

## LJUBLJANA–THE HAGUE CONVENTION IN THE CONTEXT OF CROSS-BORDER GATHERING OF EVIDENCE

*Abstract: On the 26 May 2023, the Convention on International Co-operation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes and other International Crimes was adopted in Ljubljana, Slovenia. This contribution focuses on how the Convention closes the existing practical and legal gap hampering cross-border gathering of evidence in investigations focusing on core international crime. To this end, the drafting process and goals of the Convention are briefly outlined, before the author dissects its general provisions related to each phase of a request for mutual legal assistance: issuing of the request, its transmission to the executing authority, grounds for its refusal, and the execution phase (including the speciality principle and sharing of evidence via CICCED). The Convention also contains some particularly detailed rules regarding specific requested for investigation measures. Clauses on hearings by video-conference and joint investigation teams are particularly well developed and therefore analysed by the author. However, even particularly well thought out provisions can only reach their potential if the Convention is signed by a sufficient number of states willing to end impunity for core international crime. The author argues that, beyond these considerations, for WB states, supporting the Convention is also in line with the Western Balkans Criminal Justice initiative promoted by Eurojust. He concludes that, by signing the Convention, any state sends a strong signal to the EU and its citizens that is aligned with European values.*

**Key Words:** MLA Initiative, Core International Crime, Mutual Legal Assistance, International Criminal Law, MLA Convention

### 1. INTRODUCTORY REMARKS ON THE MLA INITIATIVE AND THE LJUBLJANA–THE HAGUE CONVENTION

On the 26 May 2023, the Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes against Humanity, War Crimes

---

\* Academic assistant, University of Maribor, Faculty of Law, [jan.stajnko@um.si](mailto:jan.stajnko@um.si).

and other International Crimes was adopted in Ljubljana, Slovenia. The signing conference took place The Hague on 14th and 15<sup>th</sup> of February 2024. Therefore, the Convention became known as the *Ljubljana–The Hague Convention* (hereinafter: MLA Convention).

The Convention is envisaged as a practical tool to enable states to both comply with their international obligations and empower their national judiciaries to investigate and prosecute crimes of genocide, crimes against humanity and war crimes (hereinafter: core international crime).<sup>1</sup> For investigation and prosecution of core international crime at the domestic level, interstate cooperation is essential. However, the existing international procedural legal framework for mutual legal assistance and extradition was found to be incomplete and outdated. It has been reported that in many cases, prosecutors decide in the course of investigations that, as extradition of a suspect or obtaining the required evidence is not possible, they have to halt investigations.<sup>2</sup> The MLA Convention was drafted in order to fill this legal gap.<sup>3</sup> As pointed out by *Herik*, it was already clear early on that the treaty will have a “technical flavour geared towards operationalizing general obligations and ambitions to investigate and prosecute international crimes”.<sup>4</sup>

Perhaps somewhat surprisingly, the *Ljubljana–The Hague Convention* was drafted in a stand-alone process *outside the UN forum*. This process, which became known simply as the *MLA Initiative*, emerged after the expert meeting organized by the Netherlands, Belgium and Slovenia in November 2011.<sup>5</sup> This Core Group of States, later enlarged with Argentina, Senegal and Mongolia, first strived to

- 
- 1 Towards a Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes, <https://www.gov.si/assets/ministrstva/MZZ/projekti/MLA-pobuda/MLA-Initiative-Explanatory-note-English.pdf>, 10. 4. 2025, 1.
  - 2 For an overview of practical examples see Annex – Examples of instances where a treaty framework would have been instrumental to help speeding up – or merely to allow for – the initiation of prosecution, in: Towards a Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes, <https://www.gov.si/assets/ministrstva/MZZ/projekti/MLA-pobuda/MLA-Initiative-Explanatory-note-English.pdf>, 10. 4. 2025, 6.
  - 3 B. de Oliveira Biazatti, E. Amani, “The Ljubljana–The Hague Convention on Mutual Legal Assistance: Was the Gap Closed?”, *EJILTalk*, June 12, 2023, <https://www.ejiltalk.org/the-ljubljana-the-hague-convention-on-mutual-legal-assistance-was-the-gap-closed/>, 10. 4. 2025, 1; Chair’s Conclusions, Preparatory Conference – Doorn (The Netherlands), 16–19 October 2017, <https://www.gov.si/assets/ministrstva/MZZ/projekti/MLA-pobuda/First-Preparatory-Conference-Chairs-Conclusions-English.pdf>, 20. 4. 2025, 1.
  - 4 Especially as compared to the proposed Convention on Crimes against Humanity, which was since its inception driven by scholars and academia. See L. J. van den Herik, “Relating to ‘the Other’ – The ILC Draft Convention on the Crimes against Humanity and the Mutual Legal Assistance Initiative”, *African Journal of International Criminal Justice*, 2/2020, 276.
  - 5 MLA (Mutual Legal Assistance and Extradition) Initiative, <https://www.gov.si/en/registries/projects/mla-initiative/>, 10. 4. 2025.

enlist support in the international community for drafting of a treaty filling the previously mentioned legal gap.<sup>6</sup> Their efforts proved successful and resulted in the First Preparatory Conference, which took place in October 2017. At this conference, participants from over 41 co-sponsoring States reaffirmed their commitment to end impunity for core international crimes by supporting the adoption of a new multilateral treaty would facilitate more effective practical cooperation between States investigating and prosecuting these crimes.<sup>7</sup>

