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Delegations will find attached a Presidency report of the 5th EU Day Against Impunity for genocide, crimes against humanity and war crimes, which was held on Saturday 23 May 2020.

Presidency report of the 5th EU Day Against Impunity for genocide, crimes against humanity and war crimes

I) Introduction

On Saturday 23 May 2020, the fifth EU Day against Impunity was marked in an alternative format, due to the current Covid-19 crisis. The event was organised in collaboration with the Croatian Presidency, the European Commission, the Network for investigation and prosecution of genocide, crimes against humanity and war crimes (‘the Genocide Network’) and Eurojust.

The objective of the annual EU Day Against impunity is to raise awareness on the most heinous crimes of genocide, crimes against humanity and war crimes. Moreover, the aim of the event is to promote national investigations and prosecutions, and to acknowledge the common efforts of the Members States and the European Union in enforcing international criminal law. This day further provides the opportunity to pay respect to victims of these crimes and to bolster the European-wide commitment to continue fighting against impunity.

Held entirely digitally, which contributed to the dissemination to wider audiences of the strong message this day carries, the event raised substantial interest. Promoted by ways of social media channels and traditional media outlets, the EU Day Against Impunity this year was mentioned in 146 media publications, reaching a combined estimated reach of around 400 million readers, along with 345 mentions of the *EUDayAgainstImpunity* hashtag. Prior to the day, a virtual press briefing had taken place with 22 journalists representing various European and international news channels.

The theme of this year's EU Day Against Impunity was cumulative prosecution of foreign terrorist fighters (FTFs). Recorded keynote statements, launched via Eurojust YouTube channel, featured Minister of Justice of Croatia, the EU Commissioner for Justice and Consumers, Ms Nadia Murad, a Yazidi human rights activist and Nobel Peace Prize laureate, accompanied by the contributions of national public prosecutors from Germany, The Netherlands and France. The President of Eurojust, Mr Ladislav Hamran and Mr Matevž Pezdirc, the Head of the Genocide Network Secretariat, also provided introductory statements to the celebration. Together with the video statements, a Report on the cumulative prosecution of foreign terrorist fighters (FTFs) and a Factsheet on core international crimes were published.

II) Programme

Keynote speeches were provided by Mr. Dražen Bošnjaković, the Minister of Justice of Croatia, the EU Commissioner for Justice and Consumers, Mr. Didier Reynders, and Ms. Nadia Murad, Yazidi human rights activist and Nobel Peace Prize laureate.

In his speech, Mr Bošnjaković focused on the importance to combat impunity, 75 years after the end of World War II. He noted that the primary responsibility for prosecuting these most serious crimes lies with the states themselves. Furthermore, he reaffirmed the reality of crimes being committed in Syria and Iraq by ISIS and their supporters, calling on states to increase their fight against impunity. Mr Reynders' allocution touched upon his determination to fight the perpetrators of core international crimes and availability of the EU bodies to assist EU Member States in investigation, prosecution and trials of around 3000 pending national cases. In recognising the difficulties faced during investigations, he stressed the great help the EU provides, in part through the EU legal instruments such as the European Investigation Order or the Victims' Rights Directive, and the efforts currently underway to simplify the digital evidence exchange process. To conclude, he brought forward the need to protect the most vulnerable – witnesses and victims who suffered particularly serious crimes, those for which the fight remains: people who deserve protection and that justice be served.

Bringing in the perspective of victims into the EU Day Against Impunity celebration, Ms Murad, the winner of the 2018 Nobel Peace Prize, stated that “*living without receiving justice is another kind of torture*”. Victims, she said, such as the Yezidi community she herself is a part of, want prosecutors to take action. Six years ago, ISIS killed thousands of Yezidis, kidnapped and sold Yezidi women, reduced into sexual slavery and forcibly displaced the community. Six years after, the community still awaits justice and accountability. With the amount of evidence available and collected by UNITAD this is unacceptable. Additionally, survivors are ready to provide evidence in courts. With no accountability for ISIS, due to the inaction of prosecutors not trying ISIS fighters for core international crimes representing the gravity of their crimes, especially those who enslave Yezidis women and children, the genocide is still ongoing, she stressed.

The President of Eurojust, Mr Ladislav Hamran, in his introductory statement, firstly thanked the partners which helped set up this event. He recognised the challenges that come with the prosecution of core international crimes – the difficulty to secure witnesses and evidence – and the steps taken to still manage to get a conviction, by adding charges and cooperating with organisations on the ground. He discredited the idea that core international crimes were a far-removed reality for EU citizens, and finally reaffirmed our responsibility to protect the values we share in the EU, bring justice to victims, and that the EU should not become a safe haven for perpetrators of core international crimes. The Head of the Genocide Network Secretariat, Mr Matevž Pezdirc, provided background information on the main theme of the day, the cumulative prosecution of foreign terrorist fighters, and the Report on this topic prepared by the Genocide Network. The Report clarifies ISIS’ position as a party to a non-international armed conflict according to international humanitarian law, and presents judgements and ongoing cases from EU member states where cumulative prosecution has been applied. He furthermore stressed that for cumulative prosecution to be successful, cooperation was paramount.

