



# **STRATEGIES FOR THE EFFECTIVE INVESTIGATION AND PROSECUTION OF SERIOUS INTERNATIONAL CRIMES:**

## **The Practice of Specialised War Crimes Units**

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“The investigation and prosecution of, and exchange of information on, genocide, crimes against humanity and war crimes is to remain the responsibility of national authorities, except as affected by international law.”

Preamble, Council Decision 2002/494/JHA, 13 June 2002

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“Member States shall 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.”

Article 4, Council Decision 2003/335/JHA 8 May 2003

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## Introduction

...States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish him or her. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.<sup>1</sup>

All States are obliged to investigate with a view to prosecuting serious international crimes – genocide, crimes against humanity, war crimes, torture and enforced disappearances. This obligation is reflected in international treaties and customary international law.

International treaties, such as the United Nations Convention on the Protection of all Persons from Enforced Disappearances of 2006<sup>2</sup>, the UN Convention against Torture of 1984<sup>3</sup> and the Geneva Conventions of 1949<sup>4</sup> all oblige States Parties to ensure that those accused of committing the proscribed crimes are brought to justice, and include ‘prosecute or extradite’ or ‘seek out and prosecute’ clauses aimed at ensuring that trials occur, regardless of where the crimes took place and the location of the suspects.

The Rome Statute of the International Criminal Court (ICC) reminds State Parties that it is the responsibility of each State to “exercise its criminal jurisdiction over those responsible for international crimes.”<sup>5</sup>

The courts of the State where the crime took place (the “territorial State”) would appear to be the most obvious location for the investigation and prosecution to take place. To extradite suspects who are found outside of the territorial State for trial in the territorial State may seem to be the most appropriate way forward to ensure accountability. In reality, however, the territorial State may not be in the best position to investigate.

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<sup>1</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by General Assembly Resolution 60/147 of 16 December 2005, Principle 4.

<sup>2</sup> *International Convention for the Protection of All Persons from Enforced Disappearance*, adopted on 20 December 2006, Article 9 (2), entered into force on 23 December 2010.

<sup>3</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, entered into force 26 June 1987, Arts. 5, 7 (1).

<sup>4</sup> *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949 (hereinafter ‘First Geneva Convention’, ‘GC I’), Arts 49(2); *Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949 (hereinafter ‘Second Geneva Convention’, ‘GC II’), Arts 50(2); *Convention relative to the Treatment of Prisoners of War*, 12 August 1949 (hereinafter ‘Third Geneva Convention’, ‘GC III’), Arts 129(2); *Convention relative to the Protection of Civilian Persons in Time of War*, 12 August 1949 (hereinafter ‘Fourth Geneva Convention’, ‘GC IV’), Arts 146(2).

<sup>5</sup> Preamble of the Rome Statute of the ICC, A/CONF.183/9, 17 July 1998.

Barriers may exist, for instance if the judiciary was destroyed as a result of conflict, where States are unwilling to investigate or prosecute due to State involvement or acquiescence in the commission of the crimes or where there is no possibility to extradite to the territorial state.

The unavailability of judicial procedures in the territorial State and the resulting impunity for serious crimes under international law are among the main reasons that led to the establishment of international ad hoc criminal tribunals and in particular the International Criminal Court (ICC). However, the limited geographical scope of the former and the restricted temporal mandate of the latter, as well as other limitations on the mandate of the ICC Office of the Prosecutor make it clear that international courts and tribunals are not designed to investigate or prosecute *all* individuals suspected of perpetrating international crimes. Indeed, the Office of the Prosecutor of the ICC has indicated a “*risk of an impunity gap unless national authorities, the international community and the ICC work together to ensure that all appropriate means for bringing other perpetrators to justice are used*”.<sup>6</sup>

Rather than making national law enforcement officials and judicial authorities redundant in the fight against impunity, these international criminal courts and tribunals reinforce the need for States worldwide to play their part in the investigation and prosecution of the most heinous international crimes.<sup>7</sup> States’ obligations to cooperate with international criminal tribunals and the ICC underscore this imperative.<sup>8</sup>

There is a growing State practice. Numerous investigations and prosecutions have been initiated by national police and prosecution services on the basis of universal or related forms of extraterritorial jurisdiction in recent decades. National authorities in countries including Austria, Belgium, Canada, Denmark, France, Finland, Sweden, Germany, the United Kingdom, the Netherlands, Norway, Senegal, Spain and the United States of America (United States), have initiated proceedings against suspects of war crimes, torture, crimes against humanity or genocide committed in Afghanistan, Iraq, Mauritania, Uganda, Rwanda, Sierra Leone, Democratic Republic of Congo, Chad, Argentina, Tunisia, Chechnya, and the former Yugoslavia. In addition, victims, relying on the principle of universal jurisdiction, have filed complaints against suspects from China, the United States, Rwanda, Chad, France, Israel, Algeria and Tunisia.<sup>9</sup>

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<sup>6</sup> *Paper on Some Policy Issues Before the Office of the Prosecutor*, ICC, September 2003, p.3, available at: [www.icc-cpi.int/NR/rdonlyres/1FA7C4C6-DE5F-42B7-8B25-60AA962ED8B6/143594/030905\\_Policy\\_Paper.pdf](http://www.icc-cpi.int/NR/rdonlyres/1FA7C4C6-DE5F-42B7-8B25-60AA962ED8B6/143594/030905_Policy_Paper.pdf).

<sup>7</sup> See further, A. Wartanian, “The ICC Prosecutors Battlefield: Combating Atrocities While Fighting for States’ Cooperation: Lessons from the UN Tribunals Applied to the Case of Uganda”, *Georgetown Journal of International Law*, (July 2005).

<sup>8</sup> Art. 27 of the Statute of the ICTY; Art. 28 of the Statute of the ICTR; Art. 86 of the Rome Statute of the ICC.

<sup>9</sup> For an overview of prosecutions based on universal and extraterritorial jurisdiction see, J. Rikhof, “Fewer Places to Hide? The impact of domestic war crimes prosecutions on international law”, Conference Paper 2008, available at: [www.isrcl.org/Papers/2008/Rikhof.pdf](http://www.isrcl.org/Papers/2008/Rikhof.pdf); Human Rights Watch, *Universal Jurisdiction in Europe: The State of the Art*, at <http://hrw.org/reports/2006/ij0606>; FIDH and REDRESS, *Legal Remedies for Victims of “International Crimes” – Fostering an EU approach to Extraterritorial Jurisdiction*, September 2004, at: [www.redress.org/downloads/publications/LegalRemediesFinal.pdf](http://www.redress.org/downloads/publications/LegalRemediesFinal.pdf) (English) and [www.redress.org/downloads/publications/LegalRemedies-Final-french.pdf](http://www.redress.org/downloads/publications/LegalRemedies-Final-french.pdf) (French).

A number of countries, pre- dominantly European, but also Canada and the United States, have established '*specialised units*' within their immigration, police and/ or prosecution services, designed to detect, investigate and prosecute individuals suspected of perpetrating serious international crimes. The main rationale for the establishment of such units is that serious international crimes, just as other complex crime areas such as terrorism or drug trafficking, require specialised approaches. The legal, practical and political complexities can result in resource and time intensive investigations and prosecutions that cannot be dealt with consistently by the average law enforcement officials more familiar with burglary, assault or other purely domestic crimes. Police investigators, prosecutors and judges face a number of challenges when investigating crimes that have been committed abroad, sometimes years, if not decades earlier. These authorities may lack familiarity with the historical and political context of the crimes or with the intricacies of applicable international law. Mass crimes, such as the 1994 genocide in Rwanda, typically involve a great number of suspects, traumatised and often marginalised victims and witnesses with a different cultural background and language. These added characteristics further distinguish such cases from those typically dealt with by regular crime investigators, prosecutors and judges.

It is against this background that the International Federation for Human Rights (FIDH) and REDRESS organised an international conference entitled "***Strategies for the Effective Investigation and Prosecution of Serious International Crimes: The Practice of Specialised War Crimes Units***", which took place on 3- 4 November 2008 in Brussels, Belgium. Building on the experiences of national authorities, the Conference sought to explore lessons learned regarding the establishment and operation of specialised units, with representatives from ministries of justice and foreign affairs, prosecutors, investigators and immigration officials and experts from civil society. Experts from thirteen countries discussed whether, to what extent and under what conditions, specialised units help end safe havens for perpetrators of the worst crimes. Different models were examined, as were approaches taken by States where no such units exist.

This Report is based in part on the discussions which arose during the conference and on additional research and new developments since the conference took place. The Report is predominantly focussed on European countries and experiences, as it is in Europe where the majority of specialised units exist and where most extraterritorial investigations and prosecutions of serious international crimes have taken place, so far.

The purpose of the Report is to highlight the advances made and lessons learned in recent years in the fight against impunity on a national level and to specifically illustrate how, with institutional commitment and political will, national authorities can effectively investigate and prosecute serious international crimes. A growing number of countries have established specialised units. The European Union has adopted a Framework Decision on the '*investigation and prosecution of genocide, crimes against humanity and war crimes*', urging Member States '*to consider 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*'.

# I. Origins and Purposes of a Specialised Unit

## I.1 Prosecuting Nazi Criminals: The First Specialised Units

The first specialised units were established to investigate and prosecute Nazi war criminals in Germany (1958),<sup>10</sup> the United States (1979),<sup>11</sup> Canada, (1985),<sup>12</sup> the United Kingdom (1991),<sup>13</sup> Australia (1987)<sup>14</sup> and Poland (1998).<sup>15</sup> The units were typically established in response to the findings of national commissions of inquiry, which invariably determined a large presence of Nazi war crime suspects living in the countries concerned.

In the United Kingdom, a Parliamentary report was published in 1989 on suspected war criminals living in the UK ('Hetherington- Chalmers Inquiry Report'<sup>16</sup>), recommending a change in the law to "permit prosecutions in this country of acts of murder and manslaughter committed as war crimes in Germany or German- occupied territory during the period of the Second World War, by persons who are now British citizens or who are resident in the United Kingdom."<sup>17</sup> The Report further recommended that "[S]ome action should be taken in respect of alleged war criminals who are now British citizens or are resident in this country where the evidence is sufficient to justify such action." ...and that "the crimes committed are so monstrous that they cannot be condoned: their prosecution could act as a deterrent to others in future wars. To take no action would taint the UK with the slur of being a haven for war criminals."<sup>18</sup> The Report subsequently led to the adoption of the *War Crimes Act 1991*<sup>19</sup> which provided for a budget for the investigation of suspected Nazi war criminals, resulting in the

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<sup>10</sup> The Central Office of the State Justice Administration for the Investigation of National Socialist Crimes (Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen) [www.zentrale-stelle.de/servlet/PB/menu/1193355/index.html?ROOT=1193201](http://www.zentrale-stelle.de/servlet/PB/menu/1193355/index.html?ROOT=1193201) (official site of the German investigatory branch, text in German).

