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## **The Ljubljana-The Hague Convention: A Treaty for the Globalised and Interconnected World? Perspectives from a Legal Semiotics Analysis**

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### **Abstract**

Hailed as a major innovation in international criminal law, The Ljubljana-The Hague Convention (Mutual Legal Assistance Treaty) was adopted in May 2023. So far signed – but not ratified – by thirty-seven countries from Africa, Asia, Europe and Latin America, it aims to close the gap regarding the matter of extradition in international law, as well as expand victims' rights, streamline the matter of restitution and take international criminal legal procedures into the 21<sup>st</sup> century. This article ponders whether the treaty is truly as innovative as it presents itself to be, applying a legal semiotics perspective to textual analysis. Consisting of two parts, the first an overview of the treaty, the second a detailed discussion of its provisions, the article examines the meaning construction within the text. By highlighting the Convention's conceptual advancements – but also its drawbacks, this study also aims to increase its visibility and significance within the legal community.

### **Keywords**

The Ljubljana-The Hague Convention, the Mutual Legal Assistance Treaty, war crimes, crimes against humanity, genocide, international cooperation

### **Introduction**

The Ljubljana-The Hague Convention in International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes<sup>1</sup> (hereinafter, the LTH Convention or the Convention), also known as the Mutual Legal Assistance (MLA) Treaty, was adopted unanimously by sixty-eight states at the

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<sup>1</sup> The Ljubljana-The Hague Convention in International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes. Available at *Kingdom of Belgium. Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation* <https://diplomatie.belgium.be/sites/default/files/downloads/eng-LHC.pdf>.

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diplomatic conference taking place between the 15<sup>th</sup> and 26<sup>th</sup> of May 2023 in Ljubljana [10]. The signing event later took place between the 14<sup>th</sup> and 15<sup>th</sup> of February 2024 in the Peace Palace in the Hague, whereby thirty-three countries signed the Convention [11], a number that has now risen to thirty-seven following the treaty being open for signatures until the 14<sup>th</sup> of February 2025. These include Albania, Argentina, Austria, Belgium, Bulgaria, the Central African Republic, Chile, Costa Rica, Croatia, Czechia, Cyprus, the Democratic Republic of the Congo, Denmark, Finland, France, Germany, Ghana, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Mongolia, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Rwanda, Senegal, Slovakia, Slovenia, Sweden, Switzerland, Ukraine and Uruguay.<sup>2</sup>

This first major treaty related to the prosecution of international crimes since the Rome Statute [15], the LTH Convention, was adopted following twelve years of negotiations initiated by Argentina, Belgium, the Netherlands and Slovenia, to which Mongolia and Senegal soon joined, known as the ‘Core Group’ spearheading work on the treaty. Among the five drafts, following the pandemic [14], the initial idea for a pure MLA treaty was ultimately abandoned, with the adoption of a broad, wide-ranging Convention that addresses “both substantive and procedural issues” [14]. Envisaged as a document for the globalised world, the Convention was adopted as a “streamlined mechanism by which states can rely on a multilateral approach to investigating and prosecuting international criminal laws” [15].

Despite its wide adoption and expected ratifications, the LTH Convention has thus far not been academically analysed, barring several blogposts. As such, this article strives to bring the attention of the legal community to this landmark document, proposing a study centred on the legal language, with a particular focus on the innovative elements of the treaty. Composed of two main parts, the first providing an overview of the Convention and the second devoted to their discussion, it employs a legal semiotics approach that allows for a dynamic analysis of legal texts and concepts, one permitting the highlighting of “the importance of interpretation and the construction of meaning” [17, p. xi], thus ideally suited to language-focused research.

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<sup>2</sup> List of state parties to The Ljubljana-The Hague Convention in International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes. Available at *Kingdom of Belgium. Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation* <https://diplomatie.belgium.be/sites/default/files/2024-12/MLA-status-list-E.pdf>.

## **Part 1. Textual Analysis**

The LTH Convention comprises a preamble, eight parts totalling ninety-four articles and eight annexes. Each of the following subsections will be devoted to one particular element of the Convention, focusing on the most important and innovative points established there.

### *Preamble*

The Preamble to the LTH Convention provides an explanation for its adoption, listing, among the various reasons, *inter alia* such as the obligation to fight the impunity for the most serious international crimes, hope to further develop the international law regime, recognition of the rights of victims – and of alleged offenders, and the need for better international cooperation in criminal matters.

Furthermore, the Convention acknowledges its predecessors, from the more ‘traditional’ in this context, such as the UN Genocide Convention, the various Geneva Conventions or the Rome Statute, to the more specific ones, such as the Convention for the Protection of Cultural Property in the Event of Armed Conflict. Importantly, it also makes a direct link between its adoption and the victims of the many atrocities of the 20<sup>th</sup> and 21<sup>st</sup> centuries.

