NAVIGATING THE TENSIONS BETWEEN UNIVERSAL INTERNATIONAL CRIMINAL JUSTICE AND THIRD WORLD INTERESTS: AN ANALYSIS OF THE LJUBLJANA-THE HAGUE CONVENTION

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The recently signed Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes proposes an international legal framework to regularise the obligations of mutual legal assistance between sovereign states. The Convention seeks to create a system of international legal cooperation by procedurally facilitating mutual legal assistance and extradition cooperation. This is achieved through provisions on the transfer of sentenced persons and joint investigations, among other strategies. While the Convention could be heralded as a step forward in tackling impunity for crimes under international law, it appears to be less adequate in the obligations it imposes on its Third World stakeholders. By creating such methods of integrating global justice systems, however, the Convention discounts the disproportional obligations on its Third World signatories. This includes requiring them to criminalise genocide, crimes against humanity, and war crimes under domestic law and to establish jurisdiction over these crimes in specified circumstances, furthering the aut dedere, aut judicare principle. While numerous other such treaty regimes require States to prevent and prosecute, the Ljubljana-The Hague Convention is the first of its kind to mandate a universal international legal framework. However, the Convention does not fully account for the broader geopolitical dynamics and historical patterns, particularly in relation to the Global South. The interplay between issues of self-determination, operational selectivity, and the concentration of wars and humanitarian interventions in these regions highlights the need for a more nuanced understanding of how such obligations affect these states. Through this study, the authors analyse the provisions of the Ljubljana-The Hague Convention, and examine how its methods disproportionately affect Third World nations in carrying

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out their treaty obligations, contradicting the intent it was drafted with. In doing so, the authors argue for a more inclusive and concessional method of reforming the international criminal justice system.

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I. INTRODUCTION

The Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes and Other International Crimes ('Ljubljana-The Hague Convention' or 'the Convention'), adopted in May 2023[1] is a culmination of almost twelve years of effort, initiated by Belgium, the Netherlands, Slovenia

[1] Ljubljana–The Hague Convention on International Cooperation in the Investigation and Prosecution of Genocide, Crimes Against Humanity, War Crimes and Other International Crimes (adopted 26 May 2023, not in force) (Ljubljana–The Hague Convention).

and Argentina under the garb of the Mutual Legal Assistance ('MLA') Initiative.[2] The Initiative was proposed to promote the eventual adoption of a 'gap filler treaty',[3] to bridge the gap in international law for a multilateral treaty that sought to regulate mutual legal assistance and extradition for the domestic investigation and prosecution of core international crimes.

The current regime on MLA was opined to be a limited and outdated set of regulations. This was because the Convention on the Prevention and Punishment of the Crime of Genocide, 1948 ('Genocide Convention')[4] and the Geneva Conventions, being dated in the 1940s, were unable to reach a conclusion on the comprehensive provisions related to mutual legal assistance.[5] It was not customary for multilateral treaties to include provisions related to mutual legal assistance while adopting international agreements in the early 20th century.[6] For instance, the Genocide Convention requires states *to grant extradition in accordance with Article VII,* while it does not, however, contain multilateral provisions on mutual legal assistance.[7] Treaty regimes as practice only tend to regulate certain specific crimes against humanity, such as torture.[8]

The vacuum in the sphere of coordinating international efforts towards mutual legal assistance necessitates the adoption of a framework akin to the Ljubljana-The Hague Convention. The inability of the current regime in creating a system that effectively prosecutes the *core crimes* has often hampered their effective prosecution – either by delays in national systems, or delays in foreign

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[2] Ministry of Foreign and European Affairs, 'MLA (Mutual Legal Assistance and Extradition) Initiative' (*Republic of Slovenia GOV.SI*, 31 May 2024) <https://www.gov.si/en/registries/projects/mla-initiative> accessed 3 July 2024.

[3] Bruno de Oliveira Biazatti & Ezéchiel Amani, 'The Ljubljana – The Hague Convention on Mutual Legal Assistance: Was the Gap Closed?' (*EJIL: Talk!*, 12 June 2023) <https://www.ejiltalk.org/the-ljubljana-the-hague-convention-on-mutual-legal-assistance-was-the-gap-closed/> accessed 5 July 2024

[4] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 8 December 1948, entered into force 12 January 1051) 78 UNTS 277 (Genocide Convention).

[5] Ward Ferdinandusse, 'Improving Inter-State Cooperation for the National Prosecution of International Crimes: Towards a New Treaty? (2014) 18(15) ASIL <https://www.asil.org/insights/volume/18/issue/15/improving-inter-state-cooperation-national-prosecution-international> accessed 6 July 2024.

[6] ibid.

[7] Genocide Convention, art 7.

[8] Juan Pablo Pérez-León Acevedo, 'The Close Relationship Between Serious Human Rights Violations and Crimes Against Humanity: International Criminalization of Serious Abuses' (2017) 18 Anuario Mexicano de Derecho Internacional 145, 149.

jurisdictions due to the inability of states to extradite (however willing they may be to do so).

The Convention has hence been heralded as a significant step forward in strengthening investigation and prosecution mechanisms under international criminal law. To ensure that MLA is implemented in practice and to ease the burden on state parties, the Convention incorporates provisions such as hearing by video conferencing,[9] the procedure relating to the transfer of objects and evidence,[10] and allows for the transfer of proceedings.[11]

Counterfactually, however, the Convention seeks to place upon states a higher threshold of responsibility to take the necessary measures to prosecute alleged criminal offenders. This includes obligating member states to recognise certain classes of international crimes as domestic crimes,[12] and calling for states to prosecute these crimes within domestic judicial systems.[13]

The Convention has currently been signed by thirty-three states, and is pending formal adoption by signatories.[14]

II. EXISTING LEGAL REGIMES ON MUTUAL LEGAL ASSISTANCE

Conventions with the objective of furthering mutual legal assistance often incorporate the principle of *aut dedere aut judicare* (the obligation to extradite or prosecute).[15] One of the earliest attempts urging states to abide by *aut dedere aut judicare* specifically for international crimes was made by the 1996 Draft Code of Crimes Against the Peace and Security of Mankind ('Draft Code').[16] Article 8 of the Draft Code requires states to establish jurisdiction over international crimes referenced in Article 9,[17] including genocide, crimes against