During the Second Preparatory Conference, which took place in March 2019, participants from 50 supporting States already discussed the Preliminary Draft Treaty.<sup>8</sup> Representatives of the civil society including the EU Genocide Network, Amnesty International, and Human Rights Watch were also involved in the process. Comments received were incorporated by the Core Group into the first Draft MLA Convention.<sup>9</sup> In the following years, during the pandemic, three rounds of extensive virtual consultations took place to prepare a comprehensive (final) draft, which was later discussed at a diplomatic conference.<sup>10</sup>

Even though some criticized the initial approach of the Core Group as lacking in transparency and inclusivity,<sup>11</sup> the *MLA Diplomatic Conference*, taking place in Ljubljana, Slovenia, on 15–26 May 2023, was an overwhelming success. By May 2023, 80 States supported the MLA Initiative,<sup>12</sup> with 53 participating in

- 
- 6 L. N. Sadat, “Understanding the New Convention on Mutual Legal Assistance for International Atrocity Crimes”, *ASIL Insights*, 12/2023, <https://www.asil.org/insights/volume/27/issue/12>; A. Ijzerman, “The Initiative for a new multilateral treaty for mutual legal assistance and extradition for domestic prosecution of crimes of genocide, crimes against humanity and war crimes”, *The Military Law and the Law of War Review*, 2/2017, 275–278.
  - 7 Chair's Conclusions, Preparatory Conference – Doorn (The Netherlands), 16–19 October 2017, <https://www.gov.si/assets/ministrstva/MZZ/projekti/MLA-pobuda/First-Preparatory-Conference-Chairs-Conclusions-English.pdf>, 10. 4. 2025, 1.
  - 8 Chair's Conclusions, Second Preparatory Conference – Noordwijk (The Netherlands), 11–14 March 2019, <https://www.gov.si/assets/ministrstva/MZZ/projekti/MLA-pobuda/Second-Preparatory-Conference-Chairs-Conclusions-English.pdf>, 10. 4. 2025, 1.
  - 9 Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes (version 02/10/2019), <https://www.gov.si/assets/ministrstva/MZZ/projekti/MLA-pobuda/MLA-Initiative-Draft-Convention-English-2.10.2019.pdf>, 10. 4. 2025.
  - 10 For the final draft see Draft Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes, and other International Crimes (version 30/11/2022), <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/20221130-ENG-MLA-DRAFT-CONVENTION-CLEAN.pdf>, 10. 4. 2025.
  - 11 Particularly because it was not working under the auspices of the UN. See B. de Oliveira Biazatti, E. Amani, *op. cit.*, 1; A. Bisset, *op. cit.*; M. George, “Some Reflections on the Proposal for a New Mutual Legal Assistance Treaty for International Crimes”, *OpinioJuris*, 11. 1. 2019, <https://opiniojuris.org/2019/01/11/some-reflections-on-the-proposal-for-a-new-mutual-legal-assistance-treaty-for-international-crimes/>, 10. 4. 2025.
  - 12 Supporting States as of 12/5/2023, <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/MLA-Initiative-List-of-Supporting-States-English.pdf>, 10. 4. 2025.

the conference, and additional 15 States attending as observers.<sup>13</sup> What is more, representatives of the Council of Europe, Eurojust, International Criminal court (hereafter: ICC), United Nations (hereafter: UN), Amnesty International, REDRESS as well as other international and civil society organizations were present and allowed to have an active role in the discussions. It has been claimed that the MLA Diplomatic Conference largely contributed to Slovenia taking up on the January 1st, 2024, non-permanent seat on the UN Security Council for the second time in its history and assuming its presidency on September 1st, 2024.<sup>14</sup>

Be that as it may, the conference in Ljubljana culminated in the MLA Convention being adopted on the May 26<sup>th</sup>, 2023. The Signing Conference was organized in The Hague on 14–15 February 2024, with 33 states participating. By February 14<sup>th</sup>, 2025, 40 states signed the Convention, including:

- Member States of the European Union, with the exception of: Estonia, Greece, Hungary, Italy, Portugal and Romania;
- European Free Trade Association (EFTA) States, with the exception of Iceland;
- Western Balkans states, with the exception of: Bosnia and Herzegovina and Serbia;
- Andorra, Argentina, Central African Republic, Chile, Costa Rica, Democratic Republic of Congo, Ghana, Liechtenstein, Moldova, Mongolia, Rwanda, Senegal, Ukraine, and Uruguay.

In a Joint Statement, Non-Governmental Organisations including Amnesty International, Asia Justice Coalition, International Commission of Jurists and TRIAL International have in early 2025 called upon the international community to swiftly sign and ratify the MLA Convention, conclude the process of its adoption without reservations, and implement it fully under domestic law.<sup>15</sup> The MLA Convention also aligns with the goals of the *Western Balkans Criminal Justice* initiative promoted by Eurojust which seeks a higher level of integration and interaction in the field of criminal justice between the EU and Western Balkans.<sup>16</sup> At the same time, it scholars expect that the Convention will have a crucial role in enabling cross-border engagement with core crimes in Ukraine.<sup>17</sup> Therefore,

13 Including states such as Australia, Canada, Egypt, South Africa, Turkey, UK and the USA. All these countries who have yet to sign the Convention as of April 2025. See the List of Participants, MLA/INF.1, 26 May 2023, <https://www.gov.si/assets/ministrstva/MZEZ/projekti/MLA-pobuda/List-of-Participants.pdf>, 10. 4. 2025.

14 Compare V. Sancin, “UN Security Council Membership as a Litmus Test for Slovenia’s Commitment to R2P”, *Nordic Journal of Human Rights*, 4/2024, 555–556.

