defuse tensions and promote understanding at the local level, including with and among civil society;
  - 11.10. promote multilateral dialogue and contribute to the formation of uniform positions of different international organisations which will pave the way to build a strong and unified response to violations of international law;
  - 11.11. start a dialogue on consolidating member States' positions on reforming crucial security institutions, in particular the United Nations Security Council, and pursue an active and concerted policy to initiate change;
  - 11.12. invest in all aspects of a comprehensive security approach, including deep/soft security, human security, and democratic resilience;
  - 11.13. recognise that the notion of security is closely intertwined with numerous challenges, such as energy dependence and climate change;
  - 11.14. safeguard their societies from attacks on the good functioning of democracy, including disinformation and misinformation, and particularly from internal or external attempts to undermine, or interfere in, electoral processes;
  - 11.15. promote the role of civil society, finding ways of involving citizens in decision-making processes and safeguarding freedom of association;
  - 11.16. ensure that the ability to access and impart information is protected, including by guaranteeing an independent and pluralistic media environment;
  - 11.17. tackle socio-economic inequalities, which threaten the democratic stability of our countries and dent citizens' trust in politics;
  - 11.18. consider, for instance in the framework of the World Forum for Democracy to be held in Strasbourg in November 2023, the ways in which democracy can be strengthened by giving it a firmer foothold at all levels of the State and also by reinforcing it at the transnational level.
12. As regards the role of the Council of Europe, the Assembly recommends that its member States:
  - 12.1. fully subscribe to rules-based multilateralism while striving to further strengthen it;
  - 12.2. ensure that the European multilateral architecture is more responsive and effective in tackling the present challenges;
  - 12.3. give fresh impetus and political support to the central role of the Council of Europe as the guardian of human rights, democracy and the rule of law in Europe and as a platform for political dialogue, diplomacy and multilateralism;
  - 12.4. support the further development of Council of Europe work in the area of democratic security and democratic resilience;

- 12.5. promote all efforts aimed at ensuring accountability for violations of international law by recognising the jurisdiction of the International Criminal Court, lifting all jurisdictional limits for the prosecution of the crime of aggression and, when necessary, to ensure full accountability, establishing *ad hoc* tribunals with a narrowly defined jurisdiction, such as a Special Tribunal for the Crime of Aggression against Ukraine;
  - 12.6. enforce the duty to provide compensation to the victim of aggression, including by lawful confiscation of State-owned and private-owned assets;
  - 12.7. support the active role of the Council of Europe in promoting reforms of other international organisations to ensure their effective functioning;
  - 12.8. allocate the necessary financial resources to ensure the financial sustainability of the Council of Europe;
  - 12.9. ensure effective follow up to the Reykjavik Summit of Heads of State and Government of the Council of Europe;
  - 12.10. allocate the necessary resources to ensure that the Council of Europe can expand its work on confidence-building measures to help lay the foundations for long-lasting peace.
13. As regards its own activities, the Assembly should:
- 13.1. increase its focus on parliamentary diplomacy as a tool to defuse tensions, promote dialogue, reinforce mutual understanding and enhance confidence building and conflict prevention;
  - 13.2. contribute to the Council of Europe's efforts on early warning in order to address situations which risk posing a threat to the rule of law, democratic security and good neighbourly relations;
  - 13.3. strengthen elements relating to conflict prevention, conflict resolution and democratic security in the terms of reference of its committees and sub-committees;
  - 13.4. place greater emphasis on new security challenges and how they relate to democracy, human rights and the rule of law and mobilise political will to address structural factors that erode democratic institutions;
  - 13.5. enhance co-operation on confidence building and conflict prevention with other international parliamentary assemblies, including the European Parliament, the OSCE Parliamentary Assembly and the Parliamentary Assembly of the North Atlantic Treaty Organization (NATO);
  - 13.6. strengthen co-operation and carry out joint activities with national parliaments on confidence building and conflict prevention.

## **B. Draft recommendation<sup>3</sup>**

1. Recalling its Resolution ... (2023) “The role of the Council of Europe in preventing conflicts, restoring credibility of international institutions and promoting global peace”, the Parliamentary Assembly believes that the Council of Europe should develop additional tools to promote democratic security. While national defence is explicitly excluded from the scope of responsibility of the Council of Europe, the Organisation plays a crucial role in strengthening democratic security.
2. The Russian Federation’s aggression against Ukraine, however, is the most recent and one of the most extreme examples of the limited effectiveness of the current Council of Europe’s mechanisms when it comes to guaranteeing security as a basic precondition for the protection of democracy, human rights and the rule of law.
3. To remedy this weakness, the Assembly proposes the creation of a Council of Europe common democratic security policy, which would catalyse efforts of the Council of Europe in protecting and strengthening international security and enhance its impact in this area. The policy should ensure a comprehensive use of early warning and confidence-building measures, improve policy making, strengthen accountability and prevent future conflicts.
4. In the light of the above, the Assembly invites the Committee of Ministers to consider developing a common democratic security policy aimed at enhancing the role and impact of the Council of Europe in democratic security and conflict prevention, and at creating the preconditions for long-lasting peace. This policy should be elaborated and implemented within the legal and political mandate of the Council of Europe, in complementarity with the activities of the other international organisations competent in this field.