[9] Ljubljana–The Hague Convention, art 34.
[10] ibid, art 38.
[11] ibid, art 48.
[12] ibid, art 7.
[13] ibid, art 8.
[14] Ministry of Foreign and European Affairs, 'The Ljubljana-The Hague Convention is signed in The Hague after a decade of effort' (*Republic of Slovenia GOV.SI,* 14 April 2024) <https://www.gov.si/en/news/2024-02-14-the-ljubljana-the-hague-convention-is-signed-in-the-hague-after-a-decade-of-effort/> accessed 9 November 2024; thirty-four states had signed this convention on 14 February 2024.
[15] ILC, 'Report of the International Law Commission on the Work of its 66th Session' (5 May–8 August 2014) UN Doc A/69/10.
[16] ILC, 'Draft Code of Crimes against the Peace and Security of Mankind' (6 May–26 July 1996) UN Doc A/2673 (Draft Code of Crimes against the Peace and Security of Mankind).
[17] Draft Code of Crimes against the Peace and Security of Mankind, art 8.

humanity, crimes against United Nations and associated personnel, and war crimes, while Article 9 of the Draft Code stipulates an obligation to either extradite or prosecute individuals accused of these offences.[18] This principle has been interpreted by the ICJ in the case of *Questions relating to the Obligation to Prosecute or Extradite*,[19] with reference to obligations arising out of Article 7 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that requires states to extradite or prosecute individuals alleged to have committed any offence prohibited by the convention.[20] The ICJ interpreted the obligation to prosecute broadly recognising that a state must submit the case to its competent authorities for the purpose of prosecution,[21] irrespective of the existence of an extradition request.[22] This interpretation of the ICJ also places a greater degree of responsibility on states to prosecute rather than extradite.

There have been multiple regional and international conventions over the last few decades that incorporate the *aut dedere aut judicare* principle in relation to various crimes. For instance, a critical global convention that encourages mutual legal assistance to fight crime is the United Nations Convention against Transnational Organized Crime ('UNTOC').[23] This convention is the primary international instrument that obliges states to combat transnational organised crime, including human trafficking. As far as the UNTOC's obligations are concerned, states must criminalise the laundering of proceeds of crime, establishing domestic legislation to combat money laundering[24] and mutual legal assistance.[25] Article 18 of the UNTOC obligates state parties to fully afford MLA possible under relevant laws, treaties, agreements and arrangements of the requested state party concerning investigations, prosecutions and judicial proceedings concerning the offences for which a legal person may be held liable.

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[18] Draft Code of Crimes against the Peace and Security of Mankind, art 9.

[19] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* [2012] ICJ Rep 422.

[20] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

[21] Mads Andenas and Thomas Weatherall, 'International Court of Justice: Questions Relating to The Obligation to Extradite or Prosecute (Belgium v Senegal) Judgment of 20 July 2012' (2013) 62 International and Comparative Law Quarterly 753, 763.

[22] *Questions relating to the Obligation to Prosecute or Extradite* (n 19), 50-51.

[23] United Nations Convention against Transnational Organized Crime (adopted 15 November, entered into force 29 September 2003) 2225 UNTS 209 (UNTOC).

[24] ibid, art 7.

[25] ibid, art 18.

The scope for Mutual Legal Assistance under this treaty is limited to specific crimes, including that of money laundering and corruption. Its mandate does not account for more severe crimes of international character, such as genocide, crimes against humanity and violations of the Geneva Conventions.

However, with the adoption of the Rome Statute in 2002[26] and the establishment of the International Criminal Court ('ICC'),[27] crimes relating to the crime of genocide, crimes against humanity, war crimes, and crimes of aggression have primarily been dealt with by the ICC.[28] The Ljubljana-The Hague Convention's primary objective is to facilitate international cooperation in criminal matters between states parties.[29] The primary application of this Convention extends to the list of 'international crimes' defined under Article 5 – crimes of genocide,[30] crimes against humanity,[31] war crimes,[32] and crimes of aggression.[33] Pursuant to Article 6, this can be extended to an extraditable offence under the domestic law of the requested state party.[34] The Ljubljana-The Hague Convention aims to strengthen national jurisdictions and foster international cooperation to prosecute international crimes. In contrast, the Rome Statute creates a permanent, centralised ICC with its own judicial authority to prosecute such crimes when necessary. The benefits of working these two statutes together have been elaborated on in subsequent sections.

The concept of a multilateral legal assistance treaty is not new to the jurisprudence of international law. One of the earliest examples of such treaties is the European Convention on Mutual Assistance in Criminal Matters,[35] dating back to 1959. As a regional exclusive to the European Union, it requires parties to afford the broadest possible mutual legal assistance in proceedings with respect to offences, the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the

[26] Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (Rome Statute).
[27] ibid, art 1.
[28] ibid, art 5.
[29] Ljubljana–The Hague Convention, art 1.
[30] ibid, art 5(1).
[31] ibid, art 5(2).
[32] ibid, art 5(3).
[33] ibid, art 5(4).
[34] ibid, art 6(c).
[35] European Convention on Mutual Assistance in Criminal Matters (adopted 20 April 1959, entered into force 12 June 1962) ETS No 30 (European Convention on MLA).

requesting Party.[36] Some other regional conventions drafted along these lines include the Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters,[37] and the Inter-American Convention on Mutual Legal Assistance in Criminal Matters.[38] As the titles of all these conventions indicate, they are regionally specific, either to a continent or only a slightly broader geographic region. The Ljubljana-The Hague Convention, on the other hand, envisions a universal legal framework for severe international crimes such as genocide,[39] crimes against humanity,[40] and war crimes.[41] These provisions can greatly help international criminal tribunals such as the ICC to ensure the perpetrators of these crimes are brought to justice. The two work complementary to each other. The Rome Statute creates grounds to prosecute individuals, and hold them individually responsible for crimes such as genocide, crimes against humanity, war crimes, and the crime of aggression in the ICC; the Ljubljana-The Hague Convention, however, creates mechanisms for collaboration and mutual legal assistance – effectively aiding the prosecution process that would lie before the ICC.

