

EU UPDATE ON INTERNATIONAL CRIMES

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Report on the 5th meeting of the European Network of Contact Points in respect of Persons Responsible for Genocide, Crimes against Humanity and War Crimes

On 17-18 March 2008, the Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes ("the Network"), established by Council Framework Decision 2002/494/JHA of 13 June 2002, met for the fifth time in The Hague. The meeting brought together police investigators and prosecutors from more than 20 European countries and Canada, as well as experts from the ICTY, the ICC and non-governmental organisations.

The meeting focused on issues related to criminal prosecutions of serious international crimes committed in Serbia, Bosnia and Herzegovina and Croatia, and judicial cooperation between national authorities and the International Criminal Tribunal for the former Yugoslavia (ICTY). Participants discussed, *inter alia*, the problems arising from the completion strategy of the ICTY and the need to exchange gathered evidence for future proceedings at the national level. Regarding the special challenges that EU Member States face in prosecuting serious international crimes committed abroad, the Network acknowledged that appropriate resources and structures are needed to overcome these challenges. Further, cooperation and exchange of knowledge, practical experience and best practices among members of the Network, with third countries, international tribunals and organizations were considered crucial in overcoming obstacles.

Members of the Network emphasised the valuable contribution of NGOs to the investigation and prosecution of war crimes, crimes against humanity and genocide. They also welcomed, in particular, the gathering and distribution of information, the identification of witnesses and victims of such crimes and their encouragement to cooperate with national authorities.

WELCOME

This is the 4th edition of *EU Update on International Crimes*, a Newsletter on international crimes, published by REDRESS and FIDH.

The Newsletter outlines the main developments in the field of international criminal justice with a focus on European countries while at the same time highlighting the activities and competencies of the European Union.

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CONTENTS

Report on the 5 th meeting of the European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes.....	1
Specialised Crimes Units in Charge of Investigating and Prosecuting Serious International Crimes – Current State of Affairs.....	2
France - the Next Country to Set up a Specialised War Crimes Unit?.....	4
Interview with Mr. Isaksson Detective Superintendent of the Swedish War Crimes Unit.....	5
Recommendations to the French EU Presidency	7

EU UPDATE ON INTERNATIONAL CRIMES

Participation of NGOs and other organisations is therefore planned for future meetings. In order to ensure and further enhance the exchange of knowledge and experiences in the investigation and prosecution of 'serious international crimes', members of the Network recommended meetings on a regular basis to discuss, where appropriate, challenges in specific regions or special topics such as witness fatigue, lack of physical evidence, case selection and extradition. Several contact points called for more focused meetings that would address these issues, in addition to the current format of more general meetings. Emphasis was also laid on the importance of regular and close cooperation between the national contact points as a tool to increase the number of successful prosecutions.

Recognising both, the important contribution the Network can render to successful investigations and its limitations which are caused by its current set-up, the Network 'warmly welcomed the Member States' initiative to establish a permanent secretariat for the Network while respecting its autonomy'. Since the meeting, discussions among Member States seem to indicate that a secretariat will be established within Eurojust, which will be responsible for all Networks¹ (including the EU Network of Contact Points).♦

Specialised Crimes Units in Charge of Investigating and Prosecuting Serious International Crimes:

There is a reason why specialised international crimes units have been established in a number of countries worldwide. There will be instances in which the countries where the crimes occurred will not be in a position to prosecute, and international courts and tribunals will not have the necessary resources and, at times, jurisdiction to deal with every single person who is accused of having committed serious international crimes. Without the engagement of investigators and prosecutors worldwide to track down suspects and ensure that they are investigated and prosecuted, an 'impunity gap,' would result.

Police investigators, prosecutors and judges face a number of challenges when investigating crimes that have been committed in foreign geo-political contexts and countries, sometimes years, if not decades, ago.¹ These professionals who ordinarily deal with very localised crimes may have difficulty in tackling internationalised crimes; they may lack familiarity with the historical and political context of the crimes or with international law, posing poten-

tially serious obstacles. Massive crimes, such as the 1994 genocide in Rwanda typically involve a great number of perpetrators, traumatised and often marginalised victims and witnesses with a different cultural background and language. These added characteristics further distinguish these cases from those typically dealt with by regular crime investigators or prosecutors.