15 States should promptly join the Ljubljana–The Hague Convention on international co-operation in prosecuting crimes under international law: Joint statement 14 February 2025, IOR 51/9024/2025, <https://www.amnesty.org/en/documents/ior51/9024/2025/en/>, 10. 4. 2025.

16 G. Calcagno, “Ljubljana–The Hague Convention: An Important Tool for Judicial Cooperation with Western Balkans”, *EUWEB Legal Essays*, 1/2025, 124–127.

17 S. V. Vasiliev, “Solidarity Justice for and beyond Ukraine”, *Le questioni aperte della giustizia penale internazionale nella prospettiva interna*, 2024, 148.

it is believed that in the following years many more states will join the efforts to the fight against impunity for international crimes by signing the convention.<sup>18</sup>

The scope and content of the MLA Convention is rather broad.<sup>19</sup> For example, Bisset maintains that only half of the treaty is concerned with cooperation. Therefore, it supposedly “strayed into what is, traditionally, politically contentious territory.”<sup>20</sup> It does not merely encompass procedural provisions on cross-border cooperation between states, but also *substantive provisions* on international crime, including crime of genocide, crime against humanity and war crimes; criminalization of such crimes; jurisdiction (including the under the *aut dedere, aut iudicare* principle<sup>21</sup>); statute of limitations; and liability of legal persons. What is more, the scope of the convention may be extended if both, the requesting and the requested state, accept its application with respect to one of eight relevant annexes to the Convention.<sup>22</sup>

As an international *framework on mutual legal assistance* between states parties, the MLA Convention also covers a surprisingly wide area of cross-border cooperation, including on communication channels and establishing of central authorities; extradition; transfer of sentenced persons; transfer of proceedings; investigation measures and exchange of evidence, including provisions on hearing by video conference and temporary transfer of detainees; setting up of joint investigation teams; freezing and confiscation of assets (proceeds of crime); protection of victims, witnesses and other persons.

In this sense, van Sliedregt argues that the Convention may be seen as a *suppression treaty* since its “main purpose [is] domestic enforcement via the improvement of inter-state cooperation in legal matters suppressing specific (transnational) criminality. [It does] not come with an international criminal justice system like the ICC.”<sup>23</sup>

18 G. Calcagno, *op. cit.*, p. 121.

19 A. Bisset, “The Mutual Legal Assistance Treaty for Core Crimes: Filling the Gap?”, *EJIL: Talk!*, June 13, 2022, <https://www.ejiltalk.org/the-mutual-legal-assistance-treaty-for-core-crimes-filling-the-gap/>, 10. 4. 2025. For an overview of provisions, see M. M. Sadowski, “The Ljubljana–The Hague Convention: A Treaty for the Globalised and Interconnected World? Perspectives from a Legal Semiotics Analysis”, *International Journal for the Semiotics of Law*, 2025, 3–12.

20 A. Bisset, *op. cit.*

21 See D. Hovell and M. Malagodi, “Universal Jurisdiction: Law out of Context”, *Modern Law Review*, 6/2024, 1486–1487.

22 These annexes include “the new war crimes that have so far been adopted by amendments to the Rome Statute in 2010, 2017 and 2019 (annexes A to E), torture (annex F), enforced disappearance (annex G), and the crime of aggression as it was defined in Kampala (annex H)”, V. Koutroulis, “Symposium on Ljubljana–The Hague Convention on Mutual Legal Assistance: Critical Reflections – A New Tool in the Fight Against Impunity for Core International Crimes”, *OpinioJuris*, 25. 07. 2023, <https://opiniojuris.org/2023/07/25/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-a-new-tool-in-the-fight-against-impunity-for-core-international-crimes/>, 10. 4. 2025.

23 E. van Sliedregt, “The Future of International Criminal Justice is Corporate”, *Journal of International Criminal Justice*, 2025, 8–9.

In this contribution, provisions relevant in the context of cross-border gathering of evidence are discussed. First, some general provisions on mutual legal assistance under the Convention are presented. This includes provisions regarding drafting, transmission, grounds for refusal, and execution of a request for MLA. In the second part, some specific provisions are addressed, namely on hearing by video conference and on joint investigation teams. Throughout this endeavour, parallel provisions of the EU legislation are being referenced, for example on the Directive 2014/41/EU regarding the European Investigation Order in criminal matters<sup>24</sup> and the Framework Decision 2002/465/JHA on joint investigation teams.<sup>25</sup>

## 2. GENERAL PROVISIONS ON MUTUAL LEGAL ASSISTANCE AND CROSS-BORDER GATHERING OF EVIDENCE

General provisions on mutual legal assistance open with a declaration that states parties need to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the crimes addressed under the Convention (Art. 23). It then clarifies that a request for such a mutual legal assistance may include, *inter alia*, taking evidence or statements from persons, examining objects and sites, providing information, evidentiary items and expert evaluations, executing searches and seizures, providing relevant documents, records and computer data, using special investigative techniques, conducting cross-border observations and providing any other type of assistance that is not contrary to the domestic law of the requested state party (Art. 24).

When it comes to the *issuing phase*, the Convention does not contain a template or a form to be filled out by the issuing authority. Instead, the Convention in Art. 25 stipulates which information needs to be contained in a request (for example, the identity of the issuing authority, subject matter and nature of the investigation and a summary of the relevant facts). In this regard, the drafting technique of the Convention is closer to the Digital Services Act<sup>26</sup> (and its provisions regarding the orders to provide information in Art. 10) than to the European Investigation Order Directive. Be that as it may, the request needs to be issued in writing, in a language acceptable to the requested state and under

24 Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, 1–36.

