

**INTERNATIONAL TOOLS FOR
FIGHTING AGAINST IMPUNITY
FOR THE USE OF CHEMICAL
WEAPONS**

-

**GUIDING DOCUMENT FOR
OUTREACH**

(Issued under the responsibility of the chairperson)



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I. Introduction

1. The Partnership

The international Partnership against Impunity was launched in Paris on the 23rd of January, 2018. It brings together 40 States, plus the European Union, which, through their membership, have expressed their resolve to combat the impunity of those who develop and use chemical weapons. **This Partnership, which is an informal political forum, is open to all States that wish to subscribe to its objectives**, within the framework of permanent cooperation. Principles and terms of reference of the Partnership can be found on its [website](#)¹.

2. Objectives of the Partnership

The purpose of this chairperson's document² is to provide information, guidance and advice to like-minded States in order to enhance the fight against impunity. The information provided aims at:

- ✓ Understanding the main issues, difficulties, and needs as well as highlighting some practices in different national and international professional communities, institutions and jurisdictions.
- ✓ Reflecting on how the work carried out by specific international mechanisms, such as the IIT in relation to the Syrian conflict, or the IIIM, may facilitate operational action against perpetrators.
- ✓ Identifying differences between national jurisdictional systems to strengthen judicial capacities and individual knowledge.
- ✓ Sharing information to improve cooperation to fight impunity against any use of chemical weapons.

With this perspective, this chairperson's document is structured as follow:

- ❖ *Primo*, a political overview of the specific situation regarding the combat against impunity for the use of chemical weapons, in an outreach approach, as well as the presentation of the two main entities to conduct inquiries on such uses, the IIT and the IIIM;
- ❖ *Secundo*, a presentation of some of the available legal options to concretely combat impunity in specific circumstances, mainly by focusing criminal responsibility through universal jurisdiction and the use of administrative measures;
- ❖ *Tertio*, a tool kit including addresses and contacts of legal experts from various entities to provide assistance and advice.

This chairperson's document cannot cover all the different procedures and rules applicable in each State involved in the Partnership. Instead, **it provides an overview which States can use as a starting point to conduct further investigation**, learn about some of the available legal options, and also **identify persons or organizations that might be able to assist them**. This chairperson's document can also help States to consider taking further steps to implement legislation.



¹

² This paper was developed by France in its capacity as chair of the Partnership Against Impunity. It is not a negotiated product of the participating states of the Partnership Against Impunity, and its contents, including with respect to descriptions of international law, are not intended to represent positions of the Participating States.

II. Fighting impunity in the specific situation of chemical attacks

1. The ban of non-peaceful chemical means

The **1925 Geneva Protocol** was the very first international convention prohibiting the use of both chemical and biological weapons in warfare. Indeed, it prohibits “the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare”. The Protocol was signed under the auspices of the League of Nations in June 1925 and entered into force in February 1928. Although it is still into force for its 142 States parties (including the Syrian Arab Republic), the *instrumentum* of the treaty is very short, and thus, obligations foreseen in it are general focused towards States parties. What is more, the Protocol is part of the international regulation of warfare, known as “Law of the Hague” or *jus ad bellum*, and as such, does not apply in case of chemical weapons used outside of an armed conflict.

The **Convention on the Prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction** (CWC), signed on the 13th of January 1993 and entered into force in April 1997, is the pillar of the international norm for prohibition and non-proliferation of chemical weapons. It prohibits, for both public and private actors, use of chemical agents for non-civil and non-peaceful ends. This regime, which prohibits and provides for the destruction of these weapons of mass destruction, is being challenged since 2012 by the repeated and continuous use of chemical weapons in Syria and Iraq, and the use of chemical agents in Malaysia (2017) and in the United Kingdom (2018).

2. Repression of banned chemical uses

The primary responsibility to establish legal tools dealing specifically with chemical attacks falls upon States, as the CWC stipulates that it is up to domestic courts to judicially repress perpetrators of chemical attacks. Article VII(1) of the **CWC** requires States parties to adopt and implement domestic criminal legislation to prohibit and repress, for both natural and legal person, every use of chemicals as a weapon as is prohibited by the Convention.

In the context of the recent reemergence of uses of chemical weapons, however, the prohibited use of chemical weapons has been, mainly, the work of State-actors. When such prohibited use of chemical attacks was the work of non-State actors, the state on which it occurred had neither the intention nor the capacity to judicially repress perpetrators as required by the CWC.

