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NOTE

From: EU Counter-Terrorism Coordinator
To: Delegations

Subject: The EU's Work on Battlefield Information: Stocktaking and possible next steps
- Developments on Battlefield Information since July 2019

I. EU High-Level Workshop on battlefield information

EU CTC and the Commission convened a high-level workshop on battlefield information in July 2019 to facilitate best practices on the exchange and use of battlefield information in the EU. The workshop dealt with all relevant aspects such as better coordination and cooperation between military and law enforcement, use of battlefield information for external border security, and best practices in criminal court proceedings against foreign terrorist fighters in domestic courts in the EU. The workshop was organized in close cooperation with the US government and was attended by high-level participants from the military, intelligence, law enforcement, border management and judicial sector of EU Member States, EU institutions and agencies, international organizations as well as the US government.

II. Prosecutions based on battlefield information in the EU

1. Use of battlefield information in the Member States

Judicial authorities in Member States have become more familiar with the use of battlefield information in criminal proceedings, the experience in obtaining and using battlefield evidence has increased. Courts in several Member States have rendered convictions against FTFs and other persons suspected of criminal offences in armed conflict in which significant evidence originated from conflict zones, as shown by the **2020 Eurojust Memorandum on Battlefield Evidence**¹. The Memorandum was produced following the recommendation in EU CTC's 2019 paper on battlefield information, as well as a result of the High-Level EU Workshop on Battlefield Information in July 2019. It updates the 2018 Memorandum that had also been issued on the EU CTC's recommendation.

Battlefield evidence was successfully used in judicial proceedings in around 10 Member States and supported convictions. There are no general legal obstacles for the use of battlefield information in courts in the EU. In most Member States the legal framework allows for a free production of evidence and free assessment of the evidence by courts. Often, there are no specific restrictions on the source of the evidence but the general conditions for any type of information submitted as evidence have to be fulfilled.

Battlefield evidence is often fragmented and needs to be supplemented by other evidence, including by other statements in support of its evidentiary value. In one Member State, information provided by intelligence agencies alone can serve as a basis for initiating a criminal investigation but is not a sufficient basis for prosecution; it needs to be supplemented with other types of information.

¹ 11219/20 + ADD1.

Examples on battlefield evidence used in courts in Member States consist of electronic data as well as physical items such as written documents collected by the military in conflict zones, or documents drawn up by the military about the situation in conflict zones with regard to specific attacks or analytical reports. If necessary – and possible with regard to secrecy requirements of the military - the author of the documents can also be heard as a witness. Other material introduced as evidence were notebooks, biometric data found on mobile phones or improvised explosive devices (IEDs) from conflict zones, YouTube videos or photos depicting humiliating and degrading treatment in a conflict zone, or a contract of marriage drawn up by a DAESH judge².

Battlefield evidence used in court helped to prove for example DAESH affiliation in conflict zones, the role of defendants in the terrorist group and their participation in combat. Member States successfully used i.e. the DAESH registration form and a payroll roster with information on DAESH fighters and affiliates who received a salary from the organisation in Syria/Iraq.

2. Increasing trend of cumulative prosecutions for terrorist offences and war crimes

Several years ago, most Member States prosecuted only terrorism-related offences related to the FTFs and their affiliates. However, as the European Network of Contact Points in Respect of Persons Responsible for Genocide, Crimes against Humanity and War Crimes (**EU Genocide Network**) points out in its report on “Cumulative Prosecution of Foreign Terrorist Fighters for Core International Crimes and Terrorism-Related Offences”³, DAESH fulfils international humanitarian law criteria as a party to a non-international armed conflict in Iraq and Syria, as an organised non-state armed group. Therefore, its FTFs can be held accountable for committing war crimes and other core international crimes. Existing national jurisprudence of EU Member States and developing national practice demonstrate that it is possible to cumulatively prosecute and hold FTFs accountable for war crimes, crimes against humanity and the crime of genocide, in addition to terrorism-related offences.

² See for the concrete case examples in the annex to the Eurojust Memorandum on Battlefield Evidence from September 2020, 11219/20 ADD1.

³ 12237/20 of 23 October 2020. See for the following also “Cumulative Prosecutions of FTF for war crimes and terrorism, Exchange of Views, 8149/21 of 30 April 2021.

Prosecuting terrorist offences combined with acts of core international crimes ensures the full criminal responsibility of perpetrators, results in higher sentences - which is relevant given recent attacks in the EU by (still) radicalized prison leavers - and delivers more justice for victims. The statute of limitations is not applicable to core international crimes. Prosecuting core international crimes can be particularly relevant for addressing acts of women, wives of terrorists, often perceived as only supporting their husband as they may not have been involved in active combat. Courts in Germany, Finland, Sweden, Hungary and the Netherlands have successfully prosecuted ISIS members for war crimes. Ongoing investigations or trials in France and other States also show a developing national practice of cumulative prosecutions.