### *Part I. General provisions*

As noted in Article 1, the objective of the LTH Convention is “to facilitate international cooperation in criminal matters [...] with a view to strengthening the fight against impunity for” the most serious international crimes. Article 2 specifies that the Convention should be applied to the crimes referred to in Article 5 and – potentially – also to the selected annexes to the Convention, which expand the definition of these crimes and add two additional ones should a state party to the Convention choose to do so. Article 3 further explains that the Convention should not be interpreted in such a way that would limit or prejudice the existing or developing rules of international law relating to the crimes from Article 5, with Article 4 allowing for the adoption of new or use of the already existing agreements between the state parties that might be used to facilitate cooperation on the matters of the Convention.

Article 5 provides definitions of the international crimes covered by the Convention – crime of genocide, crime against humanity, and crime – however, given that these definitions are akin to those from the 1998 Rome Statute<sup>3</sup>, which established the International Criminal Court, I will refrain from their analysis, given the wide-ranging literature on the topic [see, e.g.,

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<sup>3</sup> Rome Statute of the International Criminal Court. Available at: *International Criminal Court* <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>.

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8]. Moreover, the state parties may agree to apply the LTH Convention to the instances of one of the three crimes from Article 5 and the two crimes established in the annexes, provided that they may be classified as such under international law or the law of the requesting or requested state party (Article 6). Furthermore, as noted in Article 7, the state parties need to implement the crimes under the Convention – and punishments for them – into their domestic legal orders.

Article 8 relates to the matters of jurisdiction, stating that every state party needs to “take such measures as may be necessary to establish its jurisdiction over the crimes” under the Convention whenever these crimes were “committed in any territory under its jurisdiction or on board a vessel or aircraft registered in that State,” the “the alleged offender is a national of that State” or the alleged offender “is present in any territory under its jurisdiction,” and no extradition to other state parties is taking place. Furthermore, any state party may choose to establish its jurisdiction if the alleged offender is a stateless person and a habitual resident of that country or if the victim is a national of the country in question. The Convention leaves the matter of defining nationality to the state parties’ domestic law (Article 9).

Article 10 states that international cooperation under the Convention should take place according to the state parties’ domestic law, whereas Article 11 lifts the matters of the statute of limitations from the crimes under the Convention. Article 12, in turn, establishes a right of any person to complain to any of the state parties about the crimes under the Convention are taking or have taken place, with each state party required to examine such allegations.

Should a person alleged to have committed a crime under the Convention be present in the territory of a state party, it should take such a person into custody or take similar measures. These should be followed by a preliminary inquiry and be complemented with ensuring the alleged preparator’s rights to fair trial, informing the relevant state parties under Article 8 (Article 13). Article 14 establishes the *aut dedere, aut iudicare* (‘to extradite or to prosecute’) rule, while once again stressing the right to fair trial. Importantly, in Article 15, the LTH Convention establishes the liability of legal persons in cases of their participation in crimes under the Convention. This includes criminal, civil or administrative liability (depending on the domestic law of the state party), with potential for criminal and non-criminal (including monetary) sanctions to be applied.

Article 16 establishes the rules regarding the use and protection of personal data, putting forward very clear rules relating to their transfer, employment, erasure and anonymisation, as well as conditions for the refusal to transfer personal data (if the domestic law prohibits such data, for example); and remedies in case of violation of the data protection as covered by the

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Convention. At the same time, Article 17 permits a spontaneous transfer of information related to crimes under the Convention, setting out specific rules to do so.

Article 18 relates to the costs of executing a request pursuant to the Convention, which, unless otherwise agreed upon or specified by the Treaty, should be borne by the requested State Party. However, certain costs (the attendance of experts in the territory of the requested country; the establishment of video or phone links; the costs of interpreters; allowances of witnesses; and costs of transportation or extradition in relevant cases) should be borne by the requesting party.

Finally, Article 19 provides certain key definitions for the Convention, i.e., of ‘confiscation’, ‘freezing’ or ‘seizure’ of assets, ‘proceeds of crime’ and ‘property’.

### *Part II. Central Authorities and Communication*

Article 20 clearly established that every state party needs to designate one or more ‘central authorities’, i.e., those elements within its administration that will be “responsible for sending and receiving requests for and information on cooperation” under the Convention, with the possibility of holding consultations between the different central authorities. Importantly, the central authorities need to be specified upon ratification of the Convention.

Article 21 further specifies that all requests and communication under the Convention need to be transmitted directly to the designated central authorities, with a possibility of a state party designating a single point of contact. Importantly, all communication needs to be done by secured electronic means, aiming to “protect confidentiality and to ensure authenticity.”

Finally, Article 21 states that requests under the Convention should be made in a language acceptable to the state party, with this language or languages indicated by informing the relevant central authorities.

