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Exchange of views with the Committee of Ministers

Introductory remarks by Michael O'Flaherty
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Thank you very much, Madam President, and my warm congratulations and best wishes to you as you take up the presidency.

I walked past the Hotel de Ville this morning, and it was such a great pleasure to see the flag of your country flying there. So every best wish.

Dear ambassadors, dear colleagues, since I last reported to you, rather the period beginning 1 September up until today, I have made thirteen trips to member states, one of which was in the context of an official visit to Germany.

I would like to thank the German authorities for the very warm welcome I received in Berlin.

During this period, I have made multiple statements and speeches, as well as publishing one "Shout Out".

All of these are available on my website, and I have exchanged a considerable degree of correspondence with member states, some in the public domain, some privately.

I have met with ministers and parliamentarians of multiple member states, both here in Strasbourg and in capitals.

I have participated in events of the Council of Europe itself, including the many excellent events of the Presidency, as well as in events organised by the OSCE, the Nordic Council, Europol, and the breadth of civil society.

Since we last met, I've published one third-party intervention to the Court, and the first two of my major thematic reports, one on externalisation of migration policies, and the other around the situation of Roma and Travellers. I have discussed both of those two topics with you recently and previously, and I don't intend to come back to them now. I'm delighted, of course, to receive any questions or observations that member states may have.

I would like to turn immediately to the first of the topics that I wish to concentrate on this morning, and that is my work regarding human rights of the people of Ukraine.

You will recall that some months back, following a visit to Ukraine, I published a memorandum to the government, which focused on necessary elements, ten indeed, ten pathways to be kept in mind as we work towards a human-centred peace for that country, with an end to the Russian aggression.

It was very important that I seek with other relevant partners to operationalise this concept of how we focus on or pay attention to the ten areas.

On that basis, I convened in Warsaw last week, a group of some 35 specialists. They comprised the Ukrainian Ombudsman, a very strong representation of Ukrainian civil society, high officials from international organisations and many others.

This was a Chatham House closed-door meeting, but a report will be issued, and I assure you that I intend to publish it during this year. But I can already share with you a number of key takeaways.

The first is a very strong awareness, and it does not take us to say this to you, that the war rages in all its horror, and we are by no means near a peace. To the contrary, the targeting of civilians by Russian forces has grown worse in recent weeks, and the assaults on energy and infrastructure are such that this is going to be the most brutal winter yet for the people of Ukraine.

Notwithstanding that war rages and that the talk of peace can seem somehow inappropriate, there was a very strong affirmation from the experts that notwithstanding that we are in the middle of this dreadful conflict, we must invest now in future peace, we must invest now in important initiatives, so that when the moment comes, the capacities are in place and primed.

In this context, you will be very reassured to hear that there was a universal view in the meeting that the efforts made for accountability and for reparations are the top priority. I want to acknowledge back to you that the very clear, unambiguous voice of civil society and of experts. This high attention to initiatives, the various initiatives around accountability and reparation are very important. Indeed, there was an enormous appreciation to the Council of Europe for taking on the leading role.

Next point, it was forcefully reminded, I hope it would never occur to us to do otherwise, that we have a solemn duty to people in the temporarily occupied territories and people taken to Russia. Their human rights will never become less important. Wherever the future may lead, respect for them, their dignity and their well-being must be uppermost in everybody's minds.

In that context, the fourth takeaway of just a few has to do with the importance we were repeatedly reminded of protecting and promoting and engaging with civil society, but in particular with grassroots civil society.

We were reminded that when peace comes into the streets and villages of Ukraine, it is grassroots civil society that is going to play an absolutely essential role, not only for the delivery of services, but for the rebuilding of bonds of society to the extent that is needed.

A fifth of the views strongly expressed is axiomatic of the nature of the memorandum and of the meeting that was convened. That is of the importance of continuing to invest in a diversity of voices around what peace should look like.

Peace must never, ever be allowed be dictated by some great powers and be about transactions. It has to reflect the human reality of the human beings at the heart of the story.

Among those humans at the table, again, reflective of resolution 1325 of the UN Security Council, women must be at the table.