Cases include prosecution for membership in a terrorist organisation combined with war crimes of pillage (suspect living in a house or apartment given by a terrorist organisation), inhumane treatment of dead persons (photo or video of a suspect next to decapitated heads, mutilated or crucified bodies), slavery (suspect having household assistance and treating persons as slaves), enlisting child soldiers (suspect giving her son to a terrorist training camp) or murder as a crime against humanity (suspect shown on video publicly executing civilians) and the crime of genocide (killing of Yazidi girls)⁴.

3. Challenges in the use of battlefield evidence in court proceedings remain.

Apart from the general legal challenges that battlefield evidence introduced in court needs to be authentic and legally reliable, to be fully admissible in legal proceedings, witness statements taken in conflict zones need to be in accordance with international criminal law standards (informed consent by the witness to share the information, documentation and evidence with the court). This is challenging with regard to witness statements taken by non-governmental organizations (NGOs) active in conflict zones.

The conversion of intelligence information into evidence needs to take place in a **timely manner** to ensure its admissibility and weight in the proceedings. **Delays in de-classifying and delivering existing battlefield information for criminal investigations can hamper the outcome of criminal proceedings.**

⁴ Further and detailed information on cases is available in 9120/20 (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) and in the Genocide Network Report on cumulative prosecutions of FTFs.

Classification or over-classification of contextual information/analytical reports

accompanying battlefield evidence can hinder the introduction as evidence in court proceedings.

The US government, the main source of battlefield information for Member States, is not classifying raw material or raw data as a standard procedure. However, **information that provides context for this raw material may still be classified for military secrecy reasons.** Providing context for raw material is very important for the evidentiary value.

4. Eurojust and the Genocide Network

The Eurojust assists prosecutors in Member States in cross-border cases operationally, including related to FTFs and battlefield information. Prosecutors also work together in joint investigative teams (JITs) supported by Eurojust in cases concerning Syria and Iraq. Recently opened Eurojust cases in this crime area are still ongoing.

Eurojust's counter-terrorism team has also presented its 2020 Memorandum on Battlefield Evidence at the European Asylum Support Office (Exclusion Network) thematic meeting on 5-6 May 2021, which dealt with exclusion for acts of terrorist nature. **Hence battlefield information can also be useful for asylum procedures.**

The EU Genocide Network's Secretariat is hosted by Eurojust and has become an internationally well respected hub of expertise for core international crimes, war crimes and the crime of genocide. Its members, war crimes prosecutors from Member States and other associated Members of the Network are active in strategic and operational exchanges⁵.

⁵ The Secretariat of the Network convenes meetings every six months with an open session and a closed session which allows for attendance of only its members where ongoing judicial procedures in Member States are presented and discussed. The secretariat has managed to use in particular the open sessions to discuss current challenges, anticipate topics relevant for future judicial proceedings in Member States and invite excellent specialists in their fields for discussions. The exchanges and cooperation between Member States' judicial authorities continue very effectively also outside of such meetings.

The Secretariat of the Network has drawn the attention of the public to accountability of FTFs with innovative methods such as launching an event for the European Day against Impunity for Genocide, Crimes Against Humanity and War Crimes through Eurojust's YouTube channel with recordings of prosecutors presenting their successful prosecutions. Public figures such as the Nobel Peace Prize Winner and DAESH survivor Nadja Murad and others were involved⁶. Many of the international crimes proceedings in the EU against FTFs and against their affiliates originate from the cooperation among war crimes investigators and prosecutors in the safe space of the EU Genocide Network. Selected non-members like the United Nations Investigative Team to Promote Accountability for Crimes Committed by DAESH/ISIL (UNITAD) or the International, Impartial and Independent Mechanism to Assist in the Investigations and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since 2001 (IIIM) have also been invited and gained an associate status in the Genocide Network. The cooperation with these UN mandated entities at Eurojust happens in operational cases on a bilateral basis with the respective Member States that have also sought Eurojust involvement in these cases, not directly with Eurojust.

The Genocide Network, through its plenary meetings, addresses cross cutting themes and situations such as crimes committed in Libya or the use of chemical weapons in Syria. The nature of these discussions on remote investigations into the acts committed in third countries includes best practices relating to the access and the use of battlefield evidence from various collectors (from United Nations mechanisms, international organisations such as the Organisation for the Prohibition of Chemical Weapons (OPCW) to NGOs).

⁶ See Report on the 5th Day Against Impunity for Genocide, Crimes Against Humanity and War Crimes on 23 May 2020, doc. 9120/20, event on cumulative prosecutions of FTF launched via Eurojust Youtube Channel. See also the 6th Day Against Impunity that focused on the EU judicial response to core international crimes committed in Syria, also shared through Eurojust's Youtube channel and other social media.