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3. Draft recommendation adopted unanimously by the committee on 11 May 2023.

## C. Explanatory memorandum by Ms Lesia Vasylenko, rapporteur

### 1. Introduction

1. The Council of Europe's role in conflict prevention and crisis management is defined in its Statute (ETS No. 1) adopted by the founding European governments in 1949.
2. The Statute of the Council of Europe begins with a preambular paragraph declaring that "the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation". Indeed, the Council of Europe aims at a structural prevention of conflicts through its multilateral tools, with the collection and analysis of information on the root causes of conflicts before they erupt, and the development of conflict prevention strategies in co-ordination with other international organisations.
3. Furthermore, according to Article 1 of the Statute, "the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress". To achieve the aim of greater unity, the Council of Europe needs to be active in conflict prevention.
4. Finally, while national defence is explicitly excluded from the scope of responsibility of the Council of Europe, the Organisation has been active in protecting democratic security. Security is a wider concept than defence, and rests to a great extent on compliance with democratic processes, human rights and the rule of law.
5. However, recently, peace in Europe has been fundamentally challenged. After a gradual decline, the number of armed conflicts began to rise again in 2010. Some 35 are currently ongoing in the world. Contributing factors to this rise include the breakdown in the rule of law, weak State institutions, unsustainable exploitation of natural resources that fuels climate change, erosion of social welfare, the weakening of multilateralism and the passivity of the international community towards emerging threats – all of which might contribute to the rise of authoritarian regimes.

### 2. Challenges to democratic security

6. The price of every war will always be many times higher than that of its prevention. Since the escalation of the Russian aggression to a full-scale invasion on 24 February 2022, the war has taken, as of 2 April 2023, at least 8 451 lives,<sup>4</sup> 501 of them children,<sup>5</sup> left 14 156 civilians injured and 10 cities razed to the ground, including Mariupol, Bakhmut, and Volnovakha.<sup>6</sup> Over 3 500 schools and other educational facilities have been either completely destroyed or damaged<sup>7</sup> and education for over 5 million children is being disrupted.<sup>8</sup> Attacks on Ukraine's health care system have led to the destruction of at least 218 hospitals and clinics.<sup>9</sup> More than 13 million Ukrainians have been forced to leave their homes behind, with approximately 5 million of them displaced internally within the territory of Ukraine and around 8 million forced to seek refuge abroad.<sup>10</sup>
7. As the Russian aggression against Ukraine started on 20 February 2014 with the annexation of Crimea and subsequent occupation of the Donetsk and Luhansk regions, the total death toll must also include the over 14 000 killed and almost 39 000 injured during the 8 years leading up to February 2022.<sup>11</sup>
8. These devastating numbers represent the tragedy of individuals, separated families, and a nation torn. Unfortunately, these numbers are growing with every day of the ongoing Russian aggression. The numbers also do not account for the losses and damage within Ukrainian territories under Russian occupation, where the Russian Federation blocks access for all independent monitoring missions.

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4. [www.ohchr.org/en/news/2023/04/ukraine-civilian-casualty-update-3-april-2023](http://www.ohchr.org/en/news/2023/04/ukraine-civilian-casualty-update-3-april-2023).

5. <https://kyivindependent.com/un-at-least-501-children-killed-in-ukraine-since-start-of-full-scale-invasion/>.

6. [www.slovoidilo.ua/2023/02/03/infografika/suspilstvo/tudy-pryjshov-ruskyj-myr-yaki-mista-ukrayiny-buly-povnistyuu-abochastkovo-zrujnovani-vijny](http://www.slovoidilo.ua/2023/02/03/infografika/suspilstvo/tudy-pryjshov-ruskyj-myr-yaki-mista-ukrayiny-buly-povnistyuu-abochastkovo-zrujnovani-vijny).

7. <https://reliefweb.int/report/ukraine/attacks-education-and-military-use-education-facilities-ukraine-2022-february-2023>.

8. <https://news.un.org/en/story/2023/01/1132757>.

9. <https://phr.org/our-work/resources/russias-assault-on-ukraines-health-care-system/>.

10. [www.unhcr.org/news/press/2023/2/63f78c0a4/unhcr-year-russian-invasion-insecurity-clouds-return-intentions-displaced.html](http://www.unhcr.org/news/press/2023/2/63f78c0a4/unhcr-year-russian-invasion-insecurity-clouds-return-intentions-displaced.html).

11. [https://ukraine.un.org/sites/default/files/2022-02/Conflict-related%20civilian%20casualties%20as%20of%2031%20December%202021%20%28rev%2027%20January%202022%29%20corr%20EN\\_0.pdf](https://ukraine.un.org/sites/default/files/2022-02/Conflict-related%20civilian%20casualties%20as%20of%2031%20December%202021%20%28rev%2027%20January%202022%29%20corr%20EN_0.pdf).