### *Part III. Mutual Legal Assistance*

Article 23 delineates the scope of this part of the Convention, stating that mutual legal assistance should be offered to the broadest extent possible by state parties when investigating, prosecuting or conducting judicial proceedings regarding crimes under the LTH Convention. Article 24 further specifies the different ways in which mutual legal assistance (hereinafter, MLA) may be afforded, listing, *inter alia*, the taking of evidence or statements (including through electronic means); examination of sites and objects; provision of information; execution of searches and confiscations; provision of copies or originals of various documents; conducting of cross-border

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observations; establishment of joint investigation teams; and ensuring that the rights of victims and witnesses are protected.

In a similar vein, Article 25 specifies the conditions that a request for MLA should pass, including most importantly, the different factual and legal details of the case at hand. It is complemented by Article 26, which specifies that such requests should be kept confidential, and Article 27, which allows the requested state party to take provisional measures in certain circumstances. Furthermore, Article 28 allows the requested state party to ask for additional information if those provided in the initial request are deemed insufficient.

Importantly, Article 29 allows the Convention to be used for requests for mutual legal assistance in cases of crimes covered by it and in cases of two state parties that do not have a bilateral MLA treaty. In turn, Article 30 lists the reasons for which an MLA may be refused. These include, *inter alia*, instances where the alleged perpetrator may face capital punishment or life imprisonment without parole, or when there is a strong belief that they are prosecuted owing to their “race, gender, colour, mental or physical disability, sexual orientation, religion, nationality, ethnic origin, political opinions or belonging to a particular social group” or if there exists a strong belief that they would be subject to inhuman or degrading treatment. An MLA request may also be refused if the alleged perpetrator has already been finally judged by the requested state party for a crime “based on the same factual conduct,” if the alleged perpetrator is to be judged by an extraordinary court, and for several other reasons.

Article 31 places restrictions on the transmission and use of information and evidence provided by the requested state party beyond the request, barring exculpatory matters. Article 32 specifies that the request should be executed in a timely manner and in accordance with domestic law. In Article 33, specific rules related to the depositions of witnesses and experts may be found, which is complemented by Article 34, providing a detailed list of rules governing the possibility of hearing these by video conference. These include, *inter alia*, the presence of a judicial authority during such a hearing and the need for protection of those heard by video conference. Importantly, these rules may also be applied to the hearings of the alleged perpetrators, should they and both state parties agree. In turn, Article 35 specifies the rules of personal appearances of these in the requesting party.

Article 36 relates to the rules governing the transfer of detainees – these include, *inter alia*, the need for consent from both the person and the two state parties and the need to receive “credit for service of the sentence” while at the other state party. Article 37 stresses the need for safe conduct towards those giving evidence in the requesting state, stating that they should not “be prosecuted, detained, punished or subjected to any other restriction of personal liberty in

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that territory in respect to acts, omissions or convictions” before their departure from the state party.

Article 38 allows for the transmission of evidence, including the original documentation, between the state parties, whereas Article 39 permits the employment of special investigative techniques, including electronic surveillance and undercover operations when investigating crimes under the Convention, provided that a state party or state parties decide to do so, with potential bi- or multi-lateral agreements between them to facilitate the process. This is complemented by the three following articles, with Article 40 allowing for the conducting of covert investigations. Article 41 further permits the establishment of joint investigation teams – provided that the state parties in question agree to do so, and under very specific organisational rules, including, *inter alia*, the leadership of the team and jurisdiction matters. Ultimately, Article 42 regulates the issues of cross-border observations, with Articles 43 and 44 relating to the criminal and civil liability of the official involved in operations from the previous four articles, respectively.

In turn, Article 45 very specifically regulates matters related to the question of international cooperation for purposes of compensation, obliging the requested party to comply – according to its domestic law – with requests for “confiscation of the proceeds of crime or property the value of which corresponds to that of such proceeds of crime” under the Convention, “including laundered property, or of property, equipment or other instrumentalities used in or destined for use in such crimes, or other property for the purposes of providing reparations to victims.” The process should also include the seizure of the relevant financial and bank records, irrespective of the matters relating to bank secrecy; however, it should not “prejudice the rights of third parties acting in good faith.”

These matters are directly linked to Article 46, which, speaking to the matters of restitution, allows for the seized property to be placed at the disposal of the requesting party, which may choose to return it to the rightful owners. Article 47 further regulates the disposal of confiscated property, specifying that state parties should prioritise the interests of victims and of the original owners. Finally, Article 48 establishes the grounds for the transfer of proceedings between state parties for the purposes of the prosecution of crimes under the LTH Convention.

