INTERNATIONAL SEVEN JOURNAL
OF MULTIDISCIPLINARY
ISSN: 2764-9547

LJUBLJANA-THE HAGUE CONVENTION AS A FORMIDABLE FRAMEWORK IN FIGHTING IMPUNITY FOR INTERNATIONAL CRIMES: AN ASSESSMENT OF ADVANTAGES OF ACCESSION AND PERCEIVABLE CHALLENGES FOR STATES NOT PARTIES TO THE ROME STATUTE

A CONVENÇÃO DE LJUBLJANA-HAIA COMO UMA ESTRUTURA FORMIDÁVEL NO COMBATE À IMPUNIDADE POR CRIMES INTERNACIONAIS: UMA AVALIAÇÃO DAS VANTAGENS DA ADESÃO E DOS DESAFIOS PERCEBÍVEIS PARA OS ESTADOS NÃO PARTES DO ESTATUTO DE ROMA

LA CONVENCIÓN DE LA HAYA DE LIUBLIANA COMO UN MARCO FORMIDABLE EN LA LUCHA CONTRA LA IMPUNIDAD DE LOS CRÍMENES INTERNACIONALES: UNA EVALUACIÓN DE LAS VENTAJAS DE LA ADHESIÓN Y LOS DESAFÍOS PERCEPIBLES PARA LOS ESTADOS NO PARTES DEL ESTATUTO DE ROMA

https://doi.org/10.56238/isevmjv4n4-026

Submission date: 06/31/2025 **Publication date:** 07/31/2025

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ABSTRACT

Fighting impunity for crimes is paramount for any criminal justice system that is resolute in rendering effective justice for crimes committed and deterring future crimes. The pursuit of prevention of impunity should not be limited to the acts that are criminalized under national laws but should encompass acts that constitute international crimes. Although states will generally be amenable to undertake impunity prevention measures to ensure effective exercise of their respective national criminal jurisdiction, similar enthusiasm could dwindle when the same is sought by other states or international criminal courts or tribunals. Concerns of any international obligations impinging upon national sovereignty and the consequential reluctance of many states to accede to the Rome Statute establishing the International Criminal Court are classic examples. Although, a significant international initiative has sought to address the void in the global fight against impunity with the recent introduction of the Ljubljana-The Hague Convention on 26 May 2023, the subsequent lukewarm response of states subscribing to the new regime raises the question whether the reluctance of the states could be attributed to the same conundrum states face in acceding to the Rome Statue. With an aim to investigate this apprehension, the present paper systematically reviews the fundamental provisions of the Ljubljana-The Hague Convention to determine the extent to which they may add to the conventional concerns of states that are not parties to the ICC. The paper closely examines the core obligations arising from the Convention to demonstrate how a balance is sought to be achieved between enhancing international cooperation and conserving national sovereignty in criminal administration. The paper argues that this pioneering multilateral regime in reinforcing international cooperation in criminal matters in three distinct fundamental elements of mutual legal assistance, extradition and transfer of sentence persons should be seen by non-subscribing states as fundamental tool in enhancing the reach and effectiveness of their national criminal jurisdiction more than as a platform to facilitate international courts or tribunals. The specific findings of the paper evaluates the

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validity of this argument to reach relevant conclusions and propose some future course of action.

Keywords: Impunity. International Cooperation. Mutual Legal Assistance. Extradition. Transfer of Sentenced Persons. Ljubljana-The Hague Convention.

RESUMO

Combater a impunidade por crimes é fundamental para qualquer sistema de justiça criminal que se dedique a proporcionar justiça efetiva aos crimes cometidos e a dissuadir crimes futuros. A busca pela prevenção da impunidade não deve se limitar aos atos criminalizados pelas leis nacionais, mas deve abranger atos que constituem crimes internacionais. Embora os Estados geralmente sejam receptivos à adoção de medidas de prevenção da impunidade para garantir o exercício efetivo de suas respectivas jurisdições criminais nacionais, entusiasmo semelhante pode diminuir quando o mesmo é buscado por outros Estados ou tribunais penais internacionais. Preocupações com quaisquer obrigações internacionais que infrinjam a soberania nacional e a consequente relutância de muitos Estados em aderir ao Estatuto de Roma, que institui o Tribunal Penal Internacional, são exemplos clássicos. Embora uma iniciativa internacional significativa tenha buscado preencher a lacuna na luta global contra a impunidade com a recente introdução da Convenção de Liubliana-Haia em 26 de maio de 2023, a subsequente resposta morna dos Estados que aderiram ao novo regime levanta a questão de se a relutância dos Estados poderia ser atribuída ao mesmo dilema que os Estados enfrentam ao aderir ao Estatuto de Roma. Com o objetivo de investigar essa apreensão, o presente artigo analisa sistematicamente as disposições fundamentais da Convenção de Liubliana-Haia para determinar em que medida elas podem contribuir para as preocupações convencionais dos Estados que não são partes do TPI. O artigo examina atentamente as principais obrigações decorrentes da Convenção para demonstrar como se busca alcançar um equilíbrio entre o fortalecimento da cooperação internacional e a preservação da soberania nacional na administração penal. O artigo argumenta que este regime multilateral pioneiro no reforço da cooperação internacional em matéria penal em três elementos fundamentais distintos: assistência jurídica mútua, extradição e transferência de pessoas condenadas, deve ser visto pelos Estados não signatários como uma ferramenta fundamental para ampliar o alcance e a eficácia de suas jurisdições penais nacionais, mais do que como uma plataforma para facilitar a atuação de cortes ou tribunais internacionais. As conclusões específicas do artigo avaliam a validade desse argumento para chegar a conclusões relevantes e propor algumas linhas de ação futuras.

Palavras-chave: Impunidade. Cooperação Internacional. Assistência Jurídica Mútua. Extradição. Transferência de Pessoas Condenadas. Convenção de Liubliana-Haia.

RESUMEN

La lucha contra la impunidad de los delitos es fundamental para cualquier sistema de justicia penal decidido a impartir justicia efectiva por los delitos cometidos y a disuadir la comisión de delitos futuros. La lucha por la prevención de la impunidad no debe limitarse a los actos tipificados como delito en las leyes nacionales, sino que debe abarcar los actos que constituyen delitos internacionales. Si bien los Estados suelen estar dispuestos a adoptar medidas de prevención de la impunidad para garantizar el ejercicio efectivo de su respectiva jurisdicción penal nacional, este entusiasmo podría decaer cuando otros

Estados o tribunales penales internacionales buscan lo mismo. La preocupación por cualquier obligación internacional que afecte a la soberanía nacional y la consiguiente reticencia de muchos Estados a adherirse al Estatuto de Roma por el que se establece la Corte Penal Internacional son ejemplos clásicos. Si bien una importante iniciativa internacional ha buscado abordar el vacío en la lucha global contra la impunidad con la reciente introducción de la Convención de Liubliana-La Haya el 26 de mayo de 2023, la posterior tibia respuesta de los Estados que se adhirieron al nuevo régimen plantea la pregunta de si la reticencia de los Estados podría atribuirse al mismo dilema que enfrentan al adherirse al Estatuto de Roma. Con el objetivo de investigar esta inquietud, el presente documento revisa sistemáticamente las disposiciones fundamentales de la Convención de Liubliana-La Haya para determinar en qué medida pueden contribuir a las preocupaciones convencionales de los Estados que no son parte de la CPI. El documento examina en detalle las obligaciones fundamentales derivadas de la Convención para demostrar cómo se busca lograr un equilibrio entre el fortalecimiento de la cooperación internacional y la preservación de la soberanía nacional en la administración penal. El documento argumenta que este régimen multilateral pionero en el fortalecimiento de la cooperación internacional en materia penal, en tres elementos fundamentales: la asistencia judicial recíproca, la extradición y el traslado de personas condenadas, debería ser considerado por los Estados no adheridos como una herramienta fundamental para ampliar el alcance y la eficacia de su jurisdicción penal nacional, más que como una plataforma para facilitar la creación de tribunales internacionales. Las conclusiones específicas del documento evalúan la validez de este argumento para extraer conclusiones pertinentes y proponer medidas futuras.

Palabras clave: Impunidad. Cooperación Internacional. Asistencia Judicial Recíproca. Extradición. Traslado de Personas Condenadas. Convenio de Liubliana-La Haya.