9. The ripple effect of Russia's crimes in Ukraine extends far beyond the European continent. As the International Energy Agency noted, the world is facing its first "truly global energy crisis" as a result of long-lasting effects of the full-scale Russian invasion of Ukraine.<sup>12</sup> Furthermore, Russia has consistently pursued political and economic weaponisation of its hydrocarbon trade.

10. Russia continues to block the export of Ukrainian grain. As a consequence, North Africa and the Middle East are suffering from severe food shortages. The grain deal, reached on 22 July 2022 with the facilitation of Türkiye and the United Nations, partially enabled the export of grain, related food items, and fertilisers, from Ukraine's Odesa, Yuzhny, and Chornomorsk ports. However, as the Russian side constantly disrupts and limits its work, the problem persists. Food prices have reached their 10-year maximum,<sup>13</sup> with over 346 million people in Africa alone being short of food in 2023.<sup>14</sup>

11. The total amount of reconstruction and rebuilding to be done in Ukraine already ranges from €410 billion<sup>15</sup> to more than €1 trillion.<sup>16</sup> As the war rages on, the reconstruction cost is rising every day. With demining activities alone expected to take up to 30 years, it will take decades before the post-war economy returns to normal.

12. To whitewash its crimes, the Russian Federation conducts an active disinformation campaign against Ukraine and the democratic world. Russian propaganda is particularly active in the global south, trying to distort the world's perception of its unlawful war of aggression.<sup>17</sup> Together with malign cyber activities, attempts to influence public opinion have been a persistent challenge posed by the Russian aggressive foreign policies, vividly demonstrated by attempts to interfere in the presidential elections in the US and France, and the Brexit referendum in the United Kingdom.<sup>18</sup> With the dissemination of cross-border online platforms, European citizens become increasingly exposed to spying activities and disinformation campaigns of authoritarian regimes, most notably of Russia and China.<sup>19</sup>

13. Russia's aggression against Ukraine at its various stages and with its varying extents of atrocities is carefully documented in the Parliamentary Assembly resolutions and opinion, and the debates held around them: [Resolution 1988 \(2014\)](#) "Recent developments in Ukraine: threats to the functioning of democratic institutions", [Resolution 2063 \(2015\)](#) "Consideration of the annulment of the previously ratified credentials of the delegation of the Russian Federation (follow-up to paragraph 16 of [Resolution 2034 \(2015\)](#))", [Resolution 2133 \(2016\)](#) "Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities", [Resolution 2132 \(2016\)](#) "Political consequences of the Russian aggression against Ukraine", [Resolution 2145 \(2017\)](#) "The functioning of democratic institutions in Ukraine", [Resolution 2198 \(2018\)](#) "Humanitarian consequences of the war in Ukraine", [Resolution 2292 \(2019\)](#) "Challenge, on substantive grounds, of the still unratified credentials of the parliamentary delegation of the Russian Federation", [Opinion 300 \(2022\)](#) "Consequences of the Russian Federation's aggression against Ukraine", [Resolution 2433 \(2022\)](#) "Consequences of the Russian Federation's continued aggression against Ukraine: role and response of the Council of Europe", [Resolution 2436 \(2022\)](#) "The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes", [Resolution 2448 \(2022\)](#) "Humanitarian consequences and internal and external displacement in connection with the aggression of the Russian Federation against Ukraine", and [Resolution 2482 \(2023\)](#) "Legal and human rights aspects of the Russian Federation's aggression against Ukraine".

14. Ukraine is the most recent and one of the most extreme examples of the limited effectiveness of Council of Europe procedures when it comes to guaranteeing security as a basic element for the protection of democracy and human rights, though not the only one.

15. Russia's aggression against Georgia in 2008 took the lives of 405 people and displaced 192 000 people. Russia created a frozen conflict in the region, which it can ignite any time at its convenience raising it to the level of a full-scale war. The Assembly reacted with [Resolution 1633 \(2008\)](#) "The consequences of the war between Georgia and Russia", although it blamed both sides for the escalation of tensions. Furthermore,

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12. [www.bbc.com/news/business-63400384](http://www.bbc.com/news/business-63400384).

13. [www.mei.edu/publications/potential-impact-ukraine-russia-conflict-mena-region](http://www.mei.edu/publications/potential-impact-ukraine-russia-conflict-mena-region).

14. *The Economist*, the World Ahead 2023.

15. [www.rferl.org/a/ukraine-reconstruction-costs-411-billion/32329833.html](http://www.rferl.org/a/ukraine-reconstruction-costs-411-billion/32329833.html).

16. [www.politico.eu/article/time-start-rebuild-ukraine-war-yulia-svydyrenko/](http://www.politico.eu/article/time-start-rebuild-ukraine-war-yulia-svydyrenko/).

17. [www.economist.com/international/2022/09/22/how-russia-is-trying-to-win-over-the-global-south](http://www.economist.com/international/2022/09/22/how-russia-is-trying-to-win-over-the-global-south).

18. European Parliament, [Resolution 2020/2268\(INI\)](#), [www.europarl.europa.eu/doceo/document/TA-9-2022-0064\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-9-2022-0064_EN.html).