Similarly, the **Rome Statute** of the International Criminal Court (ICC) entrusts, in its very first article, States with a primary competence for the prosecution and repression of international crimes, as the International Criminal Court is complementary to domestic criminal courts. The only exception to this principle is the situation of unwillingness or inability of domestic courts to carry out their obligations. In the specific context of the use of chemical weapons chemical, it is doubtless that chemical attacks are a crime in international armed conflict in the sense of the Statute, as its article 8.2.b)xviii uses the exact same wording that the 1925 Geneva Protocol on this issue. In order to avoid creating a loophole for the use of chemical weapons in internal conflict, the Rome Statute was amended on 11 June 2010 to also designate as a war crime the use of these weapons in armed conflict not having an international character (article 8.2.e.xiv). This amendment was adopted by consensus and has already been ratified by 38 States Parties.

In the case where the principle of territoriality or the active personality principle (article 12(2)) are both inapplicable for the exercise of jurisdiction of the ICC - meaning that the State is not bound by the Rome Statute - the ICC could be referred to by the Security Council on a specific matter (article 13(b)).

However, when it comes to the Syrian chemical issue, the referral of situation to the ICC, as Syria is not a State Party to the Rome Statute, seems impossible, as there is no territorial and personal basis for the ICC to act directly and a UN referral seems unlikely since such a decision would be likely to be vetoed in the UN Security Council.

It could also be underlined that, upon request of the Security Council, international or hybrid *ad hoc* tribunals could be created. Indeed, with the perspective of previous similar tribunals, it seems like a relevant option for the countries that are concerned, as it offers fair trials and possibilities for peace reconstruction. For various reasons, including the one indicated above regarding referral to the ICC, this option is highly unlikely.

Noting this unsatisfactory state of play, **the Partnership focuses on fighting impunity for those who develop and use chemical weapons**. One of the ways in which the Partnership works is to publish on its website the names of people sanctioned for their role in chemical attacks or in the development of chemical programs. The Partnership is resolute to raise awareness about the unacceptable situation of impunity that continues for perpetrators and wishes to reach out to States with concrete means to flip this current state of affairs. Indeed based on the confirmed acknowledgment that the Syrian regime does not intend to comply with its obligations under the CWC and the 1925 Geneva Protocol, and that international courts are hindered, it falls to third States, through domestic measures, to concretely combat impunity.

For such ends, relevant and specific international mechanisms, collecting evidence and data, are at disposal.

3. Specific international mechanisms for fighting against impunity

OPCW Investigation and identification Team (IIT)

“The Fourth Special Session of the Conference of the States Parties to the Chemical Weapons Convention (CWC) adopted a decision titled “Addressing the Threat from Chemical Weapons Use” (C-SS-4/DEC.3) dated 27 June 2018. [...]

The decision expressed support and appreciation for the professional, impartial, and independent work of the Director-General and the Technical Secretariat. It also called upon the Secretariat to put in place arrangements “to identify the perpetrators of the use of chemical weapons in the Syrian Arab Republic by identifying and reporting on all information potentially relevant to the origin of those chemical weapons in those instances in which the OPCW Fact-Finding Mission (FFM) determines or has determined that use or likely use occurred, and cases for which the OPCW-UN Joint Investigative Mechanism has not issued a report”. [...]

Pursuant to paragraph 10 of C-SS-4/DEC.3, the Secretariat established an Investigation and Identification Team (IIT). The IIT is responsible for identifying the perpetrators of the use of chemical weapons in the Syrian Arab Republic by identifying and reporting on all information potentially relevant to the origin of those chemical weapons in those instances in which the FFM determines or has determined that use or likely use occurred, and cases for which the OPCW-UN Joint Investigative Mechanism has not issued a report. “The Technical Secretariat has issued two Notes (EC-91/S/3 dated 28 June 2019 and EC-92/S/8 dated 3 October 2019, respectively, publicly available) detailing the work methods and focus of the IIT.

UN International, Impartial and Independent Mechanism (IIIM)

On 21 December 2016, the United Nations General Assembly adopted resolution 71/248, establishing the International, Impartial and Independent Mechanism (IIIM) 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.

The Mechanism's mandate, as stated in paragraph 4 of resolution 71/248, is "to collect, consolidate, preserve and analyze evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law."