<sup>11</sup> See the US Department of Justice Human Rights and Special Prosecutions Section, [www.justice.gov/criminal/hrsp/about/](http://www.justice.gov/criminal/hrsp/about/).

<sup>12</sup> See Canadian Department of Justice, at [www.justice.gc.ca/eng/pi/wc-cg/wwwp-pgm.html](http://www.justice.gc.ca/eng/pi/wc-cg/wwwp-pgm.html).

<sup>13</sup> See the *War Crimes Act 1991* (UK) [www.uk-  
legislation.hmsso.gov.uk/acts/acts1991/Ukpga\\_19910013\\_en\\_1](http://www.uk-legislation.hmsso.gov.uk/acts/acts1991/Ukpga_19910013_en_1).

<sup>14</sup> D. Blumenthal & T. McCormack (eds), "The Legacy of Nuremberg: Civilising influence or institutionalized Vengeance?", 2008, Review by Ben Batros, in *Journal of International Criminal Justice* (2009) 7 (2): 440-442.

<sup>15</sup> Central Commission for Investigation of German Crimes in Poland – now the 'Chief Commission for the Prosecution of Crimes against the Polish Nation' [www.ipn.gov.pl/portal/en/35/1/Brief\\_history.html](http://www.ipn.gov.pl/portal/en/35/1/Brief_history.html).

<sup>16</sup> The Simon Wiesenthal Centre provided the UK Government with a list of suspected Nazi war criminals who allegedly were living in the UK at the time; see also New Statesman, Lords Debates on 4 June 1990, at <http://yourdemocracy.newstatesman.com/parliament/war-crimes-bill/HAN10305551>. The Inquiry found 301 suspects living in the UK.

<sup>17</sup> See Section 1 of the *War Crimes Act 1991*, adopted 9 May 1991.

<sup>18</sup> New Statesman, Lords Debates on 24 July 1989, at <http://yourdemocracy.newstatesman.com/parliament/war-crimes-inquiry-report/HAN10242510>.

<sup>19</sup> *War Crimes Act 1991*.

establishment of a specialised war crimes unit within the Metropolitan Police Service (MPS).<sup>20</sup> The unit was disbanded in 1999 after having investigated 376 cases and prosecuted one suspect.<sup>21</sup> Requests to re-establish a unit of seven investigators to investigate post World War II crimes were rejected in 2003.<sup>22</sup>

Similarly, in 1985 the Canadian Government established specialised war crimes units within the Department of Justice and the Royal Mounted Police after a Commission of Inquiry concluded that approximately 900 suspected Nazi war criminals were living in Canada.<sup>23</sup> Shortly after, this Unit was expanded to include the investigation and prosecution of suspects of serious international crimes committed after World War II.<sup>24</sup> In fact, according to the Canadian Department of Justice, “[s]ince 1995, there is no real distinction between the process and policy applicable to WWII and Modern War Crimes”.<sup>25</sup>

Hetherington-Chalmers  
Parliamentary Inquiry  
Report:

***“The crimes committed are so monstrous that they cannot be condoned ... To take no action would taint the UK with the slur of being a haven for war criminals.”***

The establishment of specialised units to investigate and prosecute Nazi war criminals did not result in a high number of prosecutions, which appears to be the main reason why the majority of these units- with the exception of the Canadian and German unit<sup>26</sup> were disbanded: the relatively high costs involved were not considered to be justified in relation to the low number of prosecutions. In Australia, the Special Investigative Unit (SIU) was disbanded in 1992 after having investigated more than 650 allegations over a period of four years. None of these led to a prosecution.<sup>27</sup> However, the dismantling of the SIU also meant that, seven years later, the Australian authorities were not sufficiently equipped to initiate a prosecution against Konrad Kalejs, who was arrested in Australia in 1999, having previously been deported to Australia from the United States and the

<sup>20</sup> Ibid, s. 2.

<sup>21</sup> In one third of these cases the suspects were already dead, others were too old to be interviewed and in 25 cases the evidence did not point towards responsibility. The Crown Prosecution Service considered 10 cases and charged two persons. One suspect, Anthony Sawoniuk, was prosecuted, convicted and sentenced to life imprisonment after having been found guilty of killing two Jews. See for further information BBC, “UK War crimes trial could be first and last, 1 April 1999, at <http://news.bbc.co.uk/1/hi/uk/309814.stm>; see also T. Luckhurst, for The Guardian, “Why won’t Britain jail this war criminal?”, at [www.guardian.co.uk/world/2001/sep/02/warcrimes.germany](http://www.guardian.co.uk/world/2001/sep/02/warcrimes.germany).

<sup>22</sup> For the request made by the Metropolitan Police Agency see “MPA Budget Submission to the GLA, Nov. 2003, Part 3, at [www.mpa.gov.uk/downloads/committees/mpa/mpa-031030-7a-appendix.pdf](http://www.mpa.gov.uk/downloads/committees/mpa/mpa-031030-7a-appendix.pdf); Aegis Trust, *Suspected War Criminals and Genocidaires in the UK: Proposals to Strengthen our Law*, 2009, p. 22, at [http://aegisnew.aegisdns.co.uk/emails/resources/june\\_2009\\_report/Suspected\\_War%20Criminals\\_and\\_Genocidaires\\_in\\_the\\_UK.pdf](http://aegisnew.aegisdns.co.uk/emails/resources/june_2009_report/Suspected_War%20Criminals_and_Genocidaires_in_the_UK.pdf).

<sup>23</sup> See Canadian Department of Justice, ‘Canada’s Crimes Against Humanity and War Crimes Program: World War II Program’ at [www.justice.gc.ca/eng/pi/wc-cg/www-pgm.html](http://www.justice.gc.ca/eng/pi/wc-cg/www-pgm.html).

<sup>24</sup> Ibid.

<sup>25</sup> Id.

<sup>26</sup> The Central Office of the State Justice Administration for the Investigation of National Socialist Crimes (Zentrale Stelle der Landesjustizverwaltungen zur Aufklärung nationalsozialistischer Verbrechen) still existed at the time of writing, see [www.zentrale-stelle.de/servlet/PB/menu/1193355/index.html?ROOT=1193201](http://www.zentrale-stelle.de/servlet/PB/menu/1193355/index.html?ROOT=1193201).

<sup>27</sup> D. Blumenthal & T. McCormack (eds), “The Legacy of Nuremberg: Civilising influence or institutionalized Vengeance?”, 2008, Review by Ben Batros, in *Journal of International Criminal Justice* (2009) 7 (2): 440-42.

United Kingdom on strong suspicions of having committed war crimes in Latvia during World War II.<sup>28</sup>

These units' focus on crimes committed in some cases almost four decades earlier invariably meant that successful prosecutions would be difficult and at times impossible to achieve due to the passage of time, fading memories of witnesses and victims and in particular the age and health of the suspects.<sup>29</sup> A timelier establishment of units after the end of WWII could have at least addressed these issues. Nevertheless, the investigations that were carried out sent a message to the suspects that they were never really free from suspicion, despite the significant passage of time.

## I.2 Prosecuting Post World War II Crimes

### a) Centralising and developing expertise

Aside from WWII crimes, most of the cases prosecuted over the past decade involved crimes committed in contexts far removed from the forum states (the States exercising jurisdiction). The detection, investigation and prosecution of suspects of these crimes requires special knowledge, skills and a long term commitment. Witnesses are most often located in the territorial state; victims are often traumatised and may require specific counselling. The crimes are not normally reported to the local police station like ordinary crimes. Even though victims and NGOs may bring the cases to the attention of relevant authorities, there is ample opportunity for suspects to fall through the cracks.

Several countries decided to concentrate expertise and experience within specialised units to overcome some of the major difficulties involved in detecting, investigating and prosecuting suspects of serious international crimes. Sufficiently equipped units allow for the concentration of information, development of expertise and experience and an institutional knowledge base which in turn can render the criminal justice system more efficient and better able to ensure accountability on a consistent basis.

- The **Canadian** Department of Justice for instance notes *"that the research required to investigate and prepare such cases for prosecution is highly specialised and intensive"* and noted that a specialised unit would best combat these challenges.<sup>30</sup>
- After **Sweden** ratified the Rome Statute in 2000, one police officer within the National Criminal Police was appointed as national contact point and coordinator for ICC crimes, while the investigation of such crimes was decentralised to detectives from regional police authorities.<sup>31</sup> However, these arrangements were

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<sup>28</sup> P. Barkham for the Guardian, Obituary: "Konrad Kalejs", 12 Nov. 2001, at [www.guardian.co.uk/news/2001/nov/12/guardianobituaries.warcrimes](http://www.guardian.co.uk/news/2001/nov/12/guardianobituaries.warcrimes).

<sup>29</sup> See for instance the results of the investigations of the UK Metropolitan Police Service's war crimes unit, above fn 21.

<sup>30</sup> Department of Justice, Canada, Canada's Crimes against Humanity and War Crimes Program, available at <http://canada.justice.gc.ca/warcrimes-crimesdeguerre/home-accueil-eng.asp>

<sup>31</sup> Presentation of Lars Hedvall, Prosecutor of the Swedish Unit, at the FIDH & REDRESS conference, 3 Nov. 2008.

considered to be insufficient in light of the number of complaints filed with Swedish authorities, the complexities involved in investigating these as well as responding to international police cooperation requests in relation to such cases. In 2006 a joint assessment team comprised of police officers, public prosecutors and immigration officials was created to examine how investigations and prosecutions in serious international crimes could be improved. The team recommended that a specialised unit be established within the national police service. The team also recommended that specially designated prosecutors be appointed within the International Public Prosecution Office in Stockholm.<sup>32</sup> Both units were subsequently established in March 2008.<sup>33</sup>

- In **Germany**, the establishment of the “Central Unit for the Fight against War Crimes” in 2003 coincided with the entering into force of the new German Code of Crimes against International Law (CCAIL) and the commencement of the work of the ICC.<sup>34</sup> The unit was initially staffed with only one police investigator responsible for serious international crimes cases as well as for cooperation requests from other jurisdictions.<sup>35</sup> The unit was restructured in April 2009 and is now called “Central Unit for the Fight against War Crimes and further offences pursuant to the Code of Crimes Against International Law” (ZBKV)<sup>36</sup> growing to a staff of seven permanent police investigators. In November 2009, the unit was responsible for the arrest of two Rwandan nationals suspected of involvement in crimes against humanity and war crimes committed in Eastern Democratic Republic of Congo.<sup>37</sup> Both have been indicted and their trial is expected to start in spring 2011.<sup>38</sup>

Most staff of specialised units benefit from specific training courses designed to master evidentiary as well as the key legal challenges that may arise. Staff of the German<sup>39</sup> and Dutch units<sup>40</sup> for instance participated in courses offered by the Institute for International Criminal Investigation (IICI),<sup>41</sup> in addition to training organised by Interpol,<sup>42</sup> while the Danish, Norwegian and Swedish units organised several joint training sessions on issues such as open source research, the use of specific research

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<sup>32</sup> FIDH & REDRESS interview with Ingemar Isaksson, Detective Superintendent of the Swedish National Criminal Police War Crimes Unit, in “EU Update on Serious International Crimes”, Issue 4, Summer 2008.