19. *Ibid.*



it noted that the war came as a surprise to most of its members, thus acknowledging the failure of early warning and other conflict prevention tools. Tensions and disputes in the Balkans, Northern Ireland, Cyprus, the Caucasus, and Republic of Moldova are also serious sources of concern.

16. In 1949, the Council of Europe was created with a vision to promote peaceful coexistence among nations. The preamble to the Statute of the Organisation states that “the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation”. Although the Council of Europe is not a defence organisation, its mandate is directly linked to security. The concept of security is a basis for and is composed of the basic principles of human rights, democracy and the rule of law. The notion of democratic security, first endorsed by Heads of State and Government of the Council of Europe at the 1993 Vienna Summit, is today as relevant as ever.

17. Over the years, the Council of Europe has developed a wide array of tools to prevent conflicts: confidence-building, early warning and compliance monitoring, limitation of the rights of wrongdoers, suspension of membership.

18. Conflict prevention is the obvious and preferable option, which saves lives and money. However, with such an abundant range of conflict prevention tools at member States’ disposal, why does prevention fail?

19. For the Council of Europe to be successful in protecting democratic security, the rules of the Organisation and its various bodies need to be revisited and revised. This report builds on previous recommendations and resolutions as well as on an analysis of historical events and recent developments in an attempt to offer meaningful changes to the rules and ways of the Council of Europe, enabling it to act in good faith and in accordance with the goals set out in its Statute.

20. For this report to have practical meaning, a consistent effort to strengthen democratic security is needed from our respective parliaments and governments. This depends on the political will of each national parliament individually and our Assembly collectively. To ensure lasting commitment and concerted efforts in a certain area, Article 15.a of the Statute of the Council of Europe allows the Committee of Ministers to adopt “a common policy with regard to particular matters”.

### **3. Common democratic security policy**

21. The Assembly should recommend that the Committee of Ministers adopt a common democratic security policy – a common policy aimed at enhancing the role of the Council of Europe in conflict prevention and at creating preconditions for lasting peace. The common democratic security policy shall comprise the following elements:

- renewing impetus for preventive action;
- facilitating balanced policy making;
- promoting multilateralism;
- enhancing accountability;
- enforcing the duty to compensate.

22. The Council of Europe should play an active role in reforming the international democratic security architecture. The Assembly should be a platform for expression of legitimate expectations of the peoples of Europe from international organisations. Of course, the Council of Europe should not interfere with the work of other multilateral organisations, but rather co-ordinate its member States’ work to improve them and reconcile member States’ views and efforts on such a reform. With the functioning of such fundamentally important international organisations as the United Nations and the Organization for Security and Cooperation (OSCE) in Europe undermined by the obstructive attitude of one of their members, a supportive role of the Council of Europe is needed more than ever to uphold international rule of law and democratic decision making.

23. At the same time, the Council of Europe should have an appropriate institutional capacity to implement this policy. The Secretary General of the Council of Europe, supported by a dedicated team of the Secretariat, should co-ordinate all the processes foreseen by the resolution contained in this report and ensure that the Council of Europe has an active voice in matters concerning the reform of the international security architecture.

24. The Secretary General should react to signs of deterioration in human rights protection or interstate relations by acting as a proactive mediator, calling for prudence and negotiating a mutually agreeable solution to the conflict.

25. The Council of Europe has a responsibility to help its member States to align their positions and co-ordinate their action as to the implementation of a common democratic security policy.

26. A semi-annual revision of developments, achievements and failures related to the implementation of the common democratic security policy of the Council of Europe should be conducted. The revision could concern all aspects of the resolution contained in this report, ranging from preventive diplomacy, ensuring accountability and reforming the United Nations. The revision could serve as a basis for a “democratic security bulletin”, keeping decision makers and the public well-informed about the steps taken by the Council of Europe in preventing conflicts and ensuring democratic security.

27. The Sub-committee on external relations of the Committee on Political Affairs and Democracy should play an active role in implementing the common democratic security policy. The sub-committee should actively promote parliamentary diplomacy and multilateralism, communicate concerns of citizens of the Council of Europe member States to other States and international organisations, and promote the Council of Europe standards and tools worldwide. Its work in these ambits should be complementary to the implementation of a common democratic security policy by the Committee of Ministers.

28. The monitoring component of the common democratic security policy, led by the Secretary General of the Council of Europe, shall be supported by and co-ordinated with the work of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and the Commissioner for Human Rights.

#### **4. Renewing impetus for preventive action**

29. Throughout its 74 years of history, the Council of Europe has been active in conflict prevention on the European continent. It has employed a panoply of tools, including early warning and monitoring, confidence-building and promotion of common values. A new common democratic security policy will heavily rely on the improvement of these tools, as well as on the strengthening of the preventive action by the Council of Europe member States.

##### **4.1. Early warning**

30. The Council of Europe and its member States must have a sophisticated warning capability in place to detect democratic backsliding, hate speech and any signs of tensions and hostility within and between member States.

31. The Council of Europe has achieved significant progress in observing developments in its member States, especially through the work of the Monitoring Committee and its Commissioner for Human Rights.