III. KEY PROVISIONS OF LJUBLJANA-THE HAGUE CONVENTION

The scope of the Ljubljana-The Hague Convention can be derived from a combined reading of Articles 2[42] and 5, where Article 2 reads the application of the Convention into those crimes defined under Article 5.[43]

A. EXPANDING *AUT DEDERE AUT JUDICARE*

The Ljubljana-The Hague Convention elevates the *aut dedere aut judicare* principle to a higher standard. Article 14[44] imposes a duty on state parties under whose jurisdiction a person alleged to have committed any crimes to which this Convention applies in accordance with Articles 2 and 5 to surrender or extradite a person to another state or an international court or tribunal for prosecution of

[36] ibid, art 1.
[37] Treaty on Mutual Legal Assistance in Criminal Matters (adopted 29 November 2004, entered into force 28 January 2009) (Association of Southeast Asian Nations).
[38] Inter-American Convention on Mutual Legal Assistance in Criminal Matters (adopted 23 May 1992, entered into force 14 April 1996) (Organisation of American States).
[39] Ljubljana–The Hague Convention, art 5(1).
[40] ibid, art 5(2).
[41] ibid, art 5(4).
[42] ibid, art 2.
[43] ibid, art 5.
[44] ibid, art 14.

the alleged offender.[45] Failing compliance with this provision, the Convention requires the state to proceed with the prosecution of the alleged offender under the domestic law of the state party. This obligation is the first of its kind in the context of genocide and crimes against humanity. Both the Genocide Convention and the 1977 Additional Protocol II to the 1949 Geneva Conventions[46] ('Additional Protocol II') that covers war crimes do not trigger the *aut dedere aut judicare* obligation. This is because the Genocide Convention does not *explicitly* create an obligation to extradite or prosecute – it only criminalises and hands over the *au dedere au judicare* obligation to the tenets of customary international law.[47] The Ljubljana-The Hague Convention hence elevates the obligation – relaying the custom into obligations to follow as domestic legal process.[48]

B. Treaty as the Basis for Judicial Assistance

Part IV of the Ljubljana-The Hague Convention, through Articles 49[49] and 50,[50] becomes indispensable in the circumstances where an MLA treaty, be it in the form of an extradition treaty or otherwise, is absent between two states. Specifically, Article 50 of the Convention enables state parties to use the Convention as the legal basis for extradition in instances where state Parties do not have an extradition treaty with each other.[51] Member states of the Ljubljana-The Hague Convention that do not have an MLA treaty between them can take recourse to Article 29. When a state receives a request for MLA from another state party with which it lacks such a treaty, Article 29 allows it to proceed as if a treaty exists. In these cases, the provisions of the Convention serve as the legal basis for providing MLA on any crime covered by the Convention.[52] The provisions following Article 29 provide a standardised procedure, including grounds for refusal.[53] By additionally imposing binding obligations, it enables states to cooperate effectively in investigating and prosecuting these offences,

[45] ibid.

[46] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 75 UNTS 1125 (Additional Protocol II).

[47] Genocide Convention, art VI.

[48] Ljubljana–The Hague Convention, art 7.

[49] ibid, art 49.

[50] ibid, art 50.

[51] ibid.

[52] ibid, art 29.

[53] ibid, art 30.

even without a formal extradition agreement in place. This enhances the global fight against impunity and strengthens the international criminal justice system.

IV. INTERPLAY OF THE CONVENTION WITH EXISTING LEGAL INSTRUMENTS

The Ljubljana-The Hague Convention is designed to complement and reinforce a broader framework of international law aimed at combating the most serious crimes of concern to the international community. An aspect of the Convention that policymakers, enforcement authorities and other stakeholders should give regard to is that the Convention does not seek to override any existing legal framework. It rather facilitates the smooth functioning of the existing international legal regimes, specifically those concerning grave international criminal law offences. Both domestic and international legal enforcement agencies ought to tread carefully, observing that the Convention and existing laws are not mutually exclusive but rather complementary to each other. For instance, the Ljubljana-The Hague Convention's objective is not to override the authority of the ICC via the Rome Statute,[54] but rather assist the court in ensuring the impugned offenders are brought to justice.[55]

A. A Supporting Mechanism for the ICC

The Ljubljana-The Hague Convention can ease the burden of the ICC with special regard to third-world nations. A large portion of the perpetrators against whom the ICC has issued warrants and those 'at large' come from countries traditionally regarded as the 'third world'.[56] At the time of writing of this article, there are ten impugned offenders for whom the ICC has issued arrest warrants remain at large, indicating that they have not yet been apprehended or brought into custody. Out of which at least 6 of them can be regarded as coming from third world nations.[57]

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[54] Rome Statute.

[55] France Diplomacy, 'Fight against impunity – Signing of the Ljubljana-Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes' (*France Diplomacy*, 14 Feb 2024) <https://www.diplomatie.gouv.fr/en/french-foreign-policy/human-rights/news/article/fight-against-impunity-signing-of-the-ljubljana-hague-convention-on> accessed 6 July 2024.

[56] M Owusu, 'Defining the Third World' in Neil J Smelser and Paul B Baltes (eds), *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier 2001).

[57] *The Prosecutor v Omar Hassan Ahmad Al Bashir* (Decision) ICC-02/05-01/09 (4 March 2009).

A prominent case pending before the ICC is the Al Bashir case,[58] concerning the former president of South Sudan. Al Bashir has been charged with five counts of crimes against humanity, namely, murder, extermination, forcible transfer, torture, and rape, and two counts of war crimes, namely, intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities, and pillaging along with three counts of genocide. While a warrant for the issue of Al Bashir has been in force since 2009, he has never been brought before the ICC.[59] Cases that follow a pattern, such as that of Al Bashir, where alleged offenders of 'international criminal offences' cannot be brought before the ICC or other international tribunals that have issued warrants can be brought to justice in a less cumbersome manner through the engagement of mutual legal assistance provisions of the Convention. For example, when an impugned offender is no longer on the requesting state's soil, the offender has fled to the responding state, and no mutual legal assistance treaty exists between both states, recourse can be taken to the Convention.

By invoking Article 29 on the grounds of mutual assistance,[60] states can resort to conducting joint investigations by employing the procedure under Article 41 to bring impugned offenders to the limelight.[61] The same provision can be extended to perpetrators like Al Bashir to effectuate the arrest warrants issued by the ICC.

B. Enforcing the Hague Convention Objectives Through the Ljubljana- The Hague Convention

The Geneva Conventions of 1949 and subsequent protocols can greatly benefit from the enforcement of the Ljubljana- The Hague Convention. Both these legal instruments aim to achieve the common goal of upholding international humanitarian law ('IHL') and addressing and enquiring into any breaches of the same. The Ljubljana-The Hague Convention also includes crimes against

[58] ibid.

[59] Leila Nadya Sadat, 'Why the ICC's Judgment in the al-Bashir Case Wasn't So Surprising' (*Just Security*, 12 July 2019) <https://www.justsecurity.org/64896/why-the-iccs-judgment-in-the-al-bashir-case-wasnt-so-surprising/> accessed 10 July 2024.

[60] Ljubljana–The Hague Convention, art 29.

[61] ibid, art 41.

humanity under Article 5(4),[62] and includes violations of the Geneva Conventions and customary international law applicable during armed conflict.