<sup>33</sup> Ibid.

<sup>34</sup> Information provided by the “Central Unit for the Fight against War Crimes and further offences pursuant to the Code of Crimes against International Law” within the German Federal Criminal Police, 10 Nov. 2010. Copy on file with the authors.

<sup>35</sup> Human Rights Watch, Universal Jurisdiction in Europe: the State of the Art, July 2006, p. 66, at <http://hrw.org/reports/2006/ij0606>.

<sup>36</sup> Supra. n. 34.

<sup>37</sup> Press Release of German Federal Prosecutor, “Festnahme mutmaßlicher Führungsfunktionäre der “Forces Démocratiques de Libération du Rwanda” (FDLR)”, 17 November 2009, at [www.generalbundesanwalt.de/de/showpress.php?themenid=11&newsid=347](http://www.generalbundesanwalt.de/de/showpress.php?themenid=11&newsid=347); see also BBC News, “Germany arrests top Rwanda rebels”, 17 November 2009, at <http://news.bbc.co.uk/2/hi/8364507.stm>.

<sup>38</sup> Klaus Zorn, Chief Superintendent, ZBKV, at FIDH & REDRESS conference on “Extraterritorial Jurisdiction in Europe”, 1 December 2010.

<sup>39</sup> German Ministry of Justice, response to FIDH and REDRESS Questionnaire, copy on file with the authors.

<sup>40</sup> Dutch Police, response to FIDH and REDRESS Questionnaire, copy on file with the authors.

<sup>41</sup> Institute for International Criminal Investigation (IICI), at <http://www.iici.info/pages/index.php>.

<sup>42</sup> See: [www.interpol.int/Public/CrimesAgainstHumanity/default.asp](http://www.interpol.int/Public/CrimesAgainstHumanity/default.asp).

software products, the gathering of evidence as well as collection of information on specific countries.<sup>43</sup> British prosecutors, though not working full time on such crimes, received in-house training from a British judge who served at the ICTY as well as lawyers working abroad on international humanitarian law issues.<sup>44</sup>

## b) No- safe haven policy

EU Council Decision of 8 May 2003 on the ‘investigation and prosecution of genocide, crimes against humanity and war crimes’, noted that

*Member States are being confronted on a regular basis with persons who were involved in such crimes [genocide, crimes against humanity and war crimes] and who are trying to enter and reside in the European Union”.*<sup>45</sup>

Netherlands Police Agency,  
National Crime Squad:

“War crimes are the most serious types of crime. We believe those guilty of war crimes should be punished to the fullest extent of the law, wherever they are. The Netherlands does not wish to be a safe haven for war criminals. The government also wishes to prevent people who flee from a situation of war to the Netherlands from being confronted with the very criminals that they sought to escape.”

The concern of providing safe havens was a major incentive for certain countries to set up specialised units. The Danish Minister of Justice stressed that ‘war criminals and the like shall not find a safe haven in Denmark, but must be investigated and prosecuted if the conditions so allow’.<sup>46</sup> Following the establishment of the ICTY, the Dutch Government established a special team, the “NOJO” team (*Nationaal Opsporingsteam Joegoslavische Oorlogsmisdadigers*) to specifically deal with suspected war criminals from the former Yugoslavia who sought refuge in The Netherlands.<sup>47</sup>

The British Home Office, in a White Paper published in February 2002, recognised that “governments must be prepared to use their full range of powers, including the selective use of

<sup>43</sup> Danish Special International Crimes Office, Annual Report 2009, English Summary, at [http://www.sico.ankl.dk/media/SICO\\_2009\\_-\\_Summary\\_in\\_English.pdf](http://www.sico.ankl.dk/media/SICO_2009_-_Summary_in_English.pdf).

<sup>44</sup> Crown Prosecution Service, response to FIDH & REDRESS questionnaire, copy on file with the authors

<sup>45</sup> Council Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes, 2003/335/JHA, Official Journal L118/12, 14.05.2003, available online at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l\\_118/l\\_11820030514en00120014.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_118/l_11820030514en00120014.pdf); This decision builds upon the 2002/494/JHA Council Decision of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:167:0001:0002:EN:PDF>

<sup>46</sup> See, Birgitte Vestberg, “Prosecuting and Investigating International Crimes in Denmark”, Guest Lecture Series of the Office of the Prosecutor, 5 April 2006, page 2.

<sup>47</sup> C. Ryngaert, “Universal Jurisdiction in an ICC Era: A role to play for EU Member States with the Support of the European Union”, Working Paper No87- September 2004, p.24, available at [www.law.kuleuven.be/iir/nl/onderzoek/wp/WP87e.pdf](http://www.law.kuleuven.be/iir/nl/onderzoek/wp/WP87e.pdf); similarly, the objectives of the current Dutch war crimes unit, see [www.ind.nl/en/Images/KLPD%20Folder%20Oorlogsmisdaden%2013%20talen\\_tcm6-183962.pdf](http://www.ind.nl/en/Images/KLPD%20Folder%20Oorlogsmisdaden%2013%20talen_tcm6-183962.pdf).

immigration and nationality provisions, to make it clear that those who are suspected of involvement in atrocities are not welcome in a civilized society".<sup>48</sup> Accordingly, a "war crimes team (WCT)" was set up within the UK Border Agency to ensure that the UK does not provide a safe haven to perpetrators of serious international crimes.<sup>49</sup>

The purpose of establishing a comprehensive "War Crimes Program" in Canada was to support Canada's policy to end safe havens as well as to contribute to the domestic and international fight against impunity.<sup>50</sup>

The majority of countries with a dedicated "no safe haven policy" created specialised units within several governmental agencies, spanning immigration, police and prosecution authorities and embedded in close cooperation with the ministries of justice, home affairs and foreign affairs.

## II. Functioning of Specialised Units

At the time of writing, ten countries had established specialised units within different national authorities- immigration, police and/or prosecution services. Denmark, Norway, Belgium, The Netherlands, the United Kingdom, Germany, Sweden, Canada and the United States set up units or established relevant specialised procedures within their immigration services. All of these countries except for the United Kingdom also have a specialised unit within their police and/or prosecution services, composed of staff working full time on serious international crimes cases. France established a specialised unit within the Gendarmerie in September 2010. The Netherlands is the only country that also tasked a special investigative judge to work exclusively on serious international crimes cases.

### II.1 Specialised Unit within National Immigration Services

Immigration authorities can play a crucial role in the detection of serious international crimes suspects. Indeed, the majority of cases that have resulted in investigations or proceeded to trial in Canada, Denmark, Sweden, the Netherlands, Belgium, France, Finland, Germany and the United Kingdom involved victims, witnesses or suspects who had entered the respective countries as asylum applicants. As these types of crimes are not normally brought to the attention of law enforcement agencies by victims reporting to the local police station, immigration authorities can alert relevant investigators about the presence of suspects.

The EU Council decision of 8 May 2003 urges Member States:

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<sup>48</sup> *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*, February 2002, at p. 103, at [www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf](http://www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf).

<sup>49</sup> Ibid.

<sup>50</sup> Canadian Department of Justice, at <http://www.justice.gc.ca/warcrimes-crimesdeguerre/aboutus-aproposdenous-eng.asp>.

*to ensure that law enforcement authorities and immigration authorities have the appropriate resources and structures to enable their effective cooperation and the effective investigation and prosecution of genocide, crimes against humanity and war crimes.<sup>51</sup>*

**Article 1F of the Convention relating to the Status of Refugees:**

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

( a ) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

( b ) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

( c ) He has been guilty of acts contrary to the purposes and principles of the United Nations.

In the United Kingdom, a specialised war crimes team was established within the Immigration and Naturalisation Department (IND) of the UK Border Agency in 2004.<sup>52</sup> The team may take one of several actions in respect of people who may have committed or been complicit in serious international crimes. These include refusing leave to enter, excluding from refugee status and depriving citizenship as well as revoking refugee status where applicable.<sup>53</sup> The team may also refer cases to the Metropolitan Police Service but does not automatically do so. The team is composed of 14 analysts with specific country expertise and who are in charge of 21,000 asylum seekers and visa applicants. They work closely with staff from other departments to ensure that cases where there is reason to believe that the applicant may have been involved in the commission of an international crime are referred to and handled by the war crimes team.<sup>54</sup>

The war crimes team took action against 513 war crimes suspects since 2005, refusing citizenship, residency requests and exclusion of refugee status. These include 31 applicants who have been excluded from refugee protection on the basis of Article 1F of the 1951 Convention relating to the Status of

<sup>51</sup> Council Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes, 2003/335/JHA, Official Journal L118/12, 14 May 2003.

<sup>52</sup> Report of the Home Office, "Secure Borders, Safe Haven- Integration with Diversity in Modern Britain", February 2002, p.103, at [www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf](http://www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf). The team is now called "Research and Information Team" (RAIT), see [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/transfer-refer/transfer-refer?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/cross-cut/transfer-refer/transfer-refer?view=Binary), p. 27.

<sup>53</sup> UK Border Agency, "Identifying, handling and considering asylum claims made by suspected war criminals and perpetrators of crimes against humanity, including genocide", at [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/suspectedwarcriminals.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/suspectedwarcriminals.pdf?view=Binary).

<sup>54</sup> Presentation by Susan Wale, then Head of War Crimes Team, UKBA, at FIDH / REDRESS conference, November 2008; see also UKBA, "Exceptional leave to remain: suspected war criminals and perpetrators of crimes against humanity and genocide", at [www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/elrwarcrimes.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apunotices/elrwarcrimes.pdf?view=Binary).

