

EU UPDATE ON INTERNATIONAL CRIMES

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Joint Hearing – Fostering an EU Approach to Serious International Crimes

REDRESS and FIDH, in association with the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Sub-Committee on Human Rights (DROI) of the European Parliament organised an international conference in Brussels on 20-21 November 2006 on 'Fostering an EU approach to Serious International Crimes'. The conference brought together government representatives from more than 20 European countries, policy makers and civil servants from European institutions, practitioners, academics and experts from civil society. Participants discussed how the EU as an institution and member States can ensure that safe havens for those accused of serious international crimes- genocide, crimes against humanity, war crimes and torture - are eradicated and that international law obligations are implemented and exercised in practice.

Baroness Sarah Ludford, Member of the European Parliament, opened the Conference and emphasised the need to end safe havens in Europe. Conference speakers addressed the causes for the creation and maintenance of safe havens and the consequential denial of justice to many victims. Issues such as inadequate domestic legislation and insufficient practical arrangements to enable immigration services, police and prosecution authorities to tackle these crimes effectively were considered.

Welcome

Welcome to the second edition of the 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 justice with a focus on European countries while at the same time highlighting the activities and competencies of the European Union.

This edition covers the REDRESS and FIDH conference on Serious International Crimes held in Brussels on 20-21 November 2006. It outlines legislative developments and jurisprudence in European countries over the past 6 months in relation to the fight against impunity for international crimes: war crimes, genocide, crimes against humanity and torture.

For further information on the conference, any additional input or comments please contact:

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Further information on the conference can be obtained at:
<http://www.redress.org/Conferences.html> and
http://www.fidh.org/article.php3?id_article=3779

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The International Criminal Court (ICC) plays an important role to ensure accountability of those most responsible for committing serious international crimes. Speakers emphasised this importance while underlining that the complementarity principle of the Rome Statute of the ICC implies a shared responsibility for combating impunity between States and the ICC. In fact, the limited resources available to the ICC means that the bulk of investigations and prosecutions must take place at the national level, including, where necessary, investigations and prosecutions carried out on the basis of universal jurisdiction. While obstacles to the exercise of universal jurisdiction remain, recent criminal prosecutions in several member States illustrate the important role that universal jurisdiction trials play in ensuring accountability for serious international crimes, most of which would otherwise have gone unpunished.

"There is still room for universal jurisdiction to perform two functions: first, to ensure that there are no safe havens for those responsible for the worst possible crimes in the world, and second, to act as a catalyst, as occurred in Argentina and Chile, for states where the crimes occurred or whose nationals committed them to fulfill their obligation under international law to investigate and, where there is sufficient admissible evidence, to prosecute".

Christopher Hall, Senior Legal Advisor, International Justice Project, Amnesty International

Investigators and prosecutors involved in some of these cases presented participants with lessons learned from investigations in countries as diverse as Afghanistan, Rwanda, Democratic Republic of Congo and Sierra Leone, and fair trial concerns from the perspective of defense counsel were also canvassed. Practitioners highlighted the important role of immigration authorities in alerting national prosecutors to the presence of suspects on their territory and the need for special units within police and prosecution authorities with expertise to conduct complex investigations abroad.

"The prosecution's ambition was to become a conduit for ordinary Afghani citizens to get their case across to a jury in London. The prosecution achieved that ambition by connecting with the people of Afghanistan and then allowing them to connect with twelve people on a jury in London, thousands of miles away, geographically and culturally".

Paul Taylor, Barrister, presenting the prosecution's case in *The People v Zardad* in July 2005

The EU was urged to take steps to strengthen the potential for mutual legal assistance with a wide diversity of countries. The significant role of the EU's Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes as well as the Interpol Working Group on these crimes was emphasised by practitioners and EU representatives alike. In this regard, participants highlighted the need for close cooperation and coordination of activities of member States as well as EU institutions to fight serious international crimes effectively. The EU approach to the fight against terrorism, which includes a framework decision defining the offence of terrorism, advanced protocols for mutual assistance as well as an anti-terrorism Coordinator, was presented as an advanced approach to tackle complex cross-border crimes with potential lessons to be learned for the fight against genocide, crimes against humanity, war crimes and torture.