Comprehensive investigations are indispensable to safeguard the protections afforded by the Geneva Conventions to both military and civilian victims of domestic and international warfare.[63] The obligation to conduct investigations can be found in the Geneva Conventions of 1949, for instance, Article 49 of Geneva Convention (I) and Article 50 of Geneva Convention (II) and their Additional Protocols I (Article 85 of Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts), which require states to search for perpetrators of the breaches of the Geneva Conventions irrespective of their nationality. The Ljubljana-The Hague Convention can significantly help the cause of bringing perpetrators of 'grave breaches' of the Geneva Conventions and those who commit crimes against humanity. To Ljubljana-The Hague Convention to enforce its objectives, provides for the establishment of joint investigation teams.[64] This can be done through mutual consent by one or more state parties involved and for a limited period of time.[65]

While the provisions of both the aforementioned legal instruments are laudable, their enforceability and applicability are yet to be seen. While the Convention recognises the rights of victims and looks beyond just states, the provisions of the Ljubljana-The Hague Convention remain largely state-centric. Like the Geneva Conventions, even the Ljubljana-The Hague Convention prioritise only the roles of states in enforcing international law and overlooks the experiences and perspectives of non-state actors and marginalised communities.

If history is an indicator, it can be seen that most of the wars and humanitarian interventions of the twenty-first century have occurred in the third world and the global south countries.[66] It is pertinent to note that provisions of the Ljubljana-The Hague Convention such as Articles 23 and 24

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[62] ibid, art 5(4).

[63] Noam Lubell, Jelena Pejic and Claire Simons, 'Guidelines on Investigating Violations of International Humanitarian Law: Law, Policy, and Good Practice' (2019) 40 International Committee of the Red Cross 70 <https://www.geneva-academy.ch/joomlatools-files/docman-files/Guidelines%20on%20Investigating%20Violations%20of%20IHL.pdf> accessed 7 July 2024.

[64] Ljubljana–The Hague Convention, art 41.

[65] ibid.

[66] Eliot A Cohen, 'Distant Battles: Modern War in the Third World' (1986) 10(4) International Security 143 <https://doi.org/10.2307/2538952> accessed 8 July 2024.

can very well be invoked to justify military interventions in the name of protecting civilians, which can often serve the political and economic interests of intervening powers. Article 23 for instance, requires member states to 'afford one another the widest measure of mutual legal assistance'[67] and this includes examining objects and sites,[68] executing searches and seizures,[69] and conducting cross-border observations.[70] In contexts like current crises—such as the ongoing conflict in Sudan[71] or post-conflict regions like Iraq[72]—intervening powers could use these provisions to access evidence of human rights abuses or war crimes to bring cases before international courts, potentially disregarding a state's sovereignty by invoking the Convention.

States globally should ensure that the Convention should be used to assists each other by effectively using Articles 29 and 50 of the Convention as a basis for MLA or extradition, respectively, in the absence of such a treaty between member states. States can benefit significantly from this Convention by ensuring MLA afforded by one state to another is explicitly used within the bounds provided under Article 23.[73] States can further assist each other by employing tools such as video conferencing,[74] effecting service of judicial documents,[75] and using special investigative techniques.[76] Through this, states can bring perpetrators of crimes to justice while ensuring Western states are not perpetuating their already existing power. Special care should be taken to ensure that the state granting MLA is not violated by the requesting state.

V. SHORTCOMINGS OF THE CONVENTION

While the Convention aims to promote universal standards of justice through the allied application of MLA standards, it inadvertently exacerbates existing tensions and inequalities faced by Third World nations. This section will

[67] Ljubljana–The Hague Convention, art 23.
[68] ibid, art 24(b).
[69] ibid, art 24(d).
[70] ibid, art 24(i).
[71] Center for Preventive Action, 'Civil War in Sudan' (*Global Conflict Tracker*, 3 October 2024) <https://www.cfr.org/global-conflict-tracker/conflict/power-struggle-sudan> accessed 14 November 2024.
[72] Center for Preventive Action, 'Instability in Iraq' (*Global Conflict Tracker*, 13 February 2024) <https://www.cfr.org/global-conflict-tracker/conflict/political-instability-iraq> accessed 14 November 2024.
[73] Ljubljana–The Hague Convention, art 23.
[74] ibid, art 24(a).
[75] ibid, art 24(e).
[76] ibid, art 24(h).

examine the Convention's provisions, highlighting how they impose disproportionate responsibilities on developing states, reflect Eurocentric biases, and ultimately undermine the core principles of justice they seek to uphold.

One of the most glaring issues with the Ljubljana-The Hague Convention is its imposition of uniform responsibilities on all signatory states, regardless of their economic or institutional capacity. Article 3 mandates mutual legal assistance, obliging states to cooperate in the investigation and prosecution of serious crimes.[77] This obligation includes an overarching requirement to criminalise genocide, crimes against humanity, and war crimes under domestic law and to establish jurisdiction over these crimes in specified circumstances.[78]

While well-intentioned in the need to harmonise international criminal prosecution, this can disproportionately burden developing nations, many of which lack the necessary infrastructure and resources to engage effectively in such international cooperation. The assumption that all states possess comparable legal frameworks and capacities is fundamentally flawed, leading to a scenario where Third World countries are expected to adhere to standards that may simply be unattainable in their present contexts.[79]

A. Case Study: Republic of Uganda

An important instance where the standards of an international criminal law convention proved challenging for a developing nation is Uganda's implementation of the Rome Statute. While Uganda ratified the Rome Statute and established the International Crimes Division ('ICD') of its High Court[80] to handle crimes under the ICC's jurisdiction, it faced significant hurdles in aligning its domestic legal framework with international obligations.[81]

For instance, the ICC Act of 2010[82] incorporated the Rome Statute's provisions into Ugandan law. However, this Act only covered crimes committed

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[77] ibid, art 3.

[78] ibid, art 6.

[79] Kevin Bloor, *Understanding Global Politics* (E-International Relations 2022).

[80] Asiimwe Tadeo, 'Effecting Complementarity: Challenges and Opportunities: A Case Study of the International Crimes Division of Uganda' (*ASF*, 2010) <https://www.asf.be/wp-content/uploads/2012/10/Case-Study-of-the-International-Crimes-Division-of-Uganda.pdf> accessed 14 November 2024.

[81] Ray Murphy, 'International Criminal Accountability and the International Criminal Court' (2006) 17 Criminal Law Forum 281 < https://link.springer.com/article/10.1007/s10609-006-9020-7> accessed 14 November 2024.