1 INTRODUCTION

Impunity for crimes is a serious threat to any criminal justice system. No state resolute to serve justice in their society will neglect impunity undermining its sovereign power to prosecute and punish perpetrators of serious crimes. The prerogative of a state to pursue justice against criminals is not limited to the acts of crimes committed within its territorial jurisdiction but transcends beyond its territory. The criminal jurisdiction could extend as long as the crime in question has a nexus to the forum state in different forms or the forum state is keen on exercising criminal jurisdiction in the spirit of serving international criminal justice. Especially, when such challenges cause impunity, it will seriously impede the ability of one individual state to successfully bring the perpetrators to justice for commission of national or international crimes. Although there is a wide recognition of expanding criminal jurisdiction of national courts, challenges arise when some of the essential elements of a criminal investigation and prosecution like the suspects, evidences and proceeds of the crime are located outside a national territory of a prosecuting state. Various theoretical foundations of criminal jurisdiction exercisable by a state like territorial jurisdiction, universal jurisdiction, or extra territorial jurisdiction should inherently motivate states to ensure that effective legal mechanisms for international legal cooperation in criminal matters exist at their disposal.

Impunity is categorically recognised as one of the major obstacle in seeking justice and reparations for the victims of international crimes and serious violations of human rights. The prevalence of impunity could not only dissuade efforts and hopes in taking initiatives aimed at making perpetrators accountable, but could equally motivate the commission of an underlying crime. As the fear of consequences dwindle, it may also actuate the repetition of the crime. Impunity triggers serious adverse effects on communities recovering from conflicts in achieving essential changes aimed at creating an egalitarian and a peaceful co-existence in the future[2]. It fuels abuse of power and undermines trust in the rule of law and related institutions. Numerous adverse socio-economic consequences resulting from impunity like triggering deep divisions among social and ethical groups, inhibiting reconciliation, propelling corruption, stifling social and economic progression, and causing indeterminate damage to different strata of the

[2] See Opotow, S. (2002). Psychology of Impunity and Injustice: Implications for Social Reconciliation. In M.C.Bassiouni (Ed.), *Post-Conflict Justice* (pp.201-216). Brill-Nijhoff.

society are well documented by scientific studies[3]. Studies have also highlighted a wide array of ramifications resulting from the prevalence of impunity ranging from psychological consequences to environmental degradation[4].

Impunity in several forms is prevalent across various nations around the world and unlike the popular belief, is not limited to conflict and war torn countries. Similarly, impunity is not confined to countries where there are authoritarian rule or weak governments that do not have effective control of the entire territory. Although, impunity in a narrow perspective could mainly be traced to the above countries, impunity in a broader sense is found to exist among different nations across the world, including in the developed and democratic states[5]. For example, the 'Atlas of Impunity' published by Eurasia Group in 2024 adopting a holistic approach in defining impunity revealed various degrees of impunity existing in 170 jurisdictions that formed part of their ranking study[6]. The quantitative study, assessing impunity with reference to five extensive attributes in a scale 1-5, identified the existence of high overall impunity score of above 2 in ninety eight jurisdictions, a score between 1 to 2 among fifty six jurisdictions and only sixteen countries below the score of 1[7]. Although, the five attributes assessed under the study referred to the broader aspects of conflicts and violence, human rights abuse, governance without accountability, economic exploitation and degradation of environment without a specific focus on international crimes, the Eurasia study exemplifies that most countries face concerns of impunity at some degree. Such a finding prompts the argument that international initiatives aimed at eliminating impunity should transcend beyond egregious violation of international criminal law and seek to prevent impunity across the board and

[3] For example, see a study on economic consequences of impunity Gordon, M., Iglesias, J., Semeshenko, V., & Nadal, J.P. (2009). Crime and punishment: the economic burden of impunity. *The European Physical Journal B*, 68, 133–144.

[4] For one of the earliest studies on the psychological impact see Kordon, D. (1991). Impunity's Psychological Effects: Its Ethical Consequences. *Journal of Medical Ethics*, 17, 29-32.

[5] See for example, a relevant study investigating domestic violence and feminicide in Brazil referring to the prevalence of impunity and its adverse implication on the pursuit of justice by the victims Santos, B.C., Voltz, B.H, Sada, G.D., Darolt, G.G., Silva, L.S.M., Hillesheim, M.C., & Santos, I.M. (2022). The impacts of domestic violence and feminicide as an extreme consequence. International Seven Journal of Multidisciplinary, 1(2), https://doi.org/10.56238/isevmkv1n2-003

[6] In addition to the 170 jurisdictions, where the impunity levels are ranked, the study has also measured the level of overall impunity in 27 other jurisdictions, demonstrating the comprehensive nature of the study. See Miliband, D., & Eurasia Group. (2025). *The Atlas of Impunity 2024: A People's Perspective.* Carnegie Corporation. https://www.eurasiagroup.net/files/upload/202502AtlasofImpunitySummary.pdf

[7] Among the unranked jurisdictions scored for impunity, three jurisdictions have a high impunity score above 2, while twenty-two jurisdictions scored between 1-2 and only two jurisdictions ranked below the score of 1. See ibid at p.53.

in particular those related to attributes like ‘conflicts and violence’ and ‘human rights abuse’ that have direct nexus to the international crimes.

Measures aimed at preventing or eliminating impunity have taken several forms. First and foremost, certain theories of criminal jurisdiction and its wider adoption among national states in asserting jurisdiction transcending beyond crimes committed within their territories is a crucial element in fighting impunity. In particular, the extension of territorial jurisdiction beyond land territory, asserting jurisdiction based on theories relating to personality or nationality, expansion of extraterritorial jurisdiction, and exercise of universal jurisdiction can all be cited as potential theoretical foundations to fight against impunity[8]. Secondly, categorical recognition of international crimes as well as the creation and functioning of ad hoc international criminal tribunals and International Criminal Court (ICC) are no doubt some of the most important international initiatives that have a distinct dissuading effect upon impunity. Thirdly, bilateral or regional extradition treaties have served as important instruments preventing impunity of perpetrators of crimes fleeing a jurisdiction.

The community of nations cannot get complacent with the existing normative resources fighting against impunity and should constantly be on a vigil to identify and patch loopholes that perpetrators could take advantage. In this regard, it is crucial to realize that the success of any international initiative to fight against impunity will be highly dependent on effective ‘international cooperation’ and ‘mutual assistance’ and any perceived limitation or gaps in the related legal spheres should gain the attention and priority of the international community. Despite some of the international initiatives that have the potential to fight against impunity discussed earlier, the focus on enhancing criminal cooperation and mutual assistance has primarily been so far in the frontier of bilateral or regional cooperation without attracting the traction of the wider international community.

It is in the above context, the pioneering role of the recent initiative under the auspices of the government of Slovenia aimed at developing an exclusive international

[8] At this juncture it is also relevant to note that some of the values underpinning these theoretical underpinnings like universalism arguably span beyond prosecuting crimes and even seen in the context of protecting human rights and humanitarian values. See for a reference to a related conception affirming the notion of unlimited universality for human beings who are endowed with essential attributes like dignity irrespective of race, sex, sexual orientation, ethnicity, etc in a work focused on protection of refugees and human rights, Sousa, D.E.N. (2024). Government management process for welcoming refugees and guaranteeing human right, International Seven Journal of Multidisciplinary, 3(1), https://doi.org/10.56238/isevmjv3n1-012

regime to promote cooperation to fight impunity for international crimes gains a greater significance[9]. The efforts culminated in the successful conclusion of the Ljubljana-The Hague Convention on 26 May 2023, which provides a comprehensive international legal framework aimed at achieving cooperation in the fight against impunity for international crimes. Despite the pious purpose and ambitious provisions, since the Convention was opened for signature the response of the States has been quite lukewarm, with only forty states signing the Convention until February 2025 and none of them ratifying the instrument till then[10]. Although a quick review of the fundamental features of the emerging regime reveals that the Convention is distinctly capable of addressing impunity in comparison with other bilateral or regional initiatives, the limited response of states since its inception warrants an enquiry to identify the underlying causes and concerns that could dissuade states from embracing the Convention.

