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Please quote: DLAPIL 10/2020 JP/CLD/DG

1949.2019

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**Mr Stephen MATHIAS**
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United Nations Office of Legal Affairs
2 UN Plaza
New York, N.Y.10017
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Strasbourg, 20 April 2020

Dear Mr Mathias,

In reply to your letter of 6 January 2020 (Ref. LA/COD/59/2), the Council of Europe would like to hereby submit its information and observations on the scope and application of universal jurisdiction, as referred to in paragraph 3 of General Assembly Resolution 74/192, of 18 December 2019, entitled “The scope and application of the principle of universal jurisdiction”.

The Council of Europe welcomes UNGA Resolution 74/192 and the related report of the Secretary-General on “The scope and application of the principle of universal jurisdiction”, document A/74/144, of 11 July 2019. The report contains a number of contributions, including from member States of the Council of Europe and it also mentions two Council of Europe Conventions: the 1977 European Convention on the Suppression of Terrorism (ETS No. 90) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

The 1957 European Convention on Extradition (ETS No. 24), which includes the principle of *aut dedere aut judicare* (“extradite or prosecute”), has been ratified by all 47 member States of the Council of Europe, which is not the case for its four Additional Protocols (ETS No. 86, ETS No. 98, CETS No. 209 and CETS No. 212). Article 1 of the 1975 Additional Protocol to the European Convention on Extradition (ETS. No. 98) provides that war crimes and crimes against humanity cannot be qualified as political offences and therefore constitute extraditable offences. To date, 38 member States of the Council of Europe, and two non-member States, have ratified this Protocol. Other relevant Conventions of the Council of Europe include the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), ratified by all 47 member States of the Council of Europe, plus three non-member States, together with its two Additional Protocols (ETS No. 99 and ETS No. 182) with over 40 Parties each.

Two important Council of Europe treaties, but with low levels of ratification, are the 1974 European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82), and the 1970 European Convention on the International Validity of Criminal Judgments (ETS No. 70).

More recently, an important development took place in the Council of Europe with the adoption by the Committee of Ministers on 30 March 2011 of the Guidelines on eradicating impunity for

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serious human rights violations. Guideline XII, on international co-operation recalls that "in order to prevent and eradicate impunity, states must fulfil their obligations, notably with regard to mutual legal assistance, prosecutions and extraditions, in a manner consistent with respect for human rights, including the principle of *non-refoulement*, and in good faith". This Guideline also encourages states "to intensify their co-operation beyond their existing obligations".

As regards relevant case-law from the European Court on Human Rights, we would like to highlight the Grand Chamber´s judgment of 15 March 2018, in the case *Naït-Liman v. Switzerland* (application no. 51357/07). The case concerned the refusal of the Swiss civil courts to examine Mr Naït-Liman's civil claim for compensation in respect of non-pecuniary damage caused by his alleged torture in a third State, Tunisia. The applicant, Mr Naït-Liman, was a Tunisian national who had acquired Swiss nationality. The Grand Chamber examined whether – as a forum of necessity or as a matter of universal civil jurisdiction – the Swiss courts were required by Article 6 § 1 of the *European Convention on Human Rights* (ECHR) to examine the applicant's civil claim for compensation against Tunisia. Like the previous Chamber judgment, the Grand Chamber found that this was not the case, considering that member States are under no international law obligation to provide universal civil jurisdiction for torture (paragraphs 203 and 217). The Court considered that, "unlike in civil matters, universal jurisdiction is relatively widely accepted by the States with regard to criminal matters" (paragraph 178).

However, the Court underlined that its conclusion on this case "*does not call into question the broad consensus within the international community on the existence of a right for victims of acts of torture to obtain appropriate and effective redress, nor the fact that the States are encouraged to give effect to this right by endowing their courts with jurisdiction to examine such claims for compensation, including where they are based on facts which occurred outside their geographical frontiers*." (paragraph 218). The Court recognised "the dynamic nature of this area" and "the possibility of developments in the future", and invited the Parties to the ECHR "*to take account in their legal orders of any developments facilitating effective implementation of the right to compensation for acts of torture, while assessing carefully any claim of this nature so as to identify, where appropriate, the elements which would oblige their courts to assume jurisdiction to examine it*" (paragraph 220).

I hope that you will find these elements of interest for your discussions. We remain available for any further input from us that you may require.

The Council of Europe avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

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