The IIIM is neither a prosecutor's office nor a court or tribunal, but rather is a mechanism that collects, preserves and analyses information and evidence of international crimes in Syria to assist investigations and criminal prosecutions in competent jurisdictions.

This does not mean that the IIIM shares every piece of information and evidence which it collects with courts and tribunals investigating and prosecuting crimes in relation to the Syrian context. In accordance with its terms of reference, the IIIM respects the requirements imposed by information and evidence providers. Furthermore, the IIIM can only share information and evidence with jurisdictions that respect international human rights law and standards, including the right to a fair trial and where the application of the death penalty would not apply for the offences under consideration.

Differences between the IIIM and the IIT

The IIIM and the IIT have different but overlapping mandates. Whereas the IIT is an attribution mechanism that is responsible for investigating and identifying the perpetrators of the use of chemical weapons committed in the Syrian context, and will deliver factual reports with its own conclusions, the IIIM's role is to facilitate criminal prosecutions in relation to chemical weapons attacks as well as all other serious international crimes committed in the Syrian context. One of the ways in which the IIIM facilitates criminal prosecutions is this through its case building function. In this context, the IIIM must assess the underlying evidence against criminal law standards. Nevertheless, despite the differing nature of their mandates, much of the evidence gathered or to be gathered by the IIT will likely be relevant to the work of the IIIM. In this regard information gathered by States will be crucial to the investigations carried out by both the IIIM and the IIT.

On the basis of the current legal framework, the OPCW Technical Secretariat (TS) shall provide reports on IIT findings to the OPCW Executive Council (EC) and the UN Secretary General (UNSG) for their consideration. to the TS is also requested to preserve and provide information to the IIIM and any other relevant investigative entities established under the auspices of the UN. The TS and the OPCW States Parties cooperate on matters of interest under the provisions of the CWC.

Outreach key messages:

- Albeit different, IIT and IIM are both international mechanisms that are addressing cases related to chemical weapons use in Syria;
- Subject to the requirements of the providers, national jurisdictions would have a direct access to evidence provided by the IIIM to feed judicial actions against alleged perpetrators;

- According to their national system, domestic law enforcement authorities could use any reports, provided by the IIT to the EC and the UNSG for their consideration, for other relevant purposes, including for administrative actions.

III. Taking action: the fight against impunity at the national level

The combat against impunity must be conducted at the domestic level, regardless the fact that international justice is limited. Actions taken by relevant authorities are either based on international and national criminal law or administrative law.

1. Judicial sanctions for the most serious crimes : understanding the national and international approaches

Definition

Universal jurisdiction, even if it has never been formally defined in a treaty, is commonly understood as allowing national jurisdiction to prosecute certain crimes committed abroad, by foreigners and against foreigners. Universal jurisdiction applies to the most serious crime under international law, such as war crimes, crimes against humanity and genocide.

Two main regimes of universal jurisdiction can be identified:

- *Primo*, **absolute universal jurisdiction**, which does not need a link or a connection to be applied, doesn't require that the act is punishable at the place of its commission and doesn't depend on whether the accused was found to be on national territory and was not extradited;
- *Secundo*, **relative universal jurisdiction**, in most countries, for which there are more specific conditions to be met in order to call for universal jurisdiction. For instance, the usual residence of the alleged offender on the national territory can be necessary in order to establish universal jurisdiction.

Different national approaches

It has to be underlined that universal jurisdiction varies as its implementation may differ from one country to another, as it is a national competence to provide for it. Universal jurisdiction can hardly be analyzed outside a case-by-case basis. In this perspective, it is infeasible to describe exhaustively all the domestic implementations of universal jurisdiction – however main characteristics can surely be outlined.

Link of presence or residence of the accused

At the preliminary inquiry stage, some universal jurisdiction regimes require that the accused is present on the domestic territory, or even has its usual residence there to launch the procedure. However, in some countries, the presence of the suspect on national territory is not required for preliminary proceedings which are distinct from main proceedings for which the presence is required. Main proceedings can be conducted ahead of a potential trial.

At the trial stage, some countries cannot pursue *in absentia*. It is particularly true in common law countries where the *habeas corpus* principle is deeply rooted.

Prosecutorial discretion

In many countries, mandatory prosecution prevails, meaning that domestic prosecution authorities have no discretion to initiate preliminary proceedings or not. On the contrary, the discretionary prosecution principle is often retained because it allows domestic authorities to have certain flexibility in complex cases where a systematic approach wouldn't be the most relevant one. The latter principle can be particularly relevant in order to prevent the risk of overstretching or the potential lack of *prima facie* evidence the domestic investigative resources could face. Indeed, such situations are two examples where the procedure is unlikely to lead to a criminal trial.

