

# Conclusions of the 23<sup>rd</sup> meeting of the Network for investigation and prosecution of genocide, crimes against humanity and war crimes

*The Hague, 25-27 October 2017*

1. The Estonian EU Presidency and the European Network of Contact Points for the investigation and prosecution of genocide, crimes against humanity and war crimes (hereinafter referred as the 'Network') stressed the importance of the Network as a forum for practitioners to exchange information, facilitate cooperation and enhance national investigations and prosecutions to bring perpetrators to justice and close the impunity gap for the crime of genocide, crimes against humanity and war crimes (hereinafter referred as 'core international crimes').
2. The Network members welcomed the presentation of the Head of the UN International, Independent and Impartial Mechanism for investigating persons responsible for the most serious crimes under international law committed in Syria (IIIM). The Network members expressed their appreciation for the IIIM to provide support to national authorities in fighting impunity for core international crimes in Syria. They emphasized that domestic prosecutions currently offer the only possibility for addressing individual criminal responsibility and accountability for crimes committed in Syria and bringing justice to victims.
3. The Network members agreed that, in order to ensure the proper implementation of the IIIM mandate, sufficient funds must be provided from the UN budget in the future.
4. The Network members welcomed the focus of the open session on collaboration between national authorities and NGOs and underlined the crucial support of NGOs to national authorities in fighting impunity for core international crimes and ensuring justice for victims. Due to their presence in conflict areas or in situations of massive violations of human rights, as well as in the political and diplomatic arenas, the Network members considered NGOs as indispensable partners for national authorities in the pursuit of accountability.
5. Network members expressed their appreciation for the different roles NGOs can play in this respect, including documentation of international crimes, facilitating access to information, litigating on behalf of victims of international crimes, capacity building, research and advocacy, and outreach to victims and diaspora communities. Network members acknowledged the increased professionalism of NGOs and welcomed the relevant training that NGO staff litigating international crimes cases receive, including from the Institute for International Criminal Investigations.
6. The Network members underlined the importance of keeping a detailed record of all investigative work to establish a chain of custody and to comply with relevant disclosure rules if



applicable. NGOs were reminded of the importance of internal guidelines or methodologies for working on international crime cases.

7. The Network members stressed that in the circumstances of specific cases beyond international NGOs, local NGOs have situationally to be taken into account for cooperation.

8. The Network members and NGOs agreed that mutual respect for their different roles and shared objectives of accountability, justice for victims and fair proceedings should serve as bases for cooperation.

9. The members of the Network acknowledged that communication between national authorities and NGOs is essential for effective cooperation. Regular and specific dialogue between NGOs and national authorities at national level, as well as during Network meetings, are essential to build trust and to ensure understanding of judicial procedural requirements, evidentiary challenges and to manage expectations. Network members highlighted the independent role of the judiciary in national systems and their distinct roles as investigators and prosecutors who are in charge of investigating and prosecuting international crimes.

10. The members of the Network acknowledged that security for witnesses in countries in which core international crimes have been committed is a key issue in investigations and prosecutions of core international crimes.

11. The Network noticed national law enforcement and prosecution authorities' shortage of capacity and financial resources for outreach activities. The members of the Network considered that NGOs could provide effective channels of communication to disseminate information on results of prosecutions to the communities affected by core international crimes.

12. The members of the Network reiterated the important contribution of NGOs to the Network generally and the open session of the Network meetings specifically and welcomed their participation in open parts of future meetings.

13. The Network members expressed their appreciation for the update on the Initiative for a new Treaty on Mutual Legal Assistance and Extradition for domestic prosecution of the most serious international crimes. The meeting of supporting countries in October 2017 in Doorn, the Netherlands, was deemed an important step forward. In view of the Network's dedication to fighting impunity for the crime of genocide, crimes against humanity and war crimes, EU Member States and Observer States that have not yet made a political commitment to the Initiative have been encouraged to submit their support. The Network expressed its continued support for the Initiative and encouraged all members to participate in the further process.

14. The Network members took note of the presentation of the Association for the Study of War Crimes. The Network encourages civil society to further develop projects as a contribution to an effective fight against impunity of perpetrators of core international crimes.



