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# European Union

## Using universal jurisdiction as a key mechanism to ensure global accountability

*Amnesty International statement to the Joint Hearing of the Committee on Civil Liberties, Justice and Home Affairs and the Subcommittee on Human Rights (Fostering an EU approach to serious international crimes), European Parliament, Brussels, 20 November 2006.*

### **A. What more can the European Union (EU) member states do than they are now doing to enforce international criminal law as part of the global struggle to end impunity for crimes under international law, particularly through universal criminal and civil jurisdiction?**

The sad reality is that crimes under international law continue to be committed on a horrendous scale around the world, largely outside the EU, associated states and applicant states, although the use of torture and enforced disappearances has been documented in US rendition flights through European countries. The International Criminal Court (ICC), which these states did so much to establish and maintain, will only be able to serve as an effective complement to national jurisdictions in a handful of the hundreds of thousands of crimes under international law that are committed every year around the world. The ICC can only act with regard to crimes committed after 1 July 2002 in the territory of the 104 states parties to the Rome Statute of the International Criminal Court (Rome Statute), unless, as in Darfur, the Security Council has referred the situation, or, as with regard to the Côte d'Ivoire, the state has recognized the ICC's jurisdiction over the crimes.

Even in states parties to the Rome Statute, there are still almost no investigations or prosecutions for crimes under international law committed in their territories or by their nationals, or committed abroad, so there is still room for universal jurisdiction to perform two functions: first, to ensure that there are no safe havens for those responsible for the worst possible crimes in the world, and second, to act as a catalyst, as occurred in Argentina and Chile, for states where the crimes occurred or whose nationals committed them to fulfil their obligations under international law to investigate and, where there is sufficient admissible evidence, to prosecute.

## **B. What are the main obstacles to enforcing international criminal law through universal criminal and civil jurisdiction?**

These obstacles fall into three overlapping categories: legal, political and practical.

Although the September 2001 Amnesty International global study of universal jurisdiction in 125 countries demonstrated that approximately 125 countries around the world have legislation or jurisprudence permitting them to exercise some form of universal jurisdiction over ordinary crimes, crimes of international concern or crimes under international law, all of that legislation is procedurally flawed in some respect.<sup>1</sup> Most states, including EU member states, associated states and applicant states, have failed to define crimes under international law, principles of criminal responsibility and defences consistently with the strict requirements of international law or have left important gaps in implementation of international humanitarian and human rights law.

The legislation of many states, including EU members states, contains other legal obstacles in their national legislation or jurisprudence, including: statutes of limitation, state and official immunities, prohibitions of retrospective application of criminal law even when the conduct was criminal under international law at the time it occurred and recognition of amnesties and similar measures of impunity. Other obstacles include:

- Slow or inadequate arrest procedures;
- Ineffective procedures to guarantee appearance of released suspects or accused;
- Inadequate knowledge of national and international law regarding crimes under international law and of universal jurisdiction;
- Lack of political will to enact or implement legislation;
- Political interference with decisions to investigate, prosecute, extradite or provide mutual legal assistance;
- Difficulties in obtaining evidence abroad; and
- The absence of effective extradition and mutual legal assistance agreements.

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<sup>1</sup> Amnesty International, *Universal jurisdiction: The duty of states to enact and implement legislation*, AI Index: IOR 53/002 – 018/2001, September 2001.

## **C. Recommendations to the EU**

Amnesty International recommends that the EU take the following steps:

- Convene, during the German Presidency the fourth meeting of the European Network of Contact Points in Respect of Persons Responsible for Genocide, Crimes against Humanity and War Crimes (European Network) and similar meetings at least once in each successive Presidency;
- Expand the European Network's mandate to include torture, enforced disappearances, extrajudicial executions and other crimes under international law;
- Provide the European Network with sufficient resources, similar in scale to the resources devoted to combating other serious crimes;
- Appoint a European Network Coordinator to plan and organize meetings and draft, in consultation with the Contact Points, a rolling strategic action plan.
- Adopt an action plan similar to the action plan on the ICC to improve efforts at the national level to end impunity.
- Establish a secure on-line data exchange network devoted to crimes under international law;
- Without duplicating the work of the Interpol Working Group on Genocide, War Crimes and Crimes against Humanity, expand the European Network to include contact points around the world;
- Establish an EU investigation unit to coordinate national investigations, including through the use of joint international investigation teams;
- Establish an effective EU-wide victim and witness protection program, including, where necessary, the relocation of victims and witnesses and their families, which would provide protection for victims, witnesses and their families before during and after the proceedings, as appropriate, including in other EU countries;
- Strengthen cooperation between European Network Contact Points and EU institutions outside the territory of EU member states (including EU missions, such as police, rule of law and peacekeeping missions) to facilitate investigations, extradition, mutual legal assistance, surrender to international criminal courts and national prosecutions;
- Expand the mandate of Eurojust and Europol to include, as a priority, cooperation concerning crimes under international law;
- Provide that lack of cooperation by non-EU states with an investigation or prosecution of crimes under international law, except where such cooperation would lead to a human rights violation, will be considered as a violation of human rights;