Encouraging developments have taken place over the past three years, including an increase in investigations and prosecutions, the setting up of specialised police and prosecution units in some countries, both fostered in part by the work of the Network of Contact Points. The debate on universal jurisdiction has shifted from whether it should be exercised and whether the EU has competencies under the third pillar to ensure a common approach to how best to implement obligations in practice, how to overcome remaining obstacles and how to achieve a unified European Framework.

Various options for the way forward were considered:

Ø An EU Legal Framework to ensure compliance with international law obligations

International treaties such as the UN Convention against Torture and the Geneva Conventions of 1949 are designed to ensure accountability. All member states have ratified these and other relevant human rights treaties.¹ Yet the national laws of most member States do not fully reflect treaty, nor customary international law, obligations - impeding the practical application of international law. An EU Framework decision on serious international crimes adopted under the third pillar could assist and encourage member States to implement effectively international law obligations.

Ø An EU Action plan on serious international crimes

An Action Plan, similar to the Action Plan on the ICC, could be adopted to ensure a coherent approach to accountability for serious international crimes within the EU and to improve efforts at the national level to end impunity. Such a plan could enhance coordination between relevant second and third pillar activities, maximise the follow up and synergy of outcomes of relevant working groups of the Council and Committees of the European Parliament and progress the concept of a Framework decision on serious international crimes. Any action plan should ensure that the experiences of the fight against terrorism and organised crime are taken into account and should assist to coordinate activities of the Network of Contact Points with Europol and Eurojust.

Ø Strengthening the EU Network of Contact Points

The Network of Contact Points in respect of persons responsible for genocide, war crimes and crimes against humanity has substantially improved cooperation between member States. Currently, the organisation of meetings of the Network depends on the willingness of the country holding the Presidency of the EU. The Council and Commission should make more resources available to it and give it a more independent and stabilised structure that will guarantee its regular functioning irrespective of the holder of the Presidency. Such a structure could include the appointment of a Network coordinator and the provision of resources similar in scale to the resources devoted to transnational crimes such as terrorism and organised crime. .

Ø Setting up of specialised units

Investigations and prosecutions of serious international crimes require well-equipped specialised units. In line with Article 4 of the Council decision on the investigation and prosecution of genocide, crimes against humanity and war crimes, member States should consider setting up adequately resourced and staffed specialised units within immigration, police and prosecution services.

Ø Compliance with fair trial standards

The nature of universal jurisdiction trials make it particularly difficult for defence counsel to mount an effective defence. Adequate resources must be made available to defence counsel to adequately prepare the defence, present evidence and examine and challenge witness statements. ♦

¹ All EU Member States have ratified the Geneva Conventions and its first Protocol, the UN Convention against Torture, the Genocide Convention and, except for the Czech Republic, the Rome Statute of the International Criminal Court.

Fostering an EU approach to Serious International Crimes

Opening Speech by
Baroness Sarah Ludford, MEP

This conference is both timely and necessary. It is essential that those that perpetrate the most serious crimes of international concern - genocide, crimes against humanity, war crimes and torture - do not enjoy impunity by leaving the jurisdiction in which they have committed their crimes and finding safe haven elsewhere.

Perpetrators of international crimes do not recognise national borders. Likewise, as policy-makers we must ensure that states intensify co-operation between law enforcement and judicial services to get rid of the gaps in jurisdiction which can be easily exploited by such criminals. Impunity can only be tackled through coordinated effort at the national, regional and international levels. European states and the European Union must deliver on their commitment to liberty, respect for human rights and fundamental freedoms and the rule of law.

Important steps have been taken in developing a global justice system to fight impunity, particularly in the form of the International Criminal Court (ICC). The Rome Statute adopted in 1998 and which entered into force in July 2002 is the main instrument of redress for the most serious crimes, as well as acting as a deterrent. However, its jurisdiction is limited and, under the system of complementarity set out in the Rome Statute, all states have an obligation to bring to justice those responsible for genocide, crimes against humanity and war crimes. The principle of complementarity demands that efforts are made on a national level to make this possible.

