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Council of Europe – Chairmanship of Cyprus, Colloquium

“Initiatives to strengthen international capacities for the protection of cultural property and the prevention of illicit trafficking in cultural goods – the Council of Europe Convention on Offences relating to Cultural Property”

Session 1: “Facing the threats to cultural property: fighting illicit destruction, excavation and trafficking in cultural property.”

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Mr Secretary-General,

Honourable Minister Kasoulides,

Ms Director-General of UNESCO,

Your Excellencies,

Ladies and Gentlemen,

I'm honoured to address you today on the pertinent issue of protection of cultural property, as seen from the perspective of the Office of the Prosecutor of the International Criminal Court.

Before addressing this matter substantively, allow me at the outset to thank Mr Jagland and Mr Kasoulides for their gracious invitation and for convening this timely gathering of esteemed experts and stakeholders.

I wish to also congratulate Ms Bokova for her insightful and thought-provoking presentation this morning; UNESCO's indispensable and pioneering work in the protection of cultural heritage is commendable and must receive our full and unconditional support.

At the core of today's colloquium, I believe, is the recognition that an effective strategy or response to counter the scourge of destruction of cultural property requires a multi-faceted and multi-disciplined approach. We must indeed join our efforts, in our respective capacities, to confront this challenge through coordinated thinking and action.

Cultural property, when irreparably damaged or entirely destroyed, is a loss beyond measure. It is as if to erase the concrete manifestation of history, and the human ingenuity and cultural and artistic expressions that defined a people at a certain transient moment in human history, never to be relived.

It is, Ladies and Gentlemen, to shatter the "mirror of humanity" - we can ill afford such immeasurable loss to our common heritage.

I believe effective enforcement of the applicable legal framework, which we already have at our disposal, can play an important role in our efforts to protect cultural heritage from deliberate destruction and looting.

As you know, the mandate of my Office in accordance with the Rome Statute that established the International Criminal Court is to examine, investigate and prosecute the gravest crimes of concern to the international community as a whole - namely, genocide, crimes against humanity and war crimes.

The deliberate destruction of buildings dedicated to religion and historic monuments constitutes a war crime under the Rome Statute. Such conduct, depending on the facts and circumstances behind the commission of the crime, may also constitute persecution as a crime against humanity.

I will use the term “cultural property” today as short-hand, given the focus of my presentation.

Deliberate attacks against cultural property are grave offences, with devastating and long-term impact, first on affected communities, but also far beyond the socio-geographical space they occupy.

In parallel with atrocities committed against civilians, the looting, sacking and wanton destruction of cultural property has been a tragic concomitant of war and conflict since ancient times. From temples, mosques and churches, to the repositories of sacred texts, and from the resting place of sacred remains, to historical monuments, the targeted cultural objects typically embody in one way or another the fundamental identity of an entire community and that which singularly personifies humanity.

The magnitude of what has been stolen from humanity through the ages as a result of such attacks is unimaginable. Religious and historical objects are not military targets – yet, they frequently appear to be conceived as such.

There is an increasing threat of their deliberate destruction in times of conflict. The weapons used may range from pickaxes to jack hammers, from dynamite to bulldozers or tanks, but the goal is the same: a concerted strike at the very heart of a group's identity, roots and beliefs, resulting in profound loss for humanity and for generations to come.

Regrettably we don't have to look back far in history to see examples of such destructive conduct. Such acts were perpetrated in the 1990s during the conflict in the former Yugoslavia; think of the deliberate attacks against the old Mostar Bridge in what is today Bosnia and Herzegovina, and the destructive siege of the Old Town of Dubrovnik. In more recent years, we witnessed the filmed destruction of the Bamyán Buddhas in Afghanistan, the pillaging of the museums in Iraq, and the acts of destruction in the cities of Aleppo and Palmyra in Syria. My fellow speaker in this session, Dr

Abdulkarim, will no doubt provide profound insights with respect to the latter.

Such reprehensible conduct must no longer go unpunished. We must protect our common heritage from the desecration and ravages of war.

Justice must be meted out for the sake of our common humanity and in so doing contribute towards deterrence and the prevention of such crimes.

Your Excellencies,

Ladies and Gentlemen,

Allow me to explain in concrete terms how my Office, and the ICC as a whole, has been doing its part in this endeavour.

Following a referral by the Government of Mali in 2012, my Office initiated investigations in Mali with regard to alleged crimes committed on its territory since January 2012.

During that time, the north of Mali had fallen into the hands of jihadist groups, such as *Al-Qaeda in the Islamic Maghreb* and its affiliate *Ansar Dine*. The entire world was shocked by the brutality and cruelty to which the civilian population were subjected to, particularly in the cities of Timbuktu, Gao and Kidal.

As these groups took control of the territory in the North, they vowed to rule over the conquered cities in accordance with their own radical ideology.

In this context, in Timbuktu, the occupying groups decided to attack and systematically destroy the ancient city's famed and cherished mausoleums. These were buildings protected under international law, and particularly in this case by the Rome Statute as buildings dedicated to religion and as historic monuments. Ten structures in total were attacked – including one mosque.

As a result of my Office's investigations, we brought charges against Mr Ahmad Al Faqi Al Mahdi, who acted as the head of the *Hesbah*, the morality brigade, which carried out the attacks.