Member States benefit from Eurojust and the Genocide Network support on cumulative prosecutions greatly. Eurojust's and the EU Genocide Network's joint expertise on counter-terrorism and internal crimes have supported national authorities in several important cases. This joint expertise at the EU level is particularly significant for Member States which have less experience, expertise or capacity in the field of core international crimes. Their national criminal authorities should be encouraged to engage more often with Eurojust and the Genocide Network to benefit from their support for national criminal investigations in counter-terrorism and international crimes as Eurojust has operational and legal expertise on both "under one roof" to assist Member States with their cases. For this support to Member States to be sustainable, further resources would be needed to be allocated to Eurojust. A good example for a case in which Eurojust and the Genocide Network assisted jointly a Member State is the prosecution in Hungary against a FTF (DAESH member) that started as a Eurojust case on counter-terrorism matters but later, with Eurojust and Genocide Network support, developed into a case of cumulative charges. At the end, the perpetrator received life sentences for crimes against humanity (appeal still pending).

Eurojust also cooperates with Europol on ongoing cases, with the European Counter-Terrorism Centre (ECTC) and its Analytical Project Core International Crimes (AP CIC). While there is no specific focus on battlefield evidence as such, Europol has participated in Eurojust coordination meetings in operational cases concerning alleged crimes in Syria/Iraq. AP CIC also regularly reports on its activities at the Genocide Network meetings.

Eurojust cannot systematically share operational personal data with any foreign entity – state or international organisation – unless an agreement allowing for the exchange of such data, or a Commission adequacy decision exists, or in their absence, appropriate safeguards have been provided for in a legally binding document or have been assessed to exist. Exceptionally, operational personal data may be transferred in specific situations (e.g. vital or legitimate interest, immediate and serious threat to public security).

Eurojust does not have agreements on cooperation with IIIM, ICC and UNITAD but they have been included in Eurojust's four-year strategy as international bodies with which operational cooperation should be established. Available avenues for such cooperation will be explored.

Europol

Europol provides active operational support in criminal investigations of Member States through its Analysis Projects (AP) Core International Crimes (CIC) and AP Travellers, for example by providing information in response to hits with battlefield information. AP CIC engages with specialized police services and war crimes units in Member States as well as UN mandated and other international organisations. Europol supports Member States judicial authorities also in the context of cross-border cases at Eurojust.

Another opportunity for Europol is to build a partnership with the European Satellite Centre (EU SatCen) on the use of imagery for law enforcement purposes in order to support investigations, analysis and incident management, including in the core international crime context. Europol has therefore placed EU SatCen on its list of priority partners with which the Agency may conclude working arrangements. In 2018, AP CIC has provided EU SATCEN with relevant operational test cases generating positive results. In 2019, AP CIC travelled to Madrid to visit the EU SATCEN and discuss future cooperation.

Due to the lack of international agreements, Europol faces currently a number of serious constraints with regard to cooperation with international organisations— notably as regards the direct exchange of personal data with UNITAD, IIIM or the International Criminal Court – which hinders it from effectively supporting Member States with regard to criminal investigations against FTFs and their affiliates.

All three international organisations are on Europol's priority list for concluding working arrangements as Europol needs either a cooperation agreement or an adequacy decision by the Commission for data transfers to international organisations. Neither is in place. The conclusion of working arrangements with UNITAD, IIIM and the ICC would enable Europol to collaborate on criminal proceedings against FTFs until the Commission tables proposals for stronger cooperation through international agreements with these entities and the agreements are concluded. At the moment, as an intermediary solution, Europol's AP CIC receives data from the International Criminal Court (ICC) and UNITAD indirectly, through a Member State that has an arrangement with both organisations. AP CIC has not received any data from the IIIM.

Member States serve as a conduit to transfer relevant information originating from international organisations, allowing for its safe storage and crosschecking in Europol's databases to benefit the Member States' ongoing and future CT and core international crimes investigations.

III. External Border Security and Battlefield Information

European FTFs represent just 10% of the estimated total FTFs. It is therefore critical also non-European, FTFs are detected should they try to cross EU borders. Much of the information on non-European FTFs is held by third countries. Given this threat, EU CTC and the Commission issued a letter to Member States⁷ in October 2019 with recommendations to better use and feed the Schengen Information System (SIS) and other relevant databases such as Interpol. The US FBI provided EU Member States and Europol with data about 2 700 possible FTFs held in custody in North-East Syria in the fall of 2019 after the Turkish incursion to North-East Syria. The list includes names as well as biometric data (photographs and fingerprints). The Commission held a workshop with Member States, relevant JHA agencies and EU CTC in November 2019 on how to ensure that the data on the list would be inserted in the SIS swiftly. The main take-aways were sent in a letter to Member States⁸.

The insertion of data on such individuals in relevant EU databases has been done on an ad-hoc basis by Member States volunteering, duly verifying the information as the Member State issuing an alert is responsible for the accuracy and lawfulness of the data according to the SIS legislation. A protocol adopted by COSI⁹ provides a more systematic process for evaluation and possibly entering FTF information from third states in the SIS, setting out cooperation among security services and law enforcement in the EU. Implementation of the protocol is ongoing.

The proposal for amending the Europol Regulation includes an amendment to the SIS Regulation. If agreed between the co-legislators, this would enable Europol to enter data into the SIS on the suspected involvement of a third country national in an offense in respect of which Europol is competent.

⁷ Letter from EU CTC and the European Commission to COSI-delegates on the occasion of the military operation in North-East Syria, 22 October 2019.