In this regard, the preliminary review of the state signatories to the Convention reveals two interesting findings that forms the motivation for the inquiry in the present paper. Firstly, the inquiry reveals that most of state signatories to the Ljubljana-The Hague Convention (thirty eight out of forty states) are also signatories of the Rome Convention that established the ICC. An extended inquiry in this regard also indicates that out of the current one hundred and twenty five state parties to the ICC Rome Statute, eighty seven of them have still not chosen to sign the Ljubljana-The Hague Convention. Secondly, the inquiry reveals that two of the signatory states namely Moldova and Rwanda, who are not state parties to the ICC Rome Statute have signed the Ljubljana-The Hague Convention. From the above the findings, the objectives of the present paper are drawn, whereby it aims to examine some of the fundamental provisions of the Ljubljana-The Hague Convention to determine the extent to which they may add to the conventional concerns of states that are not signatories to the ICC. In addition, the paper also aims to examine the extent to which the provisions of the Convention may add to the advantage of those states in strengthening their respective national criminal justice system to fight impunity and effectively exercise criminal jurisdiction by enhancing a global reach. While the first finding could potentially trigger the argument that the states which are basically reluctant

[9] For a historical account of the fight against impunity see Bassiouni, C. (2000). Combating Impunity for International Crimes. *University of Colorado Law Review*, 71, 409-422.

[10] However, it is relevant to note that the Kingdom of Netherlands, despite its impending ratification, nevertheless has made a declaration under Article 91(1) of the Ljubljana - The Hague Convention expressing its willingness for provisional application of certain parts of the Convention governing mutual legal assistance towards the European part of the Netherlands.

to join ICC may tend to view the Ljubljana-The Hague Convention with similar concerns they have in subscribing to the ICC, the second finding that some non-ICC states have chosen to sign the Convention should support the counter arguments. The present paper systematically assesses the major normative standards emerging from the Ljubljana-The Hague Convention to determine their effectiveness in promoting international cooperation to fight against impunity and identify to what extent the specific legal standards emerging from the Convention could be a source of concern or advantage for states that could potentially accede to the new regime in the future.

2 DO PREAMBULAR ASPIRATIONS OF THE CONVENTION ALLEVIATE OR AGGRAVATE POTENTIAL CONCERNS

The Ljubljana - The Hague Convention rests on certain basic values and principles that are indicative of the fundamental pillars upon which its comprehensive legal framework rests[11]. The scope of application of the Ljubljana - The Hague Convention primarily related international crimes that are the most serious crimes of concern of the international community with an aim to prevent impunity from such crimes. The drafters of the Convention are of the strong conviction that fighting impunity related to these crimes is indispensable to promote peace and stability, serve justice and uphold the rule of law. These values should dictate the interpretation of the specific provisions of the new Convention. The focus of the Convention on select international crimes and not on the issue of diversity in criminalization among different national jurisdictions could cause the Convention less attractive for states not enthusiastic in pursuing justice for international crimes, especially those who are reluctant to join the ICC. However, any such concern should alleviate in the light of the fact that the Convention takes a cascading approach with regard to the international crimes governed under its purview with only three major categories of international crimes is given preponderance as will be analysed later in this paper. Moreover, states should also assess the Convention by taking into account that the obligations to pursue justice for some of those international crimes could exist even otherwise as part of peremptory norms or customary international law.

In as much as underscoring its contribution for international law development to fight against impunity, the preamble of the Convention clearly acknowledges the role of

[11] For a comprehensive set of UN principles pertaining to combating impunity see Haldemann, F., & Unger, T. (Eds.). (2018). *The United Nations Principles to Combat Impunity*. Oxford University Press.

other pertinent existing sources including customary international law and various other multilateral treaty regimes in the field of international humanitarian law and international criminal law. This arguably is a stark reminder that any obligations arising under the present Convention should be read in the light and spirit of the existing customary law and legal standards enshrined in the acknowledged list of treaty instruments[12]. Based on this acknowledgement, states should realize that even if their participation in specific international criminal law regimes is absent or limited, customary international law and treaty regimes in international humanitarian law (like the Geneva Conventions that are widely adopted or arguably manifestation of customary international law) would generally impose pertinent obligations on them. In this context, it is also important to note that the Convention reinforces the significance of the existing rights and obligations of states including their responsibilities under the general international law including the specialized fields like human rights and refugee law.

The Convention explicitly recognises the rights of various persons including the victims and witnesses of a crime falling within its purview. The right of the accused for a fair treatment during entire criminal proceedings is equally avowed. For effective criminalization of acts of international crime, the Convention emphasizes the importance of the facilitation of the process of investigation and prosecution of such crimes. In addition to the international cooperation, the role of both domestic efforts and domestic law are equally emphasised. Prospective state parties should recognize the importance that the Convention attaches to the role of individual national states and their laws, and being a party to the Convention should save the need to secure the cooperation of national states individually through the conclusion of a fragmented set of bilateral treaties. With a clear realization that the process of investigation and criminal proceedings in international crimes would transcend beyond national boundaries of a single state[13], the Convention acknowledges the indispensability of international co-operation for an effective implementation of the related processes at a domestic level.

As a consequence, it concludes that the underlying goal of enhancing international co-operation can only be achieved through the consolidation of the international legal framework for cooperation, which the Convention seeks to provide. To dissuade potential

[12] The key pre-existing treaty instruments specifically acknowledged by the Ljubljana - The Hague Convention includes Genocide Convention, the four Geneva Conventions and additional protocols on international humanitarian law, as well as the ICC Rome Statute.
[13] The Convention delineates the potential of foreign presence of people of interest like suspects and witnesses as well as the evidential materials or assets that are critical for carrying out the said processes.

concerns of any international cooperation obligations impinging upon national sovereignty, the Convention recites the relevance of pertinent international law principles of sovereign equality, territorial integrity and non-intervention. At the same time, it is important to note that the Convention attaches the primary responsibility upon individual State Parties to investigate and prosecute international crimes by imposing a mandate on them to enact relevant legislative provisions and undertake necessary executive measures to discharge such responsibility. The balance that the Convention seeks to attain between conservation of national sovereignty and imposition of a primary responsibility to cooperate is arguably an important characteristic capable of convincing concerned states.

3 DELVING INTO THE DEFINITIONS OF CRIME AND CORE ELEMENTS OF THE CONVENTION

With regard to the scope of application, a fine balance sought to be achieved by the Convention through a two pronged approach indicates the flexibility it provides to the prospective state parties. The fundamental objective of the Convention to promote international cooperation in criminal matters is primarily aimed at combating impunity for three specific crimes namely genocide, crimes against humanity and war crimes. However, the objective of the Convention is not limited to facilitating international cooperation only with regard to the three crimes but also in applicable circumstances to a broader category of 'other international crimes'. This dual narrative arguably balances the intention to prioritize the fight against impunity with regard to the three specific crimes and yet extend the utility of the Convention to a broad category of other international crimes in circumstances where State Parties may choose the application of the Convention.

The preponderance of the fight against impunity with regard to the three crimes is evident by the fact that the Convention provides a comprehensive definition of the three crimes in elaborate terms. Moreover, the Convention's definitions of the three crimes are not just reproduction from an existing legal instrument, but derived from a variety of legal sources to ensure that the scope of the definitions is presented in its broadest form to facilitate the indubitable application of the Convention[14]. With regard to these crimes that

[14] For example, among the three specific crimes defined, the definition of 'war crimes' being defined in broadest terms is derived from multiplicity of sources including the relevant humanitarian law Geneva Conventions of 1949, laws and customs governing international armed conflicts under the general

are specifically listed and defined, the application of the Convention is categorially mandated. The comprehensive definition of the three crimes derived from multiple legal sources in itself should not instigate any concern for prospective parties. The effort of the Convention to be self-sufficient in defining the covered crimes should prevent any potential uncertainty as to the acts that will fall within the purview of the Convention and help relieve related concerns.

On the other hand, the Convention recognizes the freedom of the State Parties to extend its application beyond the three specific crimes. The Convention provides for the possibility of the State Parties to extend the application of the Convention to crime(s) that are listed in any of its annexes in relation to any other State Party, which has notified the intention to extend the application to the same crime(s)[15]. In addition, the Convention also contemplates an optional application of the Convention with the agreement of the State Parties to certain conducts when a prescribed set of conditions are met. The prescribed conditions require that the conduct referred by a State Party requesting cooperation should amount to a crime of genocide, crime against humanity, war crime or crimes of aggression, torture and forced disappearance under international law and domestic law of the requesting State Party and the conduct in question constitutes an extraditable offence under the domestic law of the requested State Party. The optional application provisions also evidences the flexibility feature of the Convention, which should add to the positive factors encouraging potential state parties.

