CDDH-ELI(2025)02REV
09/09/2025

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

DRAFTING GROUP ON THE ERADICATION OF IMPUNITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS

(CDDH-ELI)

Amended draft text on
cluster 3

3. Cluster 3: Issues related to Criminal Law

1. The CDDH examined several criminal law issues while examining the need for and feasibility to revise the 2011 Guidelines and/or adopt (an) additional non-binding instrument(s) to complement the Guidelines on the eradication of impunity for serious human rights violations.

i. Universal criminal jurisdiction

2. Universal criminal jurisdiction is a well-established principle of international law[1] that serves as a complementary mechanism in the fight against impunity. It allows states to prosecute individuals for certain serious crimes / human rights violations, regardless of where they were committed or the nationality of the perpetrator or victims. By ensuring that borders are not always an obstacle to justice, universal criminal jurisdiction reinforces global accountability efforts.

3. There are no universally recognised rules under customary international law regarding universal criminal jurisdiction,[2] and there is no international consensus on its precise definition and scope.[3] Several international treaties and instruments provide for the prosecution of specific crimes based on this principle.[4] State practice shows that universal criminal jurisdiction is generally exercised over the most serious international crimes, such as war crimes, genocide, crimes against humanity, slavery, torture, terrorism, and piracy.[5]

4. Universal jurisdiction has been incorporated into the domestic legal frameworks of several Council of Europe member States. The CDDH recognises that different forms of universal criminal jurisdiction exist across jurisdictions. Some states provide for absolute universal criminal jurisdiction, while others apply a conditional form, imposing limitations, such as requiring the perpetrator's presence on national territory before prosecution can proceed.

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[1] See the work of the Sixth Committee (Legal) of the General Assembly of the United Nations in relation to the scope and application of the principle of universal jurisdiction, 79th session (2024).The European Court of Human Rights has recognised that universal jurisdiction "is relatively widely accepted by the States with regard to criminal matters". See *Naït-Liman v. Switzerland* [GC], appl. no. 51357/07, 15 March 2018, para. 178. See also, with regard to the crime of genocide, *Jorgic v. Germany*, appl. no. 74613/01, 12 July 2007, paras. 68-69. See also, with regard to enforced disappearances, Human Rights Council, Working Group on Enforced or Involuntary Disappearances, "Universal criminal jurisdiction in cases of enforced disappearance," 20 August 2025.

[2] See the work of the Sixth Committee (Legal) of the General Assembly of the United Nations in relation to the scope and application of the principle of universal jurisdiction, *op. cit.*

[3] See Committee of Ministers, Reply to Recommendation 1953 (2011) of the Parliamentary Assembly of the Council of Europe, "The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes", adopted at the 1145th meeting of the Ministers' Deputies, 13 June 2012, para. 6.

[4] See Article 49 of Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949; Article 50 of the Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 12 August 1949; Article 129 of the Geneva Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949; and Article 146 of the Geneva Convention (IV) relative to the Protection of Civilians Persons in Time of War, 12 August 1949; Articles I and VI of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948; Article V of the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted on 30 November 1973; Article 5(2) of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, adopted on 10 December 1984; Article 6(4) and (5) of the Convention for the suppression of unlawful acts against the safety of maritime navigation, adopted on 10 March 1988; Article 9 of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted on 20 December 2006; Article 8(3) of the Convention de Ljubljana-The Hague on Mutual Legal Assistance, *op. cit.*; See also Article 7 of the Draft articles on Prevention and Punishment of Crimes Against Humanity, 2019. See also *Jorgic v. Germany*, appl. no. 74613/01, 12 July 2007, para. 69.

[5] See A/78/130, Report of the Secretary-General on The scope and application of the principle of universal jurisdiction, 6 July 2023, Table 1 - List of crimes mentioned in the comments by Governments concerning which universal jurisdiction (including other bases of jurisdiction) is established by their codes, pp. 13-16.

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5. The 2011 Guidelines do not explicitly refer to universal criminal jurisdiction. Instead, they focus on states' obligations to investigate and prosecute, where warranted, serious crimes under the European Convention on Human Rights, including Article 2 (right to life), Article 3 (the prohibition of torture and inhumane or degrading treatment or punishment), Article 4 (the prohibition of slavery and forced labour), Article 5 (the right to liberty and to security), and Article 8 (the right to respect for private and family life).

6. In recent years, states – including Council of Europe member States – have increasingly exercised universal criminal jurisdiction to prosecute certain serious human rights violations such as genocide, war crimes, crimes against humanity, terrorism and torture, when committed outside their territory.[6] Examples include: Austria's conviction of a Syrian national for terrorism-related crimes in Syria;[7] Hungary's conviction of a Syrian national for crimes against humanity against the civilian population in Syria;[8] Germany's prosecution of members of Syrian intelligence services and Da'esh, convicting them for crimes against humanity, war crimes and genocide against the Yazidi community in Iraq;[9] France's trials of individuals involved in the 1994 Rwanda genocide[10] and recent investigation of alleged war crimes, enforced disappearances and torture committed in Syria;[11] Switzerland's conviction of a Liberian rebel commander for rape, murder and cannibalism; and the Netherlands' trials of former members of Syrian jihadist groups and government militias for war crimes committed in Syria.[12]

7. The UN High Commissioner for Human Rights called on states to establish universal jurisdiction in their domestic legal frameworks,[13] and to apply such principle in order to strengthen global efforts against impunity.[14]

8. The Russian Federation's aggression against Ukraine has further underscored the need to hold perpetrators accountable for serious violations of international law. In 2022, the Council of the EU asked EU member States to allow the exercise of universal jurisdiction or other forms of jurisdiction over core international crimes.[15] The Council of Europe's Committee of Ministers has emphasised the necessity of mobilising all instruments to ensure accountability and urged

[6] See CDDH-ELI(2025)01, Key points made by Amélie Becquart. See also TRIAL International, "Universal Jurisdiction Annual Review 2024," p. 11 which highlights a 33% increase of the total number of cases in 2023 compared to 2022.
[7] See Judgment of the Regional Court, Eisenstadt, AZ 50 Hv 15/21w, 23 March 2022.
[8] See Budapest Metropolitan Court, Judgment No. 31.B.1091/2019/184, 3 December 2020.
[9] As recent examples, Germany has used universal jurisdiction under its Code of Crimes Against International Law which allows prosecution for genocide, war crimes, and crimes against humanity regardless of where they occurred. See the Al-Khatib trial (2022), in which a former Syrian intelligence officer was convicted in 2022 by a German court for crimes against humanity, including torture, committed in Syria.
[10] See the 2022 conviction of Laurent Bucyibaruta for complicity in genocide and crimes against humanity and the recent case brought against Eugene Rwamucyo accused of genocide, complicity in genocide, crimes against humanity, complicity in crimes against humanity and conspiring to prepare those crimes.
[11] See French Cour de Cassation, "Universal jurisdiction of French justice for crimes committed in Syria," 12 May 2023.
[12] For more examples, see TRIAL International, Universal Jurisdiction Annual Review 2024.
[13] See for example, A/HRC/48/60, Report of the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on "Accountability: Prosecuting and punishing gross violations of human rights and serious violations of international humanitarian law in the context of transitional justice", 9 July 2021, para. 97(u).
[14] See as a recent example End of the year press conference by UN High Commissioner for Human Rights Volkr Tűrk, 9 December 2024. See also A/RES/60/147, 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, Principle 5; E/CN.4/2005/102/Add.1, Updated Set of Principles for the protection and promotion of human rights through action to combat impunity, Principle 21.
[15] See EU press release, "Council adopts conclusions on the fight against impunity in Russia's war of aggression against Ukraine," 9 December 2022.