Similarly, some countries require that the double criminality principle (the fact that the crime is incriminated in both countries) is fulfilled to launch any procedures. Entities (victims, NGOs, public prosecutor's offices) that can refer the matter to the courts under universal jurisdiction also depend on countries.

Subsidiarity/Complementarity

In order to avoid jurisdictional competition, it seems important to establish, through legislation, the distribution of competence between domestic and foreign or international courts. States need to coordinate in order to avoid competing extradition requests and prosecutions.

States are also very flexible in choosing which domestic courts would be entitled with the competence for universal jurisdiction. It could in fact be any relevant State courts – even if it likely to fall upon a specialized chamber. Indeed, preliminary inquiry in chemical affairs often requires specialized knowledge and practice in which States must invest to develop dedicated units into their public prosecution offices.

Ultimately, States are duly required to respect fundamental rights in particular the rights of the accused. As such, respect of *ne bis in idem* principle, recognized in the International Covenant on Civil and Political Rights of 19 December 1966 (article 14(7)), is compulsory. The atrocity of the crimes committed with chemical weapons cannot, in any case, justify breaches of the rule of law.

Countries concerned

It has to be reminded that the item entitled “The scope and application of the principle of universal jurisdiction” has been included for several years in the agenda of the sessions of the General Assembly's Sixth Committee, and where States are invited to make a statement on the application of universal jurisdiction at their national level.

States should consider whether they want to take further steps. It is essential to obtain advice from experts who can assess and provide information for the specific cases and universal jurisdiction in the national courts. These experts can be found in:

- War crimes and crimes against humanity units;
- Regional and international networks (Examples : Europol, Eurojust, Interpol, EU Genocide Network);
- Public Prosecutor's Offices;
- Justice Ministries;
- International Law and Human Rights Law lawyers.

Example :

The use of universal jurisdiction in France

- Articles 689 to 689-14 of the criminal code of procedure define France's clause of universal jurisdiction. France domestic courts are then competent to prosecute and condemn individuals (as

well as legal entities), who committed crimes defined by international conventions which grant domestic courts with jurisdiction, if the alleged perpetrator is present or has his or her usual residence in France. This concerns specifically (but not exclusively) crimes against humanity, war crimes, as well as the crimes of torture and enforced disappearance.

- For instance, France through its specialized unit for crimes against humanity and war crimes is currently investigating cases which may involve Syrian officials. One of them is a joint investigation with Germany in the Caesar case, from the codename of a former Syrian military photographer who documented extensive torture in Syrian detention facilities between 2011 and 2013.

Unfortunately, the mere existence of universal jurisdiction legislation doesn't mean that countries alone can effectively act to combat impunity. The need for international cooperation is essential to gather evidence and material that will facilitate prosecution. Regarding financial offences linked to criminal activities, non – criminal sanctions and civil proceedings must also be considered.

Outreach key messages:

- Universal jurisdiction allows States to prosecute and condemn most serious international crimes committed abroad by foreigners on foreigners ;
- There may be multiple avenues for prosecuting behavior related to the use of chemical weapons, and the paths available in any particular state will depend on its criminal laws;
- International cooperation and assistance in providing evidence and material to those countries that would be in a position to prosecute war crimes perpetrators under their jurisdiction is essential;
- States can easily reach out IOs to learn how to implement such jurisdiction (*see part III of the paper*).

2. Administrative measures : understanding the national and international approaches

Perpetrators of chemical weapons attacks often have links with financial institutions outside their own country, whether connecting to their assets and income or regarding the financing of proliferation activities. Additionally, it should be stressed out that sanctions can be imposed alone and are not necessarily to be followed by criminal prosecution. It is however possible to have them in parallel whereby a person is under administrative sanctions and is prosecuted under criminal law at the same time.

International basis for administrative measures

The struggle against the financing of proliferation is an international obligation for States pursuant to UN Security Council Resolution 1540 adopted in April 2004 under chapter VII of the UN Charter. According to this resolution, and others which have followed, States must take measures to prevent proliferation, which include legal measures against manufacturing, acquiring, possessing, developing, transporting, transferring, or using Weapons of Mass Destruction, and thus, chemical weapons, by non-states actors.