With regard to the three specific crimes to which the Convention basically applies, as alluded already, a comprehensive self-sufficient set of definitions embedded within the treaty instrument should be seen positively by prospective state parties. As the three covered crimes namely genocide, war crimes and crimes against humanity are regarded as imprescriptible from both conventional and customary international law perspective, any state could seek to exercise universal jurisdiction[16]. It should be noted that the right and obligation to exercise universal jurisdiction with regard to the three covered crimes exist independent of the the Ljubljana - The Hague Convention. Therefore, any concern

international law, as well as norms governing non-international armed conflicts. See Article 5(4) (a-f) of the Ljubljana-The Hague Convention 2023.

[15] The Ljubljana-The Hague Convention 2023 contains four annexes expanding the acts defined as war crimes by the Convention. See Annexes A-E. In addition, three distinct annexes additionally adds acts that will constitute as crimes of torture, forced disappearance and aggression respectively. See Annexes F-H.

[16] Lagerwall, A., & Hébert-Dolbec, M.L. (2022). Universal Jurisdiction. In A. Peters (Ed.), *Max Planck Encyclopaedia of International Law*. Oxford University Press. https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2259.013.2259/law-mpeipro-e2259

that joining the Convention could force states to extradite nationals charged with the commission of the three crimes or provide related mutual legal assistance, should also not perturb states that are committed to prevent impunity for commission of those crimes. Such states, if they are willing to initiate criminal proceedings against their own national suspects by asserting predominance in exercise of criminal jurisdiction based on an appropriate legal basis will only perceive the Convention as a facilitation framework to effectively serve criminal justice. In the light of the above arguments, the detailed elements of the definition of the three crimes should be seen positively.

The crime of genocide is the first crime defined to include the crucial component of intention to eliminate certain groups partially or fully, followed by the elaboration of a range of specific acts constituting the crime of genocide. It is important to note that they are not limited to killings, but also other pertinent acts that could exacerbate genocidal effects on any group like causing serious harm to body or mind, infliction of conditions of life aimed at physical destruction, imposition of birth preventive measures and forcible transfer of children from the group. Secondly, the crime against humanity is defined to enlist a range of specific acts that are carried out as part of a known widespread or systematic attack upon civilians. Such acts also transcend beyond murder to include notable ones like acts of extermination, enslavement, deportation, forced transfers, illegal imprisonment, torture, rape and various grave forms of sexual violence, persecution of groups on various grounds prohibited under international law, forced disappearance, apartheid and other similar inhuman acts. The Convention does not stop in just enlisting the above acts but also goes on to define most of the acts in specific details to remove any potential ambiguity as to when an enlisted act will amount to a crime against humanity. The drafters of the Convention deserve due credit for elaborate narration of the constituting elements of the enlisted acts of crime, as it will serve as an useful reference for the pragmatic application of the Convention. Its utility will be discernible in achieving the more elusive element of international cooperation, especially when State Parties have to face a range of individual diverse cases involving transboundary investigation and prosecution.

Thirdly, the Convention takes a two pronged approach in defining war crimes namely those that could result in international armed conflict and those arising in the context of a non-international armed conflict. It is further categorized into three subsects namely those specifically arising from the breach of Geneva Conventions of 1949, those

that result from the violations of other relevant laws and customs applicable to international armed conflict within the broader international law framework and those that arise from the breach of laws governing non-international armed conflict. The three subsects consists of different lists of specific acts, the commission of which will constitute a war crime. While the acts in relation to the violation of the Geneva Conventions forming part of the first subsect includes generic scenarios like wilful killing and inflicting serious injury, torture or inhuman treatment, unwarranted and illegal destruction or appropriation of property, unlawful confinement or deportation, hostage taking as well as certain illegal acts targeted at prisoners of war, the second subsect is enumerated with a much longer list of acts covering a range of persons in a war setting.

The second subsect consists of twenty five distinct acts inflicting upon diverse set of people, objects and places including persons *hors de combat*, civilian population, civilian objects, personnel and objects involved in humanitarian assistance or peace keeping, natural environment, undefended places or dwellings that do not form part of military objectives, population of occupied territories, buildings dedicated to non-military purposes like education, religion, hospitals etc., persons in power of an adverse party, individuals or nationals of a hostile party, certain enemy property and individuals of a hostile army, belligerent nationals of a hostile party and minor children below the age of fifteen. Although, the list in the second subsect reiterates various typical criminal acts arising in the context of an international armed conflict, the systemic furnishing of them in a coherent order in one single sub-article of the Convention would certainly serve as a ready reckoner in determining the application of the Convention to an investigation or prosecution in question.

The third subsect pertaining to non-international armed conflict enlist acts in violation of the common article 4 of the four different Geneva Conventions of 1949 committed against non-combatants and persons hors de combat, including violence, mutilation, murder, torture, cruel treatment, outrages on personal dignity, humiliating and degrading treatment, hostage taking, and extra-judicial sentencing and executions[17]. In addition, the Ljubljana-The Hague Convention provides a list of a dozen different acts that are carried out in violation of the other international laws and customs governing non-international armed conflicts, which will also constitute a war crime. Those acts include

[17] However, the above acts are confined to non-international armed conflicts albeit with the exclusion of internal disturbances and tensions such as instances of riots or sporadic violence. See Article 5 (4) (d) of the Ljubljana-The Hague Convention 2023.

four categories of intentional direct attacks on a range of people, personnel, objects and places that typically are not directly taking part of hostilities, pillaging, rape, forced pregnancy or prostitution, sexual slavery, and other forms of sexual violence, conscripting minor children below fifteen into armed forces or engaging them in hostilities, forced displacement of people, treacherous killing or wounding a combatant, declaration of 'no quarter will be given' constituting refusal to take surrendering combatants as prisoners, subjecting an adversary to physical mutilation or scientific experiments endangering their life or health, and destruction or seizure of adversary property without necessity.

As in the case of international armed conflicts, it is evident that the Ljubljana-The Hague Convention also provides a very comprehensive sets of lists of acts that will constitute a war crime in the context of a non-international armed conflict. These lists will serve as a clear frame of reference in determining the duties to extend international cooperation for any investigation or prosecution arising in the context of an internal conflict. To enhance the effectiveness of these lists, the Convention mandates each State Party to ensure that the crimes governed by the Convention indeed constitute a crime under its domestic law and are sanctioned by suitable penalties. This obligation for criminalization under the domestic law may trigger some concerns. However, it is relevant to note that despite the comprehensive enlistment, the Convention seeks to balance the needs of maintaining law and order in internal conflicts. The said balance is achieved by the conspicuous exclusion of internal disturbances and tensions from the purview of certain provisions of the Convention, as well as upholding the prerogative of national governments in maintaining internal law and order and defending the unity and territorial integrity of their state in specific contexts. At the same time, a blanket prohibition imposed by the Convention that all crimes to which its applies should not be considered as political crimes or associated crimes or motives could trigger some concerns among certain states.

Followed by a comprehensive set of definitions of the three crimes, it proscribes any interpretation of such definitions from limiting or prejudicing other definitions of crimes under existing or developing rules of international law[18]. In addition to the primacy provided to the existing or developing international law rules, the Convention also paves way for the State Parties to apply other existing agreements between themselves (in the

[18] Indeed, this proscription is not just limited to the definitions of crime under the Ljubljana-The Hague Convention 2023 but also all the provisions of the Convention.

place of the Convention) if such application will facilitate the cooperation with regard to any subject matter falling within the scope of the Convention. These subservient provisions of the Convention demonstrates its devout intention to serve the objective of fighting impunity for international crimes in the best possible manner even if it warrants the restraint in the application of the provisions of the Convention, which should be seen positively by states.