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member States to engage in developing a comprehensive accountability system in accordance with international law.[16]

9. In order to facilitate the exercise of universal criminal jurisdiction, the creation of specialised units for investigating and prosecuting international crimes is considered essential for effective and targeted investigations of crimes committed abroad.[17] Several Council of Europe member States have established such units for investigating and prosecuting international crimes committed outside their territories.[18] However, these units require adequate resources and capacity to function properly.[19] A key challenge in prosecuting cases under universal jurisdiction is the limited resources allocated to such investigations, as states often prioritise domestic crimes over international ones.[20] In the context of the Russia's aggression against Ukraine, the Council of the EU called on EU member States to provide adequate support for the creation and functioning of specialised units dedicated to the investigation and prosecution of core international crimes at national level.[21] Integrating international crimes into broader criminal policy frameworks could help address this challenge.[22]

10. Universal criminal jurisdiction has become an indispensable tool in closing impunity gaps. In light of recent developments in member States and in international law as well as increasing calls for action,[23] strengthening the application of universal criminal jurisdiction is vital for ensuring accountability. The CDDH considers it relevant to include a reference to universal criminal jurisdiction in revised guidelines and/or (an) additional non-binding instrument(s). In particular, Council of Europe member States could be encouraged to incorporate universal criminal jurisdiction into their domestic legal frameworks (if they have not already done so). Revised guidelines and/or (an) additional non-binding instrument(s) could also make further practical recommendations to provide adequate means enabling relevant domestic authorities to exercise universal criminal jurisdiction, for example by allocating adequate resources and capacity to investigate and prosecute crimes under universal criminal jurisdiction and establishing functioning specialised units for investigations and prosecutions.

ii. The principle of *aut dedere aut judicare* (extradite or prosecute)

[16] See Committee of Ministers' Decisions, "Consequences of the aggression of the Russian Federation against Ukraine," CM/Del/Dec(2024)1490/2.3, adopted at the 1490th meeting of the Ministers' Deputies, 21 and 23 February 2024, para. 4; CM/Del/Dec(2023)1457bis/2.3, adopted at the 1457bis meeting of the Ministers' Deputies, 24 February 2023, para. 8; CM/Del/Dec(2022)1442/2.3, adopted at the 1442nd meeting, 14-15 September 2022, para. 5.

[17] See CDDH-ELI(2025)01, Discussion. See also Working Group on Enforced or Involuntary Disappearances, "Universal criminal jurisdiction in cases of enforced disappearance," *op. cit.*, paras. 63-70; The Prague Statement on Universal Criminal Jurisdiction, "Universal Jurisdiction: Accelerating Progress on Justice and Accountability for the War in Ukraine and Beyond," 8 October 2024, p. 2.

[18] For examples, in 2013, France established the Central Office to fight crimes against humanity and hated crimes. Germany created specialised units within the Federal Criminal Police Office and the Office of the Federal Public Prosecutor General to investigate international crimes. The Netherlands have created special teams within its national police and prosecution services. See more information on A/76/203, Report of the Secretary-General on the scope and application of the principle of universal jurisdiction, 21 July 2021, paras. 32 and 36.

[19] See The Prague Statement, *op. cit.*, p. 3.

[20] See CDDH-ELI(2025)01, Discussion.

[21] See EU press release, "Council adopts conclusions on the fight against impunity in Russia's war of aggression against Ukraine," *op. cit.*

[22] See CDDH-ELI(2025)01, Discussion.

[23] See The Prague Statement, op. cit., pp. 2-3.

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11. The Parliamentary Assembly of the Council of Europe (PACE) has long advocated for Council of Europe member States to incorporate the principle of *aut dedere aut iudicare* (extradite or prosecute) into their domestic criminal laws. This principle ensures that states can prosecute perpetrators of certain serious human rights violations if their extradition to the state where the crimes were committed is not possible.[25] This principle is also contained in the UN Updated Set of principles for the protection and promotion of human rights through action to combat impunity which calls on states to implement their legal obligations to institute criminal proceedings against persons suspected of serious crimes under international law if they do not extradite them.[26] PACE has also encouraged member States to expedite extradition requests and process them in good faith, particularly for war crimes.[27] Additionally, it has called for lifting bans on the extradition of nationals, which it considers a "serious obstacle to the course of justice."[28]

12. In reply to the PACE Recommendation, the Committee of Ministers has accepted that reinforcing the principle of *aut dedere aut judicare* could serve as an effective means to prosecute war crimes, especially when universal jurisdiction cannot be applied.[29]

13. The Council of Europe Commissioner for Human Rights has recommended that all states introduce an exception to the rule of non-extradition of nationals for the most serious offences under international law (war crimes, crimes against humanity and genocide). The Commissioner stressed that such a measure would "send the signal that these crimes are so abhorrent that no safe haven can be provided to those who commit them."[30]

14. The International Law Commission (ILC) has noted that the obligation to extradite or prosecute is widely recognised by states as a crucial tool in fighting impunity. It applies to a broad range of crimes of serious concern to the international community,[31] and several international treaties already reflect this obligation.[32] The Draft Articles on Prevention and Punishment of Crimes Against Humanity propose that states be required to prosecute an alleged offender accused of crimes against humanity if the authorities do not extradite him or her.[33]

15. The Convention against Torture provides that a State Party has an obligation to prosecute alleged perpetrators of acts of torture if it does not extradite them.[34] In this regard, the International Court of Justice found that Senegal had engaged its international responsibility by failing to

[25] PACE Recommendation 1427 (1999), "Respect for international humanitarian law in Europe", adopted on 23 September 1999, para. 8.2; Resolution 1785 (2011), "The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes", adopted on 26 January 2011, paras. 9 and 10.6.

[26] Updated Set of principles for the protection and promotion of human rights through action to combat impunity, *op. cit.*, Principle 21.

[27] PACE Resolution 1785 (2011), *op. cit.*, paras. 10.4-10.6.

[28] *Ibid*, paras. 6 and 11.4.

[29] Committee of Ministers Reply to Recommendation 1953 (2011), "The obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes", adopted at the 1145th meeting of the Ministers' Deputies, 18 June 2012, para. 7.