[82] International Criminal Court Act 2010 (Uganda).

after 2002, leaving numerous atrocities committed during Uganda's prolonged civil conflict (1986–2002), such as those by the Lord's Resistance Army ('LRA'),[83] outside its scope. This temporal limitation significantly weakened efforts to address historical crimes within the country. Additionally, the ICD, while created to handle these cases, suffered from inadequate resources, a lack of specialised legal expertise, and procedural inconsistencies, which proved detritus to its effectiveness.

A notable challenge was prosecuting Dominic Ongwen, an LRA commander.[84] Although Uganda referred the case to the ICC, signalling its inability to handle it domestically, the move sparked criticisms. Critics argued that reliance on international mechanisms undermined local justice initiatives and ignored Uganda's structural weaknesses, such as limited access to justice for victims and insufficient reparations mechanisms. These hindrances made it difficult to fully operationalise the system within Uganda's existing legal and institutional capacities.[85]

B. THE TWAIL CRITIQUE

The uniformity in the Convention reflects a much deeper structural problem within international law. It points to the fact that international legal norms often operate as mechanisms of control, replicating colonial hierarchies under the guise of universality.[86] The Convention assumes that all states possess comparable legal frameworks and institutional capacities, a presumption that is fundamentally flawed. Developing countries, many of which continue to grapple with post-colonial legacies of underdevelopment and systemic inequality, are expected to adhere to standards that are unattainable given their current contexts. This imposition of unrealistic obligations effectively marginalises these

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[83] Kevin Dunn, 'The Lord's Resistance Army and African International Relations' (2010) 3(1) African Security 46 <https://www.tandfonline.com/doi/full/10.1080/19362201003608797#abstract> accessed 15 November 2024.

[84] Konstantina Stavrou and Andreas Sauermoser, 'The Prosecutor V Dominic Ongwen: A Judgment Of Many Firsts' (*Human Rights Pulse*, 11 May 2021) <https://www.humanrightspulse.com/mastercontentblog/the-prosecutor-v-dominic-ongwen-a-judgment-of-many-firsts> accessed 15 November 2024.

[85] Anna Macdonald, 'Somehow This Whole Process Became so Artificial': Exploring the Transitional Justice Implementation Gap in Uganda' (2019) 13 International Journal of Transnational Justice 225 <https://academic.oup.com/ijtj/article/13/2/225/5480392> accessed 15 November 2024.

[86] Knut Traisbach, 'International Law (Introduction)' in Stephen McGlinchey (ed), *International Relations* (e-International Relations Publishing 2017).

states within the global legal order, reinforcing the divide between the Global North and South.

The Eurocentric bias embedded in the drafting and implementation of the Convention further exacerbates these disparities. For instance, while developed states have the institutional capability to prosecute complex international crimes and comply with transnational evidentiary obligations, many Third World countries face basic challenges in maintaining judicial independence or adequately resourcing their domestic courts.[87] As Dr Chimni observes, such frameworks often mask their origins in the historical processes of empire, creating norms that privilege the interests of powerful states while relegating the Global South to a subordinate role in international legal systems.[88]

The Convention's mechanisms for MLA also raise sovereignty concerns for Third World states. While framed as reciprocal, these mechanisms predominantly benefit developed countries with advanced investigatory capacities and superior technological infrastructure. This asymmetry enables the Global North to exert disproportionate influence over the legal systems of weaker states. TWAIL scholarship emphasises how such processes can lead to the erosion of sovereignty, particularly in politically sensitive cases where legal cooperation is leveraged to achieve strategic geopolitical objectives. The Convention risks perpetuating a neocolonial dynamic where legal obligations imposed on developing states serve the interests of wealthier nations, rather than fostering genuine international collaboration. The expectation for compliance without adequate support from the international community raises critical questions about the fairness and sustainability of the Convention's framework. Developing nations often face significant hurdles, including political instability, corruption, and limited judicial resources, which ultimately hinder their ability to meet the Convention's expectations.[89]

For instance, post-conflict nations such as the Democratic Republic of the Congo ('DRC'), grapple with weak legal institutions and pervasive violence,

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[87] Lisa Hilbink and Matthew C Ingram, 'Courts and Rule of Law in Developing Countries' in Erin Hannah et al (eds), *Oxford Research Encyclopedia of Politics* (OUP 2019).

[88] BS Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 International Community Law Review 3.

[89] Mushtaq H Khan, 'Governance and Anti-Corruption Reforms in Developing Countries: Policies, Evidence and Ways Forward' (2006) 42 UNCTAD Research papers for the Intergovernmental Group of Twenty-Four on International Monetary Affairs and Development 1, 4.

making compliance with international legal obligations exceedingly challenging.[90] This pattern is also prevalent in conflict and post-conflict ridden regions in the Middle East as well. In the Syrian Arab Republic, there have been instances of numerous violations of international humanitarian law as well as non-compliance with customary international law, posing higher challenges for complying with international obligations.[91]

Moreover, Article 6 encourages states to enact domestic laws that criminalise genocide, crimes against humanity, and war crimes.[92] While this provision aims to align national legislation with international standards, it places an undue burden on developing nations to reform their legal systems. States might oppose the ratification of the Convention in its entirety or might not accede to the obligations under Article 6, in particular, owing to instances such as the disparity in the prosecutions undertaken by the ICC against members from the Global North against the South,[93] which has led states from the African Union to establish regional courts like the African Court of Human and Peoples' Rights ('ACHPR') and the Court of Justice of the African Union ('ACJ'). Many of these states, already grappling with limited financial and administrative resources, face significant challenges in implementing such reforms. For instance, after the Rwandan Genocide, Rwanda struggled to process thousands of cases domestically, relying heavily on foreign aid and ad hoc mechanisms like the Gacaca courts.[94] To prosecute such perpetrators, Rwanda allocated financial resources towards constructing prisons and arresting impugned offenders instead of rebuilding an already financially depleted country.[95] Article 6 may compel states to reallocate scarce resources from essential services, such as education and healthcare, toward expensive legal and investigative processes.

The notion of altering domestic prosecution regimes is particularly concerning when the major stakeholders of the Convention are realised. The

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[90] M Bassiouni, *International Criminal Law* (DePaul University 2008) 151.

[91] Rebecca Ingber, 'International Law is Failing Us in Syria' (*Just Security,* 12 April 2017) <https://www.justsecurity.org/39895/international-law-failing-syria/> accessed 13 November 2024.

[92] Ljubljana-The Hague Convention, art 6.

