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Exchange of views with
Council of Europe Committee of Ministers deputies

Speech by Michael O'Flaherty
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Merci Madame la Présidente,
dear Ambassadors,

Thank you, I appreciate the opportunity to be with you this afternoon to present my annual report for 2025. I hope you've all had a chance to review it, and I will not go through it in great detail now; I would rather just point to a few issues.

The report itself is clustered by priorities, and I'll go through a few aspects of each of these, but just before that, a word on the toolbox.

I've been able to make full use of my toolbox over the course of the reporting year and subsequently. That means extensive missions, visits to the member states, either in the formal framework of a country visit or for some other reason. This has been a large part of my work.

I have also had the opportunity, either at the level of the States themselves or otherwise, to engage with States, with the human rights actors of given countries, with civil society, and, of course, very importantly, with the relevant international organisations. No less important has been my interaction, which I'm seeking to ever deepen, with the breadth of the Council of Europe system. I have increasingly invested in what I can call, for want of a better term, conference diplomacy, which I see as an important part of my work and I have made an adjustment in the type of written output that you are used to from the Commissioner.

You have seen in the past year a lot from me, of statements, of letters, in the public domain and to a lesser extent, but still very important, third party interventions and rule nine interventions. However, you have seen far fewer from me than my predecessors of formal reports of a classic kind. That is because, frankly, with no disrespect, I am not a research institute, and I am not sure that producing such reports is the way in which I can be of most use to you. Instead, I see myself essentially as a diplomatic actor, closely embedded in and at the level of the field.

Now, turning to the priorities, again, and those of you who've listened to me a few times will find it tedious by now, I still have just four priorities, and they are the same ones they were

the last time I spoke to you, but I would like to give you an update on where I am with each of them.

Priority one: standing up for the people of Ukraine

This is now, and will remain, my top priority. I had the chance again during the year to visit Ukraine, and I tried, during the year, with others, to maintain attention, including through social media, to the ongoing atrocities, the criminal acts of the Russian aggressor.

I think it is important never to let up on shining a light on what the Russian Federation is doing.

In a more thematic way, I continued, again, over the year, to pay attention to what we might say is embedding human beings in the path to peace, and making sure that human well-being, human rights, is ever more visible in the different pathways towards a peaceful end to the aggression.

You already know of my memorandum, which I issued already last summer, which laid out 10 areas where attention needs to be paid if humans are to be at the heart of peace. I presented the memorandum and engaged in discussions around it in the Rome Recovery Conference of last summer. In autumn, I convened a meeting of senior representatives of international organisations expert in conflict and human rights and peace in Warsaw to see how we could further operationalise the 10 attention areas. And if you were to ask me, is there any progress here? Well, we know what we know in terms of peace and conflict, but I do see an increasing willingness to nudge open doors around the issue of women in the context of the path to peace, and in particular as framed by UN Security Council Resolution 1325 on Women, Peace and Security.

For myself, now and into the coming months, my focus is just one of my 10 attention areas, and that is that of displaced people. I am looking on the one hand at refugees, very much having in mind that the EU Temporary Protection Directive is scheduled to cease to apply as of April next year. And we need to see what will replace that because it is obvious that many people will not have returned by then. We also, no less importantly, need to look at the situation of people displaced within Ukraine itself.

Priority two: embedding human rights in the great issues of the day

This priority is a bit of an amalgam one because this is, you may recall, working with others to embed attention to human rights, human beings, human well-being within the heart of the great issues that confront our societies right now. I have been focusing on four of these great issues.

The first of these great issues is migration.

It has been a very important area of attention for me throughout the year. In terms of ongoing engagement, you will have seen from my outputs and my words, I have had to address the issue of pushbacks in a number of our member states. I have had to address the issue of the refusal of access to asylum procedures within the territory of the Council of Europe. I have had to address the persistent issue of a failure to deliver state accountability for criminal acts of state officials within the migration context.

And my particular focus, as some of you will be aware, beyond what I have just said, is on the phenomenon of externalisation. The contracting out to other states, in various formats, of our own state responsibility in terms of the management of migration.

This is always timely, but, of course, takes on a particular resonance in the context of the growing policy direction towards externalisation on this continent.

I focused on those contexts:

- The externalisation of asylum procedures.
- The externalisation of return procedures.
- The externalisation of border management.

Two general observations.

These are, sometimes, as you well know, described as innovative solutions; it is important to recall there is nothing innovative here. Everything that we are trying in Europe has been tried somewhere else, and everywhere else it has been tried, it has been seen as very problematic.