Recognising the complexity of investigations and prosecutions of such crimes has led to Council Decision 2003/335/JHA on the investigation and prosecution of genocide, crimes against humanity and war crimes.² The decision urges Member States to consider "the need to set up or designate specialist units within the competent law enforcement authorities with particular responsibility for investigating and, as appropriate, prosecuting the crimes in question."³

An increasing number of European countries have heeded these recommendations, including Belgium, Denmark, the Netherlands, Norway and recently also Sweden.⁴

“Member States should ensure that law enforcement and immigration authorities have the appropriate resources and structures to enable their effective cooperation and the effective investigation of genocide, crimes against humanity and war crimes”

Council Conclusion 2003/335/JHA

The specialised units in those countries vary in their mandates and composition. Although all of them are expressly in charge of investigating and/or prosecuting serious international crimes, the mandate of some units, such as the Danish Special International Crimes Office (SICO),⁵ is broader – including e.g. terrorist offences – whereas others deal exclusively with war crimes, crimes against humanity and genocide.

Some, such as the Belgian crimes section of the judicial police of the ‘*arrondissement judiciaire Bruxelles*’, have set up a specialised investigation unit within the police, staffed with police investigators and criminal intelligence officers, who cooperate with other authorities, such as specialised divisions in prosecution offices and immigration services.⁶

Denmark has opted for a combination of practical and legal expertise by creating a unit boasting both investigators and prosecutors. Collaboration on an *ad hoc* basis with specialists from other professions, such as historians, anthropologists, translators, military analysts and communication experts, is common to all units created so far.♦

“War crimes, genocide and torture are also high on the international political agenda. The investigation of war crimes is viewed both nationally and internationally as a question of particular importance. It is not so much a question of the interest of the Netherlands... but more the interest of the international rule of law as a whole.”

Brochure of the Dutch National Prosecutor's Office, pg 6.

1. Reportedly, the Danish specialised unit has dealt in the last years with crimes that have been committed “in 30 different countries in Europe, Africa, the Americas and Asia. A majority of them have taken place in Ex-Yugoslavia, the Middle East and Afghanistan...” See <http://www.sico.ankl.dk/page22.aspx> (last visited 13 June 2008).

2. Council Framework Decision 2003/335/JHA of 8 May 2003, on the investigation and prosecution of genocide, crimes against humanity and war crimes, Official Journal 118/12, 14.05.2003, p. 12-14, available online at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:118:0012:0014:EN:PDF> (last visited June 13, 2008).

3. *Ibid*, Article 4.

4. A non-EU example is the Canadian War crimes unit which brings together experts from several agencies of different departments. For more details, see www.justice.gc.ca/eng/pi/wc-cg/hist.html (last visited June 13, 2008). Note also that a campaign for the establishment of a specialised unit is currently conducted in Switzerland. For more details, refer to http://www.trial-ch.org/fileadmin/user_upload/documents/BI/B112deweb.pdf (last visited June 13, 2008).

5. For more information on the specialised unit in Denmark see <http://www.sico.ankl.dk/page22.aspx> (last visited June 13, 2008).

6. Immigration services play an increasingly important role in identifying suspects. As the first state authority in contact with visa applicants and asylum seekers, they have the opportunity to screen them for their potential involvement in serious international crime and refer case dossiers of suspects to the respective specialised investigation unit. According to the Danish specialised unit, “50 % of the cases have been reported to SICO by the Danish Immigration Service, when they have suspected, either based on an asylum applicant's former position or his/her own statement to the Danish authorities, that the person in question could have committed a serious crime in his/her native country.” See <http://www.sico.ankl.dk/page22.aspx> (last visited June 13, 2008).

France - the Next Country to Set up a Specialised War Crimes Unit?

According to media reports and meetings of FIDH & REDRESS with French officials, France is currently considering to establish a specialised war crimes unit.¹ The catalyst for the decision to establish a specialised unit in France appears to be the significant number of Rwandese genocide suspects located in France, and the decision of the ICTR to refer some of its cases.

If they are not extradited, some of these suspects may end up before French courts, requiring investigations into the allegations of genocide, war crimes and crimes against humanity committed in Rwanda in 1994. In addition, the ICTR in November 2007 referred two cases of Rwandan nationals accused of genocide to the French judiciary.

