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**THE COUNCIL OF EUROPE'S CONTRIBUTION TO INTERNATIONAL CRIMINAL
JUSTICE**

**13th Session of the Assembly of States Parties to the Rome Statute,
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Statement by

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President,
Distinguished delegates,
Ladies and Gentlemen,

First of all, I would like to thank the organisers for having invited the Council of Europe to participate at this 13th Session of the Assembly of the State Parties to the Rome Statute. I am very honoured to have the opportunity to address to this Assembly on behalf of my Organisation – the Council of Europe. As it is the first time I am taking the floor let me congratulate you, President, on your election and wish you all the success in assuming your duties.

The Council of Europe

Secondly, I would like to underline that regional intergovernmental organisations, such as the Council of Europe, can play a key role in the implementation of the main provisions of the Rome Statute of the International Criminal Court (ICC) as well as in assisting to make effective the jurisdiction of the Court throughout its different legal instruments on international cooperation in criminal matters. I will therefore present the multifaceted efforts of the Council of Europe in this domain.

Allow me first to briefly present our Organisation. The Council of Europe was created in 1949 to promote and protect democracy, human rights and the rule of law in Europe. Different and separate from the European Union, the Council of Europe is a pan-European intergovernmental organisation composed of 47 member States. 41 of these member States of the Council of Europe are Parties to the Rome Statute and furthermore three observer States to our Organisation are also Parties to the Rome Statute.

Taking into account that one of the main aims of the Council of Europe is to promote and protect human rights in the framework of the rule of law, the fight against the crimes contained

in the Rome Statute could not be absent from our agenda. Indeed, the Council of Europe's long standing commitment to the international criminal justice was already reflected in the 1974 *European Convention on the Non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes* in order to put an end to the impunity.

I would like to highlight the contribution of the Council of Europe to international criminal justice on the following five aspects:

1. International cooperation in criminal matters (Mutual Legal Assistance and Extradition).
2. The case law of the European Court of Human Rights.
3. The protection, assistance and reparation to victims of crimes.
4. The gender-based violence and sexual exploitation of children.
5. The contribution of the Council of Europe's Committee of Legal Advisers of Public International Law (CAHDI).

1. International Cooperation in Criminal Matters

International cooperation in criminal matters, mainly the requests for mutual legal assistance and extradition, would be a key element for improving the effectiveness and efficiency of the International Criminal Court (ICC) in conformity with the principle of complementarity which governs the jurisdiction of the ICC. For the principle of complementarity to become truly effective, it is essential that international crimes are criminalised in domestic criminal law, that jurisdiction is established and that States provide each other mutual legal assistance and, if the case arises, extradite on the basis of the *aut dedere aut judicare* principle.

The Council of Europe has already contributed significantly to facilitating international cooperation in criminal matters through its important international legally binding instruments in this area. Indeed, under the 1959 *European Convention on Mutual Legal Assistance in Criminal Matters* [ETS No.30]¹ Parties agreed to afford each other the widest measure of mutual assistance with a view to gathering evidence, hearing witnesses, experts and prosecuted persons. In addition, under the 1957 *European Convention on Extradition* [CETS No.24]² the Parties undertake to surrender to each other all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order. Both Conventions have received a high number of ratifications in a pan-European context and beyond, as both were ratified by 50 States: all 47 Council of Europe member States and, moreover, 3 non-member States (Chile, Israel and Korea in the first case and Israel, Korea and South Africa in the second case).

¹ This Convention has been supplemented by two Additional Protocols [CETS No.99 and CETS No.182] from 1978 and 2001 respectively.

² This Convention has been supplemented by three Additional Protocols [CETS No.86; CETS No.98 and CETS No.209] from 1975, 1978 and 2010.

2. The Case Law of the European Court of Human Rights

The case law of the European Court of Human Rights³ (ECHR) has dealt with some human rights issues concerning both the defendants and victims of international crimes in four relevant areas of the Rome Statute. This is another important (and quite unknown) contribution of the Council of Europe to the work of the ICC.

Firstly, the ECHR discussed amnesties for war crimes earlier this year 2014 in the *Margus*⁴ case, which concerned a former soldier who had been granted an amnesty but then subsequently prosecuted. The ECHR noted that “a growing tendency in international law is to see such amnesties as unacceptable because they are incompatible with the unanimously recognised obligation of States to prosecute and punish grave breaches of fundamental human rights”, and rejected the applicant’s complaint that the *non bis in idem* principle had been violated.

Secondly, the ECHR has dealt with statutory limitations for international crimes. In *Sawoniuk*⁵ in 2001, and *Kononov*⁶ in 2010, the Court said that those who committed war crimes during the Second World War did not have a human right for them to be statute barred, and noted a number of international Conventions that now prohibit statutory limitations for war crimes.

Thirdly, in the *Ahorugeze*⁷ case in 2011 the applicant claimed that his extradition to the International Criminal Tribunal for Rwanda should be refused because he would not face a fair trial, and because the detention facilities were of a poor quality. The ECHR rejected his claim, and ruled that the Tribunal complied with all of the human rights requirements set out in the European Convention on Human Rights.

Finally, the rights of victims of international crimes have also been addressed. For instance, in the *Jelic*⁸ case this year the ECHR said that the relatives of victims of a war crime had a right to an investigation into the circumstances in which their relatives died, and a prosecution against those responsible.

3. The Protection, Assistance and Reparation to Victims of Crimes

The protection and assistance of victims as well as reparation to them are key elements of a successful rule of law-based criminal justice response to the most serious crimes of concern to the international community.

³ The European Court of Human Rights was set up in 1959 to rule on individual or State applications alleging violations of the rights set out in the *European Convention on Human Rights* signed on 4 November 1950 and under which the member States promise to secure fundamental civil and political rights, not only to their own citizens but also to everyone within their jurisdiction.