[30] Council of Europe Commissioner for Human Rights, "Dealing with the past for a better future - Achieving justice, peace and social cohesion in the region of the former Yugoslavia," November 2023, p. 41.

[31] International Law Commission, Final report "The obligation to extradite or prosecute (*aut dedere aut judicare*)", 2014, p. 2.

[32] See Final report of the International Law Commission, *op. cit.*, pp. 4.-7, citing, *inter alia*, the four Geneva Conventions of 1949, the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, and the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

[33] See International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity, 2019, Article 10.

[34] Articles 5(2) and 7(1) of the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, *op. cit.*

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comply with its obligations under the Convention against Torture to extradite or prosecute the former President of Chad, who was residing in Senegal.[35]

16. The 1960 European Convention on Extradition (ETS No. 024),[38] ratified by all Council of Europe member States, enshrines the obligation to extradite individuals wanted for prosecution or sentencing in another Contracting Party – subject to specific conditions and provisions set out in the convention – and the principle "extradite or prosecute".[39] Not all Council of Europe member States have signed and ratified the four Additional Protocols to the European Convention on Extradition (ETS No. 086,[40] ETS No. 098,[41] CETS No. 209,[42] and CETS No. 212[43]), despite calls from the Committee of Ministers to do so.[44] Article 1 of the Additional Protocol to the European Convention on Extradition (ETS No. 086) provides that war crimes and crimes against humanity constitute extraditable offences.[45]

17. The new Ljubljana-The Hague Convention on Mutual Legal Assistance includes provisions on the application of the *aut dedere aut judicare* principle. Specifically, it provides that, in cases involving international crimes as defined in the convention, a State Party shall submit the case to its competent authorities for prosecution if it does not extradite or surrender the person to another State or a competent international criminal court or tribunal.[47]

18. The 2011 Guidelines do not refer to the principle of *aut dedere aut judicare*, despite its growing recognition in international law as a key tool in combating impunity for certain serious human rights violations that constitute crimes under domestic criminal laws. Revised Guidelines and/or (an) additional non-binding instrument(s) could expressly refer to the obligation to extradite or prosecute. In particular, they could encourage states to incorporate this principle into domestic criminal legislation and consider lifting legal obstacles – such as the non-extradition of nationals – for certain serious human rights violations that constitute crimes under international criminal law. In addition, revised Guidelines and/or (an) additional non-binding instrument(s) could encourage, where appropriate, states to sign and ratify existing European and international instruments, including the Additional Protocols to the European Convention on Extradition and the Ljubljana-The Hague Convention on Mutual Legal Assistance.

[35] International Court of Justice, Questions relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), judgment of 20 July 2012, para. 122.

[38] The European Convention on Extradition (ETS No. 024) entered into force in 1960 – to date, it has been ratified by 51 states, including all member States of the Council of Europe (see the ratification chart on the website of the Treaty Office of the Council of Europe).

[39] Article 6 (2) of the European Convention on Extradition, *op. cit.*; Reply to Recommendation 1953 (2011) of the Parliamentary Assembly of the Council of Europe, *op. cit.*, para. 5.

[40] The Additional Protocol to the European Convention on Extradition (ETS No. 086) entered into force in 1979 - to date, it has been ratified by 41 states, including 37 member States of the Council of Europe (see the ratification chart on the website of the Treaty Office of the Council of Europe).

[41] The Second Additional Protocol to the European Convention on Extradition (ETS No. 098) entered into force in 1983 to date, it has been ratified by 45 states, including 41 member States of the Council of Europe (see the ratification chart on the website of the Treaty Office of the Council of Europe).

[42] The Third Additional Protocol to the European Convention on Extradition (CETS No. 209) entered into force in 2012 - to date, it has been ratified by 23 states, all of which are member States of the Council of Europe (see the ratification chart on the website of the Treaty Office of the Council of Europe).

[43] The Fourth Additional Protocol to the European Convention on Extradition (ETS No. 212) entered into force in 2014 – to date, it has been ratified by 14 states, 13 of which are member States of the Council of Europe (see the ratification chart on the website of the Treaty Office of the Council of Europe).

[44] Reply to Recommendation 1953 (2011) of the Parliamentary Assembly of the Council of Europe, *op. cit.*, para. 2.

[45] *Ibid.*, para. 3.

[47] See Article 14 of the Ljubljana-The Hague Convention on Mutual Legal Assistance, *op. cit.*

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iii. Amnesties, pardons and time-bars

19. Amnesties, pardons, and time-bars can be significant obstacles to accountability for serious human rights violations. By preventing the investigation and prosecution of such crimes or by pardoning or granting release to an individual convicted of serious human rights violations, they contribute to impunity.

20. The 2011 Guidelines emphasise that legitimate restrictions and limitations on investigations and prosecutions should be kept to the minimum necessary to achieve their intended aim.[49] The reference texts of the 2011 Guidelines highlights the Court case-law, which affirms that when an individual is charged with torture or ill-treatment, neither criminal proceedings nor sentencing should be time-barred, and amnesties or pardons should not be permitted.[50]

21. International law constrains the use of amnesties, pardons, and statutory limitations for serious offences, even in the context of peace agreements or national reconciliation efforts.[51] In 2021, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence recommended that states "refrain from having recourse to legal, judicial or de facto obstacles to accountability, such as […] total or partial amnesties, pardons, the application of statutory limitations […] since they run counter to international law."[52] The UN Updated Set of Principles on impunity stipulates that, even in a context of peace agreement, perpetrators of serious crimes under international law may not benefit from amnesties, unless the state has fulfilled its obligations to investigate, prosecute, and provide reparations, or unless the individual has been prosecuted in another competent jurisdiction (whether international, internationalised or national).[53] The UN Updated Set of Principles also specify that amnesties must not interfere with victims' right to reparation.[54] In addition, pardons based on humanitarian grounds could only be granted in cases of terminal illness of imminent resolution.[55]

22. Amnesties for grave breaches of human rights are generally incompatible with states' obligations under international conventions that provide for a duty to prosecute crimes defined therein,[56] such as Article 7 of the International Covenant for Civil and Political Rights (ICCPR).[57] The UN Committee Against Torture (CAT) has repeatedly found that amnesties and pardons for torture are incompatible with states' obligations.[58] The UN Human Rights Committee has also

[49] See 2011 Guidelines, XIV.
[50] See Reference texts of the 2011 Guidelines, referring to *Abdülsamet Yaman v. Turkey*, appl. no. 32446/96, 2 November 2004, para. 55. See also the cases of *Yeter v. Turkey*, appl. no. 33750/03,13 January 2009, para. 70; *Ould Dah v. France*, appl. no. 13113/03, 17 March 2009, p. 17.
[51] A/HRC/48/60, *op. cit.*, para. 26.
[52] *Ibid.*, para. 97(b).
[53] Updated Set of principles for the protection and promotion of human rights through action to combat impunity, *op. cit.*, Principle 24(a).
[54] *Ibid*., Principle 24(b).
[55] A/HRC/48/60, *op. cit.*, para. 97(f).
[56] See *Marguš v. Croatia* [GC], appl. no. 4455/10, 27 May 2014, paras. 132-133.
[57] For violations of Article 7 of the International Covenant for Civil and Political Rights (ICCPR), see Human Rights Committee, CCPR General Comment No. 20; Article 7 (Prohibition of Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment), para. 15.
[58] CAT, A/55/44, Concluding Observations on Azerbaijan, 1999, para. 69(c). See also A/51/44, Concluding Observations on Senegal, 1996, para. 117; CAT/C/CR/32/5, Concluding Observations on Chile, 2004, para. 7(b); CAT/CO/34/BHR, Concluding Observations on Bahrain, 2005, para. 6(g). For pardons see CAT/C/34/D/212/2002, *Kepa Urra Guridi v. Spain*, Communication No. 212/2002, (2005), para. 6.7.