In cases where the Convention becomes applicable, it mandates a State Party to assert criminal jurisdiction in a comprehensive set of circumstances including crimes committed within its territorial jurisdiction or on board of aircrafts or vessels under its state registration, when the alleged offender is its national or stateless but its habitual resident, when the victim is its national, and when an alleged offender is physically present in its territory who is not extradited or surrendered to others for standing trail. Although the Convention proclaims a general principle of cooperation, whereby State Parties are only required to execute cooperation requests according to their domestic laws, it forbids subjecting the underlying crimes to any statute of limitation in contravention of international law. The State Parties are required to recognize the right of any person to complain about the crimes governed under the Convention and to follow-up such complaints with prompt and impartial examination and other subsequent measures. Upon the examination, the State Party in whose territory the suspect is present is required to take the suspect into custody or take other relevant legal measure[19], followed by a preliminary inquiry of the facts of the case. If that suspect is a national of another state or is a stateless person, the State Party taking custody or relevant legal measure is required provide assistance to the suspect in communicating with the representative of the suspect's national state or state of habitual residence respectively. In addition to this obligation to assist, the State Party taking custody should also directly notify the relevant State Party of which the suspect is a national or habitual resident, about the custody, the findings of the preliminary inquiry and the intention to exercise jurisdiction.

The Convention imposes the obligation '*Aut dedere, aut iudicare*' (obligation to extradite or prosecute), where by the State Party in whose jurisdiction the suspect of the crime is found is required to submit the case of initiating prosecution unless it decides to extradite or surrender the suspect in relevant circumstances of the case. Moreover, such

[19] This obligation is subject to a limitation that such custody or legal measure be continued only for a period necessary for the institution of criminal, extradition or surrender proceedings. See Article 13(1) of the Ljubljana-The Hague Convention 2023.

State Party is also required to maintain certain standards of evidence in prosecution and conviction of the suspect and guarantee fair treatment to the suspect at all stages of the criminal proceedings. Finally, beyond the obligation to apprehend, prosecute and punish individuals committing the crimes, the Convention recognizes the need for imposing criminal, civil or administrative liability and appropriate sanctions upon 'legal persons', in the event of their participation in those crimes. This extension of obligations to incriminate associated legal persons demonstrate the determination of the makers of the Convention to not only deter the commission of international crimes but also rule out any involvement of powerful entities or corporations that may serve as potential abettor of the such crimes.

Some of the distinguishable unique features of the Convention that should call the attention of states would qualify the Ljubljana-The Hague Convention as a modern day international legal instrument. One of those features pertains to the personal data protection obligations imposed upon State Parties under the auspices of the Convention, which is untypical for any criminal law instrument to address, let alone one focused on international crimes[20]. The Convention includes some standard data protection mandates that are imposed on a State Party requesting data transfer like prohibition of use of data outside the purpose of transfer or other incompatible purposes, prohibition of transfer to any third state, obligation to abide by special conditions imposed by the requested State Party, obligation to provide appropriate protection against certain accidental, unlawful or unauthorized handling, access or processing of personal data, and the obligation of erasure or anonymization of data.

The data protection mandate, which is untypical in the context of international cooperation on criminal matters, should be seen as a favourable feature for states seeking stronger data protection in diverse frontiers. The Convention also imposes some common obligations on both the requesting and requested State Parties like the obligation to transfer accurate personal data to each other, obligations of consultation, notification, correction and deletion in certain circumstances, obligations towards any concerned person to access, rectify or erasure of personal data in permitted circumstances, and obligation towards any concerned persons to seek effective remedy for violation of data protection obligation imposed by the Convention. However, two important caveats

[20] However, a general European Union initiative in this regard should be noted. See EU Directive 2016/680 on the protection of natural persons with regard to the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016L0680

regarding the data protection obligations are worth noting namely a) although the Convention mandates that a concerned person should be informed about the transfer of personal data about that person and the purpose of transfer, the said information need not be furnished if it would be prejudicial to the purpose and object of the Convention and b) despite the recognition of a general obligation of a requested State Party to transfer personal data, the same may be refused if such a transfer is prohibited under the domestic law of the requested State Party or there are valid reasons to believe that the legitimate interest of the data subject will be adversely affected. The balance sought to be achieved by the above two exceptions should obviously be seen as a welcoming feature of the Convention.

For some states, however, the extensive data protection obligations could raise concerns of potential delays in information sharing among State Parties. But any such concerns should be seen in the light of the Convention provisions seeking to expedite information sharing. The Convention recognizes the possibility of a spontaneous sharing of information by a State Party to another State Party even in the absence of a request, in order to facilitate the later to undertake or conclude criminal inquiries and proceedings or formulate a letter requesting the information in accordance the Convention[21]. Finally, with regard to the practical question of bearing the cost of executing any request for cooperation emanating under the Convention, a balance is sought again by sharing the cost between requesting and requested State Parties in specifically defined circumstances. Interestingly, while a prescribed list of costs is to be paid or reimbursed by the requesting State Party, the ordinary cost of executing a request under the Convention is to be generally borne by the requested State Party. Similarly, the specific cost of transportation of a sentenced person to a State Party that will administer the sentence should be borne by such an administering State Party. The balancing provisions in this regard should subside any concern of cost implications of cooperation for any state.

4 WEIGHING THE MULTILATERAL MUTUAL LEGAL ASSISTANCE MECHANISM

The Ljubljana-The Hague Convention 2023 recognizes three sets of specific obligations to achieve effective international cooperation to fight impunity from international crimes namely mutual legal assistance, extradition and transfer of sentenced

[21] Albeit subject to various requirements and restrictions imposed upon the State Party to which information is so transferred without its request. For details see Article 17 (2-5) of the Ljubljana-The Hague Convention 2023.

persons. In addition to these three, there are two sets of other provisions, namely one establishing relevant central authorities and facilitating effective communication among State Parties as well as another seeking to protect specific type of individuals like victims of a crime and witnesses and experts in related criminal proceedings. The above five sets of obligations constituting the majority of the focus of the Convention and their unique characteristics requires a closer scrutiny to determine the implications of the new legal framework. While this section will examine the cooperation obligations pertaining to providing mutual legal assistance, the reminder of the paper will examine the other cooperative features of the Convention.

One of the fundamental features of the Convention that will be appealing for the states to consider accession is the mechanism for mutual legal assistance, as it covers numerous specific elements of assistance, that were erstwhile not addressed comprehensively in a single multilateral instrument. Moreover, the Convention upholds its potential role to serve as the legal basis for mutual legal assistance even in circumstances where a State Party requires the provision of such assistance conditional upon the existence of a treaty and a State Party requesting assistance has not concluded any such a treaty[22]. At the very outset, it warrants the State Parties to provide mutual legal assistance in the widest form, and to the fullest extent possible in cases involving the liability of a legal person, for the purpose of investigations, prosecution and related judicial proceedings in relation to the crimes to which the Convention becomes applicable. These two fundamental obligations obviously set the emergence of the legal principle of cooperation in very broad terms, which will be a very useful tool in interpreting various specific obligations of mutual legal assistance under the Convention in the event of any disagreement between State Parties. In the typical situation of fragmented approach to seeking mutual legal assistance, the comprehensive multilateral mutual assistance mechanism offered by the Convention should serve as a strong motivation for subscription.

The mutual legal assistance mechanism in the Convention indeed translates to serve a wide range of purpose, which evidences its uniqueness in establishing a pioneering international legal framework for fighting impunity. While some of the fields or types of mutual legal assistance under the Convention could be seen as typical in instances of mutual cooperation in criminal matters, the others are arguably ground-

[22] See Article 29 of the Ljubljana-The Hague Convention 2023.

breaking[23]. For example, taking of evidence or statement, examination of objects and sites, giving information and providing items of evidence and expert evaluations, execution of searches, seizure and confiscation, serving of judicial documents, providing original or copies of documents, data and records, facilitation of voluntary appearance of persons in a requesting State Party or to transfer a detained person on a temporary basis, and to take protective measures towards victims of crimes, witnesses and their rights could be seen as typical in instances of mutual legal assistance. However, the types or fields like use of special investigation techniques, conduct of cross-border observations, constitution of joint investigation teams and inclusion of an open purpose provision namely providing 'any other type of assistance' compatible with the laws of requested State Party are arguably some of the most innovative elements of mutual legal assistance features seen in the Convention. Although, these innovative elements risk the perception of being too intrusive, the fact that such elements of cooperation are only indicative list of possible mutual legal assistance and not mandatory should quell any related concerns. Moreover, distinct and elaborate provisions of the Convention governing those concerning elements of cooperation like special investigative techniques, cross-border observations, covert investigations and joint investigation teams generally warranting consent and cooperation of the requested state should also supress any concerns.