### *Part IV. Extradition*

Article 49, opening the next part of the Convention, explains its scope, stating that extraction in cases concerning the crimes under the Convention should take place as long as the crime is

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punishable by at least one year of imprisonment in both state parties or if the person in question has at least six months left on their sentence. It is complemented by Article 50, which allows the LTH Convention to be used *in lieu* of a specific extradition treaty should it be required by one of the state parties.

In turn, Article 51 lists grounds for refusal of an extradition, which include, *inter alia*, the belief that the person in question would be prosecuted or punished on the basis of their “race, gender, colour, mental or physical disability, sexual orientation, religion, nationality, ethnic origin, political opinions or belonging to a particular social group,” they could face inhuman or degrading treatment or face the death penalty. Furthermore, extradition may be refused if, *inter alia*, there is a possibility of life imprisonment; the person in question is set to be tried by an international institution; the requested state party is proceeding to judge the person for crimes on the basis of the same conduct; the request was made on behalf of an extraordinary court; it may deteriorate the state of health of the person in question.

Next, Article 52 establishes the rule of specialty, stressing that the extradited person should be prosecuted in regard to the crime in question, not for any prior crimes, unless in specific circumstances. In a similar vein, Article 53 prohibits re-extradition to a third state. At the same time, Article 54 states that extradition may be refused on the basis of nationality; however, in such cases, Article 14 (*aut dedere, aut iudicare*) should be applied.

The next articles relate to the matters of the extradition request: Article 55 states that such a request should be executed under the domestic law of the requested party, whereas Article 56 gives a detailed list of the specific information that an extradition request should contain (*inter alia*, detailed descriptions of the person in question, their crime and the relevant domestic law). These are complemented by Article 57, which specifies that extradition requests should be kept confidential, and Article 58, which specifies the rules governing the execution of competing extradition requests, which include the primacy of jurisdiction and, in the absence of such an obligation, the consideration of various relevant circumstances.

Article 59 specifies that, in extreme circumstances, the person whose extradition is sought may be placed under provisional arrest if so requested by the requesting state party. It is complemented by Article 60, which encourages the requesting state party to consider all periods of detention arising from their extradition request when making a final decision on the detention period.

Next, Article 60 specifies that the extradited person should be surrendered following an agreement of the details between both parties, with a possibility of a postponed (in the case of ongoing court proceedings or remaining sentence for other crimes in the requested state party)



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or temporary surrender of the person in question stated in Article 62. Article 63 further allows the state parties to organise the extraction via a simplified procedure.

In turn, Article 64 refers to the handing over of the confiscated property, be that as evidence or found in possession of the extradited person at or after their time of arrest, specifying several caveats in that respect, *inter alia*, the ongoing criminal proceedings in the requested party. Finally, Article 65 delineates the rules of the transit of the extradited persons through the territory of another country, which, barring transit by air, needs to agree for the transit to happen, stating also that transit should not take place through any territory where the extradited ‘person’s life may be threatened or if there is a high risk of the person’s rights being violated by reasons of race, gender, colour, mental or physical disability, sexual orientation, religion, nationality, ethnic origin, political opinions or belonging to a particular social group.’”

### *Part V. Transfer of Sentenced Persons*

As noted in Article 66, relating to the scope of this part of the LTH Convention, it focuses on the matters of persons sentenced for crimes under the Convention from one state party to another to serve their sentence. It further provides several key definitions, including those of the ‘administering state party’, ‘judgement’, ‘sentence’, and ‘sentencing state party’.

Next, Article 67 sets out the conditions for the transfer, which may be requested either by a sentencing party or the administering party and has to be agreed upon by both, with the possibility of the sentenced person expressing an interest in the matter themselves, provided that the person in question agrees to the transfer, is the administering state party’s national, there was a final judgement in the case and that they have at least six months of sentence to serve (unless under particular circumstances). Article 68 further states that the sentenced person should receive the necessary information about part five of the Convention upon their sentencing and, should they express the wish to be transferred, the sentencing state party should provide extensive information relating to that person, their crime and their sentence to the administering state party.

Any requests and replies need to be made in writing, with prompt decisions on the transfer, as stated in Article 69, which also stipulates the more minute details of the various information that the administering state party may be asked to provide (*inter alia*, documents relating to the matters of nationality and domestic law, as well as the details of the sentence) and which the sentencing state party needs to provide (*inter alia*, a copy of the judgement and a statement on the time served). Furthermore, Article 70 of the LTH Convention states that the

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sentencing state party needs to ensure that the person in question gives their consent to the transfer, providing the administering party with an opportunity to verify their decision.

Article 71 considers a case in which a national of a state party, who is subject to a sentence in another state party, flees or returns to their country of origin despite being aware of the criminal proceedings pending or being concluded, in which case the administering party may choose to arrest such a person and take over the execution of the sentence, even without the consent of the person in question. Next, Article 72 specifies that a sentenced person may also be transferred without their consent if the sentence includes a deportation order, provided that they are not going to be sentenced or detained for crimes committed before the transfer, unless in extraordinary circumstances.