As a member of the European Parliament's civil liberties, justice and home affairs committee and Liberal Democrat European justice spokeswoman, my main concern is what role the EU

should be playing in promoting international justice, in ensuring that the international criminal justice system functions and in closing impunity gaps. What can the EU do to strengthen the rule of law and the protection of human rights worldwide?

The EU has two fundamental roles in promoting reconciliation, justice, peace and security in the world - an external role and an internal role. Let me briefly expand on these two issues.

Externally, the EU has contributed to the fight against impunity through bilateral and regional demarches to foster human rights. In addition to its human rights dialogues and making respect for human rights a cornerstone of its international contractual relations, it has undertaken specific initiatives such as adopting an EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment.

The EU has also used its leverage with third countries to foster support for international justice. For example, EU pressure has contributed to improvements in the countries of the Western Balkans' cooperation with the ICTY. The EU suspended entry talks with Croatia in March 2005 until Croatia intensified its cooperation with the ICTY, and most importantly handed over General Gotovina. Meanwhile, talks remain on hold with Serbia as this country has still failed to arrest war crimes suspect General Mladic.

In the face of hostility from the US, the EU has been a leading force in the establishment

"Initiatives undertaken to date are far too limited- both in scope and number. It is clear that more needs to be done within the European Union and member states must decide if they are willing to put to one side concerns over protecting their national sovereignty in order to build an effective EU response to the most serious of international crimes".

and the strengthening of international justice mechanisms such as the ICC. Through its Common Positions and Action Plan the EU has come forward with concrete measures to achieve the objective of worldwide adherence to the Rome Statute and to

preserve its integrity from any attempt to undermine its letter and spirit. The EU has also encouraged partner countries to make clear their commitment to the ICC, including a joint commitment to the ICC in the revised Cotonou Agreement signed with the African, Caribbean and Pacific countries last year.

Finally, I would like to say a few words on the EU's role promoting international justice within the EU. One of the main challenges within the European Union is to ensure that victims' access to justice and the likelihood of perpetrators of international crimes not escaping impunity does not vary depending on the member state in which individuals find themselves. It is imperative that the patchwork of legal systems which makes up the EU does not make the EU a safe haven. Rather, we must work towards a single area of justice.

Important initiatives already undertaken in this respect include:

- The 2002 decision to set a network of contact points in respect of persons responsible for genocide, war crimes and crimes against humanity. This mechanism is designed to assist member states' national authorities to investigate and prosecute the most serious crimes of concern to the international community.
- This has been complemented by the 2003 Council decision on the investigation and prosecution of genocide, crimes against humanity and war crimes, stepping up cooperation between member states' law-enforcement and prosecution services to work effectively in the criminal investigation and prosecution of the actual or suspected perpetrators of these crimes. Regrettably, however, only 4 member states have complied and set up specialised units, and the lack of Commission powers to enforce this instrument illustrates the weakness of 'Third pillar' measures in this regard.

- The EU can also make a concrete contribution to the fight against impunity, equal access to justice and protection for victims through general judicial cooperation in criminal law. For example, the European Arrest Warrant applies to crimes under the Rome Statute, the European Evidence Warrant should facilitate the exchange of evidence and the Framework decision on the standing of victims in criminal proceedings from 2001 should facilitate access to legal advice and information for victims. Europol, Eurojust and the European Judicial Network can all also contribute to the effort of cooperation.

However, initiatives undertaken to date are far too limited - both in scope and number. It is clear that more needs to be done within the European Union and member states must decide if they are willing to put to one side concerns over protecting their national sovereignty in order to build an effective EU response to the most serious of international crimes.

For example, by failing to include in the Hague programme the need for specific EU instruments covering international crimes, the member states effectively prevent the EU institutions from making more headway in this respect.

The EP has a major role to play in defending and further developing the advances in international justice that we have seen in the 1990s. The EP strongly supports the building of a European area of freedom, security and justice to meet the challenge of globalization and serious international crime.

History will not look back on us kindly if we fail to do everything in our power to ensure that those who commit grave international crimes are punished, and to ensure that our justice procedures and systems are sufficiently robust to act as a strong deterrent.² t

² Abridged version of the Opening Speech delivered by Baroness Sarah Ludford MEP, Redress and FIDH Conference on national and international responses to serious international crimes on Mon 20th Nov 2006