

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**DRAFTING GROUP ON THE ERADICATION OF IMPUNITY FOR
SERIOUS HUMAN RIGHTS VIOLATIONS
(CDDH-ELI)**

Summary of the exchange of views
held with external experts at the 2nd CDDH-ELI meeting (15–17 October 2024)

1. Introduction

The CDDH-ELI agreed to hold a second exchange of views on issues related to the scope and definitions of the 2011 [Guidelines on eradicating impunity for serious human rights violations](#) (cluster 1) and on issues related to cooperation (cluster 2).

At its 2nd meeting (15-17 October 2024), the CDDH-ELI held the exchange of views with:

- Jörg POLAKIEWICZ, Director of Legal Advice and Public International Law, Legal Adviser of the Council of Europe.
- Mirjam EKKART, Legal Advisor, Department of International Affairs and Legal Assistance in Criminal Matters, Netherlands Ministry of Justice.
- Matevz PEZDIRC, Head of the Genocide Network Secretariat, European Network for investigation and prosecution of genocide, crimes against humanity and war crimes ('Genocide Network'), Eurojust.
- Robert PETIT, Head of the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 (IIIM).
- Frederic DOLT, Head of the Department on Execution of Judgments of the European Court of Human Rights.
- Kate VIGNESWARAN, Director, Global Accountability Initiative, International Commission of Jurists (ICJ).
- Chiara GABRIELE, Legal Coordinator, Accountability for Private Military and Security Actors, TRIAL International.

2. Summary of discussions

Key points made by Jörg Polakiewicz

- Jörg Polakiewicz discussed the potential establishment of a tribunal to prosecute the crime of aggression committed by the Russian Federation against Ukraine. He emphasised that a war of aggression constitutes not only a violation of a State's territorial integrity and sovereignty but also a violation of the fundamental rights of individuals, particularly in this context, the rights of Ukrainians.
- There are significant jurisdictional challenges in prosecuting the crime of aggression, with the Russian Federation's status as a permanent member of the UN Security Council effectively blocking the creation of a tribunal through the UN system. Furthermore, the current framework prevents the International Criminal Court (ICC) from exercising jurisdiction over this crime in the Ukrainian context. While the ICC has issued arrest warrants for senior officials for war crimes and crimes against humanity, Mr Polakiewicz stressed the importance of prosecuting the crime of aggression to address the broader issue of impunity.
- Mr Polakiewicz highlighted the crucial role of the Council of Europe in addressing these jurisdictional and impunity gaps. An initiative, led by the "Core Group" composed of 41 States and European organisations, including the Council of Europe, is working on establishing an *ad hoc* special tribunal through a bilateral agreement between the Council and Ukraine. This tribunal would focus on prosecuting the crime of aggression, while complementing the ICC's efforts to address war crimes and crimes against humanity.

- However, there are legal challenges in creating such a tribunal, particularly regarding issues of jurisdiction and the immunities of sitting heads of State and government. While it is envisaged that the tribunal would apply Ukrainian law, the process would need to be internationalised to ensure fairness and legitimacy when prosecuting high-ranking officials from another State.

Key points made by Mirjam Ekkart

- Mirjam Ekkart introduced the new Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes (Ljubljana-The Hague Convention). The Convention addresses a legal gap in the investigation and prosecution of international crimes, creating a comprehensive legal framework for mutual legal assistance (MLA), extradition, and other forms of cooperation. Developed since 2011, the Convention was finalised in 2023 with 80 supporting States and 36 signatories so far.
- The Convention includes three main chapters divided into types of cooperation: one on MLA to facilitate cooperation and evidence gathering across borders, particularly crucial for international crimes as victims and witnesses often relocate; one on extradition to ensure perpetrators cannot evade justice; and one on transfer of sentenced persons.
- The Convention has a large scope, containing additional provisions supporting the fight against impunity for international crimes. It includes definitions of crimes consistent with the Rome Statute and other international conventions, as well as obligations for States to criminalise these crimes, establish jurisdiction, and investigate them when extradition is not possible. Specific provisions address the rights and safety of victims and witnesses.
- Under the Convention, States must cooperate unless legitimate grounds for refusal apply. It also establishes jurisdiction over crimes committed within a State's territory, by their nationals, or by perpetrators present in their territory if extradition is not possible, with flexibility through reservations on universal jurisdiction.
- The Convention is a valuable tool to enhance international cooperation and combat impunity for international crimes. It remains open for signature until February 2025, after which three ratifications are required for it to enter into force.

Key points made by Matevz Pezdirc

- Matevz Pezdirc introduced the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes (Genocide Network), which is a platform aimed at ensuring the principle of complementarity and accountability for core international crimes through direct cooperation between practitioners across EU member States, observer States and key international organisations and NGOs, such as Eurojust, the ICC, UN mechanisms, TRIAL international and Human Rights Watch.
- The Genocide Network facilitates the investigation and prosecution of core international crimes as a platform for cooperation and informal exchanges. It also provides capacity-building and expertise. It focuses on access to evidence, sharing best practices and offering resources like case law, reports and guidelines.
- Cooperation in investigating core international crimes is strengthened through the establishment of joint investigation teams and partnerships with civil society organisations, which play a vital role in documenting evidence and reaching victims.

