

To Heads of Delegations to the Article 36 Committee

Re: Fifth Meeting of the EU Network of contact points on genocide, crimes against humanity and war crimes

Brussels, 1 April 2008



*Seeking Reparation for Torture Survivors*



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International Federation for Human Rights

**Dear Head of Delegation to the Article 36 Committee,**

We are writing in advance of the upcoming Article 36 Committee meeting in Brussels, at which you will discuss the EU Network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (EU Network). With this letter, the undersigned organizations wish to share their assessment of the EU Network's achievements to date and urge the Article 36 Committee to support the strengthening of the EU Network, notably through the creation of a permanent secretariat.

Established by Council Decision 2002/494 JHA, the EU Network was created to facilitate and increase cooperation among member states in the investigation and prosecution of grave international crimes at the national level. The fifth meeting of the Network that took place in The Hague on March 17<sup>th</sup> and 18<sup>th</sup> 2008, confirmed the value of the EU Network as a dedicated forum to discuss and advance regional collaboration and judicial cooperation on holding accountable those responsible for grave violations of human rights and humanitarian law. It is important to note that most national prosecutions for international crimes committed abroad have so far taken place in EU member states.

**1. Achievements of the EU Network to date in fostering exchange of information and collaboration in the investigation of genocide, crimes against humanity and war crimes.**

Since the first meeting of the EU Network, in November 2004, a number of cases of serious international crimes have been successfully prosecuted in Europe. These include two Afghan military officers convicted in the Netherlands of war crimes committed in Afghanistan, an Argentine officer convicted by a Spanish court of crimes against humanity in Argentina, three Rwandan perpetrators convicted before Belgian courts for participating in the Rwandan genocide, an Afghan warlord convicted in the United Kingdom for crimes in Afghanistan, and one Mauritanian officer in France.<sup>1</sup> Several further proceedings are currently ongoing in these and other European countries.

<sup>1</sup> A summary of cases and legislative developments from 2004 - 2007 can be found at FIDH & REDRESS, *EU Update on Serious International Crimes, June 2006*, Vol I/III available at: <http://www.redress.org/publications/EU%20Report%20vol%201%20June%202006%201%20.pdf> and <http://www.redress.org/publications/EU%20Report%20Vol%203%20July%202007.pdf>

Sharing these trials experiences has been extremely helpful in assisting EU member states in conducting more effective investigations and prosecutions of international crimes. The member states' aspiration that the EU not be a safe haven for war criminals makes it essential to create an effective and reliable forum for exchange of information and experience. The EU Network of contact points on war crimes, crimes against humanity and genocide provides this crucial forum.

In its meetings to date, the EU Network has achieved results which underscore the importance of its continued role in contributing to the ending of impunity for the most serious crimes.

- The meetings of the EU Network have enabled the **national “contact points”** (national judicial officials such as prosecutors or police investigators whose nomination was requested under the Council Decision establishing the EU Network) **to meet and make bilateral contacts**. Since the first meeting of the EU Network, a list of contact points within the EU member states is available, and prosecutors and investigators have contacted colleagues in other EU member states to seek information about countries under investigation and practical advice. An **email listserv** was established as a result of the increasing demand for continuous communication in between meetings and in order to facilitate more informal information exchange.
- The EU Network meetings have enabled the contact points to **exchange information about the status of respective national legislation** on prosecution of international crimes, practical enforcement advice, and **relevant information about successful cases**. Contact Points who attended the fourth and the fifth meetings emphasized that the discussions enhanced mutual cooperation and allowed them to share experiences on how to overcome challenges with respect, *inter alia*, to the taking of witness testimonies in the field, to handling extradition requests from non- European countries and cooperation with (non-) governmental organisations.
- The EU Network meetings have enabled **national authorities to consult with officials from the International Criminal Court (ICC) and the International Criminal Tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY)**, whose area of expertise is particularly relevant to their work on the investigation and prosecution of international crimes.
- Finally, the EU Network has created an opportunity for practitioners to **identify common needs that could be addressed jointly, possibly via action by the EU Network**. For example, at the third EU Network meeting, participants concluded that they had common gaps in knowledge and expertise which could be addressed through joint training sessions for investigators and prosecutors from different states.

## **2. The future of the EU Network:**

### *(i) The need for enhanced substantive discussions at EU Network meetings*

Practitioners are making progress in addressing many of the challenges presented by the investigation and prosecution of serious international crimes. The establishment and existence of the EU Network reflects the commitment of member states to the fight against impunity for these crimes.