The other general observation is that these innovative or new approaches are, from a human rights point of view, replete with risk. This requires, at a minimum, that our member states proceed with three preoccupations.

- The first is that, in all such venturing forth into these areas, they adopt what I describe as a precautionary principle. Aware that things can go wrong, ensuring from the outset that they are alert to how to avoid things going wrong.
- Second, this requires putting in place, in any arrangement with other states human rights, preconditions and safeguards.
- Third, it means ensuring the effectiveness of such safeguards through putting in place sturdy human rights monitoring systems, which in return themselves need a commitment to transparency and accountability.

To assist the member states as they address these issues going forward, I am now engaged in a new area of work, which is the development of guidance for the rollout by states of human rights assessment tools. In other words, tools to help in delivering on those three areas that I mentioned that need attention.

There are further migration related issues that cause me a considerable degree of concern.

The first has to do with deaths at sea. The IOM told us in recent days that the incidence of death in the Mediterranean already this year is at the highest we have ever seen it, in the current context of crisis. This is deplorable, since we could deploy the search and rescue capacity overnight if we had the will. People are drowning, in part, because of inadequate search and rescue.

Then, there is the context right now in the EU setting of the continued negotiation of a new or a recast return regulation. I have issued an observation on this on the 2nd of March. I will not go into it in detail here, but as the negotiation heads towards a conclusion, it is so important that such principles be protected as individualised asylum assessment, great care be taken from a human rights point of view, in the management of return hubs, and that there not be a presumption of a default option of detention for those subject to return, which may not always be necessary, and which certainly, in the case of children, is very problematic, as we know from the established practice under the UN Convention on the Rights of the Child and of UNICEF.

The second great issue has to do with artificial intelligence.

There are a number of contexts for my work and my focus on AI. Those include:

- The extraordinary speed of the rollout of new generations of the technology.
- The coterminous push for deregulation.
- The zero-sum presentation of the options of regulation on the one hand, and innovation on the other.
- The very welcome, a growing awareness of the inherent risks and dangers of unregulated artificial intelligence.

In these regards, by and large, the models for oversight have not caught up with the technology, on the one hand, and the discourse, on the other. We need a new generation of models for oversight, and so I will propose elements for how we can embed human rights in oversight of artificial intelligence in a report in coming months.

The third of my four great issues is the environment.

This is, of course, the great existential issue of our moment. There will be no future if we do not get this one right. I have been slow to come to the table because I wanted to make sure what I brought was value-added, and I am pleased to let you know that I and my team are now fully invested in supporting a human rights approach to the climate crisis. I am doing it using a classic model of promoting implementation of judgements of the European Court of Human Rights. There have been over 300 judgements of the Court around issues of the environment, and what I am seeking to do is support, across the member states, implementation by all of us of a common core content from these judgements. This is not

implementation of judgements in the classic sense. It is identifying the common key so that we can all be led by the Court towards clarifying, within the Council of Europe, the meaning of the right to a healthy environment.

The fourth great issue is inequality.

I can report that I became engaged much more, in a much more consequent way, in the past year around issues of inequality. I focus on the issue of child poverty, and I will stay with this topic until the end of my mandate. My focus is on how we can approach child poverty with human rights at the heart of our efforts. I have done two country visits on this theme already and I will issue a report with hopefully useful guidance for states next year.

Priority three: standing up for forgotten people

This priority, again familiar to those of you who have been listening to me over the last two years, is seeking out the most abandoned forgotten marginalised people in our societies and standing up for them.

That is why I have invested so much time over the past two years in the situation of Roma and Travellers. I have done five country visits, looking specifically at the issue. I published my book, "The unheard 12 million", and there is a travelling exhibition moving around Europe right now associated with the work. All of it intended to break through the hidden in plain sight experience that Roma live and so that we can move their plight up the policy agendas. I will continue to stay focused on this work at the regional and country levels, as well as, of course, with the relevant bodies here in Strasbourg.

Another of these forgotten people that I finally was able to turn my attention to in recent months is the people in occupied territories. They have been very much on my mind in Ukraine, in the temporarily occupied territories, but in addition, recently, I have been able to pay attention to the people of Abkhazia and Tskhinvali region/South Ossetia. This focus will continue.

The third and final of these forgotten or overlooked people that I am beginning to work on now is an entirely different group, but no less forgotten from a human rights point of view, and that is older people in institutional care. This is a neglected group from a human rights point of view. COVID was already five, six years ago, but it reminded us of how so many people died because of an inadequate attention to their needs. So I intend to put a heavy investment in this group, over the coming year in particular.