The UN Security Council Resolutions referenced above are equally relevant in case of chemical weapons uses by State-actors in violation of International Humanitarian Law, in international or non-international armed conflict, but also in case of uses of chemical weapons outside of armed conflict.

The implementation of these measures relies mainly on the adoption of domestic legislation and administrative measures.

National legal framework for administrative measures

Similarly to the above described elements regarding universal jurisdiction, there is not one way or only one regime possible to implement administrative measures. Each State decides, within its own sovereignty, on the scope of action that it intends to pursue to combat the financing of proliferation. Indeed, administrative sanctions can be adopted on the basis of activities that are criminal breaches investigated by independent prosecutors, thus enabling administrative measures and criminal prosecution to intervene simultaneously.

For instance, such measures may include activity-based prohibitions, targeted financial sanctions, anti-money laundering, or repression of terrorism financing. Often, ground for such administrative measures already exists but is scattered, in different legal bases such as, for instance: criminal codes, administrative laws, custom laws, international embargoes, or others. These frequent situations make it difficult for law enforcement authorities to implement in a consistent way international obligations against the financing of proliferation.

One way to deal with this difficulty is, as done by several States, to adopt legislation to implement article 41 of the UN Charter. Such legislation creates the national legal framework on which every sanctions regime can be based; such sanctions regimes may then be adopted through government regulation, allowing flexibility for the executive to easily adapt its course of action in accordance with any new international obligation, but also ensures a common and unique legal ground for multiple sanctions regimes.

This approach may also be retained in States which have scattered legislation: in conducting a mapping exercise to identify all existing legislation and regulation and then compound it into one framework-law. Such an exercise can also be the opportunity to carry out a policy review to assess the efficiency of existing instruments in those matters.

Supervising private stakeholders

As said previously, many institutions, mainly financial entities of the private sector, may play a role in countering proliferation finance. Individual perpetrators will always need, somehow, logistic support at one point of their malicious activities. Therefore, States should designate one or several agencies in charge of monitoring the private sector which can provide, knowingly or not, the needed support to perpetrators.

States would remain free to decide, with sovereign rights, if they assign only monitoring tasks to those administrative agencies, or if they assign also leading policy capabilities to those agencies, and if so, which relevant powers. In addition to such devolution of power, policy makers also need to determine accurately the scope of the leading monitoring structure. Such action requires highly specialized teams to efficiently carry out their missions in the various involved financial sectors.

On the contrary, information technologies induce a need for trans-sectorial analysis and thus should be conducted by multisectorial agencies. In order to be efficient, an oriented monitoring framework should comprise a cross-sector capability to provide the coordination of actions.

Penalties

In terms of implementation, sanctions require monitoring and possibly guidance by competent and impartial authorities in order to effectively ensure compliance by the private sector. Such guidance may intervene through a large range of non-criminal means: recommendations, early warning notices, fines etc..

In terms of enforcement, those sanction regimes must seek efficiency and deterrence while respecting the principle of proportionality. This implies that penalties must be foreseen for breaches of the restrictions imposed by the sanction regime. Of course, both legal entities and individuals must be included in the scope of

these targeted actions and in the first of these two alternatives; it is decisive that the sanction regime provides for the possibility to target the top corporate management of legal entities.

Asset Management

One key aspect for the effectivity of such sanctions regimes, whether they include fines, seizing, confiscating or forfeiting, is asset management. It concretely requires that the law enforcement entity, whichever it is, is able to order the asset holder to freeze it. Most of the time, it means that banks need to freeze accounts on public authorities request. It is, therefore, necessary to ensure that public authorities have the ability to materially control assets so as to avoid their transfer under another jurisdiction. Such control generally implies management and custody procedures of the frozen assets. However, it can also happen that such assets concerned are material goods, such as cars or real estate.

Finally, it must also be highlighted that States are obliged to respect fundamental rights in implementing such sanctions regimes. The atrocity of the crimes committed with chemical weapons cannot, in any case, justify breaches of the rule of law.