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urged states to prohibit amnesties for serious human rights violations, including international crimes.[59]

23. Statutes of limitations also create serious barriers to justice, as time restrictions on the prosecution of serious human rights violations allow perpetrators to evade accountability. Recognising this risk, international law and human rights standards emphasise that the most serious crimes should not be subject to statutory limitations. The UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence affirmed that statutory limitations should not apply to serious human rights violations.[60] The Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity establishes that such crimes remain prosecutable at all times.[61] The CAT has interpreted Articles 1 and 4 of the UN Convention against Torture as obligating states to ensure that acts of torture cannot be time-barred.[62] The Rome Statute of the ICC also explicitly states that the crimes within its jurisdiction are not subject to any statute of limitations.[63] Furthermore, the UN Updated Set of Principles on impunity stipulates that prescriptions in criminal cases "shall not apply to crimes under international law that are by their nature imprescriptible."[64]

24. The European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 082) provides that each Contracting State undertakes to adopt the necessary measures to secure that statutory limitation does not apply to the prosecution of crimes against humanity, war crimes and any other violation of a rule or custom of international law or to the enforcement of the sentences imposed for such offences.[65] To date, the convention has not only been ratified by eight Council of Europe member States. Revised Guidelines and/or (an) additional non-binding instrument(s) could encourage the remaining member States to sign and ratify this convention.

25. The Court has consistently ruled that amnesties and statutes of limitations must not obstruct accountability for grave human rights violations. In *Mocanu and Others v. Romania*, the Grand Chamber held that for acts of torture or ill-treatment, statutes of limitations should not apply, and amnesties and pardons should not be tolerated.[66] In *Kononov v. Latvia* and *Touvier v. France*, the Court further affirmed that war crimes and crimes against humanity are not subject to statutory limitations.[67]

26. In 2022, the Court issued an Advisory Opinion on the applicability of statutes of limitations to offences amounting to torture, reaffirming that the prohibition against torture is a peremptory

[59] See for examples, CCPR/C/NIC/CO/4, Concluding observations on the fourth periodic report of Nicaragua, 15 November 2022, para. 12(a); CCPR/C/SEN/CO/5, Concluding observations on the fifth periodic report of Senegal, 11 December 2019, para. 9, calling for Senegal to abolish all amnesties for international crimes and provide reparation to the victims and their families; CCPR/C/MRT/CO/2,Concluding observations on the second periodic report of Mauritania, 23 August 2019, para. 10.

[60] A/HRC/48/60, *op. cit.*, para. 34.

[61] Article 1 of the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted on 26 November 1968.

[62] For instance, see CAT/C/DNK/CO/5, Conclusions and recommendations of the CAT, 16 July 2007, para. 11.

[63] Article 29 of the Rome Statute of the ICC.

[64] Updated Set of principles for the protection and promotion of human rights through action to combat impunity, *op. cit.*, Principle 23.

[65] Article 1 of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 082). The Convention entered into force in 2003 and has been ratified by eight Council of Europe member States (see the ratification chart on the website of the Treaty Office of the Council of Europe).

[66] *Mocanu and Others v. Romania* [GC], appl. nos. 10865/09, 45886/07 and 32431/08, 17 September 2014, para. 326.

[67] *Kononov v. Latvia* [GC], appl. no. 36376/04, 17 May 2010, para. 233; *Touvier v. France*, appl. no. 29420/95, 13 January 1997, para. 7.

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norm under international law. The Court held that "criminal proceedings ought not to be discontinued on account of a limitation period, and also that amnesties and pardons should not be tolerated in such cases."[68] The Court also noted significant state practice among Council of Europe member States in abrogating or suspending statutes of limitations for acts of torture, ensuring accountability for state officials.[69]

27. The Committee of Ministers has stressed that "when a State agent has been charged with crimes involving ill-treatment, it is of the utmost importance that criminal proceedings and sentencing are not time-barred. In order to maintain public trust in the justice system, measures such as the granting of an amnesty or pardon should not be envisaged or accepted without convincing reasons."[70]

28. The European Commission for Democracy through Law (the Venice Commission) has similarly reaffirmed that "amnesties have the effect of retrospectively nullifying the criminality of certain acts and can therefore deprive criminal provisions as laid down in acts of parliament of any practical effect"[71] and concluded that amnesties are impermissible in relation to serious international crimes and serious human rights violations.[72]

29. Referring to international conventions, judgments of several international courts and resolutions, recommendations and comments from various international bodies, in 2014, the Court had recognised the "growing tendency in international law" to see amnesties for "grave breaches of fundamental human rights" unacceptable, as they are incompatible with states' unanimous recognised obligation to prosecute and punish the perpetrators of such acts.[73] This tendency has been recognised by the JLC, which in 2017 recognised that "there is a "crystallising international norm", or "emerging consensus, prohibiting amnesties in relation to serious international crimes, particularly in relation to blanket or general amnesties, based on a duty to investigate and prosecute those crimes and punish their perpetrators."[74]

30. In the 2023 Reykjavik Declaration, the Heads of State and of Government of the Council of Europe declared that no statutes of limitation apply to genocide, crimes against humanity, and war crimes, including conflict-related sexual violence and rape.[75]

31. In light of these developments, the 2011 Guidelines should be strengthened to explicitly state that amnesties, pardons and statutes of limitations should not apply to certain crimes

[68] *Advisory Opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture*, Requested by the Armenian Court of Cassation, Request no. P16-2021-001, 26 April 2022, paras. 59-64. On the prohibition of torture amounting to a *jus cogens* norm, see also: International Court of Justice, Questions Relating to the Obligation to Prosecute or Extradite *(Belgium v. Senegal)*, Judgment of 20 July 2012, para. 99.

[69] *Advisory Opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture*, op. cit., para. 64.

[70] Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, adopted at the 1253rd meeting of the Ministers' Deputies, 13 April 2016, para. 24.