⁸ Letter from the European Commission to Ambassadors of Member States on the management of the threat posed by returning FTF, 28 November 2019.

⁹ Defining a process for evaluation and possibly entering information from third countries on suspected Foreign Terrorist Fighters in the Schengen Information System, 16 November 2020, 13037/20.

IV. Cooperation with third States on battlefield information

1. Cooperation with the US

a. Member States

Five Member States have bilateral agreements with the US government that allow them access to the Department of Homeland Security's biometric database known as IDENT¹⁰. One Member State can already actively search the database and receive terrorist matches in response. Three other Member States may follow in summer. Another Member State with external EU borders has an agreement in place but needs to overcome technical issues to be able to carry out searches. Negotiations are underway with more EU Member States. Member States can gain access pursuant to either implementing arrangements to the Preventing and Combating Serious Crime Agreement or through an Enhanced Border Security Agreement. Member States can search the database and get a hit or no hit. If they get a hit, they automatically get the shareable personal and threat information about the individual. About 3 million biometric checks for partner nation are carried out per year.

Judicial authorities in Member States receive battlefield information mostly indirectly, through their military or civil intelligence agencies or security services. Member States' authorities receive battlefield information mainly through the US FBI's legal attachés (LEGATs) or through the Global Coalition against DAESH's channels of Operation Gallant Phoenix (OGP), the Middle East interagency taskforce based in Jordan and led by the US government. 27 States from the Global Coalition against ISIL/DAESH cooperate in OGP, including several Member States. Member States are present with representatives from their intelligence agencies and criminal investigators to exploit information and material collected in the conflict zones of Syria and Iraq.

¹⁰ See for more: <https://www.dhs.gov/publication/dhsallpia-089-dhs-international-biometric-interopability-initiative-visa-waiver>.

While the original aim of OGP was to provide military intelligence to military staff active in the Global Coalition, OGP's tasks have evolved over time. It is now one of the major sources for Member States law enforcement and judicial authorities to produce intelligence pictures on persons of interest or to identify battlefield evidence to be used in domestic criminal proceedings. Those EU Member States that have seconded criminal investigators to OGP have demonstrated better turnouts in their searches of OGP's database which have correlated with better achievements in their domestic criminal proceedings against FTF and their affiliates, as law enforcement is familiar with legal requirements for battlefield information to be introduced in domestic court proceedings. Member States CT prosecutors who visited OGP and made themselves familiar with its functioning and search possibilities have equally been able to improve their requests for battlefield information. Data and material that result from OGP is also shared via the US National Central Bureau in Washington D.C. through Interpol with a designated wider group of recipients.

The Global Coalition is very concerned about increasing DAESH-linked terrorist activity in the Sahel region and West Africa (Coastal states such as Cote d'Ivoire and Togo) as well as Northern Nigeria due to recent Boko Haram-Daesh clashes. The Global Coalition called on cooperating States to start working on capacity building in border security and battlefield evidence collection in the region.

b. Europol

Europol is receiving increasing amounts of battlefield information. The Commission's Counter-Terrorism Agenda of 2020 underlines the role of Europol to support Member States in their use of battlefield information to identify, detect and investigate returning or relocating FTFs.

Europol has access to battlefield information held by the US authorities through information exchange via three channels: the FBI's Terrorist Screening Centre (TSC), two pilot projects with the Terrorist Explosive Devices Analytical Centre (TEDAC) through which it can run latent prints found on IEDs in the combat zone against databases at Europol and through ad-hoc transmissions from the US FBI, such as the "2 700 list" that included biometrics of FTFs (fingerprints and photographs).

The transmissions from the US government to Europol have generated results that show the benefit of sharing battlefield information with Europol. Europol's databases and expertise on terrorism, including large amounts of data on terrorist propaganda, all forms of organised crime and cybercrime allowed it to address the crime-terrorism nexus from a unique position. Furthermore, the processing of this information by Europol allows finding possible information gaps (cross-checks against the Europol Information System - EIS and SIS). Europol has helped to identify and detect several FTF who entered or have tried to enter the EU.

To build further trust and enhance cooperation with US partners in counter terrorism that allows for an enhanced sharing of battlefield data, the ECTC at Europol has established and launched an ad-hoc Terrorist Identification Task Force (TITF). The first TITF initiative took place in September 2019, at Europol Headquarters, and brought together experts and analysts from 7 countries (including the US), and the ECTC. The TITF consists of an integrated and holistic information gathering approach, targeting a defined number of potential priority CT targets selected by the CT investigative agencies and services from participating countries. The focus are cases where gathered information had proved insufficient to proceed in judicial prosecution or further in-depth analysis is required to guide the investigation towards the priority assets. Participating investigators assessed the TITF format as a powerful tool to boost the speed and quality of CT investigations. Europol had foreseen a new TITF action week focused on FTFs in Q1 2020, in close cooperation with the Counter Terrorism Joint Liaison Team (CT JLT) members. But restrictions related to the COVID-19 pandemic do not allow for the format foreseen by the TITF. Discussions will be resumed as soon as the conditions allow it.

