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THE COUNCIL OF EUROPE'S CONTRIBUTION TO
INTERNATIONAL CRIMINAL JUSTICE

**18th Session of the Assembly of States Parties to the Rome Statute,
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Statement by

Ms Carolina LASÉN DIAZ

Legal Advisor, Public International Law Division

COUNCIL OF EUROPE

President,

Distinguished delegates,

On behalf of the Council of Europe, I would like to thank you for giving us the opportunity to participate in the 18th Session of the Assembly of the State Parties to the Rome Statute. I am very honoured to have the opportunity to address this Assembly.

The Council of Europe

Please allow me first to briefly present my Organisation. The Council of Europe was created in 1949 to promote and protect democracy, human rights and the rule of law in Europe. We have celebrated our 70th anniversary this year. It is a different and completely separate organisation from the European Union, even though we share the

same symbols. The Council of Europe is a pan-European intergovernmental organisation with 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 (Canada, Japan and Mexico).

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 are well within our agenda. Indeed, the Council of Europe's long standing commitment to 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*** [ETS No. 82], aimed at ending impunity (this Convention entered into force in June 2003).

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, as well as in assisting to make effective the jurisdiction of the Court throughout its different legal instruments on international co-operation in criminal matters. I would like to highlight the contribution of the Council of Europe to international criminal justice in the five following areas:

1. International co-operation in criminal matters
2. The case-law of the European Court of Human Rights
3. Protection, assistance and reparation for victims of crimes
4. Gender-based violence and sexual exploitation of children
5. The Council of Europe's Committee of Legal Advisers of Public International Law

1. International Co-operation in Criminal Matters

The Council of Europe has contributed significantly to facilitating international cooperation in criminal matters through its international legally binding instruments in this field, including the **1959 *European Convention on Mutual Legal Assistance***

in Criminal Matters [ETS No.30]¹ whereby Parties agree to give each other the widest 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, Parties undertake to surrender to each other all persons against whom the competent authorities of the requesting Party are prosecuting for an offence or who are wanted by the said authorities to execute a sentence or detention order. Both Conventions have received a high number of ratifications in a pan-European context and beyond, as **both have been ratified by 50 States**: all 47 Council of Europe member States as well as three non-member States (Chile, Israel and Korea in the first case and Israel, Korea and South Africa in the second case).

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

The case law of the European Court of Human Rights³ (ECtHR) has addressed human rights issues in relation to both the defendants and victims of international crimes in four relevant areas of the Rome Statute:

- The ECtHR addressed **amnesties for war crimes** in the *Marguš*⁴ case, in 2014, concerning a former soldier who had been granted amnesty but was subsequently prosecuted.

- The ECtHR dealt with **statutory limitations for international crimes**: in the judgments of cases *Sawoniuk*⁵ (2001) and *Kononov*⁶ (2010), the Court found that those who committed war crimes during World War II did not enjoy a right to be

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

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

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 are to secure fundamental civil and political rights, not only to their own citizens but also to everyone within their jurisdiction.

⁴ ECtHR, *Marguš v. Croatia*, Grand Chamber Judgment of 27 May 2014, application No. 4455/10 (*Non bis in idem* – not applicable).

⁵ ECtHR, *Sawoniuk v. UK*, Decision of 29 May 2001, application No. 63716/00, (right to a fair trial – inadmissible).

⁶ ECtHR, *Kononov v. Latvia*, Grand Chamber Judgment of 17 May 2010, application No. 36376/04, (*Nullum crimen sine lege* – no violation).

statute-barred, noting that a number of international conventions prohibit statutory limitations for war crimes.

- In the *Ahorugeze*⁷ case (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 ECtHR rejected his claim and ruled that the Rwanda Tribunal complied with all the human rights requirements set out in the *European Convention on Human Rights*.

- **The rights of victims of war crimes** have also been addressed by the European Court: in the *Jelić*⁸ case (2014), the ECtHR established that the relatives of victims of a war crime have the right to an investigation into the circumstances in which their relatives died, and to identify and punish the perpetrators.

- Finally, in a recent judgment of March this year (the *Drélingas*⁹ case), the ECtHR addressed the **concept of genocide** and found no violation of Article 7 of the Convention (no punishment without law) in the applicant's conviction for genocide, as he had taken part in a 1956 operation against two partisans resisting Soviet rule.