[71] Venice Commission, CDL-AD(2024)003, Spain - Opinion on the rule of law requirements of amnesties, with particular reference to the parliamentary bill of Spain "on the organic law on amnesty for the institutional, political and social normalisation of Catalonia", adopted by the Venice Commission at its 138th Plenary Session 15-16 March 2024, para. 60.

[72] *Ibid*, para. 122.

[73] *Marguš v. Croatia* [GC], appl. no. 4455/10, 27 May 2014, para. 139.

[74] See A/72/10 (2017), UN General Assembly, Report of the International Law Commission on the work of its sixty-ninth session (Agenda item 81), Article 10, Commentary, para. 9.

[75] Reykjavík Declaration "United around our values", op. cit., p. 4.

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constituting serious human rights violations, including international crimes. Revised guidelines and/or (an) additional non-binding instrument(s) could recommend that member States align their national laws with international standards by eliminating limitation periods for such crimes. Additionally, revised guidelines and/or (an) additional non-binding instrument(s) could stipulate that amnesties, pardons and statutes of limitations must not hinder victims' access to remedies and reparations.

32. In addition, statutes of limitations should not hinder the execution of the European Court's judgments in cases involving serious human rights violations.[76] In 2022, the Grand Chamber emphasised the challenges faced in executing judgments concerning torture and other forms of ill-treatment due to the existence of limitation periods in the domestic legal systems of member States. Several member States have taken measures to address this issue and thus prevent impunity for State officials who have committed such acts. In particular, some have amended their legislation to abolish statutes of limitations for acts of torture.[77] Revised guidelines and/or (an) additional non-binding instrument(s) could recommend that states adopt similar measures to facilitate the execution of the Court's judgments involving serious human rights violations.

iv. Immunities of State Officials

33. Another potential obstacle to accountability for serious human rights violations is the application of immunities to state officials.[80] The CDDH notes that the 2011 Guidelines do not address this issue.

34. The CDDH decides not to address the normative issues relating to immunities because these are being discussed in more specialised fora. The ILC is currently working on the topic, notably through the adoption in 2022 of the Draft Articles on the immunity of State officials from foreign criminal jurisdiction.[81] The issue of immunities has also been examined in the context of the work of the Core Group on the establishment of a Special Tribunal for the crime of aggression against Ukraine, as reflected in the Statute of the Tribunal signed by the Council of Europe and Ukraine in June 2025.[82]

v. Separation of powers, independence of the judiciary

35. The 2011 Guidelines broadly emphasise the need to ensure the independence and impartiality of investigations and the judiciary, in accordance with the principle of the separation of powers.[83]

36. The CDDH considers that revised Guidelines and/or (an) additional non-binding instrument(s) could further elaborate on international standards governing the separation of powers and judicial independence, taking into account recent jurisprudence of the Court[84] and

[76] See CDDH-ELI(2024)12, Key points made by Frédéric Dolt.
[77] See Advisory Opinion on the applicability of states of limitation for prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture, op. cit., para. 64.
[80] In the context of enforced disappearances, see Working Group on Enforced or Involuntary Disappearances, "Universal criminal jurisdiction in cases of enforced disappearance," *op. cit.*,paras. 58-62.
[81] See A/77/10, Report of the International Law Commission, adopted on the Seventy-third session, 18 April–3 June and 4 July–5 August 2022, VI., pp. 188-286.
[82] See Statute of the Special Tribunal for the Crime of Aggression against Ukraine, *op. cit.*, Articles 4(2), 23(4) and (5).
[83] See 2011 Guidelines, VI and IX.
[84] See European Court of Human Rights, Factsheet - Independence of the justice system, August 2023.

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recommendations from the Venice Commission.[85] This includes reinforcing the principles of independence, impartiality, and transparency in judicial processes, particularly related to serious violations of human rights. In this regard, a recent report of the Council of Europe's Group of States against Corruption (GRECO) expressed serious concern about persistent threats to judicial independence in some member States, urging states to strengthen the structures separating the three branches of power and calling for further action to safeguard the independence of judicial councils from legislative and/or executive powers.[86] Recommendations elaborated in revised Guidelines and/or (an) additional non-binding instrument(s) could stem from the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality adopted in 2016[87] and its implementation report.[88] This work continues to be followed up by the European Committee on Legal Cooperation (CDCJ).[89]

37. In assessing whether a tribunal can be considered as "independent," the Court examines the manner of appointment of its members, their term of office, the existence of guarantees against external pressures, and whether the judicial body presents an appearance of independence.[90] Revised guidelines and/or (an) additional non-binding instrument(s) could recommend that member States take measures promoting the independence of the judicial system, such as:

- adopting clear standards for judicial appointment and tenure, ensuring that selection and appointment processes are transparent and merit-based, that is with judges who fulfil the requirements of technical competence and moral integrity to perform the judicial functions required of it;[91]
- ensuring that the relevant domestic law on judicial appointments is couched in unequivocal terms to the extent possible, so as not to allow arbitrary interferences in the appointment process, including by the executive;[92]
- ensuring that judicial bodies satisfy the requirements of independence, in particular from the executive, and of impartiality;[93]
- strengthening institutional safeguards and, where applicable, considering establishing or reinforcing independent prosecutorial and judicial councils with mandates to oversee prosecutorial and judicial appointments, discipline and administration.[94]

38. Regarding the investigation and prosecution of serious human rights violations, the Court has emphasised that all reasonable steps must be taken to ensure that investigations are independent, effective, and subject to public scrutiny to maintain confidence in their outcomes.[95] To address proceedings specifically related to serious human rights violations, revised guidelines and/or (an) additional non-binding instrument(s) could include additional safeguards, such as:

[85] See Compilation of Venice Commission Opinions and Reports concerning Courts, CDL-PI(2023)020, 18 July 2023; Compilation of Venice Commission Opinions and Reports concerning Judges, CDL-PI(2023)019, 18 July 2023.
[86] Group of States Against Corruption (GRECO), 25th General Activity Report (2024), adopted by GRECO in March 2025, pp. 10-11.
[87] See CM(2016)36 final, Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality, adopted at the 1253rd meeting of the Ministers' Deputies on 13 April 2016.
[88] See CDCJ, Review of the Implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality, adopted by the CDCJ on 1-3 June 2022.
[89] See CDCJ, Judicial independence and impartiality.
[90] See for example, *Luka v. Romania*, appl. no. 34197/02, 21 July 2009, para. 37 (only available in French).
[91] See *Guðmundur Andri Ástráðsson v. Iceland* [GC], appl. no. 26374/18, 1 December 2020, para. 220.
[92] *Ibid.*, para. 230.
[93] *Ibid.*, para. 232.
[94] See Recommendation CM/Rec(2010)12 of the Committee of Ministers, "Judges: independence, efficiency and responsibilities," adopted on 17 November 2010.
[95] *Al-Skeini and Others v. the United Kingdom*, appl. no. 55721/07, 7 July 2011, paras. 164, 166-167.

