



Network for investigation and
prosecution of genocide, crimes
against humanity and war crimes

Conclusions of the 9th Meeting of the European Network of Contact Points for investigation and prosecution of genocide, crimes against humanity and war crimes

14-15 October 2010, The Hague

1. The Members of the Network reiterate the need for a detailed evaluation and assessment of the existing international framework for international legal cooperation relating to crimes of genocide, crimes against humanity and war crimes as already discussed during the Network's last meeting in Madrid in May 2010.

In conclusion:

- They welcome a proposal made by the Netherlands to engage in in-depth discussions on (a) global international instrument(s) on mutual legal assistance and extradition in that field. The purpose of such instrument(s) would be to simplify the channels of communication for cooperation, establish clear and shared principles governing such cooperation, identify the relevant authorities for cooperation, dealing with modern acts of cooperation such as seizures of assets, interception of communications, establishing criteria for dealing with conflicting requests etc. They recommend that EU Member States play a proactive role in these discussions.
 - For the time being, they decide to request the Network's Secretariat to be established within Eurojust ("the Secretariat"), with the contribution, if necessary, of the rotating Presidency, to share information within the Network on current best practices and to collect information on a list of contact persons within situation countries based on experiences of cooperation made by Members of the Network. The Secretariat will also make this information available to all Members of the Network.
2. Following the discussions of the 8th meeting of the Network in May 2010, Members of the Network further explored the application of extraterritorial jurisdiction by Member States. They welcome the relevant information provided by many Members of the Network on their legal provisions on this matter, on the basis of the questionnaire distributed by the Spanish Presidency and expanded by the Belgian Presidency taking stock of information gathered within the framework of COJUR and COJUR-ICC, in order to compile a collective overview of legislation. In that context, the further progress made in the project on universal jurisdiction in the 27 EU Member States currently carried out by REDRESS-FIDH was also welcomed.

In conclusion:

- They request the Secretariat to keep updated the table presented during the meeting gathering information on existing national legislation in EU Member States relating to crimes of genocide, crimes against humanity and war crimes and to extraterritorial

jurisdiction. They also decided to expand that table to existing legislation in states participating in meetings as observers. That information will be made available to all Members of the Network and observers.

3. The protection of witnesses is crucial for the effective and efficient prosecution of persons responsible for genocide, crimes against humanity and war crimes for the overall fight against impunity for these crimes. Protection was discussed in relation to witnesses, their relatives, but also counsel under threat.

In conclusion:

- The Members of the Network decide to request the Secretariat to gather information on existing tools, structures and best practices for witness protection within the EU Member States and observer States. The tools shall encompass identification of protected persons, confidentiality rules, rules for relocation of witnesses, transit of protected persons, residence status, physical protection, measures to avoid the tracing of protected persons, material/financial and psychological support, change of identity, protection during and after trial, taking due account of the rights of the accused. With regard to the existing structures, the Secretariat will gather information from the contact points on contacted persons within the competent witness protection services of the other Member States and observer states.
 - Members of the Network recommend that Member States consider the usefulness of harmonisation of national legislation and/or the mutual recognition of decisions taken at national level within the EU. They also recommend that competent authorities at national level participate actively in the ongoing public consultation on victims conducted by the EU Commission. They also recommend that the Network organise specific meetings on this field with national experts.
4. Bearing in mind the vulnerability of many witnesses testifying in cases of crimes of genocide, crimes against humanity and war crimes, the special needs of witnesses shall be duly taken into consideration throughout the process. Best practice of national institutions and of international courts and tribunals regarding a number of issues, including the identification, compensation, on site hearings of witnesses, and assistance provided to witnesses is to be compiled.

In conclusion:

- The Members of the Network request the Secretariat to gather information on best practice relating to identification of witnesses. This information could also include practical details of 'on site' research, cooperation with local authorities or other resources persons/organisations in countries where the crimes occurred, cooperation with national immigration authorities.