25 Council Framework Decision of 13 June 2002 on joint investigation teams, OJ L 162, 20.6.2002, 1–3.

26 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1–102.

conditions allowing to establish authenticity. In urgent cases and where both states agree, requests may be issued orally but need to be followed by a written request as soon as reasonably possible. Such an approach leaves some room for flexibility but still enables traceability and leaves room for a legal review of the investigation measure in the later stages of the proceedings.

In line with Art. 28, the requested state may request for additional information to be provided. This is in line with guidelines and identified best practices regarding the use of the European Investigation Order Directive, which emphasize that communication between the issuing and executing authority is key to effective cross-border investigative measures.<sup>27</sup>

Regarding the *transmission of the request* from the issuing to the executing state, the Convention stipulates that it should be possible to establish the authenticity of the request. Where states parties agree, such a transmission may be done by secure electronic means which adequately protects confidentiality (Art. 21). This implies that, without an explicit prior agreement, requests need to be transmitted via traditional (postal) mail services. In line with Arts. 20 and 21, the transmission is done through designated central authorities, except where a state party decides (and properly notifies this to other states parties) that it prefers to be addressed through a diplomatic channel or through the International Criminal Police Organization.

Additionally, states parties may designate single points of contact within its competent authorities to facilitate the efficient communication regarding the execution requests. However, single points of contact are not meant to be responsible for sending and receiving requests. Instead, they merely “liaise with each other on practical matters regarding the execution of such a request.” This is in stark contrast to the European Investigation Order Directive (Art. 7), according to which the issuing authority may, as a rule, directly send the order to the executing authority and designation of central authorities is optional. Be that as it may, in comparison, involvement of central authorities provides for more clarity and efficiency in transmission of MLA requests in an international context. Whereas authorities deal with European Investigation Orders and other instruments of mutual recognition on a daily basis, investigations related to core international crime will be used (one might hope) less frequently.

As regards to the recognition of the request, the Convention extensively regulates in Art. 30 *grounds for refusal* of the execution. This means that refusal of cooperation is not under (political or judicial) discretion of the requested state. Instead, one of the following grounds needs to be invoked: a) prosecution on grounds of discrimination; b) a looming death penalty in requesting state for the

---

27 For example, in context of the proportionality check, it is stated that the “consultation mechanism can be used to provide relevant information and to avoid the risk that execution is further delayed”. Eurojust, European Judicial Network, “Joint Note of Eurojust and the European Judicial Network on the practical application of the European Investigation Order”, June 2019, [https://www.ejn-crimjust.europa.eu/ejnupload/news/2019-06-Joint\\_Note\\_EJ-EJN\\_practical\\_application\\_EIO\\_last.pdf](https://www.ejn-crimjust.europa.eu/ejnupload/news/2019-06-Joint_Note_EJ-EJN_practical_application_EIO_last.pdf), 7.

person under investigation; c) *ne bis in idem* principle; d) a looming subjugation of the person under investigation to torture or other cruel, inhuman or degrading treatment or punishment, a flagrant violation of the right to a fair trial or other flagrant violations of fundamental human rights in the requesting state in accordance with the domestic law of the requested state; e) the requested state party would be prohibited by its domestic law from carrying out the action requested with regard to a crime based on the same criminal conduct; f) request was not made in conformity with the Convention; g) the execution of the request would prejudice the sovereignty, security, *ordre public* or other essential interests of the requested state; h) the request is issued on behalf of an extraordinary or ad hoc court or tribunal i) granting the request would be contrary to the domestic law of the requested state relating to MLA; j) a real risk of sentence of life imprisonment without parole or indefinite sentence.

In some respects, the grounds for refusal seems to be surprisingly narrow (for example, not any breach of fundamental human rights or the right the fair trial is relevant, merely *flagrant* breaches), while the others seem particularly wide (for example, essential interests of the requested state). In this respect, *George* argues, and rightfully so, that some grounds for refusal seem “unnecessarily vague, subjective, and over-inclusive. [...] If the goal of achieving an effective tool for inter-State cooperation is to be realized, the grounds for refusal ought to be explicit and narrowly construed.”<sup>28</sup>

In any case, it stands to reason that, at least for EU MS, case law on the European Investigation Order Directive and its fundamental rights non-recognition ground is also relevant in the context of the MLA Convention. For example, in *Gavanozov II*,<sup>29</sup> the CJEU emphasized that the right to an effective legal remedy needs to be available against an EIO in the issuing state to the person concerned, at least when its purpose is to conduct searches, seizures or the hearing of witnesses by videoconference. Executing an EIO issued in a legal system where an effective legal remedy is not provided would violate Art. 47 of the Charter of fundamental Rights.<sup>30</sup> It stands to reason that, where such a remedy is not provided in the issuing state against a request issued under the MLA Convention, it needs to be refused execution in the executing state.

Before refusing a request, the executing state needs to consult, where appropriate, with the requesting state. As emphasized above, this is in line with guidelines and identified best practices regarding the use of the European Investigation Order Directive, which stress the importance of communication between the issuing and executing authority.<sup>31</sup>

28 M. George, *op. cit.*

29 Judgement of 11. 11. 2021 – Case C-852/19 – Gavanozov II, ECLI:EU:C:2021:902.

30 Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, 391–407.

31 M. Šepec, T. Dugar, J. Stajanko, “European Investigation Order – A Comparative Analysis of Practical and Legal Dilemmas”, *The European Investigation Order: Legal Analysis and Practical Dilemmas of International Cooperation* (eds. K. Ambos et al.), Duncker & Humblot, Berlin, 2023, 130–131.