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- mandatory training for judges and prosecutors working in relevant fields, notably those involved in the adjudication and prosecution of serious human rights violations, including international criminal law and international humanitarian law, to ensure they possess the necessary expertise;
- ensuring the appropriate financial and administrative autonomy of the judiciary by allocating adequate and independent budgets, particularly for complex and often lengthy cases involving serious human rights violations, to prevent undue financial leverage by other branches of power;
- introducing accountability mechanisms to address judicial bias or misconduct in cases of serious human rights violations, enhancing public trust in the judicial system;
- strengthening independent oversight bodies to investigate allegations of unlawful detention or ill-treatment. This includes reinforcing the role of National Preventive Mechanisms (NPMs), which have been established in many Council of Europe member States.

39. In addition to reaffirming the principle of judicial independence, the CDDH considers important that revised Guidelines and/or (an) additional non-binding instrument(s) strengthen safeguards to protect judges, prosecutors, court staff, and lawyers, both at the domestic and international levels, from retaliation, intimidation or undue pressure in the exercise of their functions. The 2011 Guidelines already stress that lawyers, prosecutors and judges should not fear reprisals for exercising their functions.[96]

40. In the domestic context, states themselves bear responsibility for ensuring that their judicial system functions effectively, which includes protecting national judges, prosecutors, court staff, and lawyers so that they may carry out their duties free from threats, sanctions or interference.

41. In the case of regional or international courts and tribunals, the responsibility to guarantee a safe and enabling framework for their functioning – including adequate protection of their staff – is a shared responsibility. For treaty-based institutions, this responsibility lies with the State Parties that established them, while for tribunals established under Chapter VII of the UN Charter, it rests with the international community as a whole.

42. Recent developments have underlined the importance of reiterating and expanding this guarantee at the international level. In particular, U.S. sanctions directed at judges and prosecutors of the ICC have raised profound concerns within the international community, with the Bureau and the Presidency of the Assembly of State Parties, the ICC President Judge, and the Court itself issuing strong statements deploring such actions and emphasising their incompatibility with the rule of law and international justice.[97] The UN High Commissioner for

[96] See 2011 Guidelines, IX.

[97] See ICC, "Statement by the Bureau of the Assembly of State Parties in support of the independence and impartiality of the International Criminal Court," 23 January 2025; "ICC condemns the issuance of US Executive Order seeking to impose sanctions on the Court," 7 February 2025; "Statement of ICC President Judge Tomoko Akane following the issuance of US Executive Order seeking to impose sanctions on the International Criminal Court," 7 February 2025; "The International Criminal Court deplores new sanctions from the US administration against ICC Officials," 5 June 2025; "Presidency of the Assembly of State Parties expresses deep concern and rejects U.S. measures targeting ICC officials as a threat to international justice," 6 June 2025; "Statement of ICC President Judge Tomoko Akane on 17 July, Day of International Criminal Justice," 17 July 2025, stating that "[w]hile the ICC, its officials, and other actors in the field of justice have come under increasing pressure, attacks, threats and sanctions, the Court will remain undeterred in fulfilling the mandate given to it by the 125 State Parties"; "The ICC strongly rejects new US sanctions against Judges and Deputy Prosecutors," 20 August 2025; "Presidency of the Assembly of States Parties expresses

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Human Rights stated that "[s]anctioning judges and prosecutors at national, regional or international levels, for fulfilling their mandate in according with international law standards, is an assault on the rule of law and corrodes justice" and that "[s]tates need to step up to defend the institutions they have created to uphold and defend human rights and the rule of law."[98] Several States Parties to the Rome Statute have expressed their solidarity with the persons targeted by U.S. sanctions, reaffirming their support to the ICC and its staff. In this context, France underlined their essential role in the fight against impunity.[99]

43. Beyond sanctions, other forms of retaliation against international justice actors have also emerged. The Russian Federation has opened criminal investigations and issued arrest warrants against ICC judges following the ICC's decisions relating to the situation in Ukraine.[100] During the preliminary examination into alleged crimes committed in the context of the "war on drugs", the then President of the Philippines publicly threatened to arrest the then ICC Prosecutor if she conducted activities on its territory.[101] More recently, allegations of intimidation campaigns from high-level officials against the ICC Prosecutor emerged in the investigations pursued into alleged war crimes committed by Israeli officials in Gaza.[102]

44. PACE has recently condemned "any attempts by States not party to the Rome Statute to sanction the ICC and its staff," underlining that this may result in "the obstruction of its work and lack of co-operation by some State parties."[103]

45. Revised Guidelines and/or (an) additional non-binding instrument(s) could underline that reprisals or sanctions against judicial and prosecutorial staff, both national and international, undermine accountability for serious human rights violations, threaten the integrity of justice processes, and must be firmly prohibited, and could therefore:

- Recall and strengthen the duty of states to protect their own national judges, prosecutors, court staff, and lawyers (see also below, paragraph [45]) so that they can perform their functions free from threats, sanctions, or interferences; and
- Underline that, in the case of regional and international courts and tribunals, protection of their staff is a matter of shared responsibility: i) for tribunals and mechanisms established by the UN Security Council under Chapter 7 of the UN Charter, this responsibility lies with the international community as a whole; ii) for treaty-based courts and organisations, the responsibility rests with the States Parties that established them.

46. The Committee of Ministers of the Council of Europe has recently adopted the first-ever international treaty aiming to protect the profession of lawyer and the right to practice this profession with independence and without discrimination, improper hindrance or interference. The

deep concern and objects to additional U.S. sanctions targeting ICC elected officials," 21 August 2025. See also "International Criminal Court condemns US economic sanctions," 2 September 2020.

[98] See UN News, "UN rights chief decries 'relentless intensification' of US sanctions against International Criminal Court staff," 21 August 2025.

[99] See France Diplomacy, "United Nations – US Sanctions against the international criminal court," 20 August 2025. See also Spanish Ministry of Foreign Affairs, "Spain deeply regrets announcement of new US sanctions against International Criminal Court," 21 August 2025; German Federal Foreign Office, "Foreign Minister Annalena Baerbock on US sanctions against the ICC," 7 February 2025; Dutch Government, "Press conference after the cabinet meeting on June 6, 2025," 6 June 2025 (in Dutch only).

[100] See Aljazeera, "After arrest warrant for Putin, Russia opens case against ICC," 20 March 2023; See also Radio Free Europe, "Russia Issues Warrant for International Criminal Court Judge," 12 November 2024.

[101] See Aljazeera, "Duterte to ICC prosecutor: I will arrest you if you come here," 13 April 2018.

[102] See Aljazeera, "Threats and intimidation stalling top ICC prosecutor's Israel case: Report," 3 August 2025.

[103] See PACE Resolution 2598(2025), "Russian war of aggression against Ukraine: the need to ensure accountability and avoid impunity," adopted on 9 April 2025, para. 14.3.

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convention also aims at protecting lawyers from attacks, threats, harassment or intimidation.[104] Revised guidelines and/or (an) additional non-binding instrument(s) could encourage, where appropriate, Council of Europe member States to sign and ratify this Convention.