Europol also receives information collected in the conflict zones through its Analysis Project (AP) Travellers, mainly in form of battlefield information from US authorities.

c. Eurojust

Eurojust is cooperating with US authorities, including since early 2020 as part of a joint initiative to enhance searches of stored battlefield information, providing guidance on categories of information that are useful for criminal proceedings. The aim of the initiative is to enable those who search military collections (military and intelligence officers, data scientists), to identify and provide Member States with specific information that would serve their criminal cases. A guidance document is being developed, which may also enhance the understanding of national authorities of how to access battlefield information and tailor individual search requests through the FBI. National correspondents on CT and the Genocide Network have provided input to the draft document.

2. Cooperation with MENA countries and Turkey

Today, in the absence of adequacy decisions or international agreements with MENA countries and Turkey, the transfer of personal data to countries in the region is so far only possible based on ongoing criminal proceedings (according to article 25 (5) Europol Regulation). This has happened in the past in very limited cases. Europol has received some lists of FTFs from some MENA countries via Interpol in the past.

The Commission has recently proposed international agreements between Europol and CT priority countries among which are MENA countries and Turkey based on article 25 (1) (b) of the Europol Regulation. If concluded, these agreements would enable Europol to transfer and receive battlefield information in form of personal data and biometrics based on those international agreements.

V. EU capacity building in the context of battlefield information

1. CSDP missions

Mandates of EU Common Security and Defence Policy (CSDP) Missions have started to include the importance of the collection and sharing of battlefield information, in military and civilian missions. It is equally important that EU CSDP missions assist host States of the CSDP missions in line with UN Security Council Resolution 2396 (2017) to implement mechanisms for the sharing of information for the purpose of identifying and holding FTFs accountable. EU CSDP missions should, where appropriate and possible, assist host states to develop and implement systems to collect biometric data (including fingerprints, photographs, facial recognition), in order to responsibly and properly identify terrorists, including FTFs, in compliance with domestic law and international human rights law. They should encourage Host States to share this data with Member States, as appropriate, and with INTERPOL, EU JHA agencies and other relevant international bodies.

For example, the CSDP Missions in Sahel, together with the Commission, support the efforts of the security and defence forces to collect evidence from the battlefield, in particular strengthening the capacities of the military justice and of the provost units with the aim of supporting the “judicialisation” of the operations (first step in the criminal chain and the fight against impunity by military personnel). Through the provision of strategic advice, training and mentoring, the CSDP Missions are acting in several domains like the improvement of internal security forces forensic assets, the development of specialised judicial hubs and the reinforcement of provost units deployed alongside the armed forces during the operations.

The Civilian CSDP Compact¹¹ specifies that civilian CSDP missions should contribute to wider EU efforts to tackle security challenges, including those linked to terrorism, radicalisation and violent extremism. Potential increased efforts of civilian CSDP missions will build on and be coherent with relevant policy frameworks and be elaborated in a forthcoming mini-concept on possible civilian CSDP efforts related to counter-terrorism and the prevention of radicalisation and violent extremism.

¹¹ 14305/18, 19 November 2018.

2. EU capacity building projects

The lack of training and of specialized experience of military forces to obtain battlefield evidence in a human rights and rule of law based manner in conflict zones such as Syria and Iraq and beyond, as well as the lack of legitimacy of some actors in charge of carrying out these tasks, has been of great concern for the international community. The lack of legitimacy of some actors in charge of collecting the battlefield information or the way it has been secured and stored, is not only significant for criminal proceedings carried out in States in conflict zones but also for third States that may receive such information, and its introduction as evidence in criminal proceedings in third States. It is therefore important that experienced criminal investigators or specialized and trained military units with a clear mandate have a clear role when battlefield information is collected.

This is why the Commission has supported a **pilot project on battlefield evidence collection for Iraqi authorities** between 2018 and the end of 2019. It aimed to build the capacity of local military and law enforcement actors to collect, compare and contribute battlefield information as part of global efforts to prevent the movement of individual linked to serious crime and terrorism and to prosecute them. In order to maximize the extent to which the data collected can be used as actionable evidence in judicial proceedings or as a starting point for police investigations, a need for clear guidelines on battlefield evidence collection has been identified. The project managers recommended that such efforts should be coordinated under a common doctrine and follow a clear methodology, which take into account human rights and the rule of law. The overall objective is to ensure a long-term response and in-country capability that would remain after the departure of international actors. The project was managed by INTERPOL and carried out at the NATO Centre of Excellence in Vicenza, Italy.

The pilot project proved challenging due to several factors such as political instability in Iraq, discussion between the Iraqi Ministry of the Interior and the Ministry of Defence on whether and how to cooperate on information exchange and on the personnel to be sent for training. Another challenge was that the trainings could not be held in the country itself. It proved difficult to reach a change in mind-set necessary for the sharing of information between military and law enforcement. The project aimed at a similar training for Libya originally. But based on an exploration visit to the country in Spring 2019 and meetings with different stakeholders it was concluded that the political situation in the country was too volatile to implement the project.