A specialised unit is, however, warranted not only with respect to Rwandan genocide suspects but also with respect to suspects from other parts of the world, for whom France has so far been an attractive safe haven.²

Indeed, the Legal Action Group of the FIDH is currently assisting victims in about twenty cases before French courts, involving crimes such as torture and crimes against humanity, committed in a number of countries, including Republic of Congo, Algeria and Tunisia.

Whereas the French Government's current plans to establish a specialised unit are to be commended, the recent enactment of Article 689-11 of the French *Code de procédure pénale*³ implementing the Rome Statute is disappointing, since it significantly limits the scope of universal jurisdiction of French courts. In accordance with this provision, cases can only proceed against individuals who are residing in France, as opposed to those who might be present on French territory for shorter or less fixed periods. Also, unlike common crimes in France, proceedings can only commence upon request of the prosecution and no longer upon the initiative of victims or associations acting on behalf of victims, although the latter have played a pivotal role in initiating past cases.♦

Why establish specialised units?

- Specialised units allow investigators and prosecutors to address complex cases of serious international crimes more efficiently, as they can fully dedicate themselves and their resources to the prosecution of such crimes, rather than working on an *ad hoc* basis and also having to deal, in addition, with domestic crimes.
- Specialised units allow investigators and prosecutors to develop, maintain and share experience and expertise in the investigation and prosecution of serious international crimes.
- Delays in following up complaints filed by survivors, where possible, and in investigations in general may be reduced.
- An institutional approach ensures consistency and even more proactive investigations as well as swift detention of perpetrators. It thereby contributes more effectively to meeting the demand for justice of victims and at the same time ensuring accountability of perpetrators. Indeed, more than 85% of all serious international crimes cases that were successfully brought to trial since 2001 have been handled by specialised units.
- Coordination and mutual cooperation with foreign authorities as well as sharing of experiences crucial to the investigation and prosecution of large-scale crimes are further improved where specialised structures exist.
- If all EU Member States were to establish a specialised unit, the net around potential offenders would be significantly tightened and the burden of investigations and prosecutions could be shared equally among European countries.
- An institutional set up to tackle serious international crimes will further facilitate swift compliance with cooperation requests from International Tribunals and the International Criminal Court.

1. For more details refer to <http://www.hiredellnews.com/content/view/2199/329/> (last visited July 10, 2008).

2. See call of the Minister of Foreign Affairs of 26 May 2008, available online at http://www.lemonde.fr/cgi-bin/ACHATS/acheter.cgi?offre=ARCHIVES&type_item=ART_ARCH_30J&objet_id=1037524&clef=ARC-TRK-NC_01, and the recommendations of the Commission Guinchard to the Minister of Justice of 30 June 2008, available online at http://www.presse.justice.gouv.fr/art_pix/1_Synthesedespropositions.pdf.

3. The wording of Article 689-11 of the French Code of criminal procedure reads as follows: "Peut être poursuivie et jugée par les juridictions françaises, toute personne qui se trouve sur le territoire de la République et qui s'est rendue coupable à l'étranger de l'un des crimes relevant de la compétence de la Cour pénale internationale en application de la convention portant statut de la Cour pénale internationale signée à Rome le 18 juillet 1998, si les faits son punis par la législation de l'Etat où ils ont été commis ou si cet Etat don il a la nationalité es partie à la convention précitée. La poursuite de ces crimes ne peut être exercée qu'à la requête du ministère public si aucune juridiction internationale ou nationale ne demande la remise ou l'extradition de la personne. A cette fin, le ministère public s'assure auprès de la Cour pénale internationale qu'elle décline expressément sa compétence et vérifie qu'aucune autre juridiction international compétente pour juger la personne n'a demandé sa remise et qu'aucun autre Etat n'a demandé son extradition."

Interview with Mr. Isaksson, Detective Superintendent of the Swedish National Criminal Police's War Crimes Unit, conducted by Janina Berg

Q 1: Mr. Isaksson, could you briefly explain the tasks and mandate of Sweden's specialised unit that has recently been established?

The Swedish National Criminal Police's War Crimes Unit has been launched on March 1, 2008 and is provided with a budget of 9 million SEK (approx. 960.000€). Its mandate lasts until further notice and covers war crimes, crimes against humanity, genocide and torture.

Q 2: Why was the Unit created?