The Convention prescribes the procedure and supporting documents for seeking the request for mutual legal assistance to enable the requested State Party to ascertain the authenticity of the request. At the same time, it mandates the requested State Party to generally maintain confidentiality on various aspects of the request. The requested State Party also has the right to seek additional information if it considers that the information furnished by the requesting State Party in the first instance are insufficient. While submitting the request for mutual legal assistance, the requesting State Party could also seek provisional measures to preserve evidence, maintain an existing situation or protect legal interests that are endangered. Despite the prescriptions to substantiate a request for mutual legal assistance through submission of initial documentation and furnishing of additional information, the requested State Party could still refuse to provide the assistance sought and the Convention categorically identifies the permissible grounds upon which such refusal could result. The Convention takes a notable approach in this

[23] See the Ljubljana-The Hague Convention 2023, Article 24.

regard by prescribing a set of specific grounds of refusal[24] and at the same time mandating due consideration to principles of human rights and fundamental freedom emanating from both domestic and international law. To limit the potential adverse impact the grounds of refusal may have on assistance seeking, the Convention incorporates a possible safeguard measure, whereby the requested State Party is obliged to consult the requesting State Party to explore whether the assistance could still be granted based on imposition of certain terms and conditions upon the requesting State Party. This is yet another clear balancing act of the Convention effectively moderating the interests of the requesting and requested State Party, which should serve as one of the major motivating features for prospective state parties.

There are also additional safeguards imposed by the Convention that deserves the attention of prospective state parties. If a request for mutual legal assistance is granted, a general obligation is imposed on the requesting State Party, whereby the information or evidence shared as part of the request are barred from being transmitted or used for purposes other than for which the original request was made, unless the consent of the requested State Party is obtained to that effect. The Convention also prescribes relevant provisions governing the execution of a request for mutual legal assistance, which is mainly aimed at ensuring that the request is executed in consonance with the domestic law of the requested State Party and the request is carried out expeditiously. At the same time, it provides for a dual possibility of a requesting State Party seeking an express request when necessary or the requested State Party postponing a request to avoid any potential interference with any ongoing investigation, prosecution or court proceedings[25]. Most of these provisions addressing potential concerns, which a State Party requested of assistance could face, demonstrates the foresight and pragmatism of the makers of the Convention to pre-emptively address those concerns.

After the prescription of legal standards governing the request and provision of mutual legal assistance in general, the Convention furnishes individual provisions governing specific types or fields of legal assistance. The types of mutual legal assistance for which separate individual provisions are prescribed includes depositions of persons, hearings through video conferencing, facilitation of appearance of persons in a requesting

[24] For the various grounds of refusal recognized under the Convention see Article 30 (1) (a-j).
[25] For a specific study of potential problems that may arise in providing mutual legal assistance in the situations of absence of a treaty between states see Asgarova, M.P. (2021). Problems of the Non-Treaty Based Mutual Legal Assistance on Criminal Cases between the States. *Law Review of Kyiv University of law*, 2021(3), 294-300.

State Party, transfer of detainees on a temporary basis, transmission of evidences, permission and facilitation of special investigative techniques, assistance for the conduct of covert investigation, establishment and operation of joint investigation teams, authorization and assistance for conducting cross-border observations, cooperation for confiscation of proceeds of crime or property, facilitation of restitution, and disposal of confiscated assets. Albeit a closer scrutiny of the above individual provisions revealing numerous innovative features promoting international cooperation as well as safeguards balancing the diverse interest of different stakeholders, a detailed discussion of the same should be differed for another paper in the interest of space.

Finally, two additional measures introduced by the Convention regarding mutual legal assistance calls for a special attention before the issue of cooperation in matters of extradition under the Convention is examined. Firstly, in relation to some of the most innovative elements of mutual legal assistance features mentioned earlier, the Convention has established clear standards governing criminal and civil liability of officials involved in related operations like cross-border observations, covert and joint investigations, and use of special investigative techniques. Laying down of liability standards demonstrates the Convention drafter's premonition of sensitivity of the underlying cooperative operations and the potential risks of civil and criminal injury that could result. Moreover, it also evidences their anticipation of the preventive role such standards could play in dissuading any official disregard to the rights of relevant stakeholders, while undertaking such sensitive and untypical mutual legal assistance operations. Secondly, arguably one of the cornerstone provisions having an overarching effect in supplementing the purpose and spirit of the mutual legal assistance is the specific provision recommending the State Parties to consider the possibility of transfer of proceedings for purpose of prosecution when such a transfer would serve the interest of proper administration of justice in cases involving multiple jurisdictions. Although the purpose of these additional measures could be seen in their own merits, it cannot be denied that they could trigger a mixed perception among prospective state parties.

5 ASSESSING THE EXTRADITION OBLIGATIONS UNDER THE FRAMEWORK OF THE CONVENTION

Like mutual legal assistance, extradition is also a subject matter that is typically governed by bilateral treaties between states. The fact that the Ljubljana-The Hague

Convention seeks to address the issue of extradition within the multilateral framework should be an important factor of consideration for prospective state parties. However, the question of how states may perceive the specific features of extradition manifesting under the Convention can be determined by assessing the scope and implications of the related obligations. Request for extradition in relation to the crimes to which the Convention becomes applicable and the presence of a person sought by a State Party within the territory of a requested State Party are the essential requirements for the application of the provisions governing extradition under the Convention. However, the Convention recognizes some *de minimis* rules namely a) the crime in question for which extradition is sought should be punishable offence by at least one year of imprisonment in both the requested and requesting State Parties, and b) in cases where the person sought is already convicted and sentenced to prison in a requesting State Party, the minimum remaining duration of the sentence to be served should be six months.

The Convention also establishes itself as the legal basis for extradition in similar lines with the mutual legal assistance discussed earlier, whereby if a requested State Party mandates the existence of an extradition treaty with the requesting State Party to process the extradition, then the Convention should be deemed to serve that role[26]. In as much providing the substituting role for itself, the Convention recognizes certain concrete grounds of refusal of extradition. These grounds are interestingly presented in two distinct sets namely the circumstances in which extradition should necessarily be refused (mandatory grounds) and the circumstances, which may result in a refusal of extradition (discretionary grounds). Among these grounds of refusal, the discretionary grounds could trigger a mixed response among states. While most states may find such a discretion essential to retain the prerogative of a requested State Party to refuse extradition, some states may perceive the discretion as a potential cause for uncertainty in securing extradition. The mandatory grounds that will trigger a refusal of extradition pertains to serious concerns that should typically gain the consensus of majority of states.

Mandatory grounds of refusal like requests made for untenable purposes like intention to prosecute on the basis of a person's race, religion, gender, colour, sexual orientation, political belief, etc, concerns relating to the potential punishment by death penalty as a consequence of the extradition, concerns of the risk of torture or other

[26] For certain consequences of absence of an extradition treaty see Stefanovska, V. (2016). Extradition as a Tool for Inter-State Cooperation: Resolving Issues about the Obligation to Extradite. *Journal of Liberty and International Affairs*, 2(1), 38-48.

prohibited treatments or punishment, and possibility of denial of fair trial or flagrant violation of fundamental human rights etc resulting from extradition, and the passing of a final judgement by a court of the requested State Party on the same criminal conduct of a person whose extradition is sought evidences the characteristics amenable to majority of states. The ten discretionary grounds based on which a refusal of extradition may result pertains to a mixed set of circumstances like risk of certain types of punishments being imposed on a person sought, the person sought is a person to be tried by a competent international court or tribunal, existence of a final judgment on the same criminal conduct of the person sought already rendered by an international court or court of another State, etc.

Despite the fact that the discretionary grounds in comparison with the first set of mandatory grounds of refusal generally involves very specific circumstances, certain grounds like the opinion of the requested State Party that the execution of an extradition request could prejudice its sovereignty, security, pubic order or other essential interests are bound to create serious concerns and the likelihood of the requested State Party refusing extradition under such circumstances is almost certain[27]. Nevertheless, it is pertinent to note that the Convention also recognizes the possibility of a requested State Party imposing certain terms and conditions as necessary for the requested extradition to be honoured in the event of its contemplation to refuse or postpone the extradition. These features recognizing the imperative role of a requested state should be seen as an antidote by any state that may be concerned of undertaking extradition obligations under a multilateral treaty regime. After the grant of extradition, a general rule of speciality is triggered, whereby the Convention proscribes the requesting state from initiating proceedings, sentencing or detaining the person extradited for any prior crime other than for which that person was extradited[28]. Interestingly, at the same time the Convention recognizes the possibility of alteration of the description of the crime charged during the criminal proceedings albeit subject to the condition that the altered description would still constitute an extraditable crime. Re-extradition to a third state is forbidden unless consent to that effect is sought from the requested State Party.