The Commission supports a **digitisation of evidentiary material held by Iraqi authorities through UNITAD**. This project aims to strengthen Iraqi capacity to exploit the existing documentary evidence-base upon which national and international bodies are able to develop investigative priorities and identify evidentiary gaps that need to be filled. The ultimate goal is to increase the number of successful prosecutions of DAESH members in domestic proceedings in Iraq and other countries for crimes against humanity, war crimes and genocide. This project has helped to increase UNITAD's evidentiary capacities. UNITAD has been increasingly able to assist not only Iraqi local authorities but also Member States authorities in criminal proceedings against DAESH Members and their affiliates.

Another capacity building project the Commission is supporting is project **South Sharaka by Interpol**. The project aims to increase information exchange and data collection related to organised crime and terrorism, human smuggling and trafficking of small arms and human beings, using Interpol systems, including databases, the encrypted network and specialised task forces. The project is carried out in Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia.

VI. International organisations and battlefield information

1. United Nations Counter-Terrorism Executive Directorate (UNCTED)

UNCTED has issued guidelines to facilitate the use and admissibility of evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences in December 2019.¹² The EU CTC has provided input. The document gives Member States guidance on how to share and use battlefield information for the purposes of national prosecutions.

2. The United Nations Investigative Team for Accountability of Daesh/ISIL (UNITAD)

UNITAD has become an important partner for several Member States authorities to overcome long-standing barriers to the effective investigation and prosecution of DAESH members. It has significantly strengthened its capacity to provide support to other national authorities in response to requests for assistance, drawing on strong cooperation with Iraqi authorities.

¹² https://www.un.org/sc/ctc/wp-content/uploads/2020/01/Battlefield_Evidence_Final.pdf

Seven Member States have information exchange and cooperation arrangements with UNITAD in place and work with UNITAD in support of ongoing national proceedings in relation to DAESH crimes. In light of its existing legal framework and UN Security Council mandate, UNITAD does not generally require formal agreements to be put in place prior to cooperation, but they may be deemed necessary according to Member States legal framework so as to support the exchange of personal data and similar sensitive information.

UNITAD prepares structural case-briefs addressing the Team's core investigative priorities that support national authorities in establishing the contextual elements of international crimes committed by DAESH, thereby enabling them to act swiftly when individual suspects or witnesses have been identified. These case briefs provide a detailed analysis of the legal characterization of applicable crimes, strengthening the basis on which national authorities may take forward prosecutions of DAESH members. UNITAD substantiates its findings through a synthesis of testimonial, documentary, digital and forensic evidence, seeking to address the fundamental evidential challenges faced by national authorities in prosecuting DAESH members.

Supplementing these structural briefs, UNITAD has developed individual case-files in relation to a wide range of alleged perpetrators. As part of this work, UNITAD has identified and drawn on a significant number of internal DAESH documents within its evidentiary holdings, confirming the identity and activities of priority persons of interest. Through the work of its dedicated financial tracking unit, the Team has also completed an initial case brief identifying individuals and companies that facilitated crimes, including pillage, by providing financial services to DAESH.

The digital and documentary evidence holdings of the Team have grown significantly as a result of its cooperation with Iraqi authorities, including the Digitization Project supported by the European Commission, as well as independent evidence-collection activities. The Team's increased ability to exploit internal DAESH documentation extracted from former DAESH digital devices, obtained through cooperation with Iraqi authorities, has been central to the success achieved in this regard. Through the collection and processing of battlefield information, including ISIL immigration records, medical records, payment logs, fighter rosters and records connected with its administration of academic institutions, the Team has been able to directly tie persons of interest to specific DAESH battalions, geographic locations and crime scenes.

UNITAD has also strengthened its analytical capacity drawing on artificial intelligence, machine learning and other advanced technological tools.¹³ Enhanced searches in its evidence holdings have allowed the Team to identify relevant internal DAESH documents, including payroll records, confirming the DAESH unit, DAESH identity number and role of alleged perpetrators.

The Team has introduced a series of new tools to enhance its evidence processing capabilities so as to draw on the significant new data sets. It has implemented a number of new technologies for the search, analysis and review of image and video data collected¹⁴. At the same time, UNITAD is in the final stages of implementation of a custom made data enrichment platform using the latest in artificial intelligence, Microsoft cognitive services, machine learning, machine translation and facial recognition. The project will allow analysts and investigators to rapidly exploit multimedia files and identify relevant objects, faces and locations. The project will also support the automatic transcription and subsequent machine translation of video assets (videos depicting crimes committed by DAESH are automatically converted into English-language). This will significantly enhance the ability of the Team to filter and analyze such material.

UNITAD has also developed new search methodologies allowing it to produce analytical products. This has allowed for more targeted searches through which substantial information relevant to specific alleged perpetrators has been identified. Drawing on its rapidly increasing evidentiary holdings and improvements in analytical capacity, the Team has been able to respond positively to a significant majority of requests for assistance received from Member States.