Under Art. 32 of the MLA Convention, the request needs to be *executed* in accordance with the domestic law of the requested state. The execution of the request may be postponed if it interferes with an ongoing investigation or judicial proceeding. Exact deadlines are not provided. Instead, the Convention stipulates that the request should be executed as soon as possible and take as full account as possible of suggested deadlines.

Contrary to the European Investigation Order Directive, the MLA Convention contains a comprehensive provisions on the *principle of speciality*.<sup>32</sup> They can be found in Art. 31, which stipulates that the requesting state should not transmit or use evidence provided by the requested state for investigations, or judicial proceedings other than those stated in the request without the prior consent of the requested state – except where such evidence is exculpatory to an accused person. In such cases, a notification the requested state prior to the disclosure is needed.

Beyond speciality and data protection considerations, MLA Convention is not particularly concerned with how the evidence gathered in the executing state is transmitted to the requesting state or stored. However, Art. 17 does allow without prejudice to domestic law and under certain considerations, transmission of information relating to the crimes to other states parties to the Convention. In this respect, the *Core International Crimes Evidence Database* (CICED)<sup>33</sup> set up by Eurojust plays a vital role, at least in a broader European context.<sup>34</sup> It was set up in order to preserve, store, and analyse evidence of core international crimes in a secure mode. As argued by Kuczyńska and Nasiłowski, CICED in tandem with the allows “for the exchange of operational information and evidence, including large files, that should be ensured through an upload/download mechanism designed to store the data centrally only for the limited period of time necessary for the technical transfer of the data.”<sup>35</sup>

32 M. Šepec, T. Dugar, J. Stajniko, *ibid.*, pp. 134–135; G. Vermeulen, M. Kusak, “Unblurring the Fuzzy Line Between Specialty and Data Protection in EU Mutual Legal Assistance After the European Investigation Order”, *European Journal on Criminal Policy and Research*, 2023, 661.

33 See Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011, PE/29/2018/REV/1, OJ L 295, 21.11.2018, p. 99–137. See also the Regulation (EU) 2023/969 of the European Parliament and of the Council of 10 May 2023 establishing a collaboration platform to support the functioning of joint investigation teams and amending Regulation (EU) 2018/1726, PE/73/2022/REV/1, OJ L 132, 17.5.2023, p. 1–20, which is vital for an efficient collaboration of JITS.

34 K. Lingenfelter, “Romancing International Criminal Justice: The European Union and Criminal Accountability in Ukraine”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 2/2024, 214.

35 H. Kuczyńska, M. Nasiłowski, “The Polish Investigation into Core Crimes Committed in Ukraine: Practical Aspects of the Functioning of the JIT”, *Polish Yearbook of International Law*, 2023, 331.

### 3. SPECIAL RULES ON HEARING BY VIDEO CONFERENCE

The MLA Convention contains some particularly detailed rules regarding specific requested for investigation measures. For example, during a hearing, *witnesses and experts* are allowed to refuse a deposition under the domestic law of either the requested or the requesting state (Art. 33). This is important because, for example, the rules in professional privileges in criminal proceedings may diverge in legal systems under question. Even more interesting are elaborate rules on *hearing by video conference*, which have been labelled by Sadowski as “perhaps the most innovative part of the Convention [...] officially opening international law to the digital era.”<sup>36</sup>

For example, the Convention provides for possibility that if the requested state does not have the technical means to carry out such a hearing, such means may be provided by the requesting state. If the requested state agrees to hearing via a video conference, a judicial authority of the requested state needs to be present during the hearing to ensure that basic principles of its domestic legal system are being adhered to. While a hearing is conducted directly by (or under the direction of) the judicial authority of the requesting state and in accordance with its domestic law, the witness may still refuse a deposition under the domestic law of either the requested or the requesting state (Art. 34), which is of immense importance for preservation of national sovereignty regarding protection of trust in certain professions such as attorneys, doctors and even journalists or religious workers.

### 4. THE ROLE OF JOINT INVESTIGATION TEAMS IN FIGHTING CORE INTERNATIONAL CRIME

Joint Investigation Teams (hereafter: JITs) are practical mechanisms of cooperation which are established between two or more states to, jointly, conduct criminal investigations.<sup>37</sup> They are predominantly used during the investigative phase of a case and *focus on the collection and sharing of evidence*.<sup>38</sup> As pointed out by V. Shepitko, M. Shepitko and Latysh, JITs are “difficult to implement in the context of exchange of evidence between different jurisdictions, since each country participating in an international investigation team has its own requirements for collection and storage of evidence.”<sup>39</sup>

36 M. M. Sadowski, *op. cit.*, 13.

37 A. Furger, “Can They Deliver? The Practice of Joint Investigation Teams (JITS)”, *Journal of International Criminal Justice*, 1/2024, 44.

38 *Ibid.*, 48.

39 V. Shepitko, M. Shepitko, K. Latysh, “Digital Evidence Barriers Overcoming in the Ukrainian case: New Actors and Standards”, *Revista Brasileira de Direito Processual Penal*, 3/2024, 17.