47. Transparency is essential for the effective functioning of the justice system, as it strengthens public trust in courts and prosecutors. To enhance transparency, revised guidelines and/or (an) additional non-binding instrument could recommend member States to:

- publish judicial decisions in accessible formats, including digital versions;
- ensure public access to hearings, where appropriate, and facilitate media access to relevant and appropriate case information;
- promote better communication between the judiciary, prosecutors and the media to enhance public awareness and trust;[105]
- establish victim-friendly procedures, such as ensuring victims have access to legal assistance and case information (see below, Cluster 4).

vi. Fair trial guarantees

48. The 2011 Guidelines include safeguards to protect individuals deprived of their liberty from serious human rights violations. These safeguards aim to prevent any unlawful detention or ill-treatment and to ensure the right to a fair and public hearing for those accused of committing such violations.[106]

49. The CDDH considers that revised guidelines and/or (an) additional non-binding instrument(s) could incorporate further safeguards in light of the Court's case-law on the right to a fair trial.[107] In particular, these revisions could recommend that member States adopt or maintain measures to uphold the principle of a fair trial in proceedings involving serious human rights violations, including:

- ensuring the fairness of the proceedings, while balancing the need for police authorities to take effective measures to counter serious crimes in discharge of their duty under Articles 2, 3 and 5 paragraph 1 of the European Convention on Human Rights to protect the right to life and the right to bodily security of members of the public;[108]
- providing additional safeguards for individuals on trial for serious human rights violations, ensuring that even those accused of grave crimes receive justice in line with international standards. This includes the right to legal representation at all stages of the proceedings, particularly when the seriousness of the offence and the severity of the potential penalties justify free legal representation.[109] Other essential safeguards include adequate time and

[104] Article 1 of the Council of Europe Convention for the Protection of the Profession of Lawyer, adopted by the Committee of Ministers at its 1522nd meeting on 11-12 March 2025.
[105] See the European Commission for the Efficiency of Justice (CEPEJ), Guide on communication with the media and the public for courts and prosecution authorities, adopted at the 31st plenary meeting of the CEPEJ, 3 and 4 December 2018. See also CM(2013)161-add, Opinion No. 8 (2013) of the Consultative Council of European Prosecutors (CCPE) on relations between prosecutors and the media, adopted on 22 January 2014.
[106] See 2011 Guidelines, IV and IX.
[107] See Guide on article 6 of the European Convention on Human Rights – Right to a fair trial (criminal limb), updated on 28February2025.
[108] *Ibrahim and Others v. the United Kingdom* [GC], appl. nos. 50541/08, 50571/08, 50573/08 and 40351/09, 13 September 2016, para. 252.
[109] *Benham v. the United Kingdom* [GC], appl. no. 19380/92, 10 June 1996, para. 61; *Quaranta v. Switzerland*, appl. no. 12744/87, 24 May 1991, para. 33; *Zdravko Stanev v. Bulgaria*, appl. no. 32238/04, 6 November 2012, para. 38.

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facilities to prepare a defence and the right to appeal a judgment, subject to statutory requirements which should not undermine the fairness of the proceedings;[110]

- ensuring effective participation in the proceedings, including specific protections for vulnerable defendants.[111] Juvenile defendants, in particular, should be afforded proceedings that respect the principle of the best interests of the child. This includes taking full account of their age, level of maturity, and intellectual and emotional capacities, and ability to understand and participate in the proceedings.[112]

50. Information provided by international organisations and NGOs can play an important role in criminal proceedings related to serious human rights violations. Such information may contribute to the establishment of facts, support efforts to ascertain the truth, and ultimately help to prevent impunity.[113]

51. Additionally, revised guidelines and/or (an) additional non-binding instrument(s) should recognise the evolving increasing reliance on digital technologies, including open-source intelligence and social media content.[114] The 2011 Guidelines do not address these developments, despite the fact that digitalisation of justice systems of member States is constantly developing (see below, paragraphs [51-54]) and that accountability bodies dealing with serious human rights violations, particularly international crimes, now regularly handle large volumes of electronic, pictorial and social media evidence. Establishing guidelines for managing and securing digital evidence is essential, including to prevent investigative bodies from being overwhelmed[115] and to secure entire digital platforms used by courts in the investigation of serious human rights violations.[116] For example, the Register of Damage for Ukraine relies exclusively on digital evidence due to necessity and to efficiency process a large number of claims.[117] The Register also uses mass claims processing techniques and tools, such as computer-assisted data processing, data analysing and sampling, with the use of artificial intelligence (AI).[118] In 2022, Eurojust has established the Core International Crimes Evidence Database[119] to preserve, analyse, and store evidence of core international crimes. This digital database enables national judicial authorities to identify relevant evidence located in other jurisdictions. UNODC has also developed standards and best practices for digital forensics,[120] while Interpol has issued

[110] Article 6 guarantees apply in principle to appeals on points of law. See *Meftah and Others v. France* [GC], appl. nos. 32911/96, 35237/97 and 34595/97, 26 July 2002, para. 40.
[111] *Hasáliková v. Slovakia*, appl. no. 39654/15, 24 June 2021, para. 69, concerning defendants with intellectual impairments.
[112] *V. v. the United Kingdom* [GC], appl. no. 24888/94, 16 December 1999, paras. 85-86; *Blokhin v. Russia* [GC], appl. no. 47152/06, 23 March 2016, para. 195.
[113] The case of Michel-Thierry Atangana was brought to the attention of the CDDH-ELI. Mr Atangana, a French national of Cameroonian origin, was arbitrarily detained for 17 years in Cameroon. He was released in 2014, partly thanks to an opinion by the UN Working Group on Arbitrary Detention. Despite his release, Mr. Atangana was not cleared and found himself in a difficult situation. He drew the attention of French elected representatives, which led to the introduction of a new provision in the French Code of Criminal Procedure. This article enables the French judicial authorities to take into consideration the opinions and reports of international organisations as evidence in French criminal proceedings, with a view to establishing the material element of an offence or contributing to the ascertainment of the truth. See more in Le Monde, "*Michel Thierry Atangana: 'Mon combat je le mène avec calme, parce que je sais son importance'*," 28 March 2024 (not available in English).
[114] See CDDH-ELI(2025)01, Key Points made by Amélie Becquart.
[115] See The Prague Statement on Universal Criminal Jurisdiction, *op. cit.*, p. 3.
[116] For instance, see B. Thorne, "Artificial Sanctions: Potential Implications of US Sanctions on the ICC's use of AI and Digital Evidence," Opinio Juris, 25 February 2025.
[117] See CDDH-ELI(2025)01, Key Points made by Markiyan Kliuchkovskyi.
[118] Register of Damage for Ukraine, Rules Governing the Submission, Processing and Recording of Claims, Article 20(1).
[119] See more information about the Core International Crimes Evidence Database.
[120] See United Nations Office on Drugs and Crime, Standards and best practices for digital forensics.