Refugees.<sup>55</sup> Furthermore, in 2008 and 2009, the war crimes team turned down 104 requests for citizenship due to suspicions that the applicants had perpetrated serious international crimes. However, only nine of these cases were referred to the Metropolitan Police Service for further investigation, while no action has been taken in relation to the remaining 95 suspects.<sup>56</sup> In total, the war crimes team has referred 51 cases to the MPS since 2005, yet no arrests or prosecutions resulted from these referrals.<sup>57</sup>

In The Netherlands, a special 1F unit was created in late 1997, after media reported widely about a victim who met his torturer on the street in a Dutch city. The unit is currently composed of 25 senior immigration officers exclusively working on the assessment of 1F cases, with three additional officials providing administrative support.<sup>58</sup> It provides advice to immigration officers of other departments, who apply specific screening procedures of asylum and visa applicants, including interviewing applicants about their previous employment, which might disclose a potential involvement in international crimes. Where there are serious reasons to believe that an applicant may fall within the 1F exception, the file is forwarded to the 1F unit, which cooperates closely with the Dutch prosecution services. Should the 1F unit confirm that a case meets the criteria of Article 1F, the application is automatically rejected and transferred to the office of the prosecutor, which will then screen the file and, where considered necessary, assign the case to the war crimes unit within the Dutch National Police.<sup>59</sup> In the period of 1998-2008, the 1F unit has applied Article 1F in approximately 700 cases.<sup>60</sup> In October 2005, two Afghan nationals were convicted for torture, after immigration authorities had enquired about their previous employment in the Afghan army.<sup>61</sup> Similarly, the unit refused to grant asylum to Joseph Mpambara as there were serious reasons to believe that he was involved in crimes committed during the 1994 genocide in Rwanda. He was subsequently referred to the war crimes unit within the Dutch National Police. On 23 March 2009, he was convicted and sentenced to 20 years imprisonment after the District Court in The Hague found him guilty of torture committed during the 1994 genocide in Rwanda.<sup>62</sup> In 2009, the Prosecutor's unit in collaboration with the Police unit examined a

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<sup>55</sup> Convention relating to the Status of Refugees, adopted on 28 July 1951, entry into force 22 April 1954; see also Parliament, House of Commons, Written Answers, 07 July 2010, at <http://services.parliament.uk/hansard/Commons/ByDate/20100707/writtenanswers/part014.html>.

<sup>56</sup> Yorkshire Post, "Exclusive: Whitehall gives war criminals safe haven in Britain", 04 June 2010, at <http://www.yorkshirepost.co.uk/news?articleid=6342765>.

<sup>57</sup> See Parliament, House of Commons, Written Answers, 24 March 2010, at [www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100324/text/100324w0014.htm](http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100324/text/100324w0014.htm).

<sup>58</sup> Email correspondence with Dutch official, 10 December 2010.

<sup>59</sup> Email correspondence with Dutch official, 13 December 2010; on the specialised unit within the Dutch National Police and the prosecution services, see below.

<sup>60</sup> Email correspondence with Dutch official, 10 December 2010.

<sup>61</sup> The Hague Court of Appeal described the immigration procedure at length in the appeal judgment against Heshamuddin Hesam and Habibullah Jalalzoy, [http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=lijn&lijn=AZ9366&u\\_ljn=AZ9366](http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=lijn&lijn=AZ9366&u_ljn=AZ9366) (Hesam) and [http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=lijn&lijn=AZ9365&u\\_ljn=AZ9365](http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=lijn&lijn=AZ9365&u_ljn=AZ9365) (Jalalzoy).

<sup>62</sup> See TRIAL for further information on the case of Joseph Mpambara, [www.trial-ch.org/en/resources/trial-watch/trial-watch/profile.html?tx\\_jbtrial\\_pi2%5Btab%5D=legal-procedures&tx\\_jbtrial\\_pi2%5Bprofile%5D=joseph\\_mпамbara\\_757&cHash=fc5ff62c0d](http://www.trial-ch.org/en/resources/trial-watch/trial-watch/profile.html?tx_jbtrial_pi2%5Btab%5D=legal-procedures&tx_jbtrial_pi2%5Bprofile%5D=joseph_mпамbara_757&cHash=fc5ff62c0d).

total of 43 1F cases, with 3 cases pending before Dutch courts, 2 cases in the investigative phase and 38 cases in the preliminary investigation phase.<sup>63</sup>

Although no formal unit exists within the Danish immigration authorities, a specific approach and screening procedures are applied and since 2002, all '1F cases' are transferred to the national prosecution services.<sup>64</sup> Applicants are screened against a list of suspects issued by international tribunals and Interpol. In September 2006, this led to the arrest of a Rwandan genocide suspect in Denmark.<sup>65</sup> The specialised war crimes unit within the Swedish National Criminal Police received over 35 reports on suspected war criminals from the national migration authority.<sup>66</sup>

Even though no formal specialised unit exists within the Belgian "*Commissariat Général aux Réfugiés et aux Apatrides*" (CGRA; Commissioner General for Refugees and Stateless Persons), its staff has experience in the application of Article 1F of the Refugee Convention. The CGRA considers that there are serious reasons to believe that someone has been involved in the commission of serious international crimes where asylum seekers for some time held a high level position in a regime known for its serious human rights violations or where asylum seekers are members of important organisations known for their activities and violent methods. Where the CGRA takes a decision on the basis of Article 1F and cannot return the applicant, this is communicated to the Federal Prosecution Service with competence over serious international crimes, which will decide whether or not to initiate an investigation on the basis of the information provided.<sup>67</sup> According to information provided by the ZBKV in Germany, one of its responsibilities also includes the exchange of information with the Federal Office for Migration and Refugees ("Federal Office"), though no war crimes unit or specific procedures were in place in the Federal Office at the time of writing.<sup>68</sup> Accordingly, cooperation between the ZBKV and the Federal Office only takes place on a case by case basis.

EU Council Decision,  
2003/335/JHA

"Relevant national law enforcement and immigration authorities, although having separate tasks and responsibilities, should cooperate very closely in order to enable effective investigation and prosecution of such crimes by the competent authorities that have jurisdiction at the national level."

<sup>63</sup> Email correspondence with Dutch official, 14 December 2010; this figure includes cases that started before 2009.

<sup>64</sup> Eva Singer, Immigration Services, Denmark, at the FIDH & REDRESS conference, "Strategies for an effective investigation and prosecution of perpetrators of serious international crimes – Setting up specialized war crimes units", Brussels, 3-4 November 2008.

<sup>65</sup> "Denmark arrests Rwandan Genocide Suspect", 8 September 2006, available at [www.mamboafrica.com/index.php?option=com\\_content&task=view&id=2362&Itemid=1](http://www.mamboafrica.com/index.php?option=com_content&task=view&id=2362&Itemid=1).

<sup>66</sup> Amnesty International, "Sweden: End impunity through universal jurisdiction: No safe haven series No. 1" <http://www.amnesty.org/en/library/asset/EUR42/001/2009/en/35c14013-ee8-11dd-b1bd-6368f1b61c3f/eur420012009en.pdf>, January 2009, p. 82 "Special Police or Prosecutor Unit".

<sup>67</sup> See for further information, African Rights and REDRESS, "Extraditing Rwandan genocide suspects from Europe to Rwanda", p. 16, available at [http://www.redress.org/downloads/publications/Extradition\\_Report\\_Final\\_Version\\_Sept\\_08.pdf](http://www.redress.org/downloads/publications/Extradition_Report_Final_Version_Sept_08.pdf).

<sup>68</sup> Leaflet produced by the ZBKV, November 2010.

Aside from alerting relevant police authorities about the presence of suspects, immigration services can further assist investigation and prosecution services in providing information on possible witnesses and victims. Since 1 March 2009, the Danish Special International Crimes Office (SICO) is authorised to access information held by Danish immigration authorities in relation to foreigners who might have witnessed or been the victims of serious international crimes. This allows investigators of the office to search for suspects, victims and witnesses of serious international crimes and has resulted in the opening of 22 relating to Rwanda<sup>69</sup>, and the arrest of one genocide suspect from Rwanda.<sup>70</sup>

Danish authorities, in collaboration with the Red Cross, distribute leaflets that inform asylum seekers in six languages about the existence and contact details of a 'Specialised International Crimes Office', encouraging victims, witnesses and others to come forward with potential information about suspects who might be living in Denmark.<sup>71</sup> A leaflet distributed by Dutch immigration authorities similarly informs asylum seekers in 13 languages about the Dutch war crimes unit.<sup>72</sup>

The importance of close cooperation between immigration and law enforcement authorities was noted in the Preamble of the EU Council decision of 8 May 2003:

Relevant national law enforcement and immigration authorities, although having separate tasks and responsibilities, should cooperate very closely in order to enable effective investigation and prosecution of such crimes by the competent authorities that have jurisdiction at the national level.<sup>73</sup>

The practice of The Netherlands, Belgium, Sweden and Denmark suggests that formalised cooperation between specialised units in the domains of law enforcement and immigration diminishes the risk of inadvertently providing safe havens.<sup>74</sup>

Immigration authorities have a range of tools available to prevent alleged perpetrators from entering or residing in the country concerned. However, these are not designed to ensure accountability. It may further be impossible to return an asylum seeker or extradite a resident to their country of origin if to do so would be in violation of a country's international human rights obligations. If a country is serious about a no safe haven policy, it must make adequate arrangements to enable and ensure investigations and, where sufficient evidence exists, prosecutions on the basis of universal or related forms of jurisdiction.

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<sup>69</sup>Special International Crimes Office, Annual Report 2009, English Summary, at [www.sico.ankl.dk/media/SICO\\_2009\\_-\\_Summary\\_in\\_English.pdf](http://www.sico.ankl.dk/media/SICO_2009_-_Summary_in_English.pdf).

<sup>70</sup>Denmark arrests Rwanda genocide suspect, at [www.todayonline.com/BreakingNews/EDC101208-0000638/Denmark-arrests-Rwanda-genocide-suspect](http://www.todayonline.com/BreakingNews/EDC101208-0000638/Denmark-arrests-Rwanda-genocide-suspect).

<sup>71</sup>[www.sico.ankl.dk/media/sico\\_001.pdf](http://www.sico.ankl.dk/media/sico_001.pdf); the website of SICO also enables the public to report a case directly to SICO, at [www.sico.ankl.dk/page33.aspx](http://www.sico.ankl.dk/page33.aspx).

<sup>72</sup>See [www.ind.nl/en/Images/KLPD%20Folder%20Oorlogsmisdaden%2013%20talen\\_tcm6-183962.pdf](http://www.ind.nl/en/Images/KLPD%20Folder%20Oorlogsmisdaden%2013%20talen_tcm6-183962.pdf).

<sup>73</sup>Council Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes, 2003/335/JHA, Official Journal 118/12, 14 May 2003.

<sup>74</sup>See for instance the cooperation between SICO and Danish immigration authorities, at Special International Crimes Office, Annual Report 2009, supra. n. 68.