Priority four: standing up for human rights defenders and civil society

Standing up for human rights defenders in particular, and for civil society more generally, is, as I have said to you before, a surprisingly large part of my work. I was not expecting that not

a week would go by without me having to intervene with a government around issues, but that is the simple fact.

Over the last year, the concerns have more or less clustered in two areas. The first is freedom of assembly. The freedom, the space to operate, just a space to exist as organisations. We have increasingly suffocating laws in too many places which have the effect of massively limiting the work, are completely impeding the work of civil society organisations. And secondly, we have had a concentration of problems around a meaningful space for the freedom of peaceful protest, which again engages issues of freedom of assembly, freedom of expression, and so on.

You will see by the way in the fourth of my priorities a very clear link to the very important work that you are doing around democracy.

An unexpected priority: the defence of the Convention system

Dear President, Ambassadors,

There is one priority area that I was not expecting. I did not design it. It was imposed on me and that is to contribute, with many other actors, to a defence of the Convention system.

My views are very well known. I have expressed them here on a number of occasions. I do not intend to rehearse them again today other than just a few very brief recollections.

- I continue to be of the view that the letter and statement of last year by some member states were unhelpful.
- I consider that it was good that the discussion was brought in-house, with the work that the CDDH and yourselves are bringing to a close right now.
- I consider that the elements for the draft declaration are a lot better than some of the language we saw in the earlier documents. Some of the pitfalls have been avoided. I will leave it there.
- I accept that the draft language that has been largely finalised is the language that will go to Chişinău, to the summit.

I would just ask that you and the member states would keep in mind four things as you proceed out from Chişinău.

- The first is that you will never cease to demand full respect for the independence of Courts. I pluralise that. It is the Court of Human Rights, but it is also domestic courts when engaging in issues of human rights.

- Secondly that you will never cease to stand up for the universality of human rights, for the equal enjoyment of human rights, regardless of the accident of who you are or where you were born or how you have found yourself in the hands of the state.
- Third, we have to be so careful going forward that we do not instrumentalise the European Convention on Human Rights for some other policy ambition.
- Fourth and finally, across everything we do going forward, please make every effort to anticipate the unintended consequences. There is a risk of consequences in 10, 15, 20 years' time, maybe when the politics of our continent change, based on actions we take now. We must anticipate and ward off these consequences.

A message of hope and resilience

I have taken some time this afternoon, Madam President, but I want to close with a positive note, if I may.

I normally end up getting rather dystopian at the end of these things, and I do not want to do that today. I want to reflect briefly on the fact that I have been two years in this job, and during those two years I have come to know the Council of Europe. I knew it as an outsider; I have come to know it as an insider.

I think it is important that I end my remarks by saying how deeply impressed I am by the continuing achievements of this organisation. It has built strong foundations and infrastructure for the defence of human rights, and we must occasionally recall these.

For sure, it is the Court, it is always the Court, but it is also the other instruments, beyond the Convention and their monitoring bodies. It is the impact in countries, in prison cells of the CPT, in women's shelters of GREVIO. I see it in my work every time I visit a country.

It is in the treaty generating capacity of the organisation. This organisation is deservedly known as the global human rights treaty laboratory, and, as such, it serves such an important role. Look at the AI Framework Convention, look at the Convention on the Safety of Lawyers, globally groundbreaking. My only concern here would be that we write great treaties, but we maybe should work far harder to promote them.

Look at the output of numerous bodies, such as the Venice Commission. Look at the impact of the Venice Commission for the oversight of the policing of rule of law on this continent. It is an under-acknowledged achievement.

There is the very diverse work of the Secretariat, which again I have had a pleasure to get to know in the past two years. The imaginative, creative, groundbreaking work on AI. The HUDERIA assessment tool, developed by the Secretariat of this organisation, is a global leader.

Look at the work on Roma. The vast *acquis* of input to stay standing up in defence of Roma culture and Roma history is in large part a story of the Roma work of the Secretariat at the Council of Europe.

And there is so much more I will not list now. I have not listed any of the great work of my team, but they will understand that it would be a bit odd for me to start listing their achievements in this setting, but I want to acknowledge it nevertheless.

In closing, President, Ambassadors, I agree that there is no room for complacency. It is the most challenging time one could imagine, but, as we face into the hard winds of the period, let us do so with a deep appreciation of how well this organisation delivers already on its core business. This is a basis for legitimate pride and for self-assurance as we go forward.

Thank you.