Confirming that upon transfer, the enforcement of the sentence in the sentencing state party should be suspended in Article 73, the Convention further states in Article 74 that the administering state party should either continue the enforcement of the sentence or convert the sentence accordingly to its domestic law. Article 75 further specifies that in the case of continued enforcement, the administering state party is bound by the decision of the sentencing state party; in the case of a necessary adjustment of the sentence, it should be similar to one applicable for a similar crime under domestic law, with sanctions corresponding to those originally prescribed as much as possible. Furthermore, Article 76 states that in cases of conversion of the sentence, the administering party, *inter alia*, may not change the sanction of imprisonment to a monetary one, should deduct time served in the sentencing country, and should not be bound by any minimum period of deprivation of liberty prescribed under domestic law for the crime in question, as it may be higher than the remainder of the sentence.

Importantly, Article 77 stipulates that only the sentencing state party has the right to review the sentence, with the administering state party required to cease the enforcement of the sentence upon being informed of such a decision by the sentencing state party (Article 78). Next, Article 79 states that the administering state party should inform the sentencing party when: the sentence has been completed; the sentenced person has escaped custody; or when a special report is requested. Finally, Article 80 presents the rules governing the transit of sentenced persons, to which a state party should agree, unless it considers one of its nationals, with the possibility of asking for extra assurances that the sentenced person will not be subject to any prosecution or detention for any crimes committed in their territory while in transit. No request is necessary if the transit is taking place by air.

*Part VI. Victims, Witnesses, Experts and Other Persons*

Article 81 of the LTH Convention defines victims as either people who have been negatively impacted by crimes under the Convention or as organisations and institutions, the property of which has suffered direct harm “to any of their property which is dedicated to religion, education, art, science or charitable purposes, or to their historic monuments, hospitals and other places and objects for humanitarian purposes.”

Next, Article 82 stipulates that each state party should provide victims, witnesses, their relatives or representatives, and experts taking part in different proceedings under the Convention an appropriate level of protection – including relocation, limitations of the disclosure of identity and location, and permission for the use of long-distance communication – from “potential retaliation or intimidation, including ill-treatment.”

Finally, Article 83 entitles the victims of crimes under the Convention to reparation (including, but not limited to restitution, compensation and rehabilitation) from a state party on the territory under the jurisdiction of which the crime was committed or the state party exercising jurisdiction over the crime. Furthermore, all state parties need to establish procedures in domestic law that permit victims to actively take part in judicial proceedings without prejudicing the rights of the defendant.

*Part VII. Institutional Arrangements*

Article 84 specifies that the first meeting of the state parties should take place on the initiative of at least one-third of the state parties either five years from the entry of the Convention into force or two years after the deposition of the fifteenth instrument of ratification, acceptance, approval or accession to the Convention, whichever is later. The next meetings may be convened on the initiative of one-third of the state parties or as decided during a meeting. Meetings may involve consideration of: amendment or annex proposals, other authentic texts of the Convention in a United Nations official language; and the establishment of “lean and cost-efficient institutional arrangements that are necessary to implement the Convention.” Meetings should allow participation via virtual means to the greatest extent possible.

Finally, Article 85 states that the Kingdom of the Netherlands should compile information related to the designated central authorities of the state parties as soon as possible until two years after the fifteenth instrument relating to the Convention was deposited. The Netherlands may also provide other interim support, including the compilation of various information relevant for operational purposes and making arrangements for the first meeting of the state parties.

*Part VIII. Final Provisions*

Article 86 specifies that state parties should settle disputes related to the interpretation of the LTH Convention through negotiation. After six months of unsuccessful negotiations, they should enter into arbitration, and six months later, if still unsuccessful, they may refer the dispute to the International Court of Justice.

Next, Articles 86 and 87 state the minute details governing the inclusion of amendments and annexes to the Convention, respectively, which may take place five years after the entry of the Convention into force after the deposition of the fifteenth instrument relating to the Convention. Article 89 delineates the rules governing the process of signature, ratification, acceptance, approval and accession of the Convention, whereas Article 90 specifies that the LTH Convention should enter into force “on the first day of the month following the expiration of three months after the date of deposit of the third instrument of ratification, acceptance, approval or accession.” It adds further details as to when Convention applies to a state party depending on the time of ratification, stating, importantly, that it should apply to any requests made after entry into force, including “acts and omissions occurred before that date.” It is complemented by Article 91, which allows provisional application of the Convention.