[93] Natalie Hodgson, 'Resisting the State Crimes of the Global North: Exploring the Potential of International Criminal Law' (2024) 22 Journal of International Criminal Justice 151, 156.

[94] Maureen Laflin, 'Gacaca Courts: The Hope for Reconciliation in the Aftermath of the Rwandan Genocide' (2003) UIdaho Law 19 <https://digitalcommons.law.uidaho.edu/cgi/viewcontent.cgi?article=1502&context=faculty_scholarship> accessed 15 November 2024.

[95] Maya Sosnov, 'The Adjudication of Genocide: Gacaca and the Road to Reconciliation in Rwanda' (2007) 36 Denver Journal of International Law & Policy 125, 132.

absence of experienced legal professionals, forensic experts, and investigative resources can hinder the capacity of these states to fulfil their obligations under the Convention. Consequently, the Convention's framework may inadvertently perpetuate a cycle of impunity for serious crimes as developing nations struggle to prosecute perpetrators effectively.

C. Lack of a Bottom-Up Approach

In aligning its provisions towards harmonised legal assistance, the Convention's failure to differentiate responsibilities based on states' developmental contexts is another significant flaw. By holding all signatories to the same standards, the Convention overlooks the unique challenges faced by developing countries, many of which are still recovering from conflict or grappling with political instability.[96] This uniformity risks reinforcing existing power dynamics such as those observed with enforcing the Geneva Conventions. Leaders and military officials from Rwanda, Sierra Leone, and Sudan have been prosecuted under IHL frameworks, such as through the International Criminal Tribunal for Rwanda and the ICC.[97] However, despite the existence of well-documented violations of IHL by Western powers such as the United States during the Iraq war, steps were not taken to hold the perpetrators liable under IHL.[98] These disparities within the international legal system privilege wealthier nations that have the means to comply even though they may choose not to while marginalising those that do not possess such resources.[99]

The absence of a tiered approach to responsibilities can lead to inequitable outcomes. For instance, the Convention does not account for even nations facing economic sanctions, the situation of import driven economies in assisting in mutual legal procedures. Such consequences can further entrench existing inequalities, as wealthier nations may evade accountability for their own failures while disproportionately penalising those with fewer resources.[100]

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[96] Yolanda Kemp Spies, 'Africa, the International Criminal Court and the Law-Diplomacy Nexus' (2021) 16 Hague Journal of Diplomacy 421.

[97] Roger Bartels, 'The Classification of Armed Conflicts by International Criminal Courts and Tribunals' (2020) 20 International Criminal Law Review 595.

[98] Nsama Jonathan Simuziya, 'The (Il)legality of the Iraq War of 2003: An Analytical Review of the Causes and Justifications for the US-led invasion' (2023) 9 Cogent Social Sciences 1, 9.

[99] Frédéric Mégret, 'The Politics of International Criminal Justice' (2002) European Journal of International Law 1261.

[100] William A Schabas, *An Introduction to the International Criminal Court* (5th edn, Cambridge University Press 2017).

Furthermore, the Convention's lack of flexibility in addressing the specific contexts of developing nations can lead to a one-size-fits-all approach that fails to recognise the complexities of different legal systems and cultural practices. For example, in many African countries, customary law plays a significant role in the legal landscape.[101] The Convention does not adequately account for these practices, which can create tension between international obligations and local traditions.[102] The imposition of Western legal norms without consideration for local contexts can lead to resistance and non-compliance, undermining the Convention's objectives. Such a juxtaposition is particularly relevant when we peruse the number of under trial and imprisoned war criminals, situated before the ICC as well as other region-specific International Crime Tribunals.[103]

D. Implications for International Criminal Accountability

The Ljubljana-The Hague Convention's implications for international criminal accountability are influenced largely by the practicability of its application, insofar as the aforementioned stakeholders are concerned. Given the severe incapacity of conflict-torn nations to try these prisoners, perpetrators of serious crimes evade justice due to the inadequacies of national legal systems.[104]

Furthermore, the Convention's reliance on national jurisdictions raises concerns about the impartiality and effectiveness of prosecutions. In regions plagued by political instability, such as Syria or Iraq, the ability of national courts to hold perpetrators accountable is often compromised. The Convention does not address concerns relating to judicial bias and natural justice considerations either, creating loopholes in even appellate procedures in national courts.[105] The lack of international oversight or intervention in cases where national systems fail to act can perpetuate a culture of impunity, undermining the Convention's objectives.

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[101] Harald Sippel, 'Customary Law in Colonial East Africa' (2022) Oxford Research Encyclopaedia of African History <https://doi.org/10.1093/acrefore/9780190277734.013.1033> accessed 10 July 2024.

[102] Muna Ndulo, 'African Customary Law, Customs, and Women's Rights' (2011) Indiana Journal of Global Legal Studies 87.

[103] 'Accused States Cases' (*International Criminal Court*) <https://www.icc-cpi.int/cases> accessed 13 July 2024.

[104] Jessica Lynn Corsi, 'An Argument for Strict Legality in International Criminal Law' (2018) 49 Georgetown Journal of International Law 1321, 1343.

[105] Ndulo (n 102) 119.

The Convention's focus on national prosecutions also raises concerns about the potential for selective justice. In many cases, political considerations may influence decisions about which cases to pursue, leading to a situation where only certain individuals are held accountable while others remain untouched. This selective application of justice can undermine public confidence in the legal system and perpetuate a culture of impunity.

E. Financial Burdens on Developing Nations

The costs associated with mutual legal assistance—including the establishment of communication channels, training for law enforcement, and the protection of witnesses—can be prohibitive for nations with limited budgets. This financial strain raises questions about the sustainability of the Convention's implementation in resource-constrained environments, potentially undermining its objectives.[106] The expectation for states to comply with the Convention without adequate financial support or technical assistance reflects a significant oversight in its design.

The expectation for developing nations to shoulder the financial burdens of the Convention without adequate support from wealthier states raises ethical questions about the equity of the international legal system.[107] The principle of shared responsibility is often overlooked, as wealthier nations may fail to provide the necessary resources or expertise to assist developing countries in meeting their obligations.[108] This lack of support can further entrench existing disparities and undermine the Convention's objectives.

F. Stakeholder Impact: The case of Affected Regions

The real stakeholders of the Convention, particularly in regions such as Africa, the Balkans, and the Middle East, face complex challenges in the wake of its adoption. For countries like Sudan or the DRC, where serious crimes have been

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[106] Alexis Jori Shanes, Hannah Sweeney and Olivia B Hoff, 'An Assessment of the Ljubljana-The Hague Convention on Mutual Legal Assistance' (*Lawfare*, 1 September 2023) <https://www.lawfaremedia.org/article/an-assessment-of-the-ljubljana-the-hague-convention-on-mutual-legal-assistance> accessed 8 July 2024.

