



Council of the
European Union

Brussels, 21 October 2016
(OR. en)

13410/16

GENVAL 110
COPEN 297
EUROJUST 129
ENFOPOL 352
COHOM 132

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10173/16, 13409/16
Subject:	Conclusions of the 21st meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes (12th and 13th October 2016, The Hague)

On 12th and 13th October 2016, the 21st meeting of the European Network of Contact Points for the investigation and prosecution of genocide, crimes against humanity and war crimes ("Genocide Network"), convened and organised by the Slovak Presidency with the support of the Network's Secretariat and Eurojust, took place in The Hague.

The above meeting focused on the looting and destruction of cultural heritage as a challenge for international and national criminal law.

The report and the conclusions of the above meeting, prepared by the Genocide network, are set out respectively in the Annex to doc. 13409/16 and in the Annex to this document.

Conclusions of the 21st Meeting of the Network for investigation and prosecution of genocide, crimes against humanity and war crimes

The Hague, 12-13 October 2016

1. The Slovak EU Presidency and the European Network of Contact Points for the investigation and prosecution of genocide, crimes against humanity and war crimes (hereinafter referred to as the 'Network') stressed the importance of the Network's activities in promoting the national investigations and prosecutions that bring perpetrators to justice and close the impunity gap for the crime of genocide, crimes against humanity and war crimes (hereinafter referred to as 'core international crimes').
2. The Members of the Network took note on the activities of the US Office of Global Criminal Justice and the appointment of Ambassador Todd Buchwald. They welcomed the potential for cooperation and stressed its importance for ensuring position of the issue of accountability for core international crimes on the broader political agenda.
3. The Members of the Network welcomed the timely topic, the destruction and looting of cultural heritage, especially in light of the situation in Iraq and Syria.
4. The Members of the Network highly appreciated the presentation by the Cultural Heritage Initiative (ASOR) and its monitoring, documenting and fact-finding activities related to the current situation in Syria and Iraq concerning the destruction and looting of cultural heritage. Its weekly reports provide the international community with accurate and timely analysis of the cultural heritage destruction occurring in the conflict zones of Syria and Iraq. The Network stressed the importance of ASOR's activities in potentially providing evidence for investigating core international crimes.

5. The Members of the Network took note of the findings regarding the engagement of all major belligerents in cultural destruction, looting and illegal excavation in Syria and Iraq, where artefacts are also possibly trafficked also to EU Member States for financial gains.
6. The Members of the Network acknowledged the expertise of the International Committee of the Red Cross and appreciated their presentation on the protection of cultural heritage in armed conflict from the perspective of international humanitarian law. The Members of the Network also took note of the specific challenges facing law enforcement authorities, arising particularly from problems regarding the classification of and establishment of the nexus to armed conflicts. In this respect the Network welcomes further states' ratification and national implementation of Additional Protocol II of 1999 to the Hague Convention of 1954.
7. The Network took note of the overview on the landmark jurisdiction of the ICTY with respect to holding perpetrators accountable for the destruction of cultural heritage for war crimes and crimes against humanity (persecution). The Network appreciates the notable work carried out by the ICTY for the protection of cultural property in cases relating to Karadzic, Prljic and Strugar. The Members of the Network recognised the underlying decisions as valuable precedents for future investigations and prosecutions of the destruction, damaging and appropriation of cultural heritage.
8. The Members of the Network observed with great interest the presentation on the recent case of the ICC regarding the destruction of cultural heritage in Mali. The significance of Ahmad Al Faqi Al Mahdi lies in signalling that the destruction of cultural heritage is a war crime and persons committing it can be punished. The Network expressed its appreciation for the successful completion of the case, considering it as a further landmark decision for future investigations and prosecutions of crimes committed against cultural heritage.

9. The Network took note of the Council of Europe's initiative for a Convention on Offences Relating to Cultural Property. The members of the Network recognised the work done by the Committee on Offences Relating to Cultural Property (PC-IBC) in this regard and expressed their appreciation for the current draft of this possible Convention.

10. The Members of the Network recognised Interpol's extensive expertise concerning the trafficking in antiquities and their documenting of stolen artefacts. Its initiative for collecting information on stolen artefacts from Syria, Iraq, and Libya is of particular importance. Therefore, it is essential that states report to Interpol any artefacts found in their territory both for the purpose of documenting and the restoration of these artefacts to the states of origin.