To conclude on this meeting of last week, there was unanimous insistence that the group or some variant of it continue to meet because it is the only forum where this type of discussion is taking place. I had to inform the group that I do not have the capacity or resources to continue it. My job was to stimulate it, to catalyse it, but now I have to hand over. So, we need to look at how different organisations, , could look at how they can sustain this necessary discussion.

Moving, if I may, from the topic of Ukraine to the topic of artificial intelligence.

It is not a topic I have raised with you before, even though it is a priority of mine and has been receiving a lot of my attention.

First, my focus. My focus is how we ensure effective oversight and regulation of AI in honour of human well-being, human dignity and human rights.

To this end, I have convened two consultations so far, one in May with institutional experts and one just 10 days ago with civil society, expert civil society. I will publish a public report around these topics next year. I want to share with you immediately some findings that are very strongly present, even though the work is far from finished.

In the first place, there is a very strong acknowledgement that the Framework Convention of the Council of Europe is an excellent instrument, an excellent model of multilateral engagement around AI globally. It is of its nature. It is not a regulation. It is a multilateral treaty. The problem is that we need it to come to life. We need ratifications. We need it to come into force. We have a global model, a global good practice model, but it is sitting on the shelf because we do not have ratifications. We do not have anything like enough signatures, and it has not begun to have its necessary impact.

Similarly, HUDERIA, the technical tool developed by the Council of Europe for the human rights assessment testing of technology is excellent, it is unique. It is underused because it is under known.

Again, we need our member states to run with these two initiatives to get them the attention they deserve.

Secondly, an EU matter, but very important. It has been reaffirmed in these expert consultations that the EU models of regulation are very good. In particular, the Digital Services Act, the AI Act, and our old friend, the GDPR.

These serve well those countries where they apply in terms of a regulatory framework. A regulatory framework is a more drilled down thing than a multilateral treaty. It can serve as a model for national approaches. The problem here is, again, an issue of application of the instruments, particularly DSA and the AI Act.

The AI Act requires the putting in place of national oversight bodies, but less than half of the EU member states have done so so far. And big pieces of that legislation have been given delayed implementation dates. This is a matter of some concern, given the urgent need for oversight.

In that context, and this has been quite dramatic, the change since May. I first convened the group in May. I met the second group 10 days ago. In that short period, the extent of the growth in resistance to regulation and oversight has been quite dramatic, particularly emanating from the other side of the Atlantic. It is extremely strong, and it is a combination of the force of the state and of industry. And when I say industry, remember, I am talking about Silicon Valley, where the greatest concentration of private wealth on Earth now is.

There is a very, very strong pushback, which is deeply disturbing if you care about human rights. We see the risks of AI with generative AI. Now everybody sees the risks. Everybody sees the unreliability, the capacity for mistake and hallucination.

The analogy I use, and I will leave the point here, is that of the rules of the road. It is like we are back around 1900. Cars are appearing on our roads and there is a strong resistance to rules saying, "no, no, no, all the cars on the road will self-regulate". Can we imagine, just imagine for a moment, the chaos on our roads if we had listened to such voices, but it is no different today with arguably an even more consequential technology.

In this context, it is beyond the remit of this room, but I have to share with you that I am looking with some concern at what will appear tomorrow when the European Commission issues its EU simplification package. It is so important, and I have made this point in Brussels: simplify, that is perfectly fine, tidy up, make more efficient, but do not yield on key protection points.

A further concern with regard to AI has to do with the fact that industry has been very slow in establishing its own industry standards. Beneath treaties, beneath regulation, you need industry standards to convert the requirements into practice on a day-to-day basis. They are present almost nowhere. Again, we can speculate on the reasons, but it is a gap that must be addressed.

Finally, in my last remark on AI, while it is beyond my remit, one has to keep in mind that to the extent we have the treaties and we have regulation, they largely exclude security and military applications. This is a matter of enormous concern when you think of the extent of the development of autonomous weaponry. Just look at the way in which drones are operating in and against Ukraine right now to get a sense of the need for some form of oversight.