The Convention also permits the refusal of extradition on the grounds of nationality, however, subject to the condition already noted namely the obligation of '*Aut dedere, aut*

[27] See Article 51 (2) (j) of the Ljubljana-The Hague Convention 2023.
[28] For certain permitted exceptions in this regard, see Article 52 (1) (a) and (b) of the Ljubljana-The Hague Convention 2023.

iudicare'. Any extradition request is required to be in writing to enable the establishment of authenticity along with necessary supporting documents. The requested State Party is obliged generally to keep the fact and substance of the request confidential. In the event of any conflicting extradition requests made by more than one State Party or competent international criminal court or tribunal, the requested State Party is empowered to make its extradition decision with due regard to any of its binding international obligation on 'primacy of jurisdiction' or in the absence of such an obligation, to a set of relevant circumstances prescribed by the Convention[29]. Again, these provisions of the Convention recognizing the significant role of a requested State Party should generally motivate states to subscribed to the regime.

The State Party requesting an extradition is permitted to ask for a 'provisional' arrest to ensure that the person sought will be present at the extradition proceedings. However, it is required to account for any resulting period of arrest in other relevant circumstances like final sentencing. The Convention prescribes practical procedures for the surrender of the person after a request for extradition is granted and permits the handing over of any related property during the surrender that could serve as evidence or is a result of proceeds of the crime in question. The Convention even addresses the potential situations of the need to transit extradited persons or persons in the processes of being extradited through the territory of another State Party, which demonstrates its drive to laydown comprehensive provisions addressing all facades of international cooperation facilitating extradition. The pious intention to promote the objective is further heightened by the incorporation of an interesting pragmatic and efficacious rule, whereby the requested State Party is permitted to grant an extradition through a simplified extradition procedure, if the person sought consents to the extradition and the extradition in question is not manifestly precluded by its domestic law. These pragmatic provisions should establish the utilitarian value of the Convention to any state contemplating an accession in the future.

6 IMPLICATIONS OF OBLIGATIONS GOVERNING TRANSFER OF SENTENCED PERSONS

The Convention recognizes the possibility of a State Party transferring a sentenced person to another State Party for serving the sentence as a third major cooperative

[29] See Article 58 (2) of the Ljubljana-The Hague Convention 2023.

measure. The transfer could generally be requested by the Sentencing State Party or the receiving (administering) State Party, and it is also possible for the sentenced person to express interest in being transferred. In any case, the transfer can be effected only upon the satisfaction of five specific conditions namely 1) the sentenced person is a national of the administering State Party, 2) the judgment relating to the sentence is final, 3) the remaining period left in the sentence that is yet to be served is not less than six months[30], 4) the sentenced person or a legal representative consents to the transfer, when either the sentencing or administering State Party deems it necessary due to the age or body or mental condition of the sentenced person and 5) both the sentencing and administering State Parties consent to the transfer. Like in the cases of mutual legal assistance and extradition, the present Convention contemplates its role as providing the required legal basis, when a transferring State Party mandates a treaty with a requesting State Party to effectuate the transfer but the same is absent[31]. Interestingly, the Convention not only prescribes the requirements for transferring sentenced persons but also creates an obligation upon the sentencing State Party to provide information about the substance of Convention enabling such a possibility. Moreover, both the sentencing and the administering State Parties are obliged to inform each other in the event of the sentenced person has expressed an interest in being transferred to the respective state and ultimately inform the sentenced person about the outcome of the request for transfer.

The Convention prescribes detailed provisions on how the relevant requests and replies can be made under the Convention along with the details of the supporting documents that needs to be enclosed. As discussed earlier, although the consent of a sentenced person is one of the core requirements to effectuate a transfer and subsequent administration of a sentenced person, such a consent is not mandated by the Convention under two special circumstances. Firstly, a specific consent to transfer of a sentenced person to an amenable administering State Party is not required, when the sentenced person is subjected to an expulsion or deportation order or other similar measures resulting from the sentence or a consequential administrative decision in the sentencing

[30] However, an exception in this regard is recognized by the Convention, whereby a transfer could still be made in cases where the remaining unserved sentence period is less than six months albeit subject to the agreement of involved State Parties. See Article 67(4) of the Ljubljana-The Hague Convention 2023.
[31] For an analysis of the legal issues arising in the context of the transfer of sentenced persons in a bilateral treaty setting see Mujuzi, J.D. (2012). Analysing the Agreements (Treaties) on the Transfer of Sentenced Persons (Offenders/Prisoners) between the United Kingdom and Asian, African and Latin American Countries. *European Journal of Crime, Criminal Law and Criminal Justice*, 20(4), 377-414.

State Party. Secondly, the transfer of administration of the sentence to an amenable State of nationality does not require the consent of the sentenced person, when the sentenced person has fled or returned to the State of nationality being aware of the impending criminal proceedings or the issuance of the judgement in a court of the sentencing State Party. Given the broad-based underlying justification, both the grounds dispensing with the consent requirement should be amenable to states contemplating to join the convention in the future.

The Convention contemplates potential overlap of responsibilities between the states involved in a situation of transfer and provides for relevant provisions to avert them. If a transfer is carried out in accordance with the provisions of the Convention, a range of legal effects that could entail for the sentencing State Party and the administering State Party are systematically laid out, which are crucial to avoid any overlap or conflict of responsibilities between the two State Parties that are directly involved in the transfer of a sentenced person. In addition to establishing a general clarity to the situation resulting from the transfer, the relevant provisions also provide pragmatic guidance to both State Parties regarding how the transfer would impact or impose specific obligations on their respective parts. The administering State Party is generally bound by the legal nature and duration of the sentence, as imposed by the sentencing State Party for the purpose of continued enforcement after the transfer. However, the administering State Party is permitted to make some adjustment to the sanction imposed by the original sentence without aggravating the same, in certain circumstances like its domestic law mandating such adjustments. The categorical laying out of the effect of a transfer upon involved State Parties as well as the leeway recognized in relation to the administering State Party should demonstrate the systematic approach of governance, the Convention offers for prospective state parties.

Moreover, the provisions of the Convention that seek to achieve a balance of specific interests on certain matters between the involved State Parties are worth notable. For example, the administering State Party could choose to undertake a conversion of sentence following its domestic legal procedures and fulfilling the conditions prescribed by the Convention in this regard. At the same time, the right to undertake a review of the judgement related to the sentence remains the exclusive prerogative of the sentencing State Party. The administering State Party is obliged to terminate the enforcement of a sentence, if the sentencing State Party informs of any decision or measure that ceases

the enforceability of that sentence. The Convention also imposes a continued duty upon the administering State Party to furnish the sentencing State Party with updated information relating to the enforcement of the sentence. Finally, as in the case of extradition discussed earlier, the Convention establishes pertinent provisions addressing a range of practical issues that would potentially arise in circumstances of transit of sentenced persons. A well balanced and a practical legal framework offered by the Convention regarding the transfer of sentenced persons should merit due consideration by states contemplating to accede to the Convention.

7 POTENTIAL PERCEPTION OF OBLIGATIONS PERTAINING TO FACILITATION AND PROTECTION

The Convention mandates the designation of one or more central authorities in every State Party to facilitate the sending and receiving of requests and information, as part of the cooperation. Such central authorities are also assigned with the role of encouraging prompt and proper execution of the requests made under the auspices of the Convention. Finally, a consultative role is also contemplated for these central authorities on matters pertaining to the application of the Convention, whenever a consultation is sought by one or more State Parties. But the State Parties are provided with the option to declare that requests under the Convention be addressed through diplomatic channels and/or International Criminal Police Organization (ICPO). To enhance the efficiency of the communication about the execution of the requests made, the State Parties could also designate single points of contact within their competent authorities. The modern outlook of the Convention, which could also enhance the efficiency of the underlying cooperation, can be seen in its recommendation that the transmission of requests, information or communication related to the Convention be carried out using secured electronic means with the agreement of the relevant State Parties and after due regard for the need to protect confidentiality and ensure authenticity. The measures aimed at establishing the required institutional mechanism to facilitate the functioning of the features, as well as the recognition of modern means like the use of electronic means of communication should reaffirm the potential of the Convention to succeed.