3. Protection, Assistance and Reparation for Victims of Crimes

The Council of Europe has a long-standing practice and experience in this field as it has developed a legal corpus whereby victims and witnesses are placed at the heart of the justice system. I would like to mention the **1983 Convention on the Compensation of Victims of Violent Crimes**¹⁰ which obliges States Parties to compensate the victims of intentional and violent offences resulting in bodily injury or death. In addition, in 2005 the Committee of Ministers of the Council of Europe adopted a **Recommendation on the protection of witnesses and collaborators of**

⁷ ECtHR, *Ahorugeze v Sweden*, Judgment of 27 October 2011, application No. 37075/09, (right to a fair hearing –no violation; prohibition of inhuman treatment – no violation).

⁸ ECtHR, *Jelić v. Croatia*, Judgment of 12 June 2014, application No. 57856/11, (right to life – violation).

⁹ ECtHR, *Drélingas v. Lithuania*, Judgment of 12 March 2019 (final on 9 September 2019), application no. 28859/16.

¹⁰ The *European Convention on the Compensation of Victims of Violent Crimes* [CETS No. 116] entered into force on 1 February 1988. To date, the Convention has received 26 ratifications and 8 signatures.

*justice*¹¹. In 2006, ***Recommendation on assistance to crime victims***¹² was adopted, setting forth the principles that should guide member States when taking measures to ensure the effective recognition of, and respect for, the human rights of victims (i.e. the role of public services, State compensation, assistance, training, and victim support services). Several conventions adopted in the framework of the Council of Europe contain binding provisions on assistance to and compensation of victims of serious crimes, such as terrorism¹³ or trafficking in human beings¹⁴.

4. Gender-based Violence and Sexual Exploitation of Children

Victims of all forms of sexual violence and gender-based crimes have a need for recognition, accountability and redress, which is another issue of concern for the ICC and the Council of Europe. The Council of Europe took a big step in that direction with the adoption of two conventions, open to non-member States: the ***2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse***¹⁵, (“the Lanzarote Convention”), which requires criminalisation of all sexual offences against children. And the ***2011 Convention on preventing and combating violence against women and domestic violence***¹⁶ (“the Istanbul Convention”), a landmark treaty aimed at protecting women from all forms of violence through the prevention, prosecution and elimination of violence against women and domestic violence, including the protection of victims. This Convention explicitly states that it applies “in times of peace and in situations of armed conflict” (Article 2(3)).

¹¹ *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.

¹² *Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims*, adopted on 14 June 2006.

¹³ The *Council of Europe convention on the Prevention of Terrorism* [CETS No.196] entered into force on 1 June 2007. To date, the Convention has 40 ratifications and 8 signatures.

¹⁴ The *Council of Europe Convention on Action against Trafficking in Human Beings* [CETS No.197] entered into force on 1 February 2008. To date, the Convention has 47 ratifications.

¹⁵ The *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* [CETS No. 201] entered into force on 1 July 2010. To date, the Convention has 45 ratifications and 3 signatures.

¹⁶ The *Council of Europe Convention on preventing and combating violence against women and domestic violence* [CETS No. 210] entered into force on 1 August 2014. To date, the Convention has 34 ratifications and 12 signatures, including the EU.

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

The Committee of Legal Advisers on Public International Law (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, as well as a significant number of representatives of observer States and international organisations. CAHDI's agenda includes as a permanent item the consideration of developments in the ICC and other international criminal tribunals, given the importance of these issues for the Legal Advisers of all countries. The CAHDI provides a unique platform for the Legal Advisers of States Parties and non-Parties to the Rome Statute to discuss and exchange on their different positions. Furthermore, and in order to reinforce the dialogue needed to ensure the effectiveness of the international criminal justice system, the CAHDI regularly holds exchanges of views with Presidents and Judges of international courts and tribunals, including with the former ICC President (Ms Silvia Fernández) and the current Prosecutor (Ms Fatou Bensouda), in 2016 and 2014, respectively.

To conclude, I would like to stress that the Council of Europe stands ready to continue co-operating with our member States and the ICC in order to develop the full potential of the Rome Statute.

Thank you very much for your attention.