Article 92 allows the state parties to formulate reservations relating only to specific articles (39 – special investigative techniques, 40 – covert investigations, 42 – cross-border investigations, as well as those from article 86 paragraph 3 and article 90, paragraph 5, relating to the settlement of disputes by arbitration and the ICJ, and the matters of entry into force, respectively). Additionally, a state party may choose to formulate a temporary reservation for a renewable period of three years on the basis of its domestic law and international obligations related to Article 8 paragraph 2 (matters of jurisdiction). In turn, Article 93 regulates the matter of withdrawal from the Convention, stressing that it would not affect the obligations relating to the requests made prior to the withdrawal.

Finally, Article 94 stresses that the Kingdom of Belgium should act as the Depositary of the LTH Convention, delineating its obligations, and designates the English, French and Spanish texts as equally authentic.

*Annexes*

The annexes provide the possibility for the state parties to expand the definitions of the crimes under the Convention, as listed in Article 5. Thus, Annex A expands the definition of war crimes by the inclusion of various poisons, gases and bullets that expand or flatten easily upon contact with humans; Annex B expands the definition of war crimes by the inclusion of biological

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weapons; Annex C expands the definition of war crimes by the inclusion of weapons whose fragments are undetectable by X-rays; Annex D expands the definition of war crimes by the inclusion of laser weapons, which cause permanent blindness; Annex E expands the definition of war crimes by the inclusion of starvation of civilians as a method of warfare; Annex F introduces the crime of torture; and Annex F introduces the crime of forced disappearance.

### *Declarations and Reservations*

As of December 2024, four countries have made declarations or reservations to the LTH Convention. The Democratic Republic of the Congo stated that it will apply the Convention to the crimes listed in its annexes. France, in regard to the crimes listed in Article 5, repeated *mutatis mutandis* its declarations with respect to the interpretation of the Rome Statute,<sup>4</sup> and it declared that it would ratify the Convention if the three official language versions were concordant. Furthermore, it made a temporary reservation for a renewable three-year period that the “French courts may prosecute any person habitually residing in its territory who is guilty of the offences referred to in Article 5 of this Convention,” providing a definition of habitual resident under domestic law.

Germany declared that it will apply the Convention to crimes listed in Annexes A, B, E, F, G and H on a reciprocal basis. Furthermore, it stated that it will not apply the Convention to crimes that occurred before the date of the entry into force of the Convention. It also stated that it will limit the establishment of jurisdiction regarding the crime of aggression from Annex H. Finally, the Netherlands declared that it will apply Part III of the Convention regarding Mutual Legal Assistance provisionally.

## **Part 2. Commentary**

This second main part of this article provides a discussion of certain particularly notable and innovative elements of the LTH, remarking on each section separately, corresponding to the above format.

### *Preamble*

This introduction to the Convention highlights the first elements of its remarkably innovative outlook. Notably, in addition to the stress of the rights of the victims and of the alleged perpetrators – which, of course, are further developed later in the text of the Convention and

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<sup>4</sup> France. Available at *United Nations Treaty Collection* [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en).

thus will be analysed below – is the inclusion on the list of the ‘appreciated’ treaties Convention for the Protection of Cultural Property in the Event of Armed Conflict.

This clearly fits into the broader trend of the acknowledgement of the impact of the destruction of cultural heritage during armed conflict, which, in its Al Mahdi judgement, the International Criminal Court confirmed may constitute a war crime in its own right, with the affected victims not only from the local but also from the global community [12]. The already strong link with the past is further stressed in the acknowledgement of the collective memory of the victims of past atrocities, which is a major, if oftentimes unspoken, fundament of the international criminal and human rights law framework [13, p. 69-78].

### *Part I. General Provisions*

The first part of the LTH Convention provides both innovative and conservative elements. The decision to define crimes under the Convention using definitions from the 1998 version of the Rome Statute rather than the Kampala Amendments needs to be criticised as overly cautious and backwards-looking [14]. On the other hand, the very broad definition of jurisdiction needs to be commended, just as the stressing of the question of the right to fair trial.

As it has been noted, the Convention closes the loophole in the current international legal system, which makes it difficult to bring suspects of international crimes “before a national court,” with the system presently in place considered to be “partly outdated,” thus making “it tricky for states to cooperate effectively in the fight against impunity,” especially in cases where “the suspects, victims and evidence are often scattered across different countries” [7]. As such, the LTH Convention “empowers national justice systems,” allowing its state parties to completely “fulfil their international legal obligations” [3]. Notably, this stipulation in Article 8 paragraph 3, despite being modelled on the language of the Convention Against Torture, proved particularly controversial during treaty negotiations [5].

Other innovative elements in the first part include a broad right to complain to the state parties regarding the crimes under the Convention, a widely defined *aut dedere, aut iudicare* obligation, the introduction of the responsibility of legal persons and a strict definition of costs and other pecuniary questions. It needs to be remarked after Bruno de Oliveira Biazatti and Ezéchiél Amani that it has been modelled on the language of the Convention Against Torture and the interpretation provided by the International Court of Justice in the Hissène Habré case [5].