## II.2 Specialised Units within the Police and/or Prosecution Services

Specialised units within police and prosecution services in Belgium, Canada, Denmark, The Netherlands, Norway, Sweden and Germany carried out investigations worldwide, including in Afghanistan, Rwanda, Uganda, Democratic Republic of Congo, Chad, Iraq, Liberia, Sierra Leone, Sri Lanka as well as countries of the former Yugoslavia.<sup>75</sup>

These specialised units established within police and/or prosecution services differ in mandate and composition. The Danish SICO for instance brings together both, investigators and prosecutors, thereby combining investigative and legal expertise. Its mandate is specifically focused on serious crimes committed abroad and as such covers a wide range of crimes, including genocide, crimes against humanity, war crimes, torture, rape, homicide as well as acts of terrorism.<sup>76</sup> SICO has a staff of 17, including a State Prosecutor, a deputy state prosecutor, a chief superintendent, as well as analysts, investigators and administrators.<sup>77</sup>

Police and prosecution services are separated in most other countries. In Belgium, the Federal Prosecution Service enjoys exclusive competence over serious international crimes and one senior prosecutor guides investigations carried out by a special investigative team within the “judicial police” in Brussels. While no specific budget is allocated to the police for serious international crimes cases, there are five police investigators working on these types of cases on a permanent basis.<sup>78</sup>

The Dutch International Crimes Unit (“Team Internationale Misdrijven”, TIM) within the Dutch National Crimes Squad includes 30 experienced investigators. The unit also employs an expert of African Studies, a jurist and two experts of international relations and public administration respectively. Further experts are employed on a case by case basis in relation to specific countries, such as Afghanistan, Rwanda and Iraq.<sup>79</sup> The Unit is complemented by a team of prosecutors located within the National Public Prosecutor’s office in Rotterdam, where four prosecutors are in charge of all criminal investigations and prosecutions of serious international crimes.<sup>80</sup> Trials of serious international crimes are centralised in The Hague District and Appeals court, where a specialised investigative judge is leading probes into serious international crimes. Similarly, in Belgium, serious international crimes are always referred to the same investigative judges within the Brussels district, thereby ensuring consistent practice and building expertise and experience.

As in Belgium and the Netherlands, the exclusive competence of the investigation and prosecution of serious international crimes in Germany lies with the Federal Prosecution Service.<sup>81</sup> A team of 2 prosecutors supervises investigations into these crimes, which are

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<sup>75</sup> Supra, n.9; see also Annex Specialised Units by Country.

<sup>76</sup> The Special International Crimes Office (SICO) Annual Report 2009, Summary in English, p.1.

<sup>77</sup> See website of SICO, at <http://www.sico.ankl.dk/page27.aspx>.

<sup>78</sup> Belgian Ministry of Justice, response to FIDH and REDRESS Questionnaire, copy on file with the authors.

<sup>79</sup> E-mail correspondence with Dutch official, 8 December 2010.

<sup>80</sup> Dutch National Crimes Squad, response to FIDH and REDRESS questionnaire, on file with the authors.

<sup>81</sup> Para.120 (1) Nr. 8 Gerichtsverfassungsgesetz together with para.142a (1) Gerichtsverfassungsgesetz.

carried out by the ZBKV. Further prosecutors will be selected from the Federal Prosecution Service on a case by case basis. At the time of writing, an additional four prosecutors were working on serious international crimes.<sup>82</sup> The ZBKV, located within the Federal Crimes Office, currently employs seven investigators and analysts working exclusively on serious international crimes.<sup>83</sup>

In Sweden, a war crimes unit with eight police investigators, one analyst and one administrator was established in March 2008. It is complemented by four prosecutors within the International Public Prosecution Office in Stockholm.<sup>84</sup> Both units have nationwide jurisdiction and their activities and performance will be reviewed in March 2011.<sup>85</sup>

In the United Kingdom, the war crimes team within the UKBA is not complemented by a specific taskforce within the Metropolitan Police Service. Rather, a war crimes unit within the anti-terrorist unit of the MPS has a number of investigators working on an ad-hoc basis on serious international crimes, next to cases related to terrorism.<sup>86</sup>

### **III. Assessment**

#### **III.1. Specialised Units are More Likely to Secure Prosecutions of Perpetrators of Serious International Crimes**

Out of a total of 24 serious international crimes convictions since the late 1990s, 18 involved investigations and prosecutions carried out by specialised units.<sup>87</sup> In The Netherlands, five suspects were convicted for war crimes, torture and crimes against humanity committed in the former Zaire, in Rwanda, Afghanistan and Iraq.<sup>88</sup> All convictions were preceded by lengthy investigations, often taking several years and involving frequent travel to the relevant territorial states. SICO secured the conviction of

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<sup>82</sup> Email correspondence with German official, 30 November 2010.

<sup>83</sup> Ibid.

<sup>84</sup> Email correspondence with Swedish official, 14 December 2010.

<sup>85</sup> FIDH & REDRESS interview with Ingemar Isaksson, Detective Superintendent of the Swedish National Criminal Police War Crimes Unit, in "EU Update on Serious International Crimes", Issue 4, Summer 2008.

<sup>86</sup> Response by the Crown Prosecution Service to FIDH and REDRESS questionnaire, copy on file with the authors; see also London Evening Standard, "Scotland Yard urged to form war crimes unit", 6 April 2010, at [www.thisislondon.co.uk/standard/article-23821577-scotland-yard-urged-to-form-war-crimes-unit.do](http://www.thisislondon.co.uk/standard/article-23821577-scotland-yard-urged-to-form-war-crimes-unit.do); see e.g., the handling of the Zardad case, where two investigators of the war crimes team coordinated the investigation from London while sending delegates from the Anti-Terrorist Branch for investigation to Afghanistan, in Human Rights Watch, "Universal Jurisdiction in Europe: The State of the Art", July 2006, p. 95.

<sup>87</sup> Supra n.9.

<sup>88</sup> See FIDH & REDRESS, "Developments in the field of international criminal justice – August 2007-July 2008", available at [www.fidh.org/IMG/pdf/UJ\\_developments\\_Aug07-July08.pdf](http://www.fidh.org/IMG/pdf/UJ_developments_Aug07-July08.pdf).

a Ugandan national for armed robbery and abduction in 2004.<sup>89</sup> Following the establishment of a specialised unit in Norway, a Bosnian national was convicted by a Norwegian court for war crimes committed during the war in the former Yugoslavia<sup>90</sup> and further investigations by the specialised units are currently ongoing against suspects from Rwanda as well as the former Yugoslavia.<sup>91</sup>

Similarly, it was due to investigations carried out by the Belgian specialised unit within the national police that to date seven suspects were convicted by Belgian courts for their involvement in the 1994 genocide.<sup>92</sup> A specialised war crimes unit was established within the German Federal Police in the 1990s to investigate serious international crimes committed in the Former Yugoslavia.<sup>93</sup> Having opened 133 investigations against 177 suspects, the unit secured the conviction of four perpetrators for war crimes and genocide.<sup>94</sup> The unit was disbanded in early 2000 and no further cases were investigated or prosecuted over subsequent years. The restructuring of the unit in April 2009 amidst increasing media attention to the presence in Germany of suspects of serious international crimes led to the prosecution of a suspect accused of involvement in genocide in Rwanda and of two suspects accused of crimes against humanity allegedly committed in Eastern Congo.<sup>95</sup>

These results are in contrast to countries where no specialised units exist for these types of crimes. In France for instance, where at the time of writing a specialised unit was in the process of being established, approximately 18 complaints regarding Rwandan genocide suspects are currently pending before investigative judges. Some of these cases have been pending for as long as 15 years, yet due to a lack of resources, hardly any progress has been made in any of the cases.<sup>96</sup> Indeed, two investigative judges had previously

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<sup>89</sup> Due to the absence of implementing legislation in Denmark, SICO investigates and prosecutes all complaints on the basis of ordinary crimes as defined in the Danish Penal Code; see [www.sico.ankl.dk/page34.aspx](http://www.sico.ankl.dk/page34.aspx).

<sup>90</sup> Judgment of the Oslo District Court, 2 December 2008, Case No 08-018985MED-OTIR/08, English translation at [www.haguejusticeportal.net/Docs/NLP/Norway/Repak-Mirsad\\_Verdict\\_EN\\_2-12-2008.pdf](http://www.haguejusticeportal.net/Docs/NLP/Norway/Repak-Mirsad_Verdict_EN_2-12-2008.pdf); Repak's conviction was overturned by Norway's Supreme Court on 3 December 2010 as the Court held that the relevant legislation relied upon for his conviction could not be applied retroactively, see The Telegraph, "Norway court cancels Bosnian's war crimes sentence", at [www.telegraph.co.uk/news/worldnews/europe/bosnia/8179811/Norway-court-cancels-Bosnians-war-crimes-sentence.html](http://www.telegraph.co.uk/news/worldnews/europe/bosnia/8179811/Norway-court-cancels-Bosnians-war-crimes-sentence.html).

<sup>91</sup> See Human Rights Watch, "Universal Jurisdiction in Europe – The State of the Art," July 2006.

<sup>92</sup> Judgment of the Oslo District Court, 2 December 2008, Case No 08-018985MED-OTIR/08.

<sup>93</sup> FIDH & REDRESS, "Developments in the field of international criminal justice – August 2007-July 2008.

<sup>94</sup> See Claudia Ilgner, "Besonderheiten und Problemstellungen bei Strafverfolgungsmassnahmen und kriminalpolizeilichen Ermittlungen wegen Voelkermords, Vebrechen gegen die Menschlichkeit und Kriegsverbrechen", in "Der Internationale Strafgerichtshof- Fuenf Jahre nach Rom", Tagungsdokumentation, 27-28 Juni 2003, pp.53-56, at [www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/dokumentation\\_der\\_internationale\\_strafgerichtshof.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/dokumentation_der_internationale_strafgerichtshof.pdf); also presentation by Hans- Peter Kaul, Andreas Mlitzke & Steffen Wirth on "International Criminal Law in Germany, during the 9<sup>th</sup> session of the Preparatory Commission for the ICC, 18 April 2002, at [www.iccnw.org/documents/Comments%20on%20ICCode%20and%20E41.pdf](http://www.iccnw.org/documents/Comments%20on%20ICCode%20and%20E41.pdf).

<sup>95</sup> All three prosecutions were ongoing at the time of writing.