¹³ See for more: Investigative Team to Promote Accountability for Crimes Committed by DAESH, *Harnessing Advanced Technology in International Criminal Investigations, Innovative Approaches in Pursuit of Accountability for ISIL Crimes*, published 11 May 2021, https://www.unitad.un.org/sites/www.unitad.un.org/files/general/2105390-harnessing_advanced_technology_in_international_criminal_investigations_web10may_0.pdf.

¹⁴ Through this process, UNITAD has been able to extract facial profiles from image data across its archives, establishing a dedicated repository of over 175,000 such profiles. This has proven immediately effective with respect to the identification of persons of interest relevant to the investigative priorities of UNITAD. As a next step, processing has started of the more than 34,000 video files currently held by UNITAD, with a view to extracting all facial profiles and other relevant images. As part of efforts to exploit former DAESH electronic devices, UNITAD has also enhanced its decryption capacity. UNITAD is taking forward a roll-out campaign, which will empower all investigators to harness advanced image and video searches in support of their work.

A total of nine experts seconded from national authorities presently work at UNITAD (Australia, Finland, Germany, Jordan, Saudi Arabia and Sweden). UNITAD is currently recruiting seconded national experts in the field of electronic discovery officer, forensic geneticist and investigative analyst. UNITAD strongly encourages Member States to nominate qualified candidates.

3. United Nation’s International, Impartial and Independent Mechanism for Syria (IIIM)

The IIIM has a broad mandate that covers serious international crimes committed by any actor, irrespective of their affiliation, in the Syrian Arab Republic from March 2011. It supports criminal justice authorities in EU Member States and other national jurisdictions in a number of ways, such as by sharing information and evidence collected in the IIIM’s central repository. The IIIM collects information and material from a broad a range of actors and preserves this in a repository to be used to support justice efforts, including through building case files. The IIIM shares material and information from this collection with national jurisdictions for domestic proceedings.

The IIIM provides criminal justice actors with analytical work that can be used to support ongoing investigations and prosecutions, including the contextual information needed to prove core international crimes. It can share its own analysis and contextual information that could help national authorities to better understand the broader context in which crimes were committed in Syria.

The IIIM can also respond to specific requests. This can involve deploying the IIIM’s investigators to locate potential witnesses, launching open source investigations, deploying language capabilities that national authorities may lack (such as Arabic, Kurdish), or applying special techniques, such as geolocation, and other analytical techniques. The IIIM acts upon specific requests as well as proactively if it is known that national authorities work on a specific issue and the IIIM possesses related material. As of 4 June 2021, the IIIM has cooperated with 13 different jurisdictions, including jurisdictions in Member States, and has received 127 requests for assistance relating to 109 criminal investigations. Many of the requests the IIIM receives originate from criminal justice actors in Member States. The Mechanism has cooperation agreements with several States in order to receive information to assist its work.

The IIIM itself does not need such cooperation agreements to receive information and to share with criminal justice authorities as it is UN mandated and such cooperation is inherent to its mandate. But as the IIIM also receives material or personal data from these national authorities, the respective European Member States have often the requirement of a formal cooperation agreement, Memoranda of Understanding etc. as a legal basis for the data transfers. The IIIM also cooperates with NGOs that collect high value information about the commission of core crimes in the Syrian Arab Republic, such as documentary or witness evidence.

Most of the documents the IIIM holds are digitalized. The IIIM also has the capacity to store some physical evidence. In order to obtain information from the IIIM Central Repository, national prosecutors and investigative judges send written requests to the IIIM (containing information about the case in question and the information they are looking for) and the IIIM will search its Central Repository for responsive material. It then communicates with the requestor about the results and can also do follow-up work in consultation with the requestor.

The IIIM does not work with seconded staff from governments but it envisages sustained engagement with national investigators and prosecutors, including hosting them at the IIIM's premises, to allow them to work with the IIIM team on specific issues or cases of relevance. The IIIM already has visits from national jurisdictions, including delegations of prosecutors to discuss evidentiary issues or to have targeted discussions on specific cases.

In addition to supporting criminal proceedings in national jurisdictions, the IIIM can also support regional and international courts that have jurisdiction over crimes committed in the Syrian Arab Republic, as well as proceedings not of a criminal character if they relate to the commission of crimes falling within its mandate.

4. Council of Europe

The Council of Europe has established a Working Group of Experts on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings Related to Terrorist Offences that aims at drafting a Council of Europe Recommendation. Europol, Eurojust and EU CTC have participated with observer status in the meetings of the Council of Europe Working Group. The draft recommendation is currently on hold, mainly because of objections on the text by the Russian Federation.

5. NATO

NATO approved its first Battlefield Evidence Policy in October 2020. It aims to facilitate the sharing of information obtained during NATO missions and operations for law enforcement purposes. While the primary purpose of deployed military is to fulfil their operational objectives, troops often collect information or material on the battlefield, some of which may also be useful to support prosecution of returning FTF. The new policy also supports Allies in fulfilling their obligations under UN Security Council Resolution 2396 (2014) in holding foreign fighters accountable.