JITs have been particularly successful within the structures of the EU and the Council of Europe, where the relevant legal frameworks are particularly developed and agencies such as Europol and Eurojust provide significant support for such ventures.<sup>40</sup> Nonetheless, the MLA Convention recognises that JITs are a useful tool for cross-border cooperation in investigating core international crime. Therefore, it regulates this practical tool extensively in Art. 41. Koutroulis may be right when he argues that provisions on JITs are amongst those which “are the living and breathing heart of the Convention.”<sup>41</sup>

Tremendous scholarly work in examining the MLA Convention’s provisions on JITs has recently been done by Furger, in an article published in *Journal of International Criminal Justice*. She compared the EU MLA Convention,<sup>42</sup> CoE Additional Protocol MLA,<sup>43</sup> EU JIT Framework Decision, available model agreements,<sup>44</sup> guidelines<sup>45</sup> and other materials to determine that their utility in the current international criminal justice context might be observed along six vectors: a) coordination; b) presence of seconded members; c) ability to request investigative measures, d) direct operational powers, e) evidence sharing and f) support by UN bodies, increased efficiency and saving of resources.<sup>46</sup>

The MLA Convention explicitly addresses at least five of these concerns. It initially allows states parties to establish, upon mutual agreement, a JIT for a specific purpose and a limited period of time, to carry out criminal investigations in one or more of the states involved. In particular, the MLA Convention encourages states to establish a JIT in cases of difficult and demanding investigations and where the circumstances of the case necessitate *coordinated, concerted action* of the states involved. To this end, Art. 41 may be used “to coordinate different actors and at least partially align investigative and prosecutorial strategies of team members from various states and organizations.”<sup>47</sup>

Members of a JIT from states other than the state in which the team operates are referred to in Art. 41(6) as *seconded members*. According to Art. 41(7), such seconded members are *entitled to be present* when investigative measures are taken in the territory of the state in which the team operates, except if the leader if the

40 A. Furger, *op. cit.*, 48–49.

41 V. Koutroulis, *op. cit.*

42 Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, 3–23.

43 Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, European Treaty Series – No. 182.

44 Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT) OJ C 18, 19.1.2017, 1–9.

45 Eurojust, Joint Investigation Teams – Practical Guide by the JITs Network (2021), <https://www.eurojust.europa.eu/publication/jits-practical-guide>; Eurojust, Guidelines on Joint Investigation Teams Involving Third Countries (2022), <https://www.eurojust.europa.eu/publication/guidelines-joint-investigation-teams-involving-third-countries>.

46 A. Furger, *op. cit.*, 51–57.

47 *Ibid.*, 52.

JIT decides otherwise. This provision is important as it reduces the risk of inadmissible evidence and may prevent “unnecessary duplication of witness interviews and other investigative measures, and thereby [minimizing] the risks of inconsistent statements and possible re-traumatization of vulnerable witnesses.”<sup>48</sup>

Additionally, Art. 41(9) allows for members of a JIT to *request their own competent authorities to take investigative measures* (meaning authorities in the state from which they have been seconded). Such a request needs to be treated by the authorities as if they were requested in a domestic investigation. This “removes the need for sending [MLA] or judicial cooperation requests to other states, [thereby] enabling the JIT to directly collect evidence as if it was a domestic investigation in all participating states.”<sup>49</sup>

In comparison, the option of seconded members to have *direct operational powers* in foreign cooperating states is more controversial. In this respect, the MLA Convention stipulates in Art. 41(8) that seconded members may, in accordance with the domestic law of the state in which the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the state in which the team operates and the seconding state. Be that as it may, *Furger* is right when she argues that even states which join a JIT typically remain mindful to protect their sovereignty – even when investigating core international crime. This means that, in practice, this provision is unlikely to reach its full potential.<sup>50</sup>

Instead, the possibility to *share evidence* between members of a JIT remains *mora* relevant. However, to this end, the MLA Convention provides in Art. 41(11) that seconded members may, in accordance with their domestic law and within the limits of their competence, provide the team with information available in the state which has seconded them for the purpose of the criminal investigations conducted by the team. This means that the possibility to share information varies between different states and organizations.<sup>51</sup> What is more, even from the wording of Art. 41(12) the Convention, it is clear that it is limited by the speciality principle – which is in line with what *Furger* describes as an “closed exit” approach to sharing of evidence in a JIT.<sup>52</sup>

In addition to the described provision, the MLA Convention also contains ample technical provisions on setting up and functioning of a JIT. A *request for the setting up* of a JIT may be made by any of the states concerned. However, the team needs to be set up in one of the states in which the investigations are expected to be carried out (Art. 41(3)). The request needs to contain proposals for the composition of the team, the purpose of, and the duration for which the JIT would be constituted (Art. 41(4)).

---

48 *Ibid.*, 53.

49 *Ibid.*, 54.

50 *Ibid.*, 4–55; 57.

51 *Ibid.*, 55.

52 *Ibid.*, 57–58.

Every JIT need (at least one) leader, representing the competent authorities participating in criminal investigations from the state in which the team operates. Such a leader needs to act *within respective domestic laws*. In general, the team is bound to carry out its operations in accordance with the domestic law of the state in which it operates, while at the same time taking into account the conditions set by their own authorities in the agreement on establishing the team (Art. 41(5)).