## **D. Recommendations to EU member states, associated states and applicant states**

In addition to the above steps to be taken by the EU, Amnesty International recommends that all EU member states, associated states and applicant states take the following steps, among others to end legal, political and practical obstacles to effective universal criminal and civil jurisdiction:

- Define all crimes under international law as crimes under national law, using the broadest definitions under customary and conventional international law, with the legislation applicable to conduct from the moment it was recognized as criminal under international law;
- Include the strongest principles of criminal responsibility for crimes under international law, such as a single strict standard of superior responsibility for military commanders and civilian superiors;
- Exclude defences in national law which are inappropriate for crimes under international law, such as the defence of superior orders for war crimes;
- Provide for all five forms of reparations (restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) to victims and effective and accessible procedures for obtaining such reparations;
- Abolish statutes of limitation for crimes under international law, regardless when the crimes were committed;
- Ensure that their law provides effective criminal and civil jurisdiction over all crimes under international law, regardless when or where they were committed, without any requirement that a suspect be present in the forum state until a sufficient time before trial to prepare a defence;
- Ensure that their legislation provides that the first state to exercise jurisdiction, whether universal or territorial, to investigate or prosecute a person has priority over other states with regard to the crimes unless a second state can demonstrate that it is more able and willing to do so in a prompt and fair trial without the death penalty or other serious human rights violations;
- Establish rapid, effective and fair arrest procedures to ensure that anyone arrested on suspicion of committing crimes under international law will appear for extradition, surrender or criminal proceedings in the forum state;
- Ensure that their law facilitates rapid, fair, thorough and effective extradition proceedings in all situations not covered by the European arrest warrants, as well as mutual legal assistance, and that national law eliminates inappropriate grounds for refusal, but bar

extradition and mutual legal assistance where there is a risk of the death penalty, torture or other ill-treatment, unfair trial or other serious human rights violations;

- Ensure that their law provides that all decisions whether to extradite are taken by a court, not a political official;
- Draft, adopt and ratify promptly a new multilateral treaty under Council of Europe or UN auspices providing for extradition of persons suspected of crimes under international law and mutual legal assistance with regard to such crimes, excluding inappropriate grounds for refusal and including bars on extradition and mutual legal assistance where there is a risk of the death penalty, torture or other ill-treatment, unfair trial or other serious human rights violations;
- Refuse recognition of amnesties and similar measures of impunity for crimes under international law;
- Refuse recognition of state or official immunities;
- Ensure that national law provides for the exclusive jurisdiction of civilian courts over all crimes under international law, including crimes committed by members of the armed forces;
- Take all steps necessary to ensure that all decisions whether to investigate or prosecute are taken only by an independent prosecutor or investigating judge, not by a political official;
- Improve procedures in the forum state for conducting investigations abroad, including through the use of joint international investigation teams, with all the necessary areas of expertise;
- Eliminate in law and practice any unnecessary procedural obstacles that would delay or prevent the introduction of admissible evidence from abroad;
- Eliminate in law and practice any unnecessary procedural obstacles for foreign states seeking to gather information in territory subject to the forum state's jurisdiction concerning crimes under international law;
- Establish, where this has not yet been done, national investigation and prosecution units for crimes under international law, staffed by persons with legal and practical experience and highest qualifications;
- Devote similar resources to the investigation and prosecution of crimes under international law, such as genocide, crimes against humanity, war crimes, torture and enforced disappearance, as is devoted to other serious crimes, such as "terrorism", organized crime, trafficking in persons, drug trafficking and money laundering;
- Ensure the scope of prosecutorial discretion not to investigate or prosecute crimes under international law is reduced and make the criteria for exercising such discretion clear,

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excluding improper grounds, such as the supposed impact on political negotiations to end armed conflicts;

- Appoint, where this has not yet been done, European Network Contact Points without any further delay and ensure that they attend European Network meetings, exchange information and fully participate on a regular basis in intersessional work; and
- Increase cooperation with Interpol, particularly in the establishment and maintenance of a database to assist investigation and prosecution of crimes under international law.