32. Further improvement could involve accelerating the detection and warning procedures, introducing an evaluation system of risks based on a dispute escalation framework and immediate public notification to the member States and their societies.

33. In this respect, we should reiterate calls for an enhanced early warning procedure made in [Recommendation 2235 \(2022\)](#) “Recent challenges to security in Europe: what role for the Council of Europe?”. The Assembly should also welcome the reply to this recommendation by the Committee of Ministers which has indicated that it might consider starting discussions on such a possible early warning mechanism and call for concrete text-based discussion of proposals for such a procedure.

##### **4.2. Confidence building-measures**

34. Since its creation, the Council of Europe has invested heavily in confidence-building by developing the idea of a “common European heritage”. Building confidence by promoting this idea is the essence of the 2005 Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199, the “Faro Convention”) and the “Technical Co-operation and Consultancy Programme related to the integrated conservation of cultural heritage”, which helps to implement the principles of the conventions and the values of the Organisation on the ground.

35. The Council of Europe, including its Assembly, should ensure a strong political impetus to increased reliance on confidence-building measures. Through co-operation with parliamentary assemblies of the OSCE, the North Atlantic Treaty Organization (NATO) and other organisations, the Council of Europe should develop a set of confidence-building measures, including monitoring, and co-operation between members of civil society.

36. In this context, the Assembly should particularly condemn the reckless decision of the Russian Federation on 21 February 2023 to suspend its participation in the New Start Treaty on Measures for the further Reduction and Limitation of Strategic Offensive Arms.

37. The Assembly should recommend that the Committee of Ministers continue its confidence-building efforts. Although such measures alone cannot deter wars, they are an important building block in overall conflict prevention architecture.

#### **4.3. Duty to prevent aggression**

38. Preventive measures and a duty to make good use of them are provided under various international rights protection mechanisms. Most notably, Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide defines the legal obligation to prevent genocide by States signatories to the Convention. Article 2 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment imposes a similar duty on States to prevent torture and other kinds of inhuman and degrading treatment.

39. Article 1 of the UN Charter explicitly calls for effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression. Depending on the context, this duty must trigger an obligation upon States to actively negotiate to prevent escalation. In cases of imminence of an unprovoked attack, collective defence mechanisms must be mobilised to urgently provide relevant assistance, including military one, for potential victims of aggression.

40. Collective defence and security, referred to in Article 51 of the UN Charter, should be made available to all countries and not just to NATO members. We should encourage a dialogue on the collective security system to implement provisions of the UN Charter.

41. For 8 years, Ukraine had to exercise self-defence against the Russian aggression with a very limited set of means at its disposal. Both prior to 2014 and 2022, a number of foreign intelligence services were aware of the Russian Federation's plans of aggression. However, assistance to Ukraine was insufficient. Had Ukraine been provided with more significant military assistance before the full-scale invasion began, it could have served as a potent deterrent against Russia's aggressive intentions.

42. The Council of Europe should promote the duty to prevent aggression as a legal obligation among its member States and facilitate its implementation through the common democratic security policy.

#### **5. Facilitating balanced policy making**

43. In the early stages of policy development, deterioration of democratic standards and human rights can be prevented by timely policy advice and legislative changes. The European Commission for Democracy through Law (Venice Commission) has served as an important advisory body and a source of expertise informing the legislative processes at an early stage of policy development in many States across the continent.

44. The Council of Europe should intensify its efforts to enhance the profile of the Venice Commission, to promote its work both inside the Council of Europe member States and in its external relations, invite more States to join it as fully-fledged members and make more active use of requests for its opinions, as well as strengthen its institutional capacity to react swiftly to such requests and increase its ability to make impact and to work more actively internationally.

45. International courts can play a similar role. Their advisory opinions can better inform policy makers and prevent the emergence of disputes. The power of the European Court of Human Rights to give advisory opinions could be expanded to respond to concerns even earlier, at the stage of policy development.

#### **6. Promoting multilateralism**

46. The world should return to the forgotten spirit of multilateralism and mutually beneficial co-operation. The prerequisite to this return is strict abidance by the rules. Rules create a level playing field where every actor is equal. We also need to rethink the notion of dialogue. International decision making should be equalised, so that no country can enjoy a privileged position leading to abuses and imbalances.

### **6.1. Inter-institutional co-ordination**

47. Often, international institutions and their bodies, such as the United Nations and its General Assembly, the Council of Europe, NATO, OSCE and their parliamentary assemblies, the European Parliament and the Inter-Parliamentary Union, act in isolation from each other. With little regard for each other's opinion, governments and parliaments form fragmented positions and fail to build a concerted response to aggressions and human rights violations.

48. International organisations should co-ordinate their work as far as practicable. For this purpose, members of the Parliamentary Assembly of the Council of Europe could be regularly briefed by the secretariat as to the recent developments in the United Nations General Assembly and Security Council, European Parliament, Inter-Parliamentary Union, NATO and OSCE Parliamentary Assemblies.