A particularly interesting question relates to the matter of data protection, a veritable *signum temporis*, the inclusion of which proved particularly problematic during the treaty

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negotiations, with the European Union member states advocating for strict adherence to the 2016 General Data Protection Regulation. Given that this proposal was met with strict opposition by non-EU countries, with a compromise taking the form of the abovementioned Article 16 paragraph 10 [5], which allows to refuse data transfer on the basis of domestic law.

### *Part II. Central Authorities and Communication*

A clear innovation of Part II is the very direct laying down of the ways of communication between state parties through the obligation of designation of central authorities, ensuring a smoother exchange of requests and cooperation. Notably, the LTH Convention “is the first multinational instrument regulating intergovernmental cooperation in the prosecution of international crimes” [1]. Importantly, it allows horizontal cooperation within the realm of international criminal law also for countries that have refrained from adhering to the Rome Statute but nonetheless strive to punish impunity [14].

### *Part III. Mutual Legal Assistance*

Perhaps the most innovative part of the Convention, designating the different ways in which mutual legal assistance may be offered, officially opening international law to the digital era through the inclusion of videoconferences and various new investigation techniques. At the same time, the Convention needs to be applauded in this part for the reaffirmation of the rights of witnesses and victims but also of the alleged perpetrators. Altogether, the LTH Convention “provides a ‘toolbox’ to combat impunity for these [international] crimes and strengthens the role of national judicial systems in prosecuting them” through the clarification and “strengthening the duties and obligations of states to assist each other in cases of international crimes” [6].

Another notable point of interest is the regulation of the matters of compensation and the regulation of the issues regarding the matters of bank secrecy, providing the basis for just reparation. Notably, the LTH Convention breaks through the potential “complexity of a perpetrator’s international web of wealth,” which acts as “a barrier” in confiscating their assets, thus “contributing to an ecosystem that enables the timely delivery of reparation” [9].

### *Part IV. Extradition*

The fourth part of the Convention succeeds in very clearly stating the question of extradition for international crimes, laying out simple rules as to when it should happen and when it may be refused, while keeping in mind the rights of the accused. Of particular note is the reiteration

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of the *aut dedere, aut iudicare* obligation in cases of refusal of extradition on the basis of nationality. As such, the LTH Convention will “help prevent perpetrators of these [international] crimes from finding safe havens” [7].

#### *Part V. Transfer of Sentenced Persons*

Similarly to the regulation of the matters of extradition, the fifth part of the LTH Convention regulates questions of the transfer of sentenced persons in a clear and decisive manner. It further reaffirms the question of the rights of the sentenced people.

#### *Part VI. Victims, Witnesses, Experts and Other Persons*

In addition to the third and fourth parts, perhaps the most important element of the Convention, which defines the victims of international crimes very broadly, including also cultural, religious and other institutions into the definition. Importantly, in addition to the more established measures to prevent retaliation, the Convention takes a particular interest in both allowing the victims of the crimes to be present during the proceedings and in avoiding revictimisation, two issues that are some of the major criticisms of the current international justice system [15]. This is complemented by a broad and open catalogue of possible reparations, further stressing the Convention’s dedication to the recognition and upholding of victims’ rights. These, significantly, include a departure “from the traditional requirement that the crime be attributable to the State” in order for that state to provide reparations, which follows Senegal’s innovative approach to recognise “the rights of victims to reparation within that [country’s] court, even though the perpetrator and victims were Chadian and the crimes had taken place in Chad” [4].

#### *Part VII. Institutional Arrangements*

The more technical seventh part of the Convention nonetheless needs to be complimented for a clear designation of which state party holds an interim responsibility, thus ensuring smooth operation.

#### *Part VIII. Final Provisions*

The also technical, final, eighth part of the Convention also needs to be remarked upon owing to the strict limitation of reservations (despite certain countries advocating for more flexibility even on some key issues of jurisdiction [5]), which cannot encompass the key innovations regarding mutual legal assistance, the rights of victims, or the matters of extradition. Importantly, it ensures that the requests will also be responded to in the event of a withdrawal.



### *Annexes*

As mentioned above, it is regrettable that the expanded definitions of international crimes were included in the annexes and not directly included in Article 5. It needs to be remarked, after Alexis J. Shanes, Hannah Sweeney and Olivia B. Hoff, that several of these definitions may already be found in the Rome Statute (regarding the starvation of the civilian population, poisonous gases, flattening bullets, crime of aggression, and forced disappearance), whereas others go beyond them (regarding torture), or are completely innovative (regarding bioweapons, lasers, and weapons whose fragments are undetectable by X-rays) [15].