EU Member States have actively contributed to the NATO Battlefield Evidence Working Group with delegations that included prosecutors, military, law enforcement or intelligence officers. The Working Group continues to meet on a regular basis, most recently to develop and discuss the Program of Work to guide the implementation of the Policy. Later in 2021, NATO will update its Counter-Terrorism Action Plan. It is expected that Battlefield Evidence will continue to play a prominent role in it.

NATO is currently working to implement a grant from the US to support Battlefield Evidence training for selected partner countries via the NATO Stability Policing Centre of Excellence in Vicenza, Italy with the first iteration foreseen to take place June 2021, if the pandemic circumstances allow for it. NATO is planning further Battlefield Information related activities with partners through this grant over the next year and a half.

Cooperation with other international organizations, including the United Nations, INTERPOL and the EU, is an important aspect of NATO's work on battlefield evidence to ensure complementarity and added value.¹⁵¹⁶ EU and NATO have engaged on battlefield information through informal staff talks and COTER seminars under the Finnish and German Presidency of the Council of the EU¹⁷.

¹⁵ https://www.nato.int/cps/en/natohq/topics_77646.htm

¹⁶ https://www.nato.int/cps/en/natohq/news_179194.htm.

¹⁷ Informal Seminar of the Council Working Group on Terrorism –International Aspects (COTER) and representatives of NATO Political Committee (PC), 7 December 2020, organized by the German Presidency of the Council of the EU and in October 2019 by the Finnish Presidency.

6. Interpol

Interpol continues to cooperate with Member States in the ways laid down in EU CTC's paper from 2019. Europol received information by Interpol in the framework of Interpol's Project Vennlig (Vennlig I) between 2007 and 2010. After a long period in which Europol had not received battlefield information from Interpol neither in the context of this Project nor otherwise, recent contacts have led to a contribution concerning non-EU individuals suspected of active DAESH participation in Iraq.

7. Other

EU Member States also cooperate also with other international organisations such as the International Committee of the Red Cross (ICRC), Independent International Commission for Inquiry on the Syrian Arab Republic, the International Criminal Court (ICC) and the International Residual Mechanism for Criminal Tribunals (IRMCT) or the Organization for the Prohibition of Chemical Weapons (OPCW).

VII. NGOs and battlefield information

1. EU Member States

Member States cooperate on battlefield information with a variety of NGOs, specifically in core international crimes and war crimes proceedings. In addition to material originating from conflict zones introduced as evidence, representatives of NGOs also provide information as witnesses in criminal proceedings in Member States. The NGOs include the Commission for International Justice and Accountability (CIJA), the European Center for Constitutional and Human Rights (ECCHR), Human Rights Watch (HRW), TRIAL International, the International Federation for Human Rights (FIDH), Redress, the Syrian Observatory for Human Rights, Amnesty International (AI), Yazda, the Coalition for the International Criminal Court (CICC) or the Association for the Study of War Crimes (ASWC).

2. Europol

Europol also engages with NGOs to assess whether they hold valuable data collections, and if so, whether they can be supplied into the AP CIC database to support ongoing or future EU Member States core international crimes and CT investigations. NGOs are often the only ones, along with the military, who are present in areas of conflict, and as a consequence are able to access and collect information and material.

However, similar to data transfers from international organisations on core international crimes, data transfers from NGOs pose challenges, because the Europol Regulation does not allow the processing and storage of data originating from private parties. Yet, these information transfers are essential to mitigate security threats within the EU. Not only do they provide information about the activities of FTFs and their family members during their presence in the conflict zones, they also contain information allowing identification of migrants who may have been members of armed jihadist groups and organisations, and as such may have been involved in the perpetration of atrocities in their countries of origin. Cooperation with private parties is one of the key aspects in the ongoing discussions on the recast of the Europol Regulation.

Europol currently works with an intermediary solution by indirectly receiving the data through Member States that have 'practical arrangements' with the respective NGOs and private parties. So far, such practical solutions have been established for cooperation with eyeWitness, SJAC, and Redress for example. AP CIC receives similar data from non-law enforcement entities without practical arrangement, though still through facilitation of a Member State (e.g. CIJA, Syrian Archive).

AP CIC's engages further with the Yazidi community and different States through its Yazidi Initiative that aims to identify FTF's through collection of relevant data from victims and witnesses of the 2014 Yazidi genocide perpetrated by DAESH. AP CIC has received and is expecting to receive contributions of relevant data from Australia, Canada and Germany. Europol will organise a follow up meeting with other interested countries, to discuss the data already received and encourage similar contributions in future, also through participation of relevant private and international organisations in the Yazidi Initiative, such as Yazda.

3. Eurojust and the Genocide Network

Eurojust cooperates with NGOs through the respective national criminal authorities in operational cases where it supports Member States' criminal investigations. In other words, it is the Member State that involves the NGOs. However, several of the mentioned NGOs have an associate status to the EU Genocide Network, allowing contribution and exchange of information with national criminal authorities. The Genocide Network is working closely with many NGOs collecting battlefield information.