Yet, past cases and discussions among contact points illustrate that member states and observer countries could introduce specific practical and legal measures to render investigations and prosecutions more effective. In particular, the contact points identified the following issues as ones that may benefit from further exchange of information: case selection, extradition of suspects, traumatized witnesses/ witness fatigue, specialized training and jurisprudence on international law as issues.

Moving forward, we believe that the EU Network meetings in their current broader format could be supplemented by focused sessions that would gather all interested contact points to discuss these specific challenges.

### *(ii) The need to strengthen the institutional structure of the EU Network:*

Contact Points at the fifth EU Network meeting underscored the need for a permanent and autonomous secretariat for the Network that would ensure its stability and enable it to live up to its potential. In close cooperation with the EU Presidency and equipped with adequate resources, such a secretariat could:

- **Ensure the organization of regular/semi-annual meetings:** Currently, the organization of EU Network meetings is the responsibility of the EU Presidency in close collaboration with the General Council Secretariat of the EU. Considerable time and energy is lost in simply deciding whether to organize a meeting. As a result, meetings have not taken place on a regular basis. As explained above, contact points during the fifth meeting emphasized that there are a lot of issues that need to be addressed in depth to render investigations and prosecutions of serious international crimes more effective. The proposed secretariat could therefore collaborate with the EU Presidency and contact points to organize semi-annual meetings of the EU Network, with one general meeting contributing to raising awareness among all EU member states and one focused meeting facilitating in-depth discussions of key issues, as proposed above.
- **Facilitate cooperation and information exchange:** A permanent secretariat could act as a first point of contact for members of the EU Network as well as for countries not represented in the EU Network. It could assist with contact information in ministries and law enforcement agencies of Member States and observer countries, thereby rendering cooperation requests more effective. The secretariat could be in charge of updating the list of contact points so that it clearly identifies the responsibilities of each contact point. A permanent secretariat of the EU Network could coordinate information requests and, building on the current informal email listserv managed by the Council Secretariat, establish a confidential listserv to enable

contact points to share detailed information on current or potential investigations in specific contexts. In addition, contact points have stressed the need for a confidential database accessible only to contact points from EU and observer countries. The database could include information on past and current cases, including the names and locations of suspects, witnesses, victims, country specific experts and risk assessments of relevant countries.

- **Follow up on adopted conclusions:** At each EU Network meeting, contact points have stressed the need for an appropriate infrastructure to ensure the implementation of conclusions adopted. Despite a clear conclusion at the third EU Network meeting that members should benefit from joint training, there is no EU Network representative in a position to organize such an initiative. A permanent secretariat would be in a position to present the Network's needs as identified by the conclusions to the variety of actors relevant for their implementation.

#### **4. Conclusion and Recommendations:**

National experiences presented during the EU Network meetings demonstrated that the investigation and prosecution of grave international crimes committed abroad at the national level is not only possible but also an important component of the fight against impunity for these heinous crimes.

The establishment of the International Criminal Court (ICC) has not removed the need for effective national prosecutions of war crimes, crimes against humanity and genocide. In fact, because of the court's limited jurisdiction and capacity, it could not have prosecuted any of the cases that have been successfully brought to justice in Europe so far. Also, as affirmed in the Council decision establishing the Network, the investigation and prosecution of international crimes remains the primary responsibility of national authorities under international law.<sup>2</sup>

The EU Network is therefore a necessary component of European and international efforts to bring perpetrators of serious international crimes to justice.

Despite the encouraging achievements described above, the EU Network is still in its early phases and needs to be strengthened in order for it to realize its potential. Contact points underscored the value added by the EU Network to their work to date, while at the same time emphasizing the need for a stronger institutional commitment.

We therefore recommend that the Article 36 Committee:

- Take all necessary steps to strengthen the structure of the EU Network; in this regard, we welcome the fact that the draft Eurojust decision currently being discussed includes the creation of a secretariat for the EU Network. It will be important that this secretariat be able to function autonomously;
- Take positive note of the report presented by the Council Secretariat about the 5<sup>th</sup> meeting of the EU Network and reaffirm the importance of the EU Network's contribution;

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<sup>2</sup> Preamble, Article 6. O.J. L 167/1 26.6.2002

- Share the above mentioned report and other relevant considerations about the EU Network with the Justice and Home Affairs Council in order to keep ministers abreast of the important developments discussed at the EU Network meetings;
- Encourage the forthcoming EU presidencies to organize meetings of the EU Network with the input of contact points and non- governmental organizations.

Thank you for your attention with regards to this important matter,

Yours sincerely,



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Carla Ferstman  
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Souhayr Belhassen  
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Cc: Javier Solana, Secretary-General of the Council of the European Union  
Franco Frattini, European Commissioner for Justice, Freedom and Security