We deemed his prosecution to be critically important. What was at stake was not just walls and stones: the destroyed mausoleums were important from a religious point of view, from a historical point of view and from an identity point of view. Attacks against buildings dedicated to religion and historic monuments constitute crimes that destroy what we are, and profoundly and irremediably affect social practices and structures.

The structures attacked were important also beyond Mali, for the whole of Africa and indeed for the entire world, as underlined by the status, bar one, as UNESCO World Heritage Sites, and the condemnation of the attacks by the international community.

By prosecuting Mr Al Mahdi, therefore, my Office sent a very clear message with a purposive preventative goal: the intentional targeting of cultural property is a serious crime affecting the international community as a whole and will *not* go unpunished.

Following his surrender to the Court, the trial of Mr Al Mahdi took place in August 2016, during which he made an admission of guilt – a first at the ICC.

On 27 September 2016, the Trial Chamber of the Court unanimously found Mr Al Mahdi guilty beyond reasonable doubt as a co-perpetrator of the war crime consisting in intentionally directing attacks against religious and historic buildings in Timbuktu, and sentenced him to nine years' imprisonment.

I sincerely hope Mr Al Mahdi's sentence, along with his expression of remorse and admonition to others not to do as he did, can bring some degree of comfort to the people of Timbuktu affected by these acts while conveying a deterrent message to those who are inhabited by intolerant behavior and ideology against other people's ways of living and believing.

Beyond the case of Mr Al Mahdi, and in accordance with the Rome Statute, my Office remains firmly committed to the situation in Mali and will continue to do all it can within its mandate and means to ensure perpetrators of crimes under ICC jurisdiction do not go unpunished and that the victims attain justice they so rightly deserve.

The goal of ending impunity in Mali, I firmly believe, can best be achieved with the combined efforts of the Court and the national authorities. Indeed, complementarity is central to the Rome Statute

system. My Office stands ready to offer assistance in support of the efforts of the national judicial authorities, as required, within the parameters of its mandate to continue fostering genuine national proceedings for ICC crimes in Mali.

Your Excellencies,

Ladies and Gentlemen,

To stress the severity of the crimes and our commitment to confront this scourge through our work, beyond the investigation in Mali, I have decided to focus a forthcoming comprehensive public policy on the issue of attacks against cultural property, mapping out and strategizing how best we can investigate and prosecute these crimes and work with partners to address what we deem to be serious crimes under the Statute.

I consider such policy work critically important, as I feel that the ICC is uniquely placed to consider and address particular crimes and serve as an example or partner for other actors at the international, regional and national level.

In fact, more generally, the development with partners of a coordinated investigative and prosecutorial strategy is a key strategic goal identified by my Office in its Strategic Plan for 2016-2018.

You may wonder why this is necessary.

Every day, my Office receives communications from individuals and groups concerning alleged crimes in situations of conflict around the globe. For example, since the summer of 2014, my Office has received and considered troubling allegations of countless atrocities committed by *Daesh* in Syria and Iraq including waves of destruction against historic and religious monuments.

My Office also continues to receive referrals from State authorities. And, in political arenas, such as the UN Security Council and the UN Human Rights Council, calls for referrals by the Security Council of situations concerning grave crimes are made on a regular basis.

The reality, however, is that my Office, and the ICC as a whole, while determined to its best, cannot alone address all these demands.

This, in part relates to its jurisdictional limitations – many States, including Syria and Iraq, are still not a party to the ICC Rome Statute and as such cannot be subject to investigations without a Security Council referral. In this context, more advocacy efforts are required to increase the ICC's universality, to ensure that all citizens and territories of the world benefit from the Court's legal protection.

Other aspects relate to the ICC's finite capacity and budget, meaning that even with a Court with universal scope, the ICC will not be able to handle all cases. This is also not the design of the Rome Statute, which envisages a complementary system involving the combined efforts of the International Criminal Court and national criminal jurisdictions.

Therefore, to avoid an impunity gap, our collaborative efforts are required.

The efforts of the Council of Europe under its Convention on Offences relating to Cultural Property are one such avenue. I reemphasise the importance of the innovative efforts of UNESCO in raising awareness and protecting cultural property in armed conflict.

On the side of the ICC, steps have already been taken to identify and bring together national and regional authorities in charge of law enforcement. The idea of better coordination is generating enthusiasm amongst the various interlocutors and bodies, and we need to keep and build on this momentum, to develop further promising prospects for the way forward in our joint efforts to address impunity.

I take this opportunity to state that my Office stands ready to work with you in our joint yearning, indeed responsibility, to make the global response to the scourge of deliberate destruction of cultural property as effective as possible.

I'm delighted therefore to address this audience, which is seeking to make a difference when it comes to developing ideas and strategies to address, prevent and hold to account the perpetrators of attacks on cultural property.

In the past decades alone, we have already witnessed too many attacks against cultural property. We must do more to prevent and punish such crimes.

At the opening of my Office's case against Mr Al-Mahdi, I stated before the Court that "history itself, whose physical embodiment is at peril through such attacks will not be generous to our failure to care or to act decisively." I can only reiterate that call here.

The deliberate destruction of cultural property is a serious crime and must be seen as increasingly repugnant to our cultural ethos in this new century.

Together, I'm confident we can make a difference. I thank you for your attention. | OTP