- They also recommend that the Network explore innovative means of coordination on the field of parallel investigations being conducted by two or more Members States' authorities at the same time.
 - They also recommend that the Network explore the issue of witnesses travelling where the witness has no clear citizen/residence status.
5. The problems that the International Committee of the Red Cross faces in relation to its mandate and the performance of its work, especially in relation to the privilege of ICRC personnel not to testify and the confidentiality of ICRC documents were discussed.

In conclusion:

- Members of the Network ask the ICRC to provide them with adequate information on the rationale and the international rules applicable to this problematic issue.
 - They also recognise the need for competent national authorities to take action in order to implement these international rules properly at the domestic level.
6. The interplay between prosecutions by international criminal tribunals, particularly the International Criminal Court (ICC), and domestic prosecutions will be crucial in the future for the overall fight against impunity. An enhanced relationship between the two levels will enable the ICC, EU Member States and observer States to coordinate their work and to use their capacities in an efficient manner.
7. The completion strategies of the ICTY and the ICTR will be a major challenge in the coming years. Efforts need to be undertaken to enable national institutions to build fully on the work already carried out by the tribunals and thereby result in a true completion of the work of both tribunals.

In conclusion:

- Members of the Network consider support and close cooperation with each other and with the ICTY and the ICTR in this regard crucial.
 - They express the wish to be kept informed of the key decisions to be adopted on the completion strategy, namely with regard to future consultation of judicial archives of these institutions by national authorities.
8. Members of the Network confirmed their decision to have, as a rule, open sessions with the participation of observer States, relevant institutions (including the International Criminal Court, Tribunals and the ICRC) and NGOs. However, each meeting will also provide for a closed session, the format and the participation in which is to be based on the subject-matter to be covered during the closed session.
9. During the 9th session of the Network, a roundtable on the state of play on ongoing investigations and requests for extraditions took place.

In conclusion:

- Members of the Network request the Secretariat to gather information from all contact points on a list of countries in which EU Members States' national authorities have conducted investigations on crimes of genocide, crimes against humanity and war crimes. This information is to be restricted to the UE contact points and observer State participants.
- They also decided to dedicate more time in closed session to exchanging information on current investigations and requests for extradition pertinent for the work of the Network and its participants.

10. The revision of the Council Decision 2002/494/JHA was examined with regard to the pledge made in the Rome Statute Review Conference held in Kampala (May-June 2010).

In conclusion:

- Members of the Network recommend to the rotating Presidency to inform the competent working parties within the EU of the usefulness of considering introducing in a reviewed version of the Decision provisions on , inter alia, organisation of meetings of the Network (on the basis of at least one meeting every six months), an explicit status within the Network for observer States and pertinent institutions (including the International Criminal Court, Tribunals and the ICRC) and NGOs, the possibility for ad hoc meetings on specific matters also open to other national experts, the role of the Secretariat (namely information sharing, collection of best practices and a reporting mandate to the Network on the implementation of the Network's decisions and recommendations), the expansion of the scope of the Network's mandate in order to be able to deal with natural and/or legal persons suspected of having committed crimes of genocide, crimes against humanity and war crimes regardless of their nationality.
11. Members of the Network welcome the ongoing efforts undertaken regarding the establishment of the Secretariat of the Network within Eurojust in early 2011. The Secretariat is expected considerably to improve the work and coordination of the Network in the future.
12. Members of the Network consider the further development of a trio programme an effective tool for advancing the work of the Network and providing continuity in its work. They encourage the next trio-Presidency to build upon the efforts made during the current trio-Presidency and to develop a similar work programme.
13. Following the discussion on assembling a pool of agenda items for future meetings, the Members of the Network reiterate the importance of the following topics: identification of and access to witnesses, witness protection, issues related to victims, preservation of evidence, awareness raising amongst migrants, and the completion strategies of the international criminal tribunals and specialised courts. They also decided to add other agenda items, inter alia the SCSL completion strategy, information on the ICC Legal Tools project, information on initiatives relating to establishing an International Centre dedicated

to the prevention of genocide and mass atrocities, forensic questions and challenges and cooperation with national immigration authorities. Therefore they should be included in the agendas of future meetings of the Network. Participants are invited further to contribute to the development of the pool of agenda items.