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15. The Network members took note of the discontinuation of French interpretation due to budgetary restrictions at Eurojust with disappointment. The Network reiterated and emphasized the need for a regular meeting per EU Presidency, according to the legal basis, with an open and closed session. In addition, ensuring the option of additional *ad hoc* operational meetings on specific situations or cases is necessary. The Network members stressed the importance of the Network meetings for the work of national authorities in addressing individual criminal responsibility of perpetrators of core international crimes. In this respect, the Network calls again on the European Commission to ensure implementation of the Conclusions of the JHA Council of 15-16 June 2015 (doc. 15584/2/14).

16. The Network members acknowledged developments in relation to the situation in Ukraine. Presentations from the OSCE and ICC offered good insight into the situation, while members of the Network recognised possible cases arising from this armed conflict, particularly in relation to foreign fighters.

17. The Network members took note of the update on the Secretariat's activities and administrative matters. The members of the Network expressed appreciation for the Secretariat's dedication and its continued successful activities to raise awareness and improve support for the fight against impunity on national and international levels. The Network members stressed their support for the planned establishment of a working group on the evaluation and the further development of the Network and its Secretariat and overview of the implementation of the Strategy, adopted in 2014. The Network members mandated the Secretariat to convene a working group on this matter.

18. The Network members welcomed the successful implementation of the 2nd EU Day against Impunity for genocide, crimes against humanity and war crimes on 23 May 2017, which was co-organised by the Maltese Presidency, the European Commission, Eurojust and the Network, as an important event to raise awareness of the commitment of the European Union and the Member States to the fight against core international crimes.

19. The Network members expressed their appreciation for the resumption of the joint efforts of the Secretariat and the European Judicial Training Network (EJTN) in developing and implementing a revised training programme on core international crimes for judges and prosecutors at EU level. They welcomed the implementation of the 2<sup>nd</sup> training programme on core international crimes for judges and prosecutors at EU level in 2017 in Nuremberg and expressed their gratitude to the Nuremberg Principles Academy for their support.

20. In light of the need for capacity building in the area of investigating and prosecuting core international crimes, the Network members welcomed the ongoing cooperation with the European Judicial Training Network (EJTN) and the European Union Agency for Law Enforcement Training (CEPOL). The Network members emphasized their support for the cooperation between the Secretariat and CEPOL in successfully implementing a webinar, as well as in developing further training programmes on core international crimes for investigators at EU level focusing on investigative aspects.

21. The members of the Network reiterated the importance of training programmes and encouraged the Secretariat of the Network to further pursue the efforts to establish, in close cooperation with CEPOL and the EJTN, permanent training programmes and to promote their continuing development with enhanced and updated curricula.

22. During the closed session of the meeting, the Network members and the Observer States acknowledged the value of discussing ongoing investigations and shared experience during this session. They will dedicate more time, including breakout sessions, to discuss specific cases relevant to several national authorities. The closed sessions are essential, establishing a confidential environment for the exchange of information on current investigations and, if appropriate, requests for extradition pertinent to the work of the Network. The Network emphasized the importance of meetings on specific situations, such as those relating to the ongoing conflicts in Syria and Eastern Ukraine, facilitating a proactive approach to combating impunity that must also be ensured in the future.

23. While assembling a pool of areas of focus for future meetings, the Network members expressed their interest in learning more about and discussing topics related to:

- Cooperation modalities with social media providers with a view to collecting information and its use in criminal proceedings;
- Improving tools for the continued sharing of information on specific conflict situations;
- Model MLA requests for the purposes of investigation and prosecution of international crimes to find best practice for the Network members, including a template for requests to UN fact-finding bodies;
- New investigative approaches relating to links between core international crimes and transnational organised crime *and terrorism*;
- Effects of post-traumatic stress on the reliability of witness' memory;
- Outreach communication strategy related to the affected communities or diaspora;
- Attribution of criminal responsibility for committing core international crimes;
- Core international crimes committed in cyberspace;
- Implementation and application of the crime of aggression in domestic legislation;
- Methods of introducing and presenting well-known facts in the evidentiary documents of a case;
- Rules of engagement and the principles of distinction and proportionality as challenges in modern and asymmetric armed conflicts;
- Victim participation in international crime cases;
- Survey of new developments in immunities of foreign officials and heads of state;
- Investigation methods of the ICC, e.g. in Libya; and
- Experience in investigating/prosecuting on basis of/with help of Eurojust/Europol.