



ADF INTERNATIONAL

Information and Evidence Unit
Office of the Prosecutor
Post Office Box 19519
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The Netherlands

25 October 2016

Dear Ms Bensouda,

RE: ICC Prosecution of Daesh for crimes under the Rome Statute

We write further to your decision from April 2015 not to initiate preliminary examinations into the atrocities committed by Daesh¹ foreign fighters.

We enclose information that may be of assistance when deciding whether to reconsider the stance and to open a preliminary examination into the situation in Syria and Iraq and, in particular, the atrocities committed by Daesh foreign fighters from State Parties to the Rome Statute.

The number of Daesh foreign fighters has been assessed at over 30,000.² Many of them come from countries that are signatories to the Rome Statute.

It has been reported that at least 3,700 Daesh fighters (out of over 5,000 fighters coming from European countries) are from the UK, France, Germany, and Belgium.³ As of October 2015, over 6,000 of the fighters travelled from Tunisia and over 2,000 from Jordan.⁴ The ICC has jurisdiction over the nationals of these countries.

Daesh has made no attempt to hide the involvement of foreign fighters. To the contrary, Daesh advertises the atrocities committed by Daesh fighters in its attempt to spread propaganda and recruit new fighters, including in the official Daesh periodical *Dabiq*.

As of October 2016, there were 15 online issues of the magazine. The magazine provides updates about the atrocities committed by Daesh fighters in the Middle East and all over the world, calls for jihad, and shares stories about Daesh fighters.

¹ Also known as Islamic State, IS, ISIS, ISIL, Da'esh.

² Jean-Paul Laborde, UN Assistant Secretary, Head of the Counter-Terrorism Committee, reported in <http://www.politico.eu/article/united-nations-30000-foreign-fighters-in-syria-and-iraq-isil-terrorism/>

³ The Soufan Group, Foreign Fighters in Syria and Iraq (December 2015), 13. *See*: Appendix A.

⁴ *Ibid.*, 8.

Une alliance consacrée à la défense juridique de la liberté

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The magazine has published crucial information about the foreign fighters playing an important role for the Daesh terrorist network. Some of the examples include the following:

- An interview with Abu Umar Al-Baljiki (Abdelhamid Abaaoud), a Belgian national responsible for the attacks in Paris in November 2015 (Dabiq, 7th Issue, Appendix B). In November 2015, together with Abuz-Zubayr al-Baljiki and Abu Khalid al-Baljiki, he caused the death of over 130 people. As is clear from the interview, he was the mastermind behind the attack. In the interview, he calls upon others to join the jihad.
- Information on Abu Quadamah al-Misri, a British national (Dabiq, 7th Issue, Appendix C). Abu Quadamah al-Misri and his friend Abu Quadamah travelled from the UK to join Daesh's jihad.
- Information on Abu Ibrahim at-Tunusi, a Tunisian national (Dabiq, 7th Issue, Appendix D). Abu Ibrahim at-Tunusi perpetrated the attack in the Corinthia Hotel, Libya.
- An advertisement of a video interview with Abu Suhayb al-Faransi, a French national (Dabiq, 8th Issue, Appendix E). A former French businessman, Abu Suhayb al-Faransi, is an influential recruiter for Daesh and calls Western Muslims to join the Daesh jihad in Syria and Iraq.
- Information on two Daesh fighters, Abu Mus'ab al-Almani and his twin brother, German nationals (Dabiq, 9th Issue, Appendix F).
- An interview with Abu Samir Al-Urduni, a Jordanian national (Dabiq, 10th Issue, Appendix G). Abu Samir Al-Urduni was a leading member of al-Nusra before he joined Daesh.
- Information on Abu Ja'Far al-Almani, a German national (Dabiq, 11th Issue, Appendix H).
- Information on Abu Junaydah al-Almani, a German national (Dabiq, 12th Issue, Appendix I).
- A poster of nine Daesh fighter, seven of whom were foreign fighters masterminding and leading some of the main attacks perpetrated by Daesh (Dabiq, 13th Issue, Appendix J).
- Information on Abu Muharib al-Muhajir (Mohammed Emwazi, the so-called Jihadi John), a British national (Dabiq, 13th Issue, Appendix K).
- An interview with Shaykh Abu Inrahim al-Hanif, a Canadian national (Dabiq, 14th Issue, Appendix L).
- Information on Abu Jandal al-Bangali, a fighter from Bangladesh (Dabiq, 14th Issue, Appendix M).

- An interview with Umm Khalid al-Finlandiyyah, a foreign fighter from Finland (Dabiq, 15th Issue, Appendix N).
- An interview Abu Sa'd at-Trinidad, a foreign fighter from Trinidad (Dabiq, 15th Issue, Appendix O).
- Information on Abu 'Abdillah al-Canadi, a Canadian national (Dabiq, 15th Issue, Appendix P).

Many of the foreign fighters, including the above-named individuals, hold senior positions and play important roles within the Daesh network. Many of the Daesh foreign fighters are chosen to lead the international attacks because of their knowledge of the language, customs, and culture of the countries where the planned attacks were or are to take place. This strategy is exemplified by the attacks in Belgium and France.

