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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**DRAFT OPINION OF THE EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)  
ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1953 (2011) ON  
THE OBLIGATION OF MEMBER STATES AND OBSERVER STATES OF THE COUNCIL OF  
EUROPE TO CO-OPERATE IN THE PROSECUTION OF WAR CRIMES**

Secretariat memorandum prepared by  
the Directorate General of Human Rights and Legal Affairs (DGHL)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1953 (2011) and Resolution 1785 (2011) on the obligation of member states and observer states of the Council of Europe to co-operate in the prosecution of war crimes, the Committee of Ministers decided to communicate these texts to the European Committee on Crime Problems (CDPC) for information and possible comments. The CDPC examined these documents and decided to contribute to the response of the Committee of Ministers by providing the following comments concerning matters within its fields of competence:
2. The CDPC welcomed the initiative of the Parliamentary Assembly to foster co-operation between the member and observer states of the Council of Europe to counter impunity and to ensure that those accused of war crimes are brought to justice. Accordingly, the CDPC supported the Assembly's invitation to urge member and observer states which have not yet done so to sign and ratify the relevant Council of Europe treaties, and in particular the three additional Protocols to the European Convention on Extradition (ETS No. 86, ETS No. 98 and CETS No. 209) and the European Convention on the Non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes of 1974 (ETS No. 82), without declarations and reservations limiting their applicability.
3. The CDPC recalled in particular Article 1 of the Additional Protocol to the European Convention on Extradition (ETS No. 86), which provides that war crimes and crimes against humanity cannot be qualified as political offences and, consequently, that war crimes constitute extraditable offences. In view of the fact that, to date, 37 member states of the Council of Europe have ratified the Protocol, and given the pertinence of Article 1 regarding the subject matter, it would be important to urge all member states to ratify this Protocol and to withdraw any reservations with respect to Article 1 (see Appendix for the list of ratifications and reservations). The CDPC recalled that the Council of Europe's Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC) is working currently on a Fourth Additional Protocol to the European Convention on Extradition with the intention of modernising a number of provisions of the Convention. In accordance with the Recommendation of the Parliamentary Assembly, the CDPC will inform the PC-OC of the Assembly's concerns on this subject.
4. Concerning the European Convention on the Non-applicability of Statutory Limitation to Crimes against Humanity and War Crimes of 1974 (ETS No. 82), the CDPC acknowledged that while this Convention provides for the elimination of statutory limitations for the prosecution of war crimes, to date, only three member states of the Council of Europe have ratified this convention.
5. As regards point 10.3 of the Resolution, the CDPC considered that this point is addressed by the United Nations Convention relating to the Status of Refugees which has been ratified by 144 countries, including 43 members states of the Council of Europe. Indeed, this Convention provides that when it may be proved that an asylum-seeker has committed a war crime, his/her rights of "non-refoulement" may then be revoked, unless "refoulement" entails a risk for this individual to be subjected to torture or to inhuman or degrading treatment or punishment.
6. As regards the specific criminal law aspects, the CDPC noted that Recommendation 1953 (2011) refers to the principles of *aut dedere aut judicare* and of universal jurisdiction over war crimes and crimes against humanity.
7. In reference to the principle of *aut dedere aut judicare*, the CDPC recalled that this principle is already enshrined in the European Convention on Extradition. According to Article 6 paragraph 2 of the Convention, the requested Party that refuses to extradite a national, shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken.
8. The CDPC wished to recall that the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73) remains the main Council of Europe instrument regarding international aspects of jurisdiction, as it provides for the prosecution of non-territorial crimes on the sole basis of a request for proceedings presented by another Contracting state. To date, only 25 member states of the Council of Europe have proceeded to its ratification. Therefore, there is a need to urge member states which have not yet done so to ratify it as soon as possible.

9. The CDPC wanted to draw the attention of the Committee of Ministers to the fact that the PC-OC is currently carrying out work regarding jurisdiction in relation to international co-operation in criminal matters, which could also be of relevance to the facilitation of the transfer of war trial proceedings. This work will include a review of the application of the European Convention on the Transfer of Proceedings in Criminal Matters, as well as of the principle of *aut dedere aut judicare*. In this context, the CDPC will instruct the PC-OC to take note of the Assembly's concerns regarding the co-operation of member states in the prosecution of war crimes.
10. In relation to the principle of universal jurisdiction, the CDPC observed that several member states of the Council of Europe have acknowledged this principle. However, there is no international consensus on the definition and scope of this principle, as the exercise of universal jurisdiction is in practice often subject to legal limitations defined in national legislation.
11. The CDPC acknowledged that given the lack of political will on an international level and the methodological difficulties regarding the scope of the principle of universal jurisdiction, considerable challenges remain for domestic legal systems to ensure the exercise of universal jurisdiction efficiently and effectively. As a result, the CDPC was of the opinion that the Council of Europe should maintain its neutral stance in relation to the principle of universal jurisdiction and should reinforce the application of the principle of *aut dedere aut judicare* as a means of prosecuting war crimes effectively in cases where universal jurisdiction cannot be exercised.
12. In view of the above, the CDPC reiterated its support to the work on fighting the impunity of war crimes by enhancing co-operation between the member and observer states of the Council of Europe. Furthermore, the CDPC was of the opinion that the standard-setting work in progress on the subject is already addressing the criminal law and criminal procedural law questions within its general mandate which arise in relation to the prosecution of war crimes. Therefore, the CDPC advised the Committee of Ministers to inform the Parliamentary Assembly of the initiatives the CDPC and the PC-OC have undertaken. The CDPC was of course ready to extend its work on this subject, should the Committee of Ministers consider it necessary.