I would like now, Madam President, Ambassadors, to turn finally to the topic of the European Convention on Human Rights and the pressures with regard to which a lot of attention is being given right now in terms of the law and the practice of the Convention and the Court.

Yesterday in Warsaw, in the context of its annual Warsaw Human Rights Seminar, as a guest of the government, I delivered a keynote speech on exactly the topic. It is on my website. It is on the homepage. You may wish to have a look at it.

I would like now, in order to have a single consistent voice and not be inconsistent, to read out to you just some paragraphs from the speech yesterday. Forgive me if it seems a little bit out of place here, but as I say, I do not want to repeat in different words what I said just yesterday.

For years now, there has been a negative discourse about human rights from some, even from those who mean well for our society, claims that there are better ways to protect us and achieve progress.

In recent times, the narrative has been given voice in political discourse. Here in Europe, this has been most evident in, but not exclusively, in debate around the management of migration. More specifically, around a reduction in human rights protection for all, or for some, irregular migrants. Views are diverse. Many are still in development. Some have been publicly expressed. Others have only been shared so far in private spaces.

In this context, I would wish to share some general observations. And given the lack of clarity and the fast-developing discourse, I have to insist that I am not addressing the specific positions of any member state.

First, I urge everyone to be assiduously evidence-based. The facts cited to justify change must be impeccable. In that regard, I am concerned about numerous inaccuracies currently in circulation. For instance, one lazy correlation of irregular migrants and criminals is unacceptable. And the claim that it is currently next to impossible to expel those criminals with a migrant background is not supported by the facts.

I am no less concerned with the claim that the entry into our states of instrumentalised migrants undermines national security. Instrumentalisation is a deplorable fact, but our societies are well able to receive and consider the asylum claims of the victims of the practice.

What is more, national security is at its best when it embraces human security, a society that upholds human rights and rule of law for all.

Another fact-related consideration has to do with any assumption that adjusting the law or practice of the convention and the court that will somehow axiomatically change practice on the ground. For instance, that it would impact irregular migratory flows. Assumptions such as this are unconvincing.

Finally, on the topic of facts, it is good to recall the extent to which human rights law regarding migration is so very often misunderstood in the media and in discourse. For instance, and obviously, there is no right of migration and asylum is an exception. It is granted only when certain criteria are established.

What is more, the voluntary or indeed the forced return of those who do not qualify for international protection is an important dimension of migration management. I think it would be important to insert these elements of the reality around migration law into the public discourse.

Turning to law specifically, I urge states and commentators to be deeply respectful of it. Above all, in the current context, I have in mind the right to seek asylum. This absolute entitlement can be found in law and practice globally. Beyond treaties and jurisprudence, it has the status at least of customary international law. Attempts to interfere with it are unacceptable.

No less essential is the need to respect the universality of human rights. That they are held co-equally by everyone, by virtue of our humanity. Any discourse that creates a hierarchy of rights holders on the basis of their being more or less deserving is deeply problematic.

One further legal consideration is to ensure that all discourse and proposals do nothing to diminish the independence of the European Court of Human Rights or indeed of any other court. The principle of independence is essential to the rule of law state.

My third and final plea to those who would weaken human rights protections is to consider wide implications. For instance, today it is mainly migrants who are the focus of attention. But once the precedent is established, who next? Which unpopular minority group might next be subject to efforts to reduce human rights?

And keep in mind also that the world is watching. Any European weakening of human rights protection will be seized on by those who would do away with human rights entirely.

President, Ambassadors,

To conclude on this point, this is not the first time I have expressed these views and I am well aware of the degree to which they can be rejected or argued against.

One of the most common pushbacks against my view is the opinion that we must yield some human rights ground in order to stop populists in their tracks, to stop the migration of electoral votes to them. I appreciate this concern, but I question the logic.

I am convinced that our peoples are not against strong human rights protections, and surveys and research repeatedly affirm this. Their concerns have to do with very important but other considerations, such as senses of alienation and disadvantage. These senses are amplified through clever political messaging as well as disinformation. Such phenomena must be addressed if we care about the well-being of our societies, but the way is not to damage the human rights system.

Thank you.