

Conclusions of the 27th meeting of the Network for investigation and prosecution of genocide, crimes against humanity and war crimes

The Hague, 06-07 November 2019

1. The Finnish Presidency of the Council of the EU 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') reiterated 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 (also referred as 'core international crimes').

2. The Network members expressed their appreciation for the focus of the open session on the possibilities and opportunities for prosecuting foreign fighters for war crimes, crimes against humanity and genocide to combat impunity. States mainly approach the issue of foreign fighters from a counter-terrorism perspective. However, to ensure criminal responsibility of perpetrators and to deliver justice to victims, investigation and prosecution of all crimes committed by foreign fighters, members of ISIS and other terrorist groups during the armed conflict in Iraq and Syria are essential. Suspects charged with terrorism are often also involved in other criminal offences, such as slavery, rape, torture and murder as core international crimes. Interaction between different sets of law is therefore required on national level to lead to a more effective charging of suspects.

3. The Network members expressed their appreciation for presentations on applicability of the law of the armed conflict (IHL) to a non-state-organised armed group, such as ISIS and similar armed groups. Terrorist groups and its members can also commit war crimes, crimes against humanity and genocide, as well as other crimes, during an armed conflict. IHL can be applicable to armed groups and their members engaged in armed conflicts of a non-international character. The primary source for possible determination of crimes is Common Article 3 to the Geneva Conventions.

4. The members of the Network observed with great interest presentations relating to the existing jurisprudence in various EU countries and ongoing investigations to see how cooperation and exchange of information could ensure criminal responsibility of perpetrators by an effective accumulation of charges. Presented cases demonstrate how EU Member States can successfully investigate and prosecute foreign fighters, spouses and other members of ISIS and its affiliates for war crimes, crimes against humanity and genocide next to terrorism-related offences. Cases involving cumulative charges of membership in a terrorist organisation and war crimes of pillage, inhumane treatment of dead persons, slavery, rape and enlisting of child soldiers are particularly

encouraging. Similarly, cases relating to the crimes committed against Yezidis, being war crimes, crimes against humanity or genocide, can be prosecuted in addition to terrorism charges. To avoid prosecuting just one aspect, coordination by different public prosecution offices to attain cumulative prosecution for terrorism-related offences, core international crimes and other crimes is essential.

5. The Network members believe that cumulative prosecution of foreign fighters for terrorism-related offences, core international crimes and other crimes can ensure full criminal responsibility of suspects, deliver higher sentences for the acts committed and lead to more justice for victims. This approach of cumulative prosecution is required, taking into account an increase in the number of foreign fighters who might return to EU countries.

6. The Network members expressed their appreciation for presentations on various sources for obtaining information on the acts committed by ISIS, access to evidence and links to victims and witnesses. Prosecutors need to consider all sources of evidence, including evidence collected by UN bodies, military forces in the battlefield, open source information available with social media providers, non-governmental organisations and other partners.

7. The members of the Network expressed their appreciation for cooperation possibilities offered by the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/Islamic State in Iraq and the Levant (UNITAD). UNITAD's mandate is to ensure responsibility of ISIS for committing war crimes, crimes against humanity and genocide. The primary recipient of UNITAD's collection of evidentiary material is Iraq, but this mechanism can also assist other domestic prosecutions, according to UN best practice.

8. The Network members expressed their appreciation for further opportunities for accessing battlefield information obtained by the military of the USA in the battlefield, as well as access to documentary evidence, victims and witnesses supported by Yazda and the Commission for International Justice and Accountability.

9. The Network also took note of the presentation of the ICRC regarding humanitarian and legal concerns in relation to the treatment and detention of foreign fighters in Syria and the importance of ensuring prosecution for the acts committed, particularly IHL violations.

10. The Members of the Network took note of the presentation of civil society organisations regarding their work and projects. The Network underlined the crucial support of NGOs to national authorities in fighting impunity for core international crimes and ensuring justice for victims. The Network expressed its appreciation for a one-day Practitioners' Workshop on Improving Access to Justice for Victims of International Crimes in Europe, taking place before the Network meeting, and organised by Redress, FIDH and ECCHR.

11. 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.

12. The Network took note of the 1st Steering Board meeting, which took place on 1 October 2019, and expressed its support for periodic meetings. Discussions of the Steering Board are essential to provide guidance and support to the work of the Secretariat and to ensure decision making between the Network meetings according to the Guidelines of the Functioning of the Network. The Network took note of the appointment of Ms Nicole Vogelenzang as the vice-chair of the Steering Board by its members.

13. The members of the Network took a decision in relation to the request of Ukraine for observer status. The Network members consider that any new observer state to the Network should first be a party to the Rome Statute of the ICC and implement the relevant crimes in their domestic legislation. In this respect, the Network invites Ukraine to become a party to the Rome Statute and resubmit an application for observer status to the Network upon implementing the crimes in the national legislation.

14. The members of the Network took a decision in relation to the request of the civil society organisations Civitas Maxima, the Centre for Justice and Accountability ('CJA') and the European Centre for Constitutional and Human Rights ('ECCHR') for associate status. The Network members expressed their appreciation for the work of civil society in the fight against impunity, but stressed the nature and focus of the Network as a network of practitioners. The Network members decided that these three NGOs are to be invited to the meetings of the Network on *ad hoc* basis, depending on whether the topic relates to their work, without granting associate status.

3

15. The Network members welcomed implementation of the 3rd training programme on core international crimes for judges and prosecutors, which took place in Nuremberg on 18-20 September 2019, organised jointly by the Secretariat and the European Judicial Training Network (EJTN), together with the Nuremberg Principles Academy. Additionally, they welcomed the planned webinar to be organised in December in cooperation with the European Agency for Law Enforcement Training (CEPOL) on investigative aspects of core international crimes, devoted to investigators and law enforcement authorities.

16. 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 and supported the work on its negotiation and adoption. They welcomed information on the dates of informal consultations on 27 - 29 January in The Hague and the formal diplomatic conference taking place on 8 - 19 June in Slovenia. In view of the Network's dedication to fighting impunity for the crime of genocide, crimes against humanity and war crimes, the Network encouraged all members to participate in the process.

17. The members of the Network reiterated the need for a regular meeting per EU Presidency, according to the legal basis, with an open and closed session. 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. The closed sessions are essential, and establish a confidential environment for the exchange of information on current investigations and, if appropriate, requests for extradition pertinent to the work of the Network. In addition, the Network members emphasized the necessity to ensure the option of additional *ad hoc* operational meetings on specific situations or cases. In this manner, the Network could increase operational cooperation with a view to advancing cases for coordination meetings at Eurojust or even joint investigation teams.

18. The Network was highly appreciative of the overview of investigations and ongoing trials in relation to the armed conflict in Syria with the presence of representatives of the International, Impartial and Independent Mechanism (IIIM).

19. The members of the Network expressed their appreciation for the update on the Analysis Project Core International Crimes (AP CIC) by Europol, giving an overview on cases, situation countries and contributions of participating States. The Network members took note of Europol's request to share their case statistics and information on cases on core international crimes.