### *Declarations and Reservations*

While it needs to be applauded that so far only two countries (France and Germany) have raised reservations, it is regrettable that only two (the Democratic Republic of Congo and Germany) have decided to include the broader definition of international crimes from the annexes – and not all the annexes in the case of Germany. Furthermore, France needs to be criticised for making its decision on ratification dependent on a linguistic matter. Additionally, given the current international situation it is upsetting that only one country (the Netherlands) has decided to apply a part (Part III) of the Convention provisionally.

### **Conclusions**

Is the LTH Convention indeed a treaty for the globalised and interconnected world we live in today, as the eponymous question asks? The different signatories of the treaty were undoubtedly most enthusiastic about the LTH Convention: the Swiss government, for example, saw the adoption of the Convention as an opportunity “to play an even greater role in the investigation and prosecution of international crimes” [1]. In a similar vein, the Dutch government considers the Convention to be “a milestone in the international fight against impunity for the most serious crimes and an important step towards justice for the victims of these crimes,” the signing of which, by countries from different regions around the world, is “a key outcome of the Netherlands’ commitment to promoting the development of the international rule of law” [7]. Similarly, the Slovenian government perceived the signing of the Convention as a landmark, paving the way “to turn the often-heard words ‘Never Again’ into concrete action” [6].

In turn, while Fisseha Tekle perceived the adoption of the Convention as representing “a historic step towards delivering justice to victims of crimes under international law. In a world with ever more visible atrocities and where enormous numbers of victims are often left

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without any remedy, the Convention opens more routes to justice,” he criticised certain exemptions and discretionary measures in the matters of jurisdiction to which the LTH Convention leaves the door open [2]. Similarly, Julie Bardèche argues that the Convention’s language “does not go far enough” – full of such caveats as “subject to domestic law,” it risks diluting the treaty’s standards [4].

Looking at the big picture, despite its shortcomings resulting from the nature of international negotiations, the LTH Convention clearly succeeds in making the otherwise convoluted procedures in regard to the prosecution of the most heinous international crimes much clearer and smoother, allowing them to become more efficient and actually effective. It directly introduces some of the key elements of 21<sup>st</sup> century daily life – videoconferencing, international cooperation and data protection – into the international criminal law.

Perhaps most importantly, provisions related to the rights of victims and the matter of seizure of the perpetrators’ property could have an application to the current ongoing conflicts. As has been remarked, once the LTH Convention comes into force, for example, “if a Ukrainian citizen who is in Slovenia has witnessed or been a victim of a crime in Ukraine, it will be much easier to start proceedings immediately” [6]. Thus, the country, invaded by Russia in 2022, perceives the LTH Convention as key for the improved system for the international search for suspects to be realised [16]. The confiscation provisions of the treaty also open up the means for the employment of “existing or future international comprehensive compensation mechanisms, such as the recently established Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine by the Council of Europe Summit” [14], potentially paving the way for the use of the currently frozen Russian assets as reparations.

Importantly, the signing event was accompanied by the President of the International Criminal Court (ICC) Judge Piotr Hofmański; upon meeting him, the then Slovenian Foreign Minister remarked that they “agreed on the need to speed up the process of detecting and prosecuting the most serious international crimes. This includes Gaza, where we are witnessing a humanitarian catastrophe,” adding that she hoped the Convention “will make an important contribution to the work of” the ICC [6].

Additionally, on the 22<sup>nd</sup> of October 2024, a pledge to raise awareness about the Convention in the hopes of encouraging the states to ratify the document was made by Argentina to the International Red Cross, with the support of Belgium, Slovenia, the Netherlands and Liechtenstein [11]. As remarked upon by Frederika Schweighoferova, various countries around the world already adhere “to similar treaties on mutual cooperation to fight transnational organised crime (UN Convention Against Transnational Organised Crime - UNTOC) and

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corruption (UN Convention Against Corruption -UNCAC);” hence, ratification of the LTH Convention should not be an issue [14]. To date, however, neither of these countries have ratified the LTH Convention. In a similar vein, the Lithuanian government (which signed but did not ratify the Convention) expressed an interest in the Convention applying to the crimes listed in the Annexes, stressing the crime of aggression [10]; however, it has not made a declaration in that respect upon signing the document. At the time of writing, there were no ratifications of the Convention from any of the thirty-seven signatories.

Even more worryingly, a number of the countries that participated in the diplomatic conference that adopted the Convention decided that not to sign it – among these, for example, the United Kingdom argued that ratifying the document “would offer few advantages over those existing arrangements and could increase the risk of the British service personnel being prosecuted and potentially extradited on spurious grounds.”<sup>5</sup> Such a perspective needs to be criticised, given the clear need for the adoption of the Convention. Only through its broadest possible ratification may the fight against impunity for international crimes be successful and also act as a deterrent – the suppression of safe havens and the protection of assets under the LTH Convention would have truly groundbreaking implications for perpetrators of international crimes.

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