[107] Zhu Dan, 'Who Politicizes the International Criminal Court' (2014) 28 TOAEP <https://www.toaep.org/pbs-pdf/28-zhu> accessed 13 July 2024.

[108] Andre Nollkaemper, *Principles of Shares Responsibility in International Criminal Law* (CUP 2014).

rampant.[109] In Sudan, the Rapid Support Forces ('RSF') have committed war crimes of rape, sexual slavery, and pillage. Further the RSF has been accused of committing torture and displacing civilians.[110] It becomes increasingly difficult to ensure accountability for such crimes, committed by entities such as RSF that enjoy state support and are powerful paramilitary organisations, owing to which the perpetrators of such crimes are never brought to justice. Similarly in the DRC, the M23 armed group that enjoys governmental support from Rwanda and Uganda have been found of killing civilians, gang rapes and looting.[111] There have been instances where the M23 has committed such crimes with the Rwandan military,[112] the involvement of Government officials makes it difficult for both domestic and international tribunals to take cognisance of such offenders. The Convention's emphasis on accountability is crucial. However, the effectiveness of this accountability is contingent on the willingness and capacity of national governments to engage with the Convention.

In the Balkans, the legacy of the Yugoslav Wars underscores the importance of international cooperation in prosecuting war crimes.[113] The Convention's framework could enhance collaboration among states in the region, facilitating the sharing of evidence and resources. Yet, the political will to engage with these processes remains a significant barrier. The historical

[109] 'Why is the Democratic Republic of Congo wracked by conflict?' (*Amnesty International*, 29 October 2024) <https://www.amnesty.org/en/latest/campaigns/2024/10/why-is-the-democratic-republic-of-congo-wracked-by-conflict/> accessed 13 November 2024; 'Sudan: UN Fact-Finding Mission outlines extensive human rights violations, international crimes, urges protection of civilians' (*United Nations Office of the High Commissioner of Human Rights*, 6 September 2024) <https://www.ohchr.org/en/press-releases/2024/09/sudan-un-fact-finding-mission-outlines-extensive-human-rights-violations> accessed 13 November 2024.

[110] 'Crimes Committed in Sudan by Rapid Support Forces, Allied Militias Undermining National, Regional, International Stability, Delegate Tells Security Council' (*United Nations Meetings Coverage and Press Releases*, 13 September 2023) <https://press.un.org/en/2023/sc15408.doc.htm> accessed 13 November 2024.

[111] Maria Elena Vignoli, 'International Criminal Court Takes Important Step in DR Congo' (*Human Rights Watch*, 16 October 2024) <https://www.hrw.org/news/2024/10/16/international-criminal-court-takes-important-step-dr-congo> accessed 13 November 2024.

[112] Paul Kamage, 'DRC files second complaint to ICC against Rwanda army, M23 rebels' (*Al Jazeera*, 24 May 2023) <https://www.aljazeera.com/news/2023/5/24/drc-files-new-complaint-to-icc-against-rwandas-military-and-m23-rebels> accessed 13 November 2024.

[113] Theodor Meron, 'War Crimes in Yugoslavia and the Development of International Law' (1994) 88 American Journal of International Law 78.

context of these conflicts complicates the implementation of the Convention, as national interests often overshadow commitments to international justice.[114]

In the context of Syria, where the ongoing conflict has led to widespread atrocities, the Convention's potential to promote accountability is severely limited by the realities of war.[115] The lack of a stable legal environment hampers efforts to investigate and prosecute crimes, leaving victims without recourse to justice.[116] Thus, while the Convention aspires to support stakeholders in affected regions, its practical impact is often constrained by local conditions.[117]

G. Sovereignty vs International Justice: Why do Nations lack the Political Will to Engage with International Criminal Prosecution

The tension between national interests and international justice is a recurring challenge for developing countries, as they often face competing priorities that limit their capacity to comply fully with global legal frameworks. This consequently precludes their interest, or ability to stay involved in international criminal prosecution.[118] Concerns on sovereignty are a critical factor, with many states perceiving international mechanisms as intrusions on their autonomy. Kenya's resistance to the ICC's involvement in prosecuting post-election violence also stands as evidence to this dynamic.[119] Domestic leaders argued that ICC interventions jeopardised reconciliation efforts and disrupted the fragile balance of national stability, framing compliance with international justice as secondary to pressing internal concerns.[120] Such cases highlight the inherent conflict between respecting national sovereignty and enforcing global accountability mechanisms.

Geopolitical influences also play a significant role in shaping how developing nations interact with international justice systems. Many states

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[114] Karl A Hochkammer, 'The Yugoslav War Crimes Tribunal: The Compatibility of Peace, Politics, and International Law' (2021) 28 Vanderbilt Journal of Transnational Law 119.

[115] Michael Scharf, Milena Sterio and Paul Williams, *The Syrian Conflict's Impact on International Law* (CUP 2020).

[116] Jeanne Koopman, 'When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda by Mahmood Mamdani' (2002) 35 International Journal of African Historical Studies 462.

[117] Mégret (n 99) 1270.

[118] Robert Cryer, 'International Criminal Law *vs* State Sovereignty: Another Round?' (2005) 16 European Journal of International Law 979, 991.

[119] Tim Murithi, 'Ensuring Peace and Reconciliation while Holding Leaders Accountable: The Politics of ICC Cases in Kenya and Sudan' (2015) 40(2) Africa Development 74, 79.

[120] Cryer (n 118) 83.

perceive these mechanisms as tools wielded by powerful nations to advance their geopolitical interests rather than impartial instruments of justice. The African Union's critique of the ICC for disproportionately targeting African leaders also solidifies this perception,[121] reinforcing the idea that international justice selectively applies its standards. This belief leads to selective cooperation, where states may tend to align their participation with broader foreign policy goals or resist mechanisms perceived as biased or, rather, politically motivated.

These instances flesh out the systemic imbalances within international legal systems rather palpably, where developing countries face disproportionate burdens and limited support. International justice mechanisms often fail to accommodate the unique socio-economic and institutional challenges faced by the Global South, creating a framework that prioritises formal adherence – a hard and fast rule of adhering to the framework – over equitable participation. Addressing this imbalance requires reform that not only provides technical and financial assistance to under-resourced nations but also rethinks the universal applicability of legal standards that do not consider historical and structural inequalities.