<sup>96</sup> See website of the "Collectif des Parties Civiles pour le Rwanda" for an overview of Rwandan cases currently pending before French investigative judges, at [www.collectifpartiescivilesrwanda.fr/affairesjudiciaire.html](http://www.collectifpartiescivilesrwanda.fr/affairesjudiciaire.html); the European Court of Human Rights in 2004 in the case of Wenceslas Munyeshyaka ruled that France violated the rights of one of the victims to be

requested to be relieved of their other court obligations to fully dedicate their time to the investigation of the Rwandan cases, yet their request was turned down.<sup>97</sup> Private parties relying on French legislation providing for victims and third parties to bring complaints were behind the only two prosecutions of serious international crimes in France to date, effectively taking over the role of prosecutors.<sup>98</sup> The same is true for Spain, where private parties submitted a complaint to the investigative judge, leading to the prosecution and conviction of Adolfo Scilingo for crimes against humanity in 2005.<sup>99</sup> Even though more than 10 serious international crimes cases are currently pending before Spanish judges,<sup>100</sup> no specialised unit has been established, and hardly any progress has been made by investigative judges over the past five years due to a lack of resources. None of the pending cases have led to a prosecution of the suspect.<sup>101</sup>

Ad hoc arrangements in the United Kingdom and in Finland led to the conviction of an Afghan warlord<sup>102</sup> and a Rwandan 'génocidaire' in 2005 and 2010 respectively. As no dedicated war crimes team exists in either country, resources were made available specifically for these cases. In the United Kingdom, two investigators working on serious international crimes as well as terrorism related crimes selected a team of investigators from the Counter-Terrorism Branch and coordinated their investigation in the United Kingdom as well as in Afghanistan.<sup>103</sup> Resources made available to the Finnish police and prosecution authorities allowed the investigation and prosecution of Francois Bazaramba over a period of three years. During the trial, which lasted from June 2009 to April 2010, the court heard 68 witnesses from the United States, Canada, Belgium, Switzerland, Kenya, Germany, Holland, Zambia, Rwanda and Tanzania.<sup>104</sup> Similarly, ad hoc arrangements led to the conviction of Fulgence Niyonteze by a Swiss court in 2001 for war crimes committed in Rwanda during the 1994 genocide.<sup>105</sup>

The lack of progress made in France has led the French Ministry of Justice to call for the establishment of a specialised unit. On 1 September 2010, a specialised unit was officially created within the *Section de Recherches* of the Paris Gendarmerie and at the time of writing, three officers were working on serious international crimes on a full time basis. The unit can rely on a staff of 70 from the *Section de Recherches* if cases require more

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heard promptly and her right to compensation, at

[www.haguejusticeportal.net/Docs/NLP/France/Munyeshyaka\\_CEDH\\_judgement\\_8-9-2004.pdf](http://www.haguejusticeportal.net/Docs/NLP/France/Munyeshyaka_CEDH_judgement_8-9-2004.pdf).

<sup>97</sup> FIDH interview with French official, January 2010.

<sup>98</sup> See the case of Ely Ould Dah, convicted by a French court in July 2005 to ten years imprisonment for torture committed in Mauritania, at [www.fidh.org/Ely-Ould-Dah-convicted-after-six-years-of](http://www.fidh.org/Ely-Ould-Dah-convicted-after-six-years-of); and the case of Khaled Ben Saïd, convicted by a French court in September 2010 to twelve years imprisonment for having given instructions to commit acts of torture in Tunisia, at [www.fidh.org/Conviction-of-Khaled-Ben-Saïd-A-victory-against](http://www.fidh.org/Conviction-of-Khaled-Ben-Saïd-A-victory-against).

<sup>99</sup> National Court, Criminal Chamber, 19 April 2005, judgment available in Spanish at [www.derechos.org/nizkor/espana/juicial/doc/sentencia.html](http://www.derechos.org/nizkor/espana/juicial/doc/sentencia.html).

<sup>100</sup> For further information on cases currently pending in Spain, see FIDH & REDRESS, "EU Update on Serious International Crimes", Issue 8, Winter 2010, at [www.fidh.org/IMG/pdf/EU\\_Newsletter\\_Nov\\_2010.pdf](http://www.fidh.org/IMG/pdf/EU_Newsletter_Nov_2010.pdf).

<sup>101</sup> Ibid.

<sup>102</sup> R v Zardad, High Court Judgment of 19 July 2005; an appeal was dismissed on 7 February 2007.

<sup>103</sup> Human Rights Watch, "Universal Jurisdiction in Europe- The State of the Art, p. 97.

<sup>104</sup> See Press Release of the District Court of ITÄ- UUSIMAA, 11 June 2010, "Judgment in a criminal case of genocide, Prosecutor v Francois Bazaramba (R 09/404).

<sup>105</sup> Cour militaire de cassation: arrêt, 27 April 2001, at [www.haguejusticeportal.net/eCache/DEF/6/667.html](http://www.haguejusticeportal.net/eCache/DEF/6/667.html).

resources.<sup>106</sup> However, the high number of cases currently pending before French investigative judges, with approximately 18 cases concerning Rwanda alone, raises serious doubts as to whether three investigators will be sufficient to handle all of these cases.

The practice outlined above suggests that it will be difficult, if not impossible, to successfully prosecute a suspect of serious international crimes without special arrangements. The establishment of a specialised unit has the advantage of a consistent and coherent approach to accountability of serious international crimes, rendering investigations and prosecutions more effective and allowing for the accumulation of expertise and sharing of experiences. It also suggests a political willingness to take these crimes as seriously as other international crimes such as terrorism and for which specialised units have been created. The experiences in countries such as Germany, Belgium and The Netherlands, where the establishment of specialised units resulted in the prosecution and conviction of a relatively high number of suspects, suggest that the limited investigations and prosecutions in the United Kingdom since 2005, despite the existence of relevant domestic legislation providing for universal jurisdiction, and despite a relatively high number of suspects already present and others frequently travelling to the United Kingdom, could be attributed to the lack of a specialised and well resourced unit.

### **III.2 Specialised Units in Immigration, Police and Prosecution Services Diminish Risks of Safe Havens**

Specialised units allow national authorities to dedicate time and resources to examine a large number of cases, thereby considerably diminishing the risk of safe havens. Since it started work seven years ago, SICO investigated 224 cases, with 41 cases opened in 2010.<sup>107</sup> While only one of these cases led to a prosecution and conviction, the majority of cases was dismissed as there was insufficient evidence or no jurisdiction to prosecute in Denmark because the suspect was no longer in the country. However, the responsibility of the unit goes beyond achieving prosecutions and a vital aspect of its work is assessing whether suspects of serious international crimes committed abroad are currently living in Denmark.<sup>108</sup> The German specialised unit established to investigate serious international crimes committed in the Former Yugoslavia carried out investigations against 177 suspects.<sup>109</sup>

As often the first point of contact to foreigners seeking entry, immigration authorities are in a unique position to screen applicants and ensure that suspects of serious international crimes do not benefit from a safe haven. Appropriate screening procedures and training of immigration staff as carried out in the UK, The Netherlands, Denmark and

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<sup>106</sup> Information provided by French official to FIDH & REDRESS, November 2010.

<sup>107</sup> See website of SICO, achievements as of 30 September 2010, at [www.sico.ankl.dk/page34.aspx](http://www.sico.ankl.dk/page34.aspx).

<sup>108</sup> Ibid.

<sup>109</sup> See C. Ilgner, "Besonderheiten und Problemstellungen bei Strafverfolgungsmassnahmen und kriminalpolizeilichen Ermittlungen wegen Voelkermords, Vebrechen gegen die Menschlichkeit und Kriegsverbrechen", in "Der Internationale Strafgerichtshof- Fuenf Jahre nach Rom", Tagungsdokumentation, 27-28 June 2003, pp.53-56.

Belgium appear crucial to ensure that relevant suspects are detected. The number of 1F cases revealed by immigration authorities in Sweden, The Netherlands, Belgium, Denmark and the United Kingdom for instance suggest that it is likely that a similar number of suspects of serious international crimes is also present in other European countries. Nevertheless, most European countries have so far failed to ensure that immigration authorities have sufficient resources and structures making it impossible for a government to estimate how many suspects are actually living on its territory.

### **III.3 Possibility to Respond Swiftly to Complaints and Cooperation Requests**

Authorities will need to assess whether the forum state has jurisdiction over the crimes alleged, whether a suspect enjoys immunity and what evidence is available that would support an arrest. Often, such an assessment will need to be carried out in a short timeframe, so as to prevent a suspect's departure from the forum state.

The need for authorities to act promptly became apparent in the case of Zoirjon Almatov in Germany, where, in 2005, eight Uzbek victims filed a complaint against Almatov regarding his alleged involvement in crimes against humanity. He had travelled to Germany in October 2005 to receive medical treatment, despite being subject to a travel ban imposed by the European Union for his alleged involvement in the "Andijan Massacre".<sup>110</sup> He left Germany before he could be questioned by police regarding the complaint. German authorities did not prevent his departure, arguing that by the time they were notified by NGOs about his presence in Germany, he had already left.<sup>111</sup> No specialised unit existed within the German immigration service, and the unit within the Federal Police was staffed with one investigator only. Furthermore, no formalised cooperation procedures between the different Ministries, in particular the Ministry of Justice and Ministry of Foreign Affairs, were in place which could have ensured that relevant national authorities were adequately informed.

One of the responsibilities of SICO for instance is to react to complaints filed by NGOs in relation to foreigners who are only in Denmark for a brief period of time.<sup>112</sup> In Belgium, a system was developed also to comply promptly with requests for cooperation and assistance of the ad hoc tribunals and the International Criminal Court (ICC). In May 2008, Belgian police of the specialised unit arrested Jean-Pierre Bemba, a former Congolese warlord and ex-presidential candidate, only 13 hours after an arrest warrant was issued by the ICC for crimes against humanity and war crimes which he allegedly committed in the Central African Republic. A similar approach exists in The Netherlands, where the specialised units within police and prosecution services operate in a framework of support from the Ministry of Justice, in charge of mutual legal assistance

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<sup>110</sup> HRW, "EU Imposes Sanctions on Uzbekistan over Massacre, 2 Oct. 2005, at

[www.hrw.org/en/news/2005/10/02/eu-imposes-sanctions-uzbekistan-over-massacre](http://www.hrw.org/en/news/2005/10/02/eu-imposes-sanctions-uzbekistan-over-massacre).

<sup>111</sup> See, also, HRW, [www.hrw.org/en/news/2006/04/05/germany-prosecutor-denies-uzbek-victims-justice](http://www.hrw.org/en/news/2006/04/05/germany-prosecutor-denies-uzbek-victims-justice).

<sup>112</sup> See website of SICO, at [www.sico.ankl.dk/page27.aspx](http://www.sico.ankl.dk/page27.aspx).

requests when extraterritorial investigations have to be carried out, and the Ministry of Foreign Affairs, providing the ‘diplomatic framework’.<sup>113</sup>

The Dutch Appeals Court in The Hague pointed out a “general problem” in such cases,

“namely that many witnesses seem not only to have a less accurate notion of time and place (and cannot read a map, for instance), but also prove or seem to have problems distinguishing their own visual observations and what they heard from others. This leads to an overall picture in which reality and imagination seem (or threaten) to merge into one.”

## VI. Lessons Learned and Remaining Challenges

The success of specialised units depends upon a range of practical factors, which go beyond law, money or political will.

### VI.1. Evidence Collection

Police and prosecution units will need to ensure a balanced investigation of the case, which respects the rights of both victims and the accused, which can be particularly challenging in extraterritorial investigations.<sup>114</sup> While witnesses will often be

available in the forum state or neighbouring countries in diaspora communities, most serious international crimes cases will at some point require an investigation in the territorial state. In Germany for instance, the district court of Frankfurt ordered the release of Onesphore Rwabukombe from pre-trial detention due to insufficient evidence, exclusively indirect witnesses, which could not confirm a suspicion that Rwabukombe was actually involved in the genocide in Rwanda 1994. It was only after further in depth investigations by the ZBKV, including in Rwanda, that he was arrested again in December 2009. His trial is expected to start in January 2011.<sup>115</sup>

Collecting evidence abroad in post- or actual conflict situations and transporting such evidence to a court situated thousands of miles away, thereby bridging the gap between the realities on the ground where the crimes were committed to the courts sitting abroad, without diminishing the credibility of such evidence, remains challenging. In some cases, practitioners observed that witnesses become “professionalised” and make a living out of providing testimonies to foreign authorities, thereby seriously undermining their credibility.<sup>116</sup> Best practices need to be developed to ensure that witness testimonies can be presented effectively to judges and juries, who may not be familiar with the cultural

<sup>113</sup> Presentation by Chantal Joubert, Dutch Ministry of Justice, at FIDH & REDRESS Conference, 3 Nov. 2008.