⁴ *Eur.Court HR, Marguš v. Croatia*, Grand Chamber Judgment of 27 May 2014, Application No. 4455/10, (Article 4 of Protocol No. 7, *Non bis in idem* – Not Applicable).

⁵ *Eur.Court HR Sawoniuk v. UK*, Third Section Decision of 29 May 2001, Application No. 63716/00, (Article 6, Right to a fair trial – Inadmissible).

⁶ *Eur.Court HR, Kononov v. Latvia*, Grand Chamber Judgment of 17 May 2010, Application No. 36376/04, (Article 7-1, *Nullum crimen sine lege* – No violation).

⁷ *Eur.Court HR Ahorugeze v Sweden*, Fifth Section Judgment of 27 October 2011, Application No. 37075/09, (Article 6- 1, Right to a fair hearing – No violation; Article 3, Prohibition of inhuman treatment – No violation).

⁸ *Eur.Court HR, Jelić v. Croatia*, First Section Judgment of 12 June 2014, Application No. 57856/11, (Article 2, Right to life – Violation).

The Council of Europe has a long-standing practice and experience in this field as it has created a legal corpus where the victims – and the witnesses – are placed at the very heart of the justice system. I would like to mention in this regard the 1983 *Convention on the Compensation of Victims of Violent Crimes*⁹ which obliges States Parties to compensate the victims of intentional and violent offences resulting in bodily injury or death. In addition, the Committee of Ministers of the Council of Europe has adopted in 2005 a *Recommendation on the protection of witnesses and collaborators of justice*¹⁰ which provides that member States should take appropriate legislative and practical measures to ensure that witnesses and collaborators of justice may testify freely and without being subjected to any act of intimidation. Furthermore, in 2006, it adopted a *Recommendation on assistance to crime victims*¹¹ which sets forth principles that should guide the member States when taking measures to ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights. These principles concern, among other things, the role of public services, State compensation, assistance, trainings and victim support services. I would also like to highlight that within the Council of Europe we have also adopted several conventions which contain binding provisions in relation to the assistance and compensation to victims of most serious crimes such as terrorism¹² or trafficking in human beings¹³.

4. The Gender-based Violence and Sexual Exploitation of Children

The need expressed by victims of all forms of sexual violence and gender-based crimes for recognition and accountability is another issue of concern of the ICC and the Council of Europe. These crimes touch upon the person's integrity and dignity and shall in no case remain unpunished.

The Council of Europe has taken a big step in that direction with the adoption of two historical conventions, which are open to non-member States. Firstly, the 2007 *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*¹⁴ - also known as "the Lanzarote Convention" - requires criminalisation of all kinds of sexual offences against children. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators and set up a monitoring mechanism to monitor whether Parties effectively implement the Convention. And secondly, the 2011 *Convention on preventing and combating violence against women and*

⁹ *European Convention on the Compensation of Victims of Violent Crimes* [CETS No. 116] was opened for signature on 24 November 1983 and entered into force on 1 February 1988. To date, the Convention has received 25 ratifications and 8 signatures.

¹⁰ *Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice* adopted on 20 April 2005.

¹¹ *Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims* adopted on 14 June 2006.

¹² *Council of Europe Convention on the Prevention of Terrorism* [CETS No.196] was opened for signature on 16 May 2005 and entered into force on 1 June 2007. To date, the Convention has received 32 ratifications and 12 signatures.

¹³ *Council of Europe Convention on Action against Trafficking in Human Beings* [CETS No.197] was opened for signature on 16 May 2005 and entered into force on 1 February 2008. To date, the Convention has received 42 ratifications and 2 signatures.

¹⁴ *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* [CETS No. 201] was opened for signature on 25 October 2007 and entered into force on 1 July 2010. To date, the Convention has received 34 ratifications and 13 signatures.

*domestic violence*¹⁵, a new landmark treaty which opens the path for creating a legal framework at pan-European level to protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence. The Convention also establishes a specific monitoring mechanism ("GREVIO") in order to ensure effective implementation of its provisions by the Parties.

5. The Council of Europe's Committee of Legal Advisers of Public International Law (CAHDI).

The Committee of Legal Advisers on Public International Law – known as the CAHDI – is an intergovernmental committee of the Council of Europe composed of the Legal Advisers of the Ministries of Foreign Affairs of the 47 member States of the Organisation and of a significant number of observer States and international organisations. Out of the 56 States participating twice a year to the meetings of the CAHDI, 46 are Parties to the Rome Statute. Since the beginning of the negotiations of the Rome Statute, a permanent item of the CAHDI agenda has been the developments concerning the ICC and other international criminal tribunals given the obvious importance of this subject for the Legal Advisers of all the countries. This therefore makes the CAHDI a unique platform which is used by the Legal Advisers of States Parties and non-States Parties to the Rome Statute, to discuss and exchange on their different national positions towards the ICC and its Statute. In order to reinforce the dialogue needed to ensure effectiveness of international criminal justice the CAHDI held an exchange of views in March of this year with the ICC Prosecutor, Ms Fatou Bensouda. This enabled her to have a direct exchange of views with all the CAHDI members, parties and non-parties to the Rome Statute.

The Council of Europe stands ready to continue to assist our member States and to cooperate with the ICC in order to develop the full potential of the Rome Statute.
Thank you very much for your attention.

¹⁵ *Council of Europe Convention on preventing and combating violence against women and domestic violence* [CETS No. 210] was opened for signature on 11 May 2011 and entered into force on 1 August 2014. To date, the Convention has received 15 ratifications and 22 signatures.