Key points made by Robert Petit

- Robert Petit explained the unique role of the International, Impartial and Independent Mechanism in assisting the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 (“IIIM”). Filling an impunity gap where the exercise of Syrian, international or ICC jurisdiction was not possible, the Mechanism was established by a UN General Assembly resolution to address impunity for atrocities committed in Syria since 2011.
- The IIIM is mandated to collect, consolidate, preserve and analyse evidence of core international crimes committed in Syria, in compliance with international criminal law standards. It supports national jurisdictions respecting international human rights law and fair trial standards or potential future tribunals to facilitate fair and expeditious criminal proceedings. The IIIM also prepares case files in case a specialised tribunal is created to try crimes committed in Syria.
- To date, the IIIM has received more than 375 requests for assistance and has supported over 200 cases prosecuted in national jurisdictions. The Mechanism produces analysis on specific issues, such as the use of child soldiers and attacks against civilians using chemical weapons.
- The Mechanism tailors its responses to the needs of jurisdictions, reflecting the growing demand for its assistance. The IIIM has established close partnerships with national authorities, international organisations and civil society organisations through formal and informal cooperation frameworks. These frameworks have been pivotal in ensuring effective evidence collection and sharing, while enhancing the Mechanism’s credibility and efficiency. The Mechanism’s very close cooperation with civil society organisations has been directly responsible for the Mechanism’s efficiency.
- The IIIM integrates a victim-centred approach with a gender-inclusive strategy, addressing the intersectoral nature of core international crimes. This approach ensures the development of comprehensive case files and meaningful justice for victims.

Key points made by Frederic Dolt

- Frederic Dolt emphasised the importance of the prompt and full execution of judgments of the European Court of Human Rights (“the Court”) in combating impunity, especially in cases involving serious human rights violations. Execution relies on individual and general measures, overseen by the Council of Europe’s Committee of Ministers. This process is essential for victims and serves as a deterrent for future violations.
- Challenges in executing judgments include a lack of cooperation from member States, sensitive political and legal issues, the complexity of required structural reforms, and systemic problems like a lack of judicial independence. Legal barriers such as delayed investigations or statutes of limitations also hinder effective accountability.
- Despite these challenges, the process of executing the Court’s judgments offers unique opportunities to address serious human rights violations, foster accountability, and ensure non-repetition. Measures like reopening investigations and pausing statutes of limitations can yield significant progress. Clear standards and political support are critical to leveraging these opportunities.
- The Reykjavik Declaration highlights the need for enhanced cooperation and national capacity-building to address execution challenges. Initiatives like a new network of national coordinators for the execution of judgments promote dialogue

and shared expertise. Strengthened political dialogue and project-based support are therefore crucial for improving results.

- Civil society plays a vital role in the process, as recognised in the Reykjavik Declaration. Their participation, including submitting communications to the Committee of Ministers, is essential for monitoring and advocating for States' effective compliance with the Court's judgments.

Key points made by Kate Vigneswaran

- Kate Vigneswaran explored ways to strengthen and expand the 2011 Guidelines to reflect recent developments and practices. She suggested that the Guidelines' scope and definitions of serious human rights violations are too narrow and should include any human rights violations meeting the gravity threshold, as well as crimes under international law. Adopting this broader definition would align the Guidelines with the UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity.
- The revised Guidelines should encompass all violations recognised under international law, including customary international law. They should also allow for the progressive development of international law by avoiding exhaustive lists of violations. This would ensure adaptability to evolving legal standards and norms.
- Ms Vigneswaran recommended expanding the definitions of impunity, victims and perpetrators to include legal persons. She also emphasised the need to recognise civil remedies as part of reparation processes, alongside criminal proceedings. Additionally, the Guidelines should address command responsibility and other modes of liability essential for holding perpetrators accountable.
- Addressing impunity requires clear political will, adequate resources and strengthened international collaboration, including with non-member States and international courts and mechanisms. Victim and witness protection should also be explicitly included to ensure their safety and participation in justice processes.

Key points made by Chiara Gabriele

- Chiara Gabriele highlighted the increasing use of extraterritorial and universal jurisdictions in addressing impunity and providing access to justice for victims. In this context, it is important to revise the 2011 Guidelines to reflect recent trends and remove obstacles to combating impunity.
- The Guidelines' scope should also expand to include the extraterritorial dimension of violations and crimes, such as environmental harm, which can result from international crimes and require reparations. Definitions of perpetrators should also include legal persons, and the definitions of victims should be broadened.
- Ms Gabriele suggested that member States should be encouraged to ratify and implement key international instruments, such as the new Ljubljana-The Hague Convention and the Rome Statute. To strengthen accountability, national legislation should incorporate the full range of modes of liability, especially those specific to international crimes like aiding and abetting and command responsibility. Enabling the seizure of perpetrators' assets to fund victim reparations should also be considered.
- Ms Gabriele underlined the critical role of civil society in documenting crimes and providing access to justice. Revised Guidelines could recommend that member States enable NGOs to initiate or participate in legal proceedings.
- The Guidelines should address environmental violations as international crimes, especially in armed conflicts, and include provisions for collective reparations for environmental harm. This aligns with the UN General Assembly's recognition of the

right to a clean and healthy environment as a human right and reflects ongoing discussions about the possibility to include environmental crimes under the Rome Statute.

Discussions

- Experts emphasised the need for clear arrangements and agreements to ensure the proper execution of sentences of persons held responsible for crimes before international courts and tribunals. This could be reflected in the revised Guidelines. Including provisions for the execution of sentences for both domestic and international court judgments was also proposed.
- Participants considered whether the Guidelines should be updated or if a separate additional instrument is necessary. Some suggested focusing on more serious human rights violations in a distinct document, aligned with recent international standards such as the UN Updated Set of principles.
- There were discussions on adopting a victim-centric approach by prioritising victims' perspectives and contributions, including on mechanisms for victims' networks to impact on access to justice and reparations.
- Some experts suggested that revised Guidelines and/or (an) additional non-binding instrument(s) could provide greater practical value for member States by ensuring effective implementation and addressing a broader range of human rights violations.