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| From:           | General Secretariat of the Council   |
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| Subject:        | Conclusions of the 19th meeting of the European Network of Contact Points for the investigation and prosecution of genocide, crimes against humanity and war crimes (21-22 October 2015) |

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On 21 and 22 October 2015, the 19th 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 Luxembourg Presidency with the support of the Network's Secretariat and Eurojust, took place in The Hague.

The above meeting focused on the status of combatants and direct participation in hostilities of civilians under international law and challenges for prosecuting diverse participants under different sets of legislation. Other topics included the European Investigation order (EIO) and an update both on the initiative for a new treaty on international cooperation for domestic prosecution of the most serious international crimes and on the Network Secretariat's activities.

The conclusions of the above meeting, prepared by the Genocide network, are set out in the Annex.

**Conclusions of the 19th meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes**

**21 and 22 October 2015, The Hague**

1. The Luxembourg Presidency and the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes (the 'Network') stressed the importance of the Network's activities in bringing perpetrators to justice and closing the impunity gap for the crime of genocide, crimes against humanity and war crimes (core international crimes).
2. The Members of the Network welcomed the EU Council Conclusions on strengthening the fight against impunity for the crime of genocide, crimes against humanity and war crimes within the EU and its Member States, adopted on 15 June 2015 by the Justice and Home Affairs Ministers of the EU. Acknowledging this step as a renewed commitment of EU Member States and the European Commission to effectively fight impunity for core international crimes, the Members of the Network emphasized the EU Council Conclusions' direct reference to the Strategy of the Network and expressed appreciation for the endorsement of this document at the political level as a reference tool as well as the invitation to the European Commission to support the activities of the competent national authorities.
3. The Members of the Network expressed their continuing regret over the UK's decision to opt out of Council Decisions 2002/494/JHA and 2003/335/JHA on setting up the Network. Taking into account the UK's commitment to fighting impunity for core international crimes, the Network extended the invitation to the competent UK authorities to join as an observer country for the time being, enabling the UK's practitioners to attend and benefit from Network meetings.

4. The Members of the Network appreciated the presentation of the International Committee of the Red Cross and its explanations on the international humanitarian law criteria for categorising armed conflicts as international or non-international, combatant status, the criteria for the fundamental distinction between civilians and combatants, including the notion of a continuous combatant function, and clarification of the crucial notion of direct participation of civilians in hostilities in contemporary conflicts.
5. The Members of the Network acknowledged the expertise of the Geneva Academy of International Humanitarian Law and Human Rights concerning advantages and shortcomings for prosecuting diverse participants of contemporary armed conflicts under various sets of legislation relating to core international crimes, ordinary crimes and to crimes relating to counter terrorism. In this respect the notion of “the foreign terrorist fighter” was discussed in relation to potential clashes with international humanitarian law governing conduct in the context of an armed conflict as well as possible tensions with refugee law.
6. The Members of the Network took note of the practical experiences of Sweden with regard to a war crime case in Syria and Spain in relation to the conflict in Eastern Ukraine. In light of the probable increase of similar cases among Members of the Network and Observer States, the Network welcomed information on the key lessons learned from these cases.
7. The Members of the Network appreciated the presentation on mercenaries, private military and security companies and foreign fighters in the perspective of international humanitarian law provided by the Office of the High Commissioner for Human Rights (OHCHR) Working Group on the use of mercenaries.

8. The Members of the Network took note of the adoption of Directive 2014/41/EU on the European Investigation Order (EIO), which will replace most of the existing laws in the key area of transferring evidence between EU Member States in criminal cases. The presentation by the General Secretariat of the EU Council outlined the legal and practical concepts of this new instrument and acknowledged the EIO as an important step towards increased judicial cooperation among EU Member States that will make cross-border investigations faster and more efficient. The Network highly appreciated the applicability of the EIO to core international crimes, following the previous mutual recognition instruments.
  
9. The Members of the Network welcomed the report and findings of the OHCHR Investigation on Sri Lanka's armed conflict. In this respect findings on the pattern and notion of widespread or systematic commission of alleged criminal acts are of particular importance for future national investigations and prosecutions, but also for a possible hybrid judicial mechanism in Sri Lanka. The Members of the Network welcomed information on the OHCHR's adoption of a policy on cooperation with national and international law enforcement authorities. The importance of providing domestic jurisdictions with information and evidence that could be used in investigations was stressed. The Secretariat of the Network was invited to continue its efforts to improve the exchange of information on core international crimes gathered by the UN Human Rights Council fact-finding bodies and commissions of inquiry with the national jurisdictions of the Network.
  
10. 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 reiterated their support. In view of the EU Council Conclusions on strengthening the fight against impunity for the crime of genocide, crimes against humanity and war crimes within the EU and its Member States, adopted on 15 June 2015 by the Justice and Home Affairs Ministers of the EU, Member States that have not yet made a political commitment to the initiative have been encouraged to consider submitting their support.

11. The Members of the Network expressed appreciation for the Secretariat's continued activities to raise awareness and improve support for the national fight against impunity.
12. The Members of the Network welcomed the joint efforts of the Secretariat and the European Judicial Training Network (EJTN) in developing and implementing the first training programme on core international crimes for judges and prosecutors at EU level and reiterated the importance of training programmes with a view to building capabilities in this crime area. The Network mandates the Secretariat of the Network to continue to closely cooperate with the EJTN to set up a permanent training programme and to promote its continued development with a more advanced curricula as well as to develop an additional common training programme, together with CEPOL, focusing on investigative aspects.
13. The Members of the Network welcomed recent developments in the Network's Restricted Area, and called for further improvements in the quality of navigation and lay-out of the Restricted Area, as well as for implementing additional functionalities, such as a system of e-mail notifications or search functionality.
14. During the closed session of the meeting, the Members of the Network, the Observer States and representatives of the ICC Office of the Prosecutor recognized the value of discussing ongoing investigations and shared experiences. They will continue to devote 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 mutual legal assistance and extradition pertinent to the work of the Network. The Network welcomed initiatives for *ad hoc* meetings on specific situations, such as those relating to recent conflicts, facilitating a proactive approach to combating impunity.

15. The number of cases in the investigative or prosecutorial phase has significantly increased in the majority of jurisdictions present in the Network, requiring additional resources. In particular, the increase of asylum seekers in EU Member States obliges immigration authorities and law enforcement/prosecution services to cooperate more closely to identify perpetrators, victims and witnesses.

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

- judicial cooperation with the UN and its organs and agencies or with the EULEX Kosovo Special Investigation Task Force,
- methods of sharing information and cooperation with NGOs,
- exploring possibilities for continued sharing of information on specific conflict situations,
- effect 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 serious international crimes,
- model MLA requests for the purposes of investigation and prosecution of international crimes to find best practice for the Members of the Network, including a template for requests to UN fact-finding bodies,
- destruction of cultural property,
- new investigative approaches relating to links between core international crimes and transnational organised crime.

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