Before the launching of the specialised Unit all the investigative work was handled by the local Police and Prosecution authorities, who lacked experience as well as funds for this type of complex, international and expensive investigations. The problem became obvious and in August 2006 the Police, the Prosecution and the Immigration authorities decided to put together a working group with the task to review the activities in this field so far. The findings of the working group were published in a report in January 2007, where they suggested a specialised Unit within the National Criminal Police as well as specialised Prosecutors within the International Public Prosecution Office in Stockholm.¹ On September 5, 2008, the National Police Board decided to establish a War Crimes Unit within the National Criminal Police.

Q 3: What is the composition of the Unit?

The War Crimes Unit within the National Criminal Police is composed of :

- 1 Detective Superintendent, head of the Unit,
- 1 Detective Inspector, intelligence,
- 6 Detective Inspectors, investigation,

- 1 Analyst, and
- 1 Administration assistant.

As a complement to this, there are 4 prosecutors within the International Public Prosecution Office in Stockholm. These prosecutors, however, do not only handle War Crime cases.²

Q 4: What cases has the Unit dealt with so far?

The Unit has received approx. 50 reports on suspected serious international crimes, some of them older cases transferred from local Police authorities. 15 cases are currently under investigation, with a focus on former Yugoslavia and Iraq due to the immigration streams.

Q 5: How is the performance of the Unit reviewed?

There are annual reports on all activities performed by the National Criminal Police. In addition, it's decided that the performance of the War Crimes Unit will be subject to a review after 3 years in operation.

Q 6: How is the Unit notified about potential cases? Can survivors of international crimes initiate an investigation in Sweden?

EU UPDATE ON INTERNATIONAL CRIMES

So far mainly by reports from the immigration authorities, approx. 70 % of the cases. The rest is a mix of reports from individuals, authorities in other countries, media etc. Survivors can of course report any crime to the Police but we would not launch a full investigation without an indication that the offender is in Sweden and, subsequently, can be put to trial in a Swedish Court.

Q 7: How can victims, civil society and others learn about the specialised Unit, and provide information to it?

Our intention is to go more public after the summer holidays, with more media exposure etc. We will also publicise information on the Swedish Police official website, www.polisen.se.

Q 8: By setting up a specialised Unit, Sweden has followed the example of a number of other European states, such as Belgium, Denmark, Norway and The Netherlands that have set up similar Units over the last decade. Prior to the establishment of the Unit, have the experiences and expertise of these (or other) units been consulted for advice?

Yes, the working group mentioned earlier has consulted the Units in Denmark, Norway, The Netherlands, ICTY and ICC. The co-operation with Denmark and Norway is ongoing, as in all fields of Police work.

Q 9: Does the Unit attend the meetings of Interpol and the EU Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes? Does the EU Network contribute to the investigation and prosecution of such crimes and if so, how?

Yes. The EU Network contributes by sharing of experience and also Point of contacts in different countries, which always makes international co-operation easier.

Q 10: Do the members of the specialized Unit receive any kind of special training in the investigation (and prosecution) of serious international crimes?

Yes. Some of the members of the Unit and some of the prosecutors have already training from the Institute for International Criminal Investigations (IICI) as well as experience from working at ICTY. The others will get special training, e.g. the Interpol War Crimes Investigators course.

1. The report is published on the Swedish Prosecution Authorities homepage, www.aklagare.se, subsection "Rapporter" (Reports in Swedish) under the name "Internationella brott" (International Crimes).

2. The prosecutors at the International Public Prosecution Office are specialised in handling serious international crimes, among them War Crimes. Examples of other crimes are trafficking in drugs, arms or human beings. There are only 3 International Public Prosecution offices in Sweden (Stockholm, Gothenburg, Malmö), while the Stockholm office has national jurisdiction regarding war crimes. They do not deal with common offences, which are handled by the local Public Prosecution Offices.

Recommendations for the French EU Presidency

Consolidate the EU Network of Contact Points

The state that holds the EU Presidency may call Network meetings. Consequently, the French Presidency is urged to organise the 6th meeting of the EU Network during the term of its Presidency. In the interest of a regular functioning Network, the Presidency should endorse and further promote the establishment of a permanent and autonomous secretariat which would be responsible for organising regular meetings of the EU Network in the future.