### **6.2. Rethinking dialogue**

49. It is beyond doubt that dialogue is central to peaceful settlement of disputes. However, sometimes insistence on compromise leads to equalisation of a victim and an aggressor.

50. In recent years, dialogue has become an end in itself, a panacea and a harmful cliché. Its misconception did not bring peace to the European continent. It is worth recalling that the Russian Federation began a full-scale war despite years of appeasement and despite being allowed to return to the Parliamentary Assembly of the Council of Europe in 2019.

51. The open exchange of thoughts is important. However, the international community does not need an illusion of compromise if international platforms are misused for disseminating fake news and justifying wars of aggression. Therefore, rules of all international organisations should provide for a majority of members deciding to limit a delegation's voting and speaking rights if a member gravely violates international law and the principles of this organisation.

### **6.3. Adherence to the rules**

52. Respect for the rules, instead of arbitrary decision making, is central to building and preserving a healthy multilateral setting, cultivating an atmosphere of peace and mutual understanding.

53. Unfortunately, in many contexts, we have failed to preserve this procedural clarity. A vivid example is the UN, where the Russian Federation was admitted to the UN and its Security Council after the dissolution of the Soviet Union without a vote under Article 4 of the UN Charter, while it took Yugoslavia, under the very same conditions, 8 years to undergo this procedure. The Assembly should welcome efforts to draw attention to these inconsistencies undermining the legitimacy of international institutions, such as Ukrainian Parliament's Resolution 2787-IX<sup>20</sup> and the Statement of the Ministry of Foreign Affairs of Ukraine<sup>21</sup> on the illegitimacy of the presence of the Russian Federation in the UN Security Council and in the United Nations as a whole, already supported by Estonia<sup>22</sup> and Poland.<sup>23</sup>

54. In 2019, our Assembly, by a majority vote, derogated from its Rules of Procedure by inviting the parliaments of Council of Europe member States "which [were] not represented by a delegation to the Assembly" to present their credentials at the June 2019 part-session.<sup>24</sup> This derogation embodied an unequal application of the Rules of Procedure tailor-made for return of the Russian Federation, an aggressor State, to the Assembly. The consequences of this dangerous step are well-known. Therefore, it is high time to make conclusions that rules and their equal application to everyone are of paramount importance.<sup>25</sup>

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20. <https://zakon.rada.gov.ua/laws/show/2787-20?lang=en#Text>.

21. <https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-nelegitimnosti-perebuvannya-rosijskoyi-federaciyi-v-radi-bezpeki-oon-ta-organizaciyi-obyednanih-nacij-u-cilomu>.

22. <https://twitter.com/UrmarsReinsalu/status/1608112125905612800?s=20>.

23. <http://www.frontnews.ge/en/news/details/49315>.

24. Resolution 2287 (2019).

25. "PACE affirms its members' rights 'to vote, to speak and to be represented in the Assembly and its bodies'", Assembly News, 25 June 2019.

#### **6.4. A more equal and effective UN**

55. The UN has failed both to prevent the Russian aggression and to stop it. The Security Council – the organ specifically tasked with maintaining international peace and security – became completely blocked due to the abuse of the right to veto by the Russian Federation.

56. Therefore, the Assembly should support the proposals voiced by Emmanuel Macron and Charles Michel expressed during the high-level debate in the UN General Assembly from 20 to 26 September 2022 – there should be some events which trigger the suspension of the right to veto, such as the committing of mass-scale international crimes or the start of a war of aggression that has been condemned by the General Assembly.

57. The Assembly should reiterate a call to hold a vote in the General Assembly to request that the International Court of Justice issue an advisory opinion on potential limitations of the right to veto implicit in the Purposes and Principles of the UN Charter or the general principles of law. This call was mentioned before in Resolution 2436 (2022) “The Russian Federation’s aggression against Ukraine: ensuring accountability for serious violations of international humanitarian law and other international crimes”. Such limitations could be based on Article 2(2) of the Charter prescribing that in order to ensure the rights and benefits resulting from membership, members shall fulfil their obligations in good faith.

58. The General Assembly should play a greater role in the maintenance of international peace and security. It has a subsidiary responsibility in this field when the Security Council is blocked. It should use these powers more actively, which includes recommending collective action to impose sanctions within the framework of the “Uniting for Peace” resolutions, creating *ad hoc* tribunals for ensuring accountability, deploying peace-keeping forces, and potentially referring situations to the International Criminal Court. Promoting a more active role of the General Assembly, which is a question of legal culture and promoting rather than amending the law, should become a part of the Council of Europe advocacy efforts within the framework of the common democratic security policy.

### **7. Enhancing accountability**

59. Accountability plays the role of a deterrent. If they know that they will inevitably face the consequences of their wrongful acts, aggressors will be deterred from committing any violations.

#### **7.1. Strengthening international justice**

60. International tribunals should have a broad and compulsory jurisdiction to hold violators of international law accountable. The more countries recognise international tribunals’ jurisdiction (International Court of Justice, European Court of Human Rights, International Criminal Court), the less unilateral outcomes involving escalation and aggression there will be.