**Appendix 1:**

**List of reservations to the  
Additional Protocol to the European Convention on Extradition  
(ETS No. 86)**

Total number of ratifications/accessions: 38

Total number of signatures not followed by ratifications: 1

Chapter I – Definition of political offences

Chapter II – Non bis in idem

Member States of the Council of Europe

States	Signature	Ratification	Entry into force	Reservation to Chapter	
				I	II
Albania	19/5/1998	19/5/1998	17/8/1998		
Andorra	11/5/2000	13/10/2000	11/1/2001		
Armenia	8/11/2001	18/12/2003	17/3/2004		
Austria					
Azerbaijan	7/11/2001	28/6/2002	26/9/2002		
Belgium	18/11/1997	18/11/1997	16/2/1998		
Bosnia and Herzegovina	30/4/2004	25/4/2005	24/7/2005		
Bulgaria	30/9/1993	17/6/1994	15/9/1994		
Croatia		25/1/1995 a	25/4/1995		
Cyprus	1/9/1978	22/5/1979	20/8/1979		
Czech Republic	18/12/1995	19/11/1996	17/2/1997		
Denmark	27/9/1976	13/9/1978	20/8/1979	X	
Estonia	3/5/1996	28/4/1997	27/7/1997		
Finland					
France					
Georgia	22/3/2000	15/6/2001	13/9/2001	X	
Germany					
Greece	18/6/1980				
Hungary	19/11/1991	13/7/1993	11/10/1993	X	
Iceland	27/9/1982	20/6/1984	18/9/1984	X	
Ireland					
Italy					
Latvia	30/10/1996	2/5/1997	31/7/1997		
Liechtenstein	17/11/2003	4/2/2004	4/5/2004		
Lithuania	9/11/1994	20/6/1995	18/9/1995		
Luxembourg	15/10/1975	12/9/2001	11/12/2001		X
Malta	20/11/2000	20/11/2000	18/2/2001	X	

Moldova	26/6/1998	27/6/2001	25/9/2001		
Monaco	30/1/2009	30/1/2009	1/5/2009		
Montenegro		23/6/2003 a	6/6/2006		
Netherlands	13/7/1979	12/1/1982	12/4/1982	X	
Norway	11/12/1986	11/12/1986	11/3/1987	X	
Poland	19/2/1993	15/6/1993	13/9/1993		
Portugal	27/4/1977	25/1/1990	25/4/1990		
Romania	30/6/1995	10/9/1997	9/12/1997		
Russia	7/11/1996	10/12/1999	9/3/2000	X	
San Marino					
Serbia		23/6/2003 a	21/9/2003		
Slovakia	14/2/1996	23/9/1996	22/12/1996		
Slovenia	31/3/1994	16/2/1995	17/5/1995		
Spain	10/6/1983	11/3/1985	9/6/1985		
Sweden	29/10/1975	2/2/1976	20/8/1979	X	
Switzerland	17/11/1981	11/3/1985	9/6/1985		
The former Yugoslav Republic of Macedonia	28/7/1999	28/7/1999	26/10/1999		
Turkey					
Ukraine	29/5/1997	11/3/1998	9/6/1998	X	
United Kingdom					

## Non-member States of the Council of Europe

States	Signature	Ratification	Entry into force	Notes
Israel				
South Africa		12/2/2003 a	13/5/2003	No reservations

## **Appendix 2:**

Provisional edition

### **The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes**

Recommendation 1953 (2011)<sup>1</sup>

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1. The Parliamentary Assembly, referring to its [Resolution 1785](#) (2011) on the obligation of member states of the Council of Europe to co-operate in the prosecution of war crimes, recommends that the Committee of Ministers:

- 1.1. urge member and observer states to sign and ratify the conventions mentioned in paragraphs 7 and 8 of the Resolution and review declarations and reservations limiting their applicability;
  - 1.2. instruct the European Committee on Crime Problems and the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters to make an assessment – in transparent consultation with civil society – of the application of the *aut dedere aut iudicare* principle (either extradite or prosecute) and of arrangements to transpose into domestic law the principle of universal jurisdiction over war crimes and crimes against humanity;
  - 1.3. inform the group of experts in charge of revising and modernising the European Convention on Extradition (ETS No. 24) of the Assembly's concerns with respect to co-operation of the member states in the prosecution of war crimes and invite it to take proper account of them in its work and invite civil society to contribute to the consideration of this point;
  - 1.4. invite the Committee of Experts on Impunity of the Steering Committee for Human Rights to take this subject into account in its Draft Guidelines on Eradicating Impunity for Serious Human Rights Violations.
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<sup>1</sup> *Assembly debate* on 26 January 2011 (5th and 6th Sittings) (see [Doc. 12454](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Dorić). *Text adopted by the Assembly* on 26 January 2011 (6th Sitting).