With an aim to protect certain persons like victims, witnesses and experts, who constitute a very pertinent group of people for the purpose and functioning of the

Convention, a specific set of provisions governing the definitions, protection and proclamation of rights is incorporated in the Convention. In defining victims, it is interesting to note that the Convention transcends beyond natural persons subjected to harm and innovatively comprehends certain types of organizations or institutions sustaining direct harm to their property dedicated to certain prescribed purposes[32]. One of the bedrock provisions that arguably will play a most effective role in the functioning of the fundamental features of the Convention is the one prescribing protection for various key persons pertinent for the purpose and operation of the Convention. As states would generally be concerned of any threats and vulnerability that would undermine criminal investigation processes, the protection measures prescribed by the Convention should be seen as a positive factor by prospective state parties.

A wide range of protective measures are prescribed by the Convention. State Parties are mandated to take protective measures against potential acts of retaliation or intimidation or ill treatment to victims and witnesses along with their relatives or representatives, experts and any other persons, participating or cooperating in the process of investigation, prosecution or other proceedings governed by the Convention. The Convention also provides some indicative measures of protection like establishment of procedures pertaining to physical protection, relocation, non-disclosure or limited disclosure of identity or location, safe deposition, physical and psychological well-being, as well as safety and privacy. The modern outlook of the Convention is again evident in its provision that prescribes the use of communication technologies to implement relevant safety measures. Finally, the Convention categorically proclaims certain rights of victims including right to reparation for the harm suffered that comprehends elements like restitution, compensation or rehabilitation in appropriate circumstances. As part of the right, the State Parties are also required to establish relevant procedures to enable victim participation and presentations for consideration at the suitable stage of the related criminal proceedings. The elaborate protection measures and reinforcement of a range of rights of the victims should generally be in lines with the expectations of prospective state parties contemplating accession to the Convention.

[32] The property subjected to harm should pertain to purposes like education, art, science, religion or charity, or related to historic monuments, hospitals as well as objects and placed used for humanitarian cause. See Article 81 (1) (b) of the Ljubljana-The Hague Convention 2023.

8 CONCLUSION

The systematic and comprehensive review of the key features of the Ljubljana-The Hague Convention reveals some important findings that should be of interest to states intending to enhance their international cooperation capabilities to strengthen the exercise of their respective national criminal jurisdiction. Several findings in this regard are worth noting. First and foremost, it is well evident that the comprehensive treatment of issues promoting cooperation on the three major aspects of mutual legal assistance, extradition and transfer of sentenced persons in a multilateral instrument in itself is a major advantage the Convention offers. Especially, when states have a limited resort to international cooperation in criminal matters as part of the typical regional or bilateral regimes in this field, various advantages identified and examined in the paper should provide the essential guarantee for a most effective international cooperation. When pursuing perpetrators of international crimes prove to be a formidable challenge for individual states, the legal framework established by the Convention has the potential to fill the void, if adopted widely.

The initiative of the Convention in providing comprehensive definitions of the three international crimes and related acts should also serve the State Parties distinctly, as the analysis reveals that the definitional provisions and the list of apposite acts are systematically elaborated to bring the necessary clarity for efficient functioning of the major features of international cooperation sought under the Convention. Additionally, the sensitivity to the existing or future rules of international law and attribution of primacy to such rules reveal the pious intention of the makers of the Convention to fill the gaps and not to disturb the tranquillity of any existing legal order. Moreover, the reinforcement of some of the basic traditional obligations like '*Aut dedere, aut iudicare'* demonstrates the determination of the Convention to derive and consolidate from existing normative standards in promoting its objectives and goals.

The analysis in the paper also revealed the fine balance, which the Convention seeks to achieve through the elaborate provisions governing three substantial features of mutual legal assistance, extradition and transfer of sentenced persons. In as much as semblance could be seen in the legal standards of the Convention governing the three features and various comparable regional or bilateral legal instruments on the same matters, the significant value the Convention adds should be recognized. In particular, bringing all the three distinct features within a single multilateral legal framework

subjected to a common set of basic principles and values aimed at promoting a unified goal of fighting impunity from international crimes should enhance the utility of specific cooperation mechanisms offered by the Convention. The single comprehensive framework of the Convention should also help assuage the concerns of fragmentation and diverse standards of obligations in this field of international cooperation. Besides the obvious advantages offered by the Convention, the paper parallelly identified various specific challenges perceivable by potential state parties. However, as revealed by the paper, such challenges could be effectively countered by relevant balancing or safeguard provisions. Such provisions are widely built into the Convention to protect the prerogative and the primary role of State Parties in their different capacities like assuming the position of a requested or requesting or administering State Party. Moreover, the primacy attached to the existing rules of conventional and customary international law in enumerating different obligations arising under the Convention should also provide reassurances to states in asserting their traditional roles as recognized under the relevant rules of international law. However, despite the advantages and balancing provisions of the Convention, the concern raised earlier in the paper that the state signatories to the Ljubljana-The Hague Convention are still predominantly states that are parties to the ICC Rome Statue still remains.

The apprehension arising from the concentration homogenous signatories inevitably raises the question, whether the states that are sceptical in subscribing to the ICC will have analogous concerns to stay away from the Ljubljana-The Hague Convention? The question should be answered in negative in the light of the balancing characteristics and effects of the specific provisions of the Convention identified in this paper. The typical concern of non-ICC states typically pertains to the potential implications that might entail in acceding to the Rome Statue, especially upon state sovereignty and the exercise of national jurisdiction. Such concerns could arguably exacerbate further in undertaking obligations under the Ljubljana-The Hague Convention as it also encompasses the possibility of its individual State Parties impinging upon state sovereignty and the national jurisdiction. However, the concerns of such intrusion by international courts or tribunals or other State parties should certainly be dissuaded in the light of the specific findings about the Ljubljana-The Hague Convention that are fully capable of safeguarding the sovereign interest and the primacy of national criminal justice systems.

The provisions of the Convention safeguarding sovereign interest and primacy of national criminal justice systems are evident on several aspects. First and foremost, the provisions of the Convention governing jurisdiction recognizes the possibility of a State Party not extraditing an alleged offender present in its territory to another State Party or surrendering the offender to a competent international criminal court or tribunal. Instead, the Convention mandates the requested State Party to take measures to exercise jurisdiction over the offender present in its territory. Secondly, as part of the obligation '*Aut dedere, aut iudicare'*, the Convention mandates the State Party in whose jurisdiction an alleged offender is found to initiate prosecution procedures, when the said State Party does not extradite or surrender the alleged offender to another state or a competent international criminal court or tribunal. Similarly, with regard to the obligation to provide mutual legal assistance, the Convention recognizes the freedom of a requested State Party to refuse the provision of the legal assistance when the request was made by an extraordinary or adhoc court or tribunal of a requesting State Party, unless certain guarantees are provided by the requesting State Party.

Exceptions to extradition obligation are also recognized in certain circumstances like where a person sought is to be tried or finally judged by an international court or tribunal recognized by the requested State Party or when the request was made by an extraordinary or adhoc court or tribunal of a requesting State Party. Finally, when a request for extradition or surrender is concurrently made by more than one State Party or a competent international criminal court or tribunal, the prerogative of the requested State Party to choose between them is recognized albeit with due regard to any obligations the requested State Party may have under international law. The above findings clearly run counter to the apprehension that states not parties to the ICC could be reluctant to join the Ljubljana-The Hague Convention based on similar concerns that basically discourage them from subscribing to the Rome Statue. Given the pioneering nature and features of the Convention, it is important to recognize the complexity and sensitivity of the underlying issues addressed by the Convention, which will naturally take its own time for achieving a wider acceptance among states. Given the scope of the Convention that transcends beyond international courts and tribunals and aims to facilitate national courts seeking the prosecute and punish international crimes, the potential utility of the the Ljubljana-The Hague Convention 2023 for individual states interested in a proactive

pursuit of perpetrators of international crimes should be much higher than any other comparable legal regimes that exist.

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