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guidelines for digital forensics first responders, listing best practices for maintaining evidence integrity during search and seizure operations.[121]

52. The Council of Europe has developed several conventions relevant to transfer of evidence and digital technologies, such as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108),[122] the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (CETS No. 224),[123] and the Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (CETS No. 225).[124] In particular, the Second Additional Protocol to the Convention on Cybercrime enhances international co-operation for the disclosure of data in specific criminal investigations or proceedings concerning criminal offences related to computer systems and data and to the collection of evidence in electronic form of a criminal offence.[125] This Additional Protocol and the Framework Convention on Artificial Intelligence have not come into force yet.

53. The Council of Europe contributes to strengthening electronic evidence-handling capacities in cases of war crimes and gross human rights violations in Ukraine.[126]

54. In 2024, the Council of Europe's Committee on Counter-Terrorism (the CDCT), in partnership with the International Institute for Justice and the Rule of Law, adopted Comparative Practices on the Use of Information Collected in Conflict Zones as Evidence in Criminal Proceedings, thereby providing guidance to practitioners to assist in investigations and prosecutions of crimes of terrorism and other crimes, such as violations of international humanitarian law committed in the context of an armed conflict, to meaningfully advance accountability and justice.[127] Furthermore, the Committee of Ministers has adopted foundational principles in its Guidelines on electronic evidence in civil and administrative proceedings.[128] These Guidelines could serve as a foundation for developing further recommendations in criminal proceedings.

55. PACE adopted a Resolution stressing the need to regulate the use of AI for use by the police and criminal justice systems based on universally accepted and applicable core ethical principles, such as transparency, justice and fairness, human responsibility for decisions, safety

[121] See Interpol, Guidelines for Digital Forensics First Responders, March 2021.
[122] The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) entered into force in 1985 and has been ratified by all Council of Europe member States as well as nine non member States (see the ratification chart on the website of the Treaty Office of the Council of Europe).
[123] The Council of Europe Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence (CETS No. 224) will enter into force after five ratifications – to date, it has been signed by two states (see the ratification chart on the website of the Treaty Office of the Council of Europe).
[124] The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (CETS No. 225) will enter into force after five ratifications including at least three member States of the Council of Europe – to date, it has been signed by 15 states and the European Union (see the ratification chart on the website of the Treaty Office of the Council of Europe).
[125] Article 2 of the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence, *op. cit.*
[126] See Council of Europe project CyberUA, which aims to contribute to improvement of the handling of electronic evidence for use in criminal proceedings related to war crimes and gross human rights violations in the context of the Russian aggression against Ukraine through strengthening the criminal justice capacities of Ukrainian law enforcement, prosecutors and the judiciary on handling electronic evidence in criminal cases.
[127] CDCT, Comparative Practices on the Use of Information Collected in Conflict Zone in Criminal Proceedings, December 2024.
[128] CM(2018)169-add1final, Guidelines of the Committee of Ministers of the Council of Europe on electronic evidence in civil and administrative proceedings, adopted at the 1335th meeting of the Ministers' Deputies on 30 January 2019.

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and security, and privacy and data protection. In particular, PACE called on member States to adopt national legal framework to regulate the use of AI, based on these principles.[129]

56. It may be considered necessary to modernise the 2011 Guidelines to reflect these rapid technological advancements affecting accountability mechanisms. Revised guidelines and/or (an) additional non-binding instrument(s) could:

- call for the establishment of standardised procedures for the collection, preservation, analysis and presentation of digital evidence of serious human rights violations, ensuring adherence to principles of integrity, authenticity and admissibility;
- encourage the use of AI tools to enhance the efficiency and accuracy of digital evidence analysis of serious human rights violations, while ensuring compliance with legal standards, ethical guidelines and security, and call on member States to adopt domestic legal frameworks to regulate the use of such technologies in this context;
- develop training programmes to equip law enforcement, prosecutors, and the judiciary with the necessary skills to handle digital evidence and AI applications in investigations of serious human rights violations;
- promote international and regional collaboration among member States to harmonise legal frameworks and facilitate cross-border exchanges of digital evidence. This could include encouraging the use of common digital platforms to store and share evidence related to serious human rights violations;
- ensure that the use of digital evidence and AI technologies in investigations of serious human rights violations respect human rights, including privacy and fair trial guarantees.

57. Revised Guidelines and/or (an) additional non-binding instrument(s) could encourage, where appropriate, states to sign and ratify existing Council of Europe instruments in this field, including the Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence and the Framework Convention on Artificial Intelligence.

vii. Modes of criminal liability

58. The 2011 Guidelines address the accountability of subordinates, emphasising that orders or instructions from a superior cannot serve as a justification for evading accountability for serious human rights violations.[130] The reference texts of the 2011 Guidelines cite the Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the ICC, each of which include the principle that superior orders do not exempt individuals from responsibility. They also reference PACE Resolution 1675(2009)[131] and Principle 27 of the UN Updated Set of Principles.

59. Experts have suggested to the CDDH-ELI that the 2011 Guidelines do not adequately address other essential modes of liability necessary for ensuring full accountability for certain serious human rights violations constituting crimes.[132] In 2022, in order to fight impunity in the

[129] PACE Resolution 2342 (2020), "Justice by algorithm – The role of artificial intelligence in policing and criminal justice systems," adopted on 22 October 2020, paras. 4 and 9. See also Europol, "AI and policing: The benefits and challenges of artificial intelligence for law enforcement," 2024.
[130] See 2011 Guidelines, XIII.
[131] See PACE Resolution 1675(2009), "State of human rights in Europe: the need to eradicate impunity," adopted on 24 June 2009.
[132] See CDDH-ELI(2024)12, Key Points made by Kate Vigneswaran and Key Points made by Chiara Gabriele. See also ICJ, TRIAL International and FIDH, Submission to the Steering Committee for Human Rights on revision or supplementation of the Guidelines on Eradicating Impunity for Serious Human Rights Violations, January 2025, p. 17.

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context of the Russian's aggression against Ukraine, the Council of the EU called on member States to adopt measures to fully implement the modes of liability enshrined in the Rome Statute.[133] To strengthen accountability revised guidelines and/or (an) additional non-binding instrument(s) could encourage states to incorporate the full spectrum of modes of liability specific to international crimes into their domestic legislation, such as: direct and indirect (co)-perpetration, other forms of perpetrations (aiding and abetting, ordering and instigating), command responsibility, responsibility for inchoate crimes (attempt and conspiracy), and the responsibility of commanders and superiors.[134] By expanding the scope of liability, these revisions would reinforce accountability frameworks and help ensure that all forms of perpetration of serious human rights violations constituting crimes are effectively prosecuted at the national level.

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[133] See EU press release, "Council adopts conclusions on the fight against impunity in Russia's war of aggression against Ukraine," 9 December 2022.

[134] See CDDH-ELI(2024)12, Key Points made by Chiara Gabriele.

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