## 5. CONCLUDING REMARKS ON THE LJUBLJANA–THE HAGUE CONVENTION IN THE CONTEXT OF CROSS-BORDER GATHERING OF EVIDENCE

In this contribution, I merely touched upon a small part of provisions of the MLA Convention. Some points of controversy, but also of overwhelming academic interest – for example on the scope of the Convention – were not addressed.<sup>53</sup> Instead, my intention was to show that the “*living and breathing heart*” of the Convention which will certainly shape day to day cross-border investigations of core international crime *resides in practical provisions*, including on mutual legal assistance for gathering of evidence. Focusing on this part of the Convention, the reliance on central authorities for transmission of requests as well as provisions on hearings by video conference and JITs seem particularly well thought out. The same cannot be said for the grounds for refusal, which contain wide exceptions that may be invoked to escape the obligation of a state to cooperate in cross-border investigations. Regardless, *Moodrick* and *Khen* are right when they maintain that the MLA Convention “sets high hopes for bolstering the fight against impunity for perpetrators of international core crimes.”<sup>54</sup>

However, such high hopes may only materialize if the states – starting with those which supported the MLA Initiative – *sign and ratify the Convention in the following years*.<sup>55</sup> Indeed, the Core Group envisaged the Convention to be open

53 See for example the outstanding contribution on the MLA Convention, its drafting history and dual criminality in H. Moodrick, E. Khen, “Mutual Legal Assistance and Double Criminality – Bolstering the Struggle against Impunity outside the ICC Framework”, *Journal of International Criminal Justice*, 2025.

54 H. Moodrick, E. Khen, “Intorductory Note to the Convention on Int’l Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes”, *International Legal Materials*, 4/2024, 549.

55 R. Saavedra, L. Baddour, “Symposium on Ljubljana–The Hague Convention on Mutual Legal Assistance: Critical Reflections – Closing the Impunity Gap: The Prospects and Potential of the Ljubljana–The Hague Convention”, *OpinioJuris*, 26. 07. 2023, <https://opiniojuris.org/2023/07/26/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-closing-the-impunity-gap-the-prospects-and-potential-of-the-ljubljana-the-hague-convention/>, 10. 4. 2025; M. Colorio, “The ICC as a Justice Hub and the EU International Criminal Justice Ecosystem Regional Coordination Hubs

for signature even to states have not signed the Rome Statute.<sup>56</sup> Therefore, I want to conclude by pointing out that two members of the so called Western Balkans family of states still did not sign the MLA Convention as of April 2025: Bosnia and Herzegovina, which is an observer state of the EU Genocide Network and whose representatives attended the MLA Diplomatic Conference, as well as Serbia, which was a supporting state of the MLA Initiative. Looking at the wider Balkans region, Romania, Bulgaria and Greece are also conspicuously missing from the list of states signatories. And, while Türkiye did not outright support the MLA Initiative, it still cooperated at the Diplomatic Conference in Ljubljana as a state observer.

As the MLA Convention stimulates cross-border cooperation in criminal matters between EU and the Western Balkans as well as between the Western Balkan states, it is complementary to the Western Balkans Criminal Justice initiative promoted by Eurojust. In general, signing and ratifying the MLA Convention gives a strong signal to the EU and its citizens that a state is *aligned with European values*. In this respect, I see a fruitful cooperation in the MLA Initiative and signing of the Convention as a small but nonetheless telling sign that a state is willing – and perhaps also deserving – of joining the EU.

## BIBLIOGRAPHY

- Anderson J., Berg S. van den, “Whats the new ‘MLA’ Treaty?: Interview with Raquel Saavedra and Vaios Koutroulis”, *Justice Info*, <https://www.justiceinfo.net/en/119070-what-is-in-the-mla-treaty.html>, 10. April 2025.
- Bisset, A., “The Mutual Legal Assistance Treaty for Core Crimes: Filling the Gap?”, *EJIL: Talk!*, June 13, 2022, <https://www.ejiltalk.org/the-mutual-legal-assistance-treaty-for-core-crimes-filling-the-gap/>, 10. April 2025.
- Calcagno G., “Ljubljana–The Hague Convention: An Important Tool for Judicial Cooperation with Western Balkans”, *EUWEB Legal Essays*, 1/2025.
- Colorio M., “The ICC as a Justice Hub and the EU International Criminal Justice Ecosystem Regional Coordination Hubs in Times of Polycentricity”, *International Criminal Law Review*, 2025 (published online ahead of print 2025).
- Furger A., “Can They Deliver? The Practice of Joint Investigation Teams (JITS)”, *Journal of International Criminal Justice*, 1/2024.
- George M., “Some Reflections on the Proposal for a New Mutual Legal Assistance Treaty for International Crimes”, *OpinioJuris*, 11. 1. 2019, <https://opiniojuris.org/2019/01/11/some-reflections-on-the-proposal-for-a-new-mutual-legal-assistance-treaty-for-international-crimes/>, 10. April 2025.

---

in Times of Polycentricity”, *International Criminal Law Review*, 2025 (published online ahead of print 2025).

56 J. Anderson, S. van den Berg, “Whats the new ‘MLA’ Treaty?: Interview with Raquel Saavedra and Vaios Koutroulis”, *Justice Info*, <https://www.justiceinfo.net/en/119070-what-is-in-the-mla-treaty.html>, 10. 4. 2025.