To illustrate strides being made by national authorities within the European Union in the prosecution of returning FTFs for terrorism-related offences, such as membership, and war crimes of pillage, slavery, enlisting child soldiers or inhumane treatment, judged cases and ongoing investigations were presented by national public prosecutors.

From Germany, Mr Christian Ritscher, Head of the War Crimes Unit, Public Prosecutor Office and Dr Anna Zabeck, Senior Public Prosecutor presented cases in which ISIS spouses got prosecuted for war crimes, branding them as good examples of how successful cumulative prosecution for foreign terrorist fighters can be. Mr Ritscher brought forth the Karla S case, the trial which led to the first German judgement on culpability for handing over one's child to ISIS training camps as a war crime. After travelling to Syria in 2013 and subsequently marrying an ISIS fighter and performing tasks for the organization, from 2016, the defendant started repeatedly handing over her son to an ISIS training camp, where he received ideological and military training, and shown how to use firearms. It was held at pre-trial stage that the crime of enlisting does not require for the child to actively participate in the conflict. In April 2020, the defendant was hence sentenced to prison time for the war crime of enlisting a person under 15 into an armed group, and well as for her participation in a terrorist organization.

Dr Zabeck focused on the Taha L and Jennifer W cases, the former of which marked the first time that a defendant was charged with the crime of genocide linked with the widespread attacks on the Yezidi community. Indicted in February 2020 for war crime and crime against humanity, 27-year old Taha LJ's was arrested in Greece in 2019 on the basis of a European Arrest Warrant and surrendered to Germany. He had joined ISIS in 2013, married Jennifer W in 2015, and subsequently bought a Yezidi mother and daughter from a slave market, who were captured during attacks in the Sinjar region in August 2014. While the mother was forced to do the housekeeping, both were forced to follow Islamic rule. In August, Taha KJ tied the child to a window outside under the heating sun as a punishment, which consequently led to her death. Court proceedings on his case started in April 24, 2020, before the Frankfurt-am-Main Higher Court.

From the Netherlands, Ms Nicole Vogelenzang, Head of the International Crimes Unit, Public Prosecutor Office, presented a case in which selfies taken with deceased persons were prosecuted as a war crime. She presented the successful experience of the Netherlands in tackling cases from both a counter-terrorism and war crime angle and the importance of using open source information. A Dutch national who joined ISIS in 2014 was deported from Turkey to the Netherlands. During the investigation by the terrorism unit, a picture of the suspect posing next to a deceased man was found. Transferred to the International Crimes Unit, it was discovered that ISIS executed the man, and that the suspect was not involved in the execution itself. But taking and sharing the picture of a deceased person still violated the dignity of the victim, which accounted for a war crime of degrading and inhumane treatment. The defendant was convicted to two and a half years for war crime, and six years for his membership in a terrorist organization.

From France, Ms Aurelia Devos, Head of the International Crimes Unit, Public Prosecutor Office, shared information about ongoing investigations of crimes against Yezidis, and the cumulative prosecution of French members of ISIS. In 2016, a complaint was lodged against person unknown by NGOs for crimes committed by ISIS, including the participation of potential French nationals. In an effort to identify those French national, a structural investigation was launched. With a great assistance of NGOs, like Yazda and FIDH, and researching and identifying alleged French perpetrators, several witnesses were heard in February 2019. Their statement corroborated the elements already in possession of the Specialized Unit, and allowed for a separate case against French national that was already prosecuted for terrorism charges. The defendant is charged as a direct perpetrator of genocide and crimes against humanity for acts committed against members of the Yezidi population in Syria. The structural investigation remains ongoing, to identify other perpetrators.

III) Outcome of the event

The event further brought awareness to the issue of cumulative prosecution of foreign terrorist fighters (FTFs) and to the fact that ultimately, each foreign terrorist fighter should be perceived as both a terrorist and a war criminal. Taking stock of both the statements and the Report issued, the following outcomes can be drawn:

- The primary responsibility for prosecuting core international crimes lies with the states, who should all join the fight against impunity; for those who already have, they should continue to do so with an even greater intensity.
- The choice of prosecuting cumulatively foreign terrorist fighters by national authorities is possible, and bring several advantages: ensures full criminal responsibility of the perpetrators, leads to stiffer sentencing, and brings more justice to victims.
- Cooperation, both on the national and international level, is essential for successful cumulative prosecutions. Nationally, among counter-terrorism units and war crimes units, and among immigration services and their intelligence counterparts. Internationally, it is of importance that national authorities share information and good practices with one another, and rely on the expertise, resources and knowledge of civil society organisations.
- In the eyes of victims, a mere terrorist membership charge is not enough to represent the gravity of crimes committed by ISIS and its foreign terrorist fighters, especially those who have committed sexual violence, enslavement and acts that can be qualified as core international crimes.