Input into the envisaged Stockholm Programme

The follow-up to the Hague Programme, setting out the EU's priorities in the field of Justice and Home Affairs from 2004 to 2009, is currently prepared by the French, Czech and Swedish Presidencies. The French Presidency should ensure to include a reference to the fight against impunity for serious international crimes in the follow-up programme (the 'Stockholm Programme'), to be adopted under the Swedish Presidency in the second half of 2009. Such a reference will further underline that the EU is not willing to provide a safe haven to perpetrators of the worst crimes and that the fight against impunity is among the priorities of the EU's Justice and Home Affairs policy.

EU Framework on the fight against impunity

The French Presidency should ensure that the fight against impunity for serious international crimes forms part of the agenda of the Article 36 Committee and consider requesting the Commission to design an Action Plan on an EU Approach to the Fight against Impunity, similar to the Action Plan on the fight against terrorism. Such an Action Plan would impact on efforts at domestic levels, cooperation among Member States and enhance coordination between the different pillars and working groups.

Strengthening victims' rights with regards to the Council Framework Decision on the standing of victims in criminal proceedings of 2001¹

EU Member States have so far been reluctant to adapt their laws to the Articles set out in the 2001 Council Framework Decision on the standing of victims in criminal proceedings, which are aimed at a high level of protection of crime victims. The Presidency should urge Member States to further approximate their legislation and policies to the extent necessary in order to achieve the Framework's objectives and to avoid inconsistency.

1. Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:EN:PDF> (last accessed July 2008).

Recent Publications

Manfred Nowak/ Elizabeth McArthur, The United Nations Convention Against Torture: A Commentary (Oxford Commentaries on International Law, May 2008).

George William Mugwanya, The Crime of Genocide in International Law: Appraising the Contribution of the UN Tribunal for Rwanda (2007).

Heiko Sauer, Jurisdiktionskonflikte in Mehrebenensystemen - Die Entwicklung eines Modells zur Lösung von Konflikten zwischen Gerichten unterschiedlicher Ebenen in vernetzten Rechtsordnungen, Reihe: Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Band 195 (2008).

Wolfgang Kaleck/ Michael Ratner/ Tobias Singelstein/ Peter Weiss (eds.), International Prosecution of Human Rights Crimes (2007).

Tom Ginsburg/ Tamir Moustafa (eds.), Rule by Law: The Politics of Courts in Authoritarian Regimes (May 2008).

Ian Brownlie, Principles Of Public International Law (publication expected August 2008).

Nils Andersson/ Daniel Iagolnitzer/ Diana G. Collier (eds.), International Justice and Impunity: The Case of the United States (May 2008).

Christopher W. Mullins/ Dawn L. Rothe, Blood, Power and Bedlam: Violations of International Criminal Law in Post-Colonial Africa - New Perspectives in Criminology and Criminal Justice (June 2008).

Otto Triffterer, The Rome Statute of the International Criminal Court: Observers' Notes, Article by Article (June 2008).

Hector Olasolo Alonso, Criminal Responsibility of Political and Military Leaders for Genocide, Crimes Against Humanity and War Crimes: With Special Reference to the Rome Statute and the Statute and Case Law of the Ad hoc Tribunals (International & Comparative Criminal Law) (May 2008).

Gerry Simpson, Law, War and Crime: War Crimes Trials and the Reinvention of International Law (December 2007).

Annual Report of the International Law Commission on its fifty ninth session (A/62/10) - Chapter IX: The Obligation to extradite or prosecute (Aut Dedere Aut Judicare), pp. 221-228, <http://www.un.org/Docs/journal/asp/ws.asp?m=A/62/10>

Kate Parlett, Universal Civil Jurisdiction for Torture, European Human Rights Law Review, Issue 4 (2007), pp. 385-403, <http://lawlib.wlu.edu/CLJC/index.aspx?mainid=829&issuedate=2007-08-31&homepage=no>

Orna Ben-Naftali and Miri Sharon, What the ICJ did not say about the Duty to Punish Genocide - The Missing Pieces in a Puzzle, Journal of International Criminal Justice, Issue 5 (2007), pp. 859-874, Advanced Access- <http://jicj.oxfordjournals.org/papbyrecent.dtl>

The Journal of International Criminal Justice Volume 6, Number 2, May 2008 features several articles on The Law of Cruelty: Torture as an International Crime, available online at <http://jicj.oxfordjournals.org/current.dtl> (last accessed June 12, 2008)

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