11. The Network took note of the presentation on alternative legal approaches to the investigation and prosecution of the destruction and looting of antiquities, provided by the Secretariat. The Members of the Network acknowledged the outlined options in the context of national law (illegal import, export, transfer of cultural property, breach of sanction regime (violation of embargo), violation of customs regime, false declaration, receiving, trading and possessing stolen goods, forgery of documents, financing of terrorist organizations and money laundering) as useful legal tools to efficiently protect cultural heritage by means of domestic criminal law.

12. The Members of the Network acknowledged the presentation of the German ILLICID project aiming at establishing authoritative figures to estimate the extent of the illicit trade in cultural property. The Network took note of the preliminary results and appreciated the aims of the project, which include; the establishment of actions for actors in the cultural property trade; awareness raising; contributions to the red list of the illicit trafficked artefacts of the International Council of Museums; improved legislative framework; and extended expertise.

13. The Members of the Network took note of the findings of the Netherlands Art crime unit regarding the Dutch market for antiquities looted or stolen from places of armed conflict.
14. The Network also took note of the high level, international conference on the protection of cultural heritage, taking place Abu Dhabi this December.
15. The Members of the Network appreciated 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 explicitly reiterated their support. In view of the Network's dedication to fight impunity for the crime of genocide, crimes against humanity and war crimes, EU Member States that have not yet made a political commitment to the initiative have been encouraged to submit their support.
16. The Members of the Network expressed their appreciation for the Secretariat's dedication and its continued endeavours to implement measures, determined in the Strategy of the Network, including raising awareness and improving support for the fight against impunity on national and international level.
17. The Members of the Network took note of the budgetary restrictions at Eurojust but reiterated the need for a regular meeting per EU Presidency, according to the legal basis, with an open and closed session. In addition, it is necessary to ensure the option of additional ad hoc operational meetings on specific situations or cases. The Members of the Network 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 on the European Commission to ensure implementation of the Council Conclusions of the JHA Council of 15-16 June (doc 15584/2/14) and to provide sufficient support for the work of the Network and competent national authorities to combat impunity for core international crimes.

18. In light of the need for capacity building in the area of investigating and prosecuting core international crimes, the Members of the Network welcomed the joint efforts of the Secretariat and the European Union Agency for Law Enforcement Training (CEPOL) in implementing an additional training programme on core international crimes for investigators at the EU level focusing on investigative aspects. This initiative delivers an important further step in combating impunity for core international crimes and complements the training programme on core international crimes for judges and prosecutors at the EU level that has been implemented in cooperation with the European Judicial Training Network (EJTN) in 2015. The Members of the Network reiterated the importance of training programmes and encouraged the Secretariat of the Network to further pursue efforts to establish, in close cooperation with the CEPOL and EJTN, permanent training programmes and to promote their continuing development with continuously enhanced curricula.
19. The Members of the Network, the Observer States and the ICC recognised the value of discussing ongoing investigations and shared experiences during the closed session of the meeting. They dedicated more time to this point in the closed session, establishing a confidential environment for the exchange of information on current investigations and, where appropriate, requests for extradition pertinent to the work of the Network. The Network emphasised the importance of ad hoc meetings on specific situations, such as those relating to the ongoing conflicts in Syria, facilitating a proactive approach to combating impunity that must be ensured also in future.
20. The Member States of the Network took note of the presentation of the Sentry project which is a civil society initiative aiming at investigating the financing of atrocities in Central African Republic, Sudan and South Sudan. The Network appreciated the potential for cooperation and the Sentry project declared their willingness to share information with law enforcement agencies, as well as supporting them in their investigations.

21. While assembling a pool of agenda items for future meetings, Members of the Network expressed an interest in discussing topics related to:

- ➔ methods of sharing information and cooperation with NGOs;
- ➔ improving tools for the continued sharing of information on specific conflict situations;
- ➔ effects of post-traumatic stress on the reliability of witness memory;
- ➔ methods of introducing and presenting well-known facts in the evidentiary documents of a case;
- ➔ attribution of criminal responsibility for committing core international crimes;
- ➔ model MLA requests for the purposes of investigation and prosecution of international crimes to find best practices for the Members of the Network, including a template for requests to UN fact-finding bodies;
- ➔ new investigative approaches relating to links between core international crimes and transnational organised crime;
- ➔ core international crimes committed in cyberspace;
- ➔ the principles of distinction and proportionality as challenges in asymmetric armed conflicts; and
- ➔ the implementation and application of the crime of aggression in domestic legislations.