- Herik, L. J. van den, "Relating to 'the Other' – The ILC Draft Convention on the Crimes against Humanity and the Mutual Legal Assistance Initiative", *African Journal of International Criminal Justice*, 2/2020.
- Hovell D., Malagodi M., "Universal Jurisdiction: Law out of Context", *Modern Law Review*, 6/2024.
- Ijzerman A., "The Initiative for a new multilateral treaty for mutual legal assistance and extradition for domestic prosecution of crimes of genocide, crimes against humanity and war crimes", *The Military Law and the Law of War Review*, 2/2017.
- Koutroulis V., "Symposium on Ljubljana–The Hague Convention on Mutual Legal Assistance: Critical Reflections – A New Tool in the Fight Against Impunity for Core International Crimes", *OpinioJuris*, 25. 07. 2023, <https://opiniojuris.org/2023/07/25/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-a-new-tool-in-the-fight-against-impunity-for-core-international-crimes/>, 10. April 2025.
- Kuczyńska H., Nasiłowski M., Sadowski, M. M., "The Polish Investigation into Core Crimes Committed in Ukraine: Practical Aspects of the Functioning of the JIT", *Polish Yearbook of International Law*, 2023.
- Lingenfelter K., "Romancing International Criminal Justice: The European Union and Criminal Accountability in Ukraine", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 2/2024.
- Moodrick, H., Khen E., "Introductory Note to the Convention on Int'l Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes", *International Legal Materials*, 4/2024.
- Moodrick H., Khen E., "Mutual Legal Assistance and Double Criminality – Bolstering the Struggle against Impunity outside the ICC Framework", *Journal of International Criminal Justice*, 2025.
- Oliveira Biazatti B. de, Amani E., "The Ljubljana–The Hague Convention on Mutual Legal Assistance: Was the Gap Closed?", *EJIL: Talk!*, June 12, 2023, <https://www.ejiltalk.org/the-ljubljana-the-hague-convention-on-mutual-legal-assistance-was-the-gap-closed/>, 10. April 2025.
- Sadowski, M. M., "The Ljubljana–The Hague Convention: A Treaty for the Globalised and Interconnected World? Perspectives from a Legal Semiotics Analysis", *International Journal for the Semiotics of Law*, 2025.
- Saavedra R., Baddour L., "Symposium on Ljubljana–The Hague Convention on Mutual Legal Assistance: Critical Reflections – Closing the Impunity Gap: The Prospects and Potential of the Ljubljana–The Hague Convention", *OpinioJuris*, 26. 07. 2023, <https://opiniojuris.org/2023/07/26/symposium-on-ljubljana-the-hague-convention-on-mutual-legal-assistance-critical-reflections-closing-the-impunity-gap-the-prospects-and-potential-of-the-ljubljana-the-hague-convention/>, 10. April 2025.
- Sadat L. N., "Understanding the New Convention on Mutual Legal Assistance for International Atrocity Crimes", *ASIL Insights*, 12/2023.

- Sancin V., "UN Security Council Membership as a Litmus Test for Slovenia's Commitment to R2P", *Nordic Journal of Human Rights*, 4/2024.
- Shepitko V., Shepitko M., Latysh K., "Digital Evidence Barriers Overcoming in the Ukrainian case: New Actors and Standards", *Revista Brasileira de Direito Processual Penal*, 3/2024.
- Sliedregt E. van, "The Future of International Criminal Justice is Corporate", *Journal of International Criminal Justice*, 2025.
- Šepec M., T. Dugar, J. Stajanko, "European Investigation Order – A Comparative Analysis of Practical and Legal Dilemmas", *The European Investigation Order: Legal Analysis and Practical Dilemmas of International Cooperation* (eds. K. Ambos et al.), Duncker & Humblot, Berlin, 2023.
- Vasiliev S. V., "Solidarity Justice for and beyond Ukraine", *Le questioni aperte della giustizia penale internazionale nella prospettiva interna*, 2024.
- Vermeulen G., M. Kusak, "Unblurring the Fuzzy Line Between Specialty and Data Protection in EU Mutual Legal Assistance After the European Investigation Order", *European Journal on Criminal Policy and Research*, 2023.

Јан Стјајнко\*

## ЉУБЉАНА–ХАШКА КОНВЕНЦИЈА У КОНТЕКСТУ ПРЕКОГРАНИЧНОГ ПРИКУПЉАЊА ДОКАЗА

### Резиме

Дана 26. маја 2023. године, у Љубљани, Словенији, усвојена је Конвенција о међународној сарадњи у истраживању и кривичном поштењу јеноцида, злочина против човечности, ратних злочина и других међународних кривичних дела. Овај рад се фокусира на то како Конвенција зајивара постојећи практични и правни јаз који ошжава прекогранично прикупљање доказа у истрајама које се односе на међународна кривична дела у ужем смислу. У том циљу, укратко се излажу процес израде и циљеви Конвенције, након чега аутор анализира њене ошше одредбе које се односе на сваку фазу захтева за међусобну правну помоћ: издавање захтева, његово прослеђивање надлежном органу, основи за одбијање, као и фаза извршења (укључујући принцип специјалности и дељење доказа преко CICCED-a). Конвенција такође садржи нарочито дејална правила у вези са посебним истражним радњама које се шраже. Одредбе о саслушањима путем видео-конференције и шимовима за заједничке истраје посебно су добро разрађене, а их аутор дејално анализира. Ипак, чак и изузетно промишљене одредбе моју пошати

\* Асистент, Универзитет у Марибору – Правни факултет, [jan.stajnko@um.si](mailto:jan.stajnko@um.si).



*свој йуни йошеницијал само ако Конвенцију йошйише довољан број држава које су сйремне да окончају некажњавање међународних кривичних дела у ужем смислу. Аутор йврди да, йоред ових асие-кайа, за земље Зайадној Балкана йодришка Конвенцији йредсйавља и усклађеносй са иницијаййивом за кривичну йравду на Зайадном Балкану коју йромовише Eurojust. Закључује да, йошйисивањем Конвенције, свака држава шаље снажну йоруку Евройској унији и својим йрађанима да је усклађена са евройским вредносйима.*

**Кључне речи:** Иницијатива за међусобну правну помоћ, међународна кривична дела у ужем смислу, међусобна правна помоћ, међународно кривично право, Конвенција о правној помоћи.