Examples : The use of sanctions regimes in France

- The Monetary and Financial Code provides the very basis for the ability of the French ministry of Economy to adopt asset freezing decisions. Its 562-3 article provides a consistent basis which foresees many key characteristics: the public entity granted to take action; the duration of the sanction; the fact that it can be renewed; the nature of the owner of the assets concerned, both physical and legal ones, including natural or legal persons controlling, somehow, other entities, whether here again natural or legal.
- On this basis, France can freeze assets of every person involved in potential circumvention or violation of restrictive measures pronounced by the UN or the UE. Those measures include all kind of assets, i.e. funds of all nature, bank accounts, but also real estate and even vehicles.
- The French ministry of Economy and Finance has frozen the assets of several proliferating networks using the domestic provisions explained *supra* (L.562-3).
- To ensure the proper implementation of these measures, the Resolution and Prudential Control Authority (ACPR) is in charge of the supervision of banking and insurance sectors, making sure that financial institutions comply with domestic and European obligations in terms of asset freezing. The Authority checks that financial institutions establish an adequate and efficient procedure to detect financial operations by targeted individuals or entities. The Authority is granted with a special Commission which can pronounce disciplinary sanctions.

Proposed Outreach key messages:

- Fighting proliferation finance is an international obligation for States (UNSC Resolutions) ;
- Generally, it involves freezing, seizing and confiscating assets, imposed by administrative bodies of the executive without judiciary intervention;
- These sanctions can be imposed alone and are not necessarily to be followed by criminal prosecution;
- It is however possible to have them in parallel whereby a person is under administrative sanctions and is prosecuted under criminal law at the same time;

- It remains, in the full exercise of sovereignty, the competence of each State to decide how to adopt such sanctions regimes;
- Those sanction regimes must be implemented in compliance with fundamental rights and the rule of law.

3. The need for international coordination and cooperation :

As prosecution for most serious crimes in Syria involving the use of chemical weapons is unprecedented, coordination at a bilateral, regional and international level is essential.

Interstate coordination

Indeed, it is necessary for States to coordinate, as a common feature of these cases is their transnationality: documentary evidence, potential victims, witnesses and suspects are likely to be dispersed. Many European countries for instance have victims of those attacks who are resident in their countries. States have to coordinate at a regional level, especially in the European Union as a result of free circulation. Several organizations were created in order to ease the circulation of information and cooperation. In Europe, for instance, there is Europol, Eurojust or the EU Genocide Network, and at the international level, bodies such as Interpol can play a very useful role.

In addition, proliferation activities have reached a global scale, which makes it more vital than ever to adopt legal bases for cooperation with other countries, regarding information-sharing for instance. Here again, it should be stressed that such information-sharing cooperation must take into account fundamental rights of individuals, such as privacy. A balanced way has to be found, in terms of information flows, between the necessary efficiency and privacy rights.

As such, agencies need to have the legal authority to share information regarding chemical weapons' accountability, as well as legal and practical controls to safeguard that information. Law enforcement agencies need to have access to information, as they are critical end-users for prosecution. Indeed, fighting impunity at the national level can be very challenging. Some units might appear to be legally incompetent with regard to such crimes. National specificities may make proceedings for such crimes very complex. There is also a vital need for coordination between national units at a regional and international level. Dialogue to access suspects, witnesses, or evidence may be indeed necessary.

It should also be noted that national prosecutors and war crime units may have many competing priorities, and their budget might not meet their needs. If Partnership countries seek the prioritisation of this issue, supporting their national bodies in charge of such prosecution and sanctions is essential.

The Partnership wants to improve the exchange of information and build on structures that can help strengthen cooperation between national and international entities.

Cooperation with NGOs

Authorities may also choose to cooperate with NGOs, as they often have access to information and witnesses that prosecuting agencies do not otherwise hold. Some relevant NGOs that whether contributed in building cases, referring to national courts, gathered evidence or that could take an active part in the fight against impunity have already made a substantial contribution to the documentation of prosecuted cases, such as for example: TRIAL International (based in Switzerland), Syrian Archive (based in Germany), CIJA, ECCHR (based in Germany), Open Society Foundation (all around the world).

International warrants

One key tool to combat impunity is international warrants. Some countries present no specificities regarding the issuance of international warrants. In others, the competent institution depends on the nature of the alleged crime. International warrants are subject to several conditions: elevated degree of suspicion, reasonable proof, ground for arrest (flight, risk of flight or of evidence tampering). There is normally no need for separate verification of the facts and evidence. It can depend on the applicable treaty for the extradition requests. If the presence in the territory of the state is necessary, no international warrant can be issued for perpetrators residing abroad. Within the European Union, European Arrest Warrants can be issued as part of the European extradition system (and for which no *prima facie* evidence is required).