61. We need to give a new impetus to the recognition of international tribunals’ jurisdiction. This conclusion was also reached at the UN Security Council ministerial debate on the “Promotion and strengthening of the rule of law in the maintenance of international peace and security: the rule of law among nations” on 12 January 2023 by the President of the International Court of Justice Joan E. Donoghue and University of Oxford Professor Dapo Akande.<sup>26</sup>

62. However, strengthening international justice is certainly a two-way street. Dealing with the efficiency of international justice, the speed and the length of the procedure are decisive factors. Member States should facilitate discussions on streamlining international justice and take into consideration relevant experience, such as the practice of setting clear deadlines for the delivery of a decision incorporated in the World Trade Organization Dispute Settlement Understanding.

#### **7.2. Expanding the jurisdiction of the International Criminal Court**

63. International criminal law and accountability are important factors in the general deterrence system. Currently, the Statute of the International Criminal Court (ICC) provides for prosecution of four international crimes – the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.

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26. [www.un.org/sg/en/content/sg/speeches/2023-01-12/secretary-generals-remarks-the-security-council-the-promotion-and-strengthening-of-the-rule-of-law-the-maintenance-of-international-peace-and-security-the-rule-of-law](https://www.un.org/sg/en/content/sg/speeches/2023-01-12/secretary-generals-remarks-the-security-council-the-promotion-and-strengthening-of-the-rule-of-law-the-maintenance-of-international-peace-and-security-the-rule-of-law).

64. Accountability for the crime of aggression is significantly limited by a special jurisdictional regime introduced by the Amendments to the Rome Statute adopted by the Review Conference in Kampala. Contrary to other crimes, the crime of aggression can be prosecuted only if a State whose nationals are perpetrating the crime ratified the Rome Statute or if the Security Council refers this matter to the ICC. In many cases, the crime of aggression remains unpunished, with the aggressor enjoying impunity. The most notable example is the Russian aggression against Ukraine.

65. Two parallel solutions are necessary. First, the Rome Statute needs to be amended and the jurisdictional regimes for all four international crimes have to be harmonised. There is simply no legitimate reason to create divergent regimes for the gravest international crimes.

66. Second, the Rome Statute should provide for a power of the General Assembly, not only the Security Council, to refer situations to the ICC as the General Assembly has its own, although secondary, competence in the maintenance of international peace and security.

### **7.3. Ad hoc tribunals**

67. These solutions, while ensuring a truly efficient system of accountability, require rigorous planning, significant efforts and cannot be achieved immediately. However, crimes are being perpetrated now.

68. Therefore, an additional solution is necessary as a temporary response to deficiencies of the current system – an *ad hoc* tribunal, such as a Special tribunal for the crime of aggression against Ukraine. Such a tribunal – whether created through the UN or the Council of Europe – should reflect the will of the entire international community to hold the perpetrators accountable.<sup>27</sup> On this basis, it will be able to prosecute senior Russian leadership.<sup>28</sup>

69. The format of the tribunal should be fully international as a hybrid tribunal would raise serious constitutional issues under Ukrainian law and significantly complicate the prosecution.<sup>29</sup> The report to Resolution 2482 (2022) “Legal and human rights aspects of the Russian Federation’s aggression against Ukraine” supports this position.<sup>30</sup>

70. The Special Tribunal will not interfere with the work of the ICC, but rather complement and facilitate it.<sup>31</sup> The Council of Europe should define all the modalities with the Government of Ukraine and swiftly proceed to its creation, based on the above-mentioned principles and according to a mutually agreed roadmap. Engagement of the United Nations is highly desirable, and its concrete contribution will be determined based on the possibility to gather support for the creation of such a tribunal in the General Assembly. The Council of Europe should use its external contacts to garner support for the Special Tribunal beyond its membership.

### **7.4. Economic sanctions policy**

71. Finally, another element of financial accountability of the aggressor should be harsh sanctions. While current efforts to weaken Russia’s ability to finance the war, embodied in 10 EU sanctions packages, are an important step towards reaching peace, this war could have been avoided had serious sanctions been imposed immediately after the unlawful annexation of Crimea or even after Russia’s aggression against Georgia.

72. Therefore, member States of the Council of Europe should consider proportionate and timely economic restrictive measures as an important tool for ensuring democratic security.

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27. [www.justsecurity.org/84017/the-case-for-creating-a-special-tribunal-to-prosecute-the-crime-of-aggression-committed-against-ukraine-part-vi-on-the-non-applicability-of-personal-immunities/](http://www.justsecurity.org/84017/the-case-for-creating-a-special-tribunal-to-prosecute-the-crime-of-aggression-committed-against-ukraine-part-vi-on-the-non-applicability-of-personal-immunities/).

28. ICJ, Judgement in Arrest Warrant case (the Democratic Republic of Congo v. Belgium).

29. [www.justsecurity.org/80958/ukraines-constitutional-constraints-how-to-achieve-accountability-for-the-crime-of-aggression/](http://www.justsecurity.org/80958/ukraines-constitutional-constraints-how-to-achieve-accountability-for-the-crime-of-aggression/).