<sup>114</sup> See, for instance, HRW, “Universal Jurisdiction in Europe: The State of the Art,” pp. 17-19.

<sup>115</sup> Klaus Zorn, Chief Superintendent, ZBKV, at FIDH & REDRESS conference on “Extraterritorial Jurisdiction in Europe”, 1 December 2010; see also *Verhandlung gegen Voelkermord- Verdaechtigen beginnt im Januar*, at [www.nh24.de/index.php?option=com\\_content&view=article&id=39781:verhandlung-gegen-voelkermord-verdaechtigen-beginnt-im-januar&catid=22:allgemein&Itemid=59](http://www.nh24.de/index.php?option=com_content&view=article&id=39781:verhandlung-gegen-voelkermord-verdaechtigen-beginnt-im-januar&catid=22:allgemein&Itemid=59) (in German).

<sup>116</sup> Belgian official at FIDH & REDRESS Conference on “Extraterritorial Jurisdiction in Europe”, 1 December 2010, Brussels.

and political context in which the crimes were committed.<sup>117</sup> This is particularly true in systems which rely heavily on written statements, such as The Netherlands, as opposed to oral witness testimonies, such as Finland and Belgium.

Lessons learned from international courts and tribunals regarding such issues as vulnerability, identification and access to witnesses should be taken into account by national authorities. At times, judges may be required to go abroad to see the territorial state and the 'crime scenes' for themselves. A Finnish court for instance travelled to Rwanda and Tanzania to sit in Kigali and Dar es Salaam respectively, hearing 51 witnesses and carrying out on site visits.<sup>118</sup>

## **IV.2 Procedural Challenges**

While substantial criminal laws might reflect international treaty obligations and have often been revised to reflect definitions of crimes of the Rome Statute of the ICC, procedural laws often have not been adapted. This can impact on the right of the accused to a fair trial, as the position of the defence in these types of proceedings, is considerably weaker than in proceedings related to domestic crimes. It will be difficult for the defence to carry out its own investigations, particularly abroad.

The lack of procedural laws that addresses the challenges of extraterritorial investigations can further make difficult the collection of evidence abroad. Mutual legal assistance agreements may require that the questioning of witnesses must follow the procedures of the territorial state, rather than the forum state, thereby obliging investigators of the forum state to send detailed questionnaires to the authorities of the territorial state, and preventing the foreign investigators from asking follow up questions.<sup>119</sup> The lack of adequate procedural laws can also impact on the presentation of the evidence to the judges, if it does not provide the opportunity for the prosecution and defence to present witnesses in court, as this can be key to bridge the "gap" between the territorial and forum state. A global procedural framework could address these challenges, as could common procedural standards agreed upon by those States primarily involved in investigations and prosecutions of these crimes.

## **IV.3 Coordination and Cooperation**

Past practice underlines the importance of effective coordination and cooperation between national authorities. This is particularly true where national authorities carry out investigations in relation to the same conflicts. Within Europe for instance, national authorities of at least 10 countries are investigating / have investigated in Rwanda in

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<sup>117</sup> Court of Appeal in The Hague, Judgment, 10 March 2008, LJN: BC 7373, para.9.14, at <http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&collection=rnl&querypage=../zoeken/zoeken.asp&searchtype=ljn&ljn=BC7373>.

<sup>118</sup> See Press Release of the District Court of ITÄ- UUSIMAA, 11 June 2010, "Judgment in a criminal case of genocide, Prosecutor v Francois Bazaramba (R 09/404).

<sup>119</sup> Interview with German official, December 2010.

relation to allegations that a suspect residing on their territory was involved in the 1994 genocide.<sup>120</sup> This number may increase in the future when genocide suspects are detected in further countries.<sup>121</sup> Witnesses and victims questioned by one country's investigators may have relevant information in relation to a suspect residing in another country. Better coordination may also help to prevent "witness fatigue", which is a phenomenon particularly in relation to witnesses in Rwanda, who have often been questioned multiple times by investigators of European countries, Canada, the United States as well as the ICTR.<sup>122</sup> One investigator indicated to FIDH and REDRESS that an important and time saving starting point for any investigation is to contact authorities of other countries who may have some experience in investigating crimes in that country.<sup>123</sup> Indeed, this is common practice of the Dutch prosecution services when faced with a new case in order to "not make the same mistakes our colleagues made and also the other way around."<sup>124</sup>

Better coordination of investigations carried out by several countries' authorities in relation to the same conflict will help to address these issues and thereby render investigations more efficient.

Coordination and cooperation can be initiated and facilitated through better promotion of the existence and experiences of a specialised unit on a national and international level. An outreach programme of a specialised unit may include organisation of conferences, a website of the unit, publication of annual reports and relevant judgments in English, pro-active engagement with the media and contact to civil society as well as publication of contact details.<sup>125</sup> Effective outreach will not only ensure that victims in the territorial state will be informed about proceedings, it could also contribute to deterring perpetrators from seeking to enter a specific country and thereby additionally prevent a country from providing a safe haven. In the United Kingdom, the Counter Terrorism Department of the Crown Prosecution Service has set up a "Community Involvement Panel for War Crimes" (CIP WC). The CIP meets twice a year and provides a platform for prosecutors, police investigators of the MPS and NGOs to discuss and exchange on specific issues in relation to serious international crimes cases.<sup>126</sup>

Furthermore, the EU Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes ("EU Network"), bringing together national experts (representatives of the Ministries of Justice of EU Member States,

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<sup>120</sup> These are Belgium, Switzerland, Netherlands, Denmark, Sweden, Norway, United Kingdom, Finland, Germany, France.

<sup>121</sup> For instance, Italy has arrested and subsequently released one genocide suspect, after refusing his extradition to Rwanda.

<sup>122</sup> The issue of witness fatigue was also discussed at various EU Network meetings and at the FIDH & REDRESS Conference on "Extraterritorial Jurisdiction in Europe", 1 December 2010, Brussels.

<sup>123</sup> Interview with police investigator at 8<sup>th</sup> EU Network of Contact Points Meeting, Madrid, May 2010, in relation to investigations in Rwanda.

<sup>124</sup> Hester van Bruggen, Prosecutor in the Dutch National Prosecution Office, Department for International Crimes, at FIDH and REDRESS conference, "Universal Jurisdiction Trial Strategies: Focus on Victims and Witnesses", conference report, November 2010, at

[www.redress.org/downloads/publications/Universal\\_Jurisdiction\\_Nov2010.pdf](http://www.redress.org/downloads/publications/Universal_Jurisdiction_Nov2010.pdf).

<sup>125</sup> See for all these points the website of SICO, at <http://www.sico.ankl.dk/page22.aspx>.

<sup>126</sup> See [www.cps.gov.uk/your\\_cps/our\\_organisation/ctd.html](http://www.cps.gov.uk/your_cps/our_organisation/ctd.html) for the Terms of Reference.

prosecutors and police investigators) provides an excellent platform for national authorities to exchange experiences and coordinate investigative and prosecutorial activities. This role will further increase with the establishment of a permanent secretariat of the EU Network in early 2011.<sup>127</sup> At its 9<sup>th</sup> meeting, the EU Network concluded that a “global international instrument” on mutual legal assistance and extradition in the fight against impunity could improve communication between national authorities through, amongst other issues, establishing relevant principles for cooperation and identifying authorities in charge of cooperation.<sup>128</sup> Providing investigators and prosecutors from one country to work for a certain period of time within a specialised unit of another country is an additional possibility to enhance the exchange of best practices.<sup>129</sup>

#### **IV.4 Protection of Witnesses and Victims**

The protection of witnesses, victims, their families and representatives is particularly important in serious international crimes cases which, in the absence of documentary evidence, largely depend on witness testimonies. Protection before, during and after proceedings is challenging, in particular after foreign authorities have completed their investigation and left the territorial state. At the same time, such protection must be ensured to the extent possible, as only an effective and encompassing witness protection system will see victims and witnesses come forward and testify. In all cases, however, protection measures must be balanced with the right of the accused to a fair trial.

National procedures may already be in place in relation to other international crimes such as organised crime or terrorism. Within European countries, arrangements and legislation related to witness protection legislation vary from country to country, leading practitioners to request a discussion on the harmonisation of legislation and the mutual recognition of decisions taken in this respect at a national level within the EU.<sup>130</sup> Tools of witness protection employed in for instance organised crimes and drug trafficking cases should also be employed in cases of serious international crimes and provide for protection before, during and after trial. Such tools may include anonymity of the witness, possibility of video- testimony, reading out of written statements, the relocation of witnesses and, in most serious cases, a change of identity. A victims and witness protection programme must also include provision of material and psychological support and arrangements need to be in place to cater for victims and witness who may be severely traumatised. Staff of the German ZBKV for instance was briefed in detail about the historical, political and military background of the conflict prior to their first investigation in Rwanda. Doctors as well as nurses familiar with the situation of victims

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<sup>127</sup> See Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, Article 25a (2).

<sup>128</sup> Conclusions of the 9<sup>th</sup> meeting of the European Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes, The Hague, 14 & 15 October 2010, copy on file with the authors.

<sup>129</sup> This possibility was mentioned by one participant during the FIDH & REDRESS conference on Extraterritorial Jurisdiction in Europe, 1 December 2010, Brussels.

<sup>130</sup> Discussions during the 9<sup>th</sup> meeting of the EU Network, 14-15 October 2010, The Hague.

in Rwanda trained the unit's staff in dealing with victims suffering from post traumatic stress disorder.<sup>131</sup>

#### **IV.4 Immigration Measures**

A preference for removal/exclusion and deportation of suspects of serious international crimes is not so much a contribution to the effective fight against impunity but rather the attempt to prevent safe havens. While this seems legitimate from the point of view of each individual State, it is short-sighted if specialised units are to effectively contribute to ending the culture of impunity. Even though immigration measures can be employed to show perpetrators of human rights violations that their actions do have consequences, simply returning suspects to their country of origin is neither a form of justice nor of accountability.