Use of relevant specific international mechanisms

Finally, States wishing to act against impunity in the use of chemical weapons have an interest in sharing information and evidence with international organizations and their relevant mechanisms, such as the IIT and the IIIM, on a legal basis, as the IIIM is collecting, analysis and preparing files to facilitate criminal prosecutions and the IIT has been mandated to identify the perpetrators. In this context, legal frameworks may need to be established for States to be able to share information and evidence. These legal frameworks can take for instance the form of conventions, Memoranda of Understandings, or be concluded through an exchange of letters.

To carry out such cooperation, States often need to review their existing frameworks and assess whether they constitute a sufficient basis for such cooperation. If they do not provide a sufficient basis, States should adopt the necessary frameworks.

Focus : Coordination between France and Germany to arrest three Syrian officials, February 2019

- For the first time, in February 2019, French and German criminal prosecutors have arrested alleged torturers working for the Syrian regime. Indeed, investigations between the French and the German war crimes units conducted joint investigations.
- The suspects were former secret service officers from the Syrian government: Anwar R. and Eyad A. (both arrested in Germany), name unrevealed (arrested in France). They are accused of committing or assisting in the commission acts of torture, and crimes against Humanity.
- The issuing of the arrest warrant has been supported by ECCHR (Berlin-based), which assists torture survivors in filing cases against their alleged torturers.

Outreach key messages:

- It is necessary for States to coordinate their action, as a common feature of these cases is their transnationality;
- It is vital to adopt legal bases for cooperation with other countries or relevant specialized agencies, regarding information-sharing, or international warrants for instance;
- Similarly, while the IIT and IIIM work on the basis of international best practices in their fields, all States, domestic jurisdictions and IOs have an interest in cooperating to develop common approaches to evidentiary issues (including collection, preservation and use) relevant to the use of chemical weapons and in providing the necessary resources to that end;
- They also need to do so in order to avoid competing prosecution;

- The Partnership could be used as a forum to build domestic capacity in like-minded States to combat impunity.

IV. Tools, references and contacts

1. International Organizations

The Technical Secretariat of the OPCW

The Technical Secretariat (TS) was charged by the June 2018 decision to put in place arrangements and establish the IIT. “Pursuant to paragraph 7 of Article VII of the CWC, each State Party undertakes to cooperate with the Organisation in the exercise of all its functions and in particular to provide assistance to the Secretariat. When a State assumes an obligation in an international agreement, this expresses a legally binding undertaking. The IIT expects full good-faith cooperation from all State Parties, in particular with the provision of relevant information and access to relevant places and persons.” ([Note by the TS on the work of the IIT, 27 June 2019](#))

Address :

Johan de Wittlaan 32
2517 JR The Hague
The Netherlands

Telephone : +31 70 416 3300

Fax : +31 70 306 3535

They can be contacted on [this page](#).

The 1540 Committee of the United Nations

“Member States of the United Nations may submit requests for assistance to the 1540 Committee. [...] Requests for assistance should be presented to the Committee by sending a Note Verbale to the Chair of the Committee through the requesting State’s Permanent Mission accredited to the United Nations in New York.

The Group of Experts, supporting the work of the Committee, can be contacted for further information or to obtain clarifications on assistance through email at 1540experts@un.org.”

[UNSCR 1540 Committee - Request for Assistance Template \[in PDF format\]](#)

[UNSCR 1540 Committee - Request for Assistance Template \[in WORD format\]](#)

All correspondence related to the submission of requests for assistance should be addressed to the Chair of 1540 Committee and sent to the address below:

Address :

Secretariat of the 1540 Committee,
Attention: Chair, 1540 Committee
2 United Nations Plaza, Room DC2-2022
United Nations, New York, NY 10017

Fax: +1-212-963-1300

Email: sc-1540-Committee@un.org”

The International Criminal Court Office of the Prosecutor (ICC OTP)

Pursuant to article 15, States can send information to the ICC OTP and under article 93(10), the ICC can cooperate with States and national jurisdiction.

All correspondence related to the submission of requests for assistance should be addressed to the Jurisdiction, Complementarity and Cooperation Division of the OTP and sent to the addresses below:

otpjudicialcooperation@icc-cpi.int

Address :

Oude Waalsdorperweg 10
2597 AK The Hague
The Netherlands

INTERPOL

Address :

Secrétariat général d’INTERPOL
200, quai Charles de Gaulle
69006 Lyon
France
Fax: +33 4 72 44 71 63

United Nations Office On Drugs and Crime (UNODC)

Address :

Vienna International Centre
Wagramer Strasse 5
A 1400 Vienna
Austria

Postal Address:

United Nations Office On Drugs and Crime (UNODC)
Vienna International Centre
PO Box 500
A 1400 Vienna
Austria

Telephone: + (43) (1) 26060

Fax: + (43) (1) 263-3389

Email: unodc@unodc.org

2. NGOs

The ICRC Advisory Service on International Humanitarian Law

This office offers legal consultancy and advice, as well as technical guidance, to national State experts in order for the full implementation of International Humanitarian Law.