Daesh also uses the above-named foreign fighters to recruit new foreign fighters to perpetrate atrocities in Syria and Iraq or to conduct attacks in the countries of their residence.

Therefore, we write to urge you to reconsider the state of the Court's jurisdiction over Daesh fighters. The past eighteen months have brought four developments that we believe require such a reconsideration.

Firstly, **evidence has arisen showing that several prominent leaders of Daesh are individuals in respect of whom the Court has jurisdiction *ratione personae***, including individuals from the UK, France, and Germany. While we appreciate the reasons for waiting for a specific conferral of jurisdiction by the Security Council, the same reasons do not apply in respect of these individuals over whom the court already has jurisdiction.⁵ Given the need, as set forth in the Preamble of the Rome Statute, to 'guarantee lasting respect for and the enforcement of international justice', further delay in exercising existent jurisdiction only breeds impunity. It would be proper, then, to begin preliminary examinations of atrocities committed by these foreign leaders and under their direction.

Secondly, given the political statements of the permanent Members of the Security Council, it has become **clear that it is extremely unlikely that the Council will refer the situations in Syria or Iraq to the Court**. While all members of the Security Council are in accord that something must be done to bring Daesh to justice, the Security Council is divided into factions that find themselves at an impasse because of disagreement over how to handle crimes committed by state actors, among other things. Now that it is clear that no referral will be forthcoming from the Security Council in the near future, the Court has every reason to begin an investigation of crimes that clearly fall under its jurisdiction such as those imputable to Daesh leaders from the UK, France, Germany and other States Parties to the Rome Statute.

⁵ As set out in the pre-conditions to the exercise of jurisdiction under Article 12(2)(b) of the Rome Statute.

Thirdly, several extremely detailed and carefully researched books and papers have been published over the past eighteen months **confirming that Daesh is currently committing genocide against Christians and Yazidis.**⁶ This research, along with the information about European nationals occupying leadership roles within Daesh, confirms that individuals under the Court's jurisdiction may have committed crimes enumerated in Article 5 and in accordance with the pre-requirement in Article 12 of the Rome Statute.

Finally, and most recently, on 12 October 2016 the Parliamentary Assembly of the Council of Europe (PACE), representing 47 member States across Europe and sitting in Plenary during their Autumn Part Session, **specifically called upon you, as the Prosecutor of the Court, to:**

- a) revisit your decision of April 2015 not to initiate preliminary examinations into crimes committed by Daesh foreign fighters, in the light of new and overwhelming evidence available to you; and
- b) expeditiously recognise your jurisdiction over the perpetrators of genocide, crimes against humanity, and war crimes in Syria and Iraq.⁷

The PACE resolution from October 2016 built upon the already numerous calls to undertake steps to prosecute the Daesh perpetrators, including:

- a) PACE resolution of 27 January 2016;
- b) European Parliament Resolution on 4 February 2016;
- c) Statement by John Kerry of 17 March 2016;
- d) UK House of Commons Motion of 20 April 2016;
- e) Independent International Commission of Inquiry on the Syrian Arab Republic report 'They came to destroy' ISIS Crimes Against the Yazidis' of 15 June 2016;

We therefore call upon you, Madam Prosecutor, to initiate preliminary examinations into the atrocities against Christians, Yazidis, and other religious minorities in Syria and Iraq committed by foreign fighters acting on behalf of Daesh as you are empowered to do so under the Rome Statute.

In accordance with Article 15(2) of the Rome Statute, Madam Prosecutor is encouraged to seek 'additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate.' We call

⁶ Independent International Commission of Inquiry on the Syrian Arab Republic, 'They came to destroy' ISIS Crimes Against the Yazidis' 15 June 2016; Knights of Columbus, *Genocide against Christians in the Middle East* (March 2016); Ewelina U. Ochab, *Never Again: Legal Responses to a Broken Promise in the Middle East* (Kairos: Vienna, 2016); Nina Shea, 'The ISIS Genocide of Middle Eastern Christian Minorities and its *Jizya* Propaganda', August 2016, Hudson Institute; Anne Speckhard and Ahmet S. Yayla, *ISIS Defectors. Inside Stories of the Terrorist Caliphate* (Advances Press: VA, 2016); Patrick Cockburn, *The Rise of Islamic State: ISIS and the New Sunni Revolution* (OR Books: London, 2014).

⁷ See Parliamentary Assembly of the Council of Europe Resolution 2134 (2016), 'Co-operation with the International Criminal Court: towards a concrete and expanded commitment' 12 October 2016, at paragraph 14.

upon you, Madam Prosecutor, to seek further information from States and other actors that are or may be in possession of any information that could help to assess the seriousness of the crimes committed by Daesh.

We are ready to meet with you in The Hague and discuss the issues raised in this letter further. We would sincerely appreciate a response from you at your earliest convenience.

Yours faithfully,



Dr Pieter Omtzigt

Member of the Dutch House of Representatives and Member of the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe



Lord Alton of Liverpool

Member of the UK House of Lords, Vice Chair of the All-Party Parliamentary Group on Freedom of Religion or Belief



Lars Adaktusson MEP

Swedish Member of the European Parliament, Member of the European People's Party, and Member of the Executive Committee of the Swedish Christian Democratic Party



Ewelina Ochab

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