30. <https://pace.coe.int/pdf/1fd9b108e6942fa495290116d912785250c8f63791d265f632d2b7181c39b816/doc.%2015689.pdf>.

31. [www.justsecurity.org/83757/forging-a-cooperative-relationship-between-intl-crim-court-and-a-special-tribunal-for-russian-aggression-against-ukraine/](http://www.justsecurity.org/83757/forging-a-cooperative-relationship-between-intl-crim-court-and-a-special-tribunal-for-russian-aggression-against-ukraine/).

## 8. Enforcing the duty to compensate

73. It is a fundamental principle of customary international law that States must provide reparation for their internationally wrongful acts, as affirmed in the case law of the International Court of Justice and in articles on State Responsibility for Internationally Wrongful Acts elaborated by the International Law Commission.

74. If a State violating international law refuses to comply with the duty to compensate, the international community should enforce this duty. Confiscation of State-owned assets and assets of private persons contributing to a violation of international law should be regarded as a lawful sanction.

75. The Russian Federation refuses to provide compensation to Ukraine for the colossal damages it has been causing. Therefore, its assets and assets of oligarchs sanctioned for supporting the aggression against Ukraine should be confiscated and proceeds from their sale should be used for Ukraine's reconstruction.

76. While State-owned assets enjoy sovereign immunity, the latter is not absolute. Immunity does not mean impunity.

77. Sovereign immunity cannot be used to shield an aggressor State from facing the consequences of its actions. Every State is entitled to take countermeasures against the war of aggression. If used for helping Ukraine's reconstruction, confiscation of Russian sovereign reserves and other State-owned assets will be fully proportionate and compliant with international law.

78. It is worth mentioning that the European Parliament, in its resolution adopted on 19 January 2023, accepted the possibility of "denying [Russian sovereign] assets the protections of sovereign immunity or limiting such protections owing to the gross nature of these violations".<sup>32</sup>

79. At the same time, private assets of already sanctioned persons could be confiscated in a non-conviction-based procedure. The criteria for applying such a procedure would include proof of support of aggression and war crimes, respect of property rights, fair trial and all other human rights of such persons. The European Court of Human Rights has considered non-conviction-based procedure to be lawful in several cases, most notably in the Italian mafia cases.<sup>33</sup>

80. Some national jurisdictions have already begun confiscating Russian assets. Canada approved a sufficiently broad legislation applying both to the confiscation of State-owned and private assets. Importantly, the ground for confiscation is being on the sanctions list for contribution to the Russian aggression against Ukraine. [Assembly Resolution 2434 \(2022\)](#) "How to put confiscated criminal assets to good use" calls for the confiscation of assets of Russian citizens and State-owned enterprises subject to targeted sanctions for their responsibilities in the war of aggression launched against Ukraine by the Russian Federation. Plans to introduce confiscation have also been announced by Estonia.<sup>34</sup>

81. In view of the above, we need to renew our strong political push for a comprehensive but lawful confiscation. This is a profoundly just policy – making the aggressor pay for the damage it caused, building strong tenets of accountability that will outlast this war and prevent aggressions in the future.

## 9. Conclusions

82. Most solutions suggested in this report are well-known and far from new. Yet in consolidating all of them, this report is expected to be innovative – innovative in generating new impetus, a new drive for global change. The report offers a roadmap for the Council of Europe in its democratic security-related activities.

83. The report promotes a new idea of adopting a common democratic security policy – a policy seeking to intensify efforts of the Council of Europe in protecting and strengthening international security. The policy should ensure a comprehensive use of early warning and confidence-building measures, improve policy making, ensure accountability and prevent future conflicts.

84. The mobilisation of efforts in the field of security is fully justified – there can be no human rights without democratic security.

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32. [www.europarl.europa.eu/doceo/document/TA-9-2023-0015\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-9-2023-0015_EN.html).

33. *Raimondo v. Italy*, European Court of Human Rights, (Application no. 12954/87), Judgement, 22 February 1994, *Arcuri & Three Others v. Italy*, European Court of Human Rights, (Application no. 52024/99), Decision, 5 July 2001.

34. [www.bloomberg.com/news/articles/2023-01-09/estonia-to-move-ahead-of-eu-with-plans-to-seize-russian-assets](http://www.bloomberg.com/news/articles/2023-01-09/estonia-to-move-ahead-of-eu-with-plans-to-seize-russian-assets).

85. The Council of Europe should promote constructive multilateral dialogue and contribute to the formation of uniform positions of its member States on the functioning and reform of other international organisations. This will allow to build a strong and unified response to violations of international law.

86. The Council of Europe should promote all efforts aimed at ensuring accountability for violations of international law, ranging from strengthening of international justice to eliminating lacunae in international criminal jurisdiction.

87. Immunity does not mean impunity. Therefore, the Council of Europe should enforce the duty to provide compensation to the victim of aggression, including by lawful confiscation of State-owned and private-owned assets.

88. These steps require a steadfast commitment and a will to overcome resistance to change. The Council of Europe should fully use its potential to contribute to the reform of the global security architecture, as its result will have a direct impact on the democratic security of the Council of Europe member States.