Address :

19 Avenue de la paix
1202 Geneva (Switzerland)

Telephone: +41 22 734 60 01

www.icrc.org/en/document/icrc-advisory-services-international-humanitarian-law

TRIAL International

This organization publishes yearly reports on the exercise of universal jurisdiction worldwide. The [2019 report by TRIAL International](#) reported inter alia, cases indicting Syrian officials and cases indicting a company that delivered chemical goods in Syria.

Address :

TRIAL International
Rue de Lyon 95
1203 Geneva
Switzerland

Telephone: +41 22 321 61 10

Email: info@trialinternational.org

Website : trialinternational.org

They can be contacted on [this page](#).

Amnesty International

Amnesty International provided in 2012 the survey [“Universal Jurisdiction : A Preliminary Survey of Legislation Around the World”](#) worldwide, although some countries have updated their legislation on universal jurisdiction since then.

They can be contacted through their regional units on [this page](#).

VERTIC

The Verification Research, Training and Information Centre is a UK based NGO which backs up the adoption, implementation and monitoring of international agreements. As such, it can provide legislative drafting assistance.

Address :

The Green House, 244-254
Cambridge Heath Road
London E2 9DA, United Kingdom

Telephone: +44 (0)20 35596146

Fax: +44 (0)20 35596147

Email : vertic@vertic.org

3. Networks of experts

The EU Genocide Network:

The European Network of Contact Points in respect of responsible for the crime of genocide, crimes against humanity and war crimes is a body established by the Council of the EU to ensure close cooperation between national authorities in investigating and prosecuting core international crimes, as defined in Articles 6, 7 and 8 of the *Rome Statute of the ICC*.

For this purpose, each EU Member State has designated to the Genocide Network one or more Contact Points who facilitate cooperation and exchange of information between the EU Member States' national authorities. Since 2011, the coordinated and continued work of the Genocide Network is supported by the Genocide Network Secretariat (GNS), hosted by Eurojust, in The Hague.

In November 2014, the Genocide Network adopted the [Strategy of the EU Genocide Network to combat impunity for the crime of genocide, crimes against humanity and war crimes within the European Union and its Member States](#). The Strategy, based on the experience of practitioners and past meetings of the Genocide Network, identifies best practice and includes a list of recommendations for EU Member States and Institutions to combat impunity.

In November 2018 the Network adopted the [Guidelines on the Functioning of the Network](#). This document includes principles that supplement the Network's legal basis (Council Decision 2002/494/JHA and Council Decision 2003/335/JHA) by providing a detailed framework on the Network's composition, facilitating requests from non-EU Member States to participate in meetings, determining the level of engagement of national contact points and the nature of different sessions, and by outlining the existing practices of the functioning of the Network.

Address :

EUROJUST, Maanweg 174, 2516 AB The Hague, Netherlands

Phone: +31 70 412 5579 –

Fax: +31 70 412 5535

Email : GenocideNetworkSecretariat@eurojust.europa.eu

www.genocidenetwork.eurojust.europa.eu

The CARIN networks

CARIN is an informal network of law enforcement and judicial practitioners in the field of asset tracing, freezing, seizure and confiscation. It is an inter-agency network. Each member state is represented by a law enforcement officer and a judicial expert (prosecutor, investigating judge, etc. depending on the legal system).

<https://www.carin.network/>

The Secretariat of CARIN is based at Europol in The Hague. This year, Romania has the Presidency of CARIN, based at the Romanian Asset Recovery and Management Office. They can be contacted via the CARIN Secretariat.

CARIN Secretariat

Ms. Marcella Van Berkel

Telephone : +31(0)-70-353-1720

Email : CARIN@europol.europa.eu

International association of prosecutors (IAP)

Address:

Hartogstraat 13
2514 EP The Hague
The Netherlands

Telephone: +31 70 363 03 45

Email: info@iap-association.org

<https://www.iap-association.org/>