Another concern is the creation of a 'legal limbo' in certain Article 1F cases, a scenario that can arise where there is insufficient evidence for the investigation of a suspect on the basis of extraterritorial/universal jurisdiction (or where such a legal basis does not even exist), and where deportation is not possible due to States' obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights. In The Netherlands, out of 700 Article 1F suspects found in the country from 1998-2008, 350 were known to be living in The Netherlands and concerns about the risk of torture on return prevented the deportation of the applicant in 40 of these cases.<sup>132</sup> In 2009, 43 1F cases were investigated and/ or prosecuted by the Dutch war crimes units, with 3 court proceedings ongoing, 2 cases in the investigative phase and 38 preliminary investigations.<sup>133</sup> Sometimes, in such cases, the applicant is 'tolerated'. In the United Kingdom, for instance, applicants are then placed on 'discretionary leave' for a period of six months, and their status is regularly reviewed "until removal becomes a viable option".<sup>134</sup> However, there is a clear risk that suspects benefit from impunity indefinitely unless measures are taken with a view to ensure accountability on the basis of extraterritorial jurisdiction.

#### **IV.5 Capacity**

States that have yet to establish a specialised unit within immigration, police and prosecution authorities have argued that a lack of cases would render such units redundant or that the current arrangements without a specialised unit are sufficient in light of the number of cases.<sup>135</sup> However, looking at past practice, particularly the newer units that have been established, the contrary appears to be the case. None of the

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<sup>131</sup> Correspondence with German official, 8 December 2010.

<sup>132</sup> Email correspondence with Dutch official, 10 December 2010.

<sup>133</sup> Email correspondence with Dutch official, 14 December 2010; this includes cases that started before 2009.

<sup>134</sup> UK Border Agency, Discretionary Leave, p. 8, at

[www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/discretionaryleave.pdf?view=Binary](http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/discretionaryleave.pdf?view=Binary)

<sup>135</sup> Interview with British official, 5 May 2010; Finnish Ministry of Foreign Affairs, Response to FIDH & REDRESS Questionnaire, copy on file with the authors.

specialised units established have sufficient staff to deal with all cases that come their way, let alone the ability to be proactive in seeking out suspects on their territories. In Belgium for instance, the number of cases has increased over the years, while the number of police investigators working on such cases has remained at five.<sup>136</sup> Similarly, in the Netherlands, the efficiency of the 1F unit within the IND has resulted in a large number of suspects being referred to the specialised war crimes unit within the KLPD (TIM) in addition to cases initiated by the authorities themselves, thereby exceeding the capacity of the specialised unit. This led to the expansion of the Dutch TIM unit from 18 to today 30 investigators two years ago, yet the unit is still faced with a high number of cases.<sup>137</sup> In 2009 alone, the specialised units within the Dutch Prosecution and Police services dealt with approximately 62 serious international crimes cases in total, with 5 cases pending before Dutch courts, 8 cases in the investigative phase and 42 cases in the preliminary investigation phase. The units also implemented requests for mutual legal assistance in 7 cases.<sup>138</sup>

Over time, the efficiency of specialised units may well result in less suspects seeking to enter the relevant country. However, European countries, and this will increasingly include Eastern European countries, will always be attractive hiding places for suspects of serious international crimes. In order to address the capacity issue to some extent, it is necessary for all States to share the responsibility of ensuring accountability and justice for these crimes. This will include setting up specialised units where this has not yet been done, assisting other countries in their investigative efforts where the number of cases permits, as well as exploring means of how best to assist the territorial state to hold suspects accountable where the crimes have been committed.

## Conclusions and Recommendations

Specialised units are no panacea for ending impunity and work best as part of an integrated approach to tackling safe havens and impunity more broadly. Furthermore, there is no perfect model of a specialised unit and much depends on each country's legal and institutional frameworks. However, past and current practice demonstrates that despite the complexities involved, holding perpetrators of serious international crimes accountable on the basis of extraterritorial jurisdiction is possible where there is a political commitment to make the necessary practical arrangements.

It is difficult to ascertain the number of suspects currently present in a given country, especially in the absence of specific screening procedures. However, the number of cases pending before courts in France and Spain, as well as the number of suspects present in countries such as The Netherlands, the UK and Sweden and relevant referrals to police authorities, suggests that such units are warranted.

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<sup>136</sup> Comment made by Belgian official at FIDH & REDRESS conference on Extraterritorial Jurisdiction in Europe, 1 December, Brussels.

<sup>137</sup> Email Correspondence with Dutch official, 8 December 2010.

<sup>138</sup> Email correspondence with Dutch official, 14 December 2010; this figure also includes cases that started before 2009.

## **To EU Member States and other States as Appropriate**

- Create an adequately resourced and experienced specialised unit within immigration, police and prosecution services. The creation of such units should be done in consultation with specialised units already established in other countries.
- Review national arrangements in place for detecting, investigating and prosecuting suspects of serious international crimes. Ensure adequate implementation of Council Decision 2002/494/JHA on the creation of the EU Network and appoint a national contact point in charge of serious international crimes.
- Ensure that conclusions of the EU Network as far as they concern national policies are properly implemented.
- Provide investigators, prosecutors, judges and immigration officials with the opportunity to regularly undergo legal and practical training with relevant institutions such as Interpol, the Institute for International Criminal Investigations, the Joint Rapid Response Team, as well as relevant in-house training.
- Ensure that police and prosecution services as well as the judiciary benefit from the experiences of national law enforcement and justice personnel working at international courts and tribunals, as well as in international police and rule of law missions abroad. The posting of personnel to such missions, courts and tribunals should be actively encouraged and present relevant personnel with career prospects.
- Adopt a comprehensive approach to witness and victim protection in the form of policies by Ministries of Justice and Interior, after consultation with experts and non-governmental organisations, as well as international best practices and standards.
- Ensure regular cooperation and coordination in the investigation and prosecution of serious international crimes on a national and international level. On a national level, such cooperation should take place between immigration, police and prosecution authorities as well as relevant ministries. On an international level, relevant national experts should participate in meetings of the EU Network, and relevant meetings organized by Interpol and other institutions and organisations, including non-governmental organisations.

## **To Specialised Units**

- Establish an effective outreach programme to ensure awareness of the existence and experiences of the specialised unit among authorities of other countries, NGOs,

victims and witnesses and to adequately inform the society in the territorial state about the outcome of proceedings.

- Consider creating a platform for regular dialogue with civil society and other stakeholders.
- Ensure that experiences and expertise are shared within the unit to minimize the impact of staff leaving a unit.

### **To EU Institutions and the EU Presidencies**

- Review the implementation of Council Decisions 2002/494/JHA and 2003/335/JHA by EU Member States.
- Consider the establishment of an EU Liaison office in third countries to assist in the coordination of the investigation of serious international crimes by several national authorities.
- Ensure that the EU's external commitment to international criminal justice is reflected by the EU's Justice and Home Affairs policy. Proper follow up to conclusions of the EU Network by the relevant institutions must be improved.
- Support Member States in the establishment of specialised units where necessary and ensure regular, at least bi annual meetings of the EU Network.
- Ensure that the soon to be established secretariat of the EU Network has sufficient resources to organise meetings of the Network on thematic issues upon request of a Member State.

Ensure that meetings of the EU network are part of each Presidency's programme and are organised in consultation with the network secretariat, contact points and civil society.

## ANNEX - Specialised Units by Country

Country	Mandate	Immigration	Police	Prosecution	Experience	Training	Contacts / website
Belgium	SICs	SP	Yes; 5	Yes; 1	Rwanda; Chad; Guatemala; Burma	No	<u>Ministry of Justice:</u> Gérard Dive Coordinator, Belgian Task Force ICC-ICT Boulevard de Waterloo 115, 1000 Brussels Tel.: 0032 2542 6713 <a href="mailto:gerard.dive@just.fgov.be">gerard.dive@just.fgov.be</a>
Denmark	SICs + acts of terrorism committed abroad	SP	One combined unit; 17		Rwanda, Uganda; Middle East, Afghanistan, FY, Rwanda	With other Nordic countries	<u>Special International Crimes Office (SICO)</u> Jens Kofods Gade 1 1268 København K Denmark Tel.: 0045 33 30 72 50 Fax.: 0045 33 30 7270 <a href="mailto:sico@ankl.dk">sico@ankl.dk</a> Website: <a href="http://www.sico.ankl.dk/page22.aspx">http://www.sico.ankl.dk/page22.aspx</a>
Germany	SICs	Cooperation with immigration authorities on case by case basis	Yes; 7	Yes; 2	FY, Rwanda, Afghanistan; Eastern DRC	IICI; Interpol; In-house	<u>Bundeskriminalamt</u> Detective Chief Superintendent Klaus Zorn ST 24- ZBKV D - 53338 Meckenheim Tel.: +4922258922396/ +49 15114040936 Email: <a href="mailto:zbkv@bka.bund.de">zbkv@bka.bund.de</a>
Sweden	SICs	SP	Yes; 10	Yes; 4	FY; Rwanda;	With other Nordic countries; IICI	<u>National Criminal Police War Crimes Unit</u> Box SE- 12256 Stockholm Tel.: 0046 840 13850 Fax: 0046 8650 5260 Email: <a href="mailto:wcu.rkp@polisen.se">wcu.rkp@polisen.se</a>
The Netherlands	SICs	Yes; 23	Yes; 30	Yes; 4	Afghanistan, DRC; Sierra Leone; Liberia; Iraq ; Rwanda	IICI, Interpol, Justice Rapid Response Team.	<u>Police:</u> Team Internationale Mis-drijven Postbus 11,3970 AA Drie-bergen, The Netherlands Tel.: 0031 653259475 Fax: 0031 343 535426 <a href="mailto:warcimesunit@klpd.politie.nl">warcimesunit@klpd.politie.nl</a> <u>Prosecution:</u> National Prosecutions Office P.O. Box 395, 3000 AJ Rotterdam Tel.: 0031 104966816 <u>Immigration:</u> Immigratie- en Naturalisatiedienst Unit 1F- zaken Postbus 3100 2130 KC Hoffddorp Tel.: 0031 20 889 7949 / 0031 6533 19126
Norway	SICs	Yes; no data	Yes;12	Yes; 3	FY, Iraq, Afghanistan, Balkans, Rwanda; .	With other Nordic countries	<u>Criminal Police:</u> Brynsalléen 6, 0667 Oslo/ Mail adress: Postboks 8163 Dep., 0034 Oslo Press contact: +47 23 20 80 60 <a href="mailto:kripos.info@politiet.no">kripos.info@politiet.no</a>
United Kingdom	SICs	Yes; 14	No	No	Afghanistan, Chechnya, China, Eritrea, Iraq, Nepal, Pakistan, Somali State of Puntland, Sri Lanka, Rwanda,	In- house training for prosecutors	<u>General enquiries:</u> Metropolitan Police Service New Scotland Yard Broadway London SW1H 0BG Non-urgent telephone enquiries: 0300 123 1212

SICs: Serious International Crimes ; SP: Standardised Procedures ; SU: Specialised Unit ; FY: Former Yugoslavia