VI. CURRENT STATUS: WHERE DOES THE WORLD STAND?

The current status of the Ljubljana-The Hague Convention, pending ratification, underscores a critical juncture in the evolution of international criminal justice. The Convention's ambitious goals are tempered by the reality that many signatory nations, particularly those in the Global South, face significant obstacles that could hinder effective implementation. This situation raises important implications for the future of international legal cooperation.

Until formally ratified by its Third World stakeholders, it is possible to foresee a lack of political will among states, particularly those grappling with internal conflicts or governance challenges. This reluctance may stem from fears of external interference or the imposition of foreign legal standards that do not align with local practices. A notable instance of this can be seen in Nigeria's opposition to the enforcement of customary international law on foreign court jurisdiction over acts of state,[122] where during the Sani Abacha regime, the

[121] 'Invited Experts on African Question' (*ICC Forum*) <https://iccforum.com/africa> accessed 16 November 2024.

[122] Tiwalade Aderoju, 'Cross-border enforcement of judgments against States' (*International Bar Association*) <https://www.ibanet.org/document?id=cross-border-enforcement-Nigeria> accessed on 13 November 2024.

Nigerian government opposed foreign attempts to hold its officials accountable for abuses of human rights through universal jurisdiction or other forms of customary international law.[123] As a result, the Convention risks being perceived as a tool of Western dominance rather than a genuine effort to foster global justice. Such perceptions can further entrench resistance to international legal frameworks, leading to a cycle of non-compliance and impunity.

The implications of these dynamics extend beyond the immediate context of the Convention. They reflect broader tensions within the international legal system, where disparities in power and resources often dictate the terms of states and their engagement with international law. If the Convention is to serve its intended purpose, it must evolve to incorporate mechanisms that genuinely consider the realities faced by all signatories, particularly those from the Global South.

VII. THE WAY FORWARD AND CONCLUSION

The Ljubljana-The Hague Convention represents a landmark attempt to establish a universal framework for mutual legal assistance and extradition in addressing core international crimes. By introducing mechanisms for the transfer of sentenced persons, joint investigations, and procedural cooperation, the Convention aims to strengthen accountability and tackle impunity under international law. However, its implementation raises critical concerns, particularly for Third World and Global South nations. The Convention imposes significant obligations on states to criminalise core international crimes under domestic law and establish jurisdiction over them, thereby advancing the *aut dedere, aut judicare* principle. Yet, the lack of attention to geopolitical asymmetries, operational selectivity, and historical injustices affecting these regions undermines its equitable application. The disproportionate burden on resource-constrained states highlights the need for a more inclusive and context-sensitive approach. To ensure effective and fair global justice, reforms should integrate perspectives from the Global South, address systemic inequalities, and provide capacity-building support to states facing disproportionate challenges. Given that only 70 states participated in the discussions surrounding the

[123] Hussein Abdullahi, 'Statement by Ambassador Hussein Abdullahi, Former Under-Secretary, Regions and International Organizations (RIO), Ministry of Foreign Affairs, Abuja The Scope and Application of the Principle of Universal Jurisdiction' (UNGA Sixth Committee, 72nd Session, 10 October 2017) <https://www.un.org/en/ga/sixth/72/pdfs/statements/universal_jurisdiction/nigeria.pdf> accessed 27 April 2025.

adoption of the Convention, it is evident that stakeholder involvement remains limited, and a larger consensus amongst states globally is required.

To mitigate these, a reimagining of the Convention's framework and implementation is essential. The Convention may particularly benefit from two ideas: including incorporating a bottom-up approach and the involvement of regional cooperatives. These mechanisms address the disparities among states in capacity and resources and may ensure that the Convention's objectives are achieved equitably and effectively across diverse jurisdictions.

An approach similar to Common But Differentiated Responsibilities ('CBDR'), established in international environmental law, recognising the shared responsibility of states to tackle global challenges while accounting for their differing capabilities and historical contexts. The Ljubljana-The Hague Convention, by incorporating an approach that identifies the needs of the Global South, can fulfil its true objectives on a global level while ensuring justice is delivered to all stakeholders. For instance, in agreements such as the United Nations Framework Convention on Climate Change ('UNFCCC')[124] and the Kyoto Protocol to the United Nations Framework Convention on Climate Change ('Kyoto Protocol'),[125] CBDR has allowed differentiated obligations for developed and developing countries. For instance, the Kyoto Protocol imposed binding emission reduction targets solely on industrialised nations, acknowledging their greater historical contribution to emissions and superior technical resources. Similarly, in the Ljubljana-The Hague Convention context, states with robust legal and institutional frameworks could bear greater responsibility for facilitating mutual legal assistance and providing technical expertise. In contrast, less-resourced states could focus on developing foundational capacities through phased obligations. The Montreal Protocol on Substances that Deplete the Ozone Layer serves as a compelling example of how the challenges faced by resource-constrained states were effectively addressed.[126] Developing states received financial and technical assistance to comply with the treaty, alongside extended timelines for meeting obligations. Drawing from this model, wealthier states could provide financial support under the Ljubljana-The

[124] United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.
[125] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 11 December 1997, entered into force 16 Feb 2005) 2303 UNTS 162.
[126] Montreal Protocol on Substances that Deplete the Ozone Layer (adopted 16 September 1987, entered into force 1 January 1989) 1522 UNTS 3.

Hague Convention to help less-resourced countries establish systems for handling extraditions, evidence sharing, and cross-border legal cooperation. This approach could include funding specialised training for law enforcement and judicial officers, creating modernised legal infrastructure, and ensuring the availability of translation and communication tools necessary for international collaboration.

Regional cooperative bodies can assist in this cause by addressing their jurisdictions' specific legal, cultural, and logistical challenges. These organisations possess the localised expertise necessary to tailor the implementation of global agreements to regional contexts. For example, the ASEAN Agreement on Transboundary Haze Pollution demonstrates how regional cooperation can address shared challenges.[127] Similarly, the African Union could coordinate regional mechanisms within the continent to support the Ljubljana-The Hague Convention, such as joint investigative bodies or shared forensic facilities. These mechanisms would reduce duplication of effort, foster trust among member states, and streamline cross-border prosecution processes.

In Latin America, regional organisations like the Organization of American States and MERCOSUR provide valuable models for harmonising legal frameworks. For example, the Inter-American Convention on Mutual Assistance in Criminal Matters reflects the potential of regional agreements to complement global treaties.[128] Building on this, regional bodies could develop standardised protocols for handling evidence, facilitate joint training initiatives, and create secure communication networks to enhance the exchange of sensitive information related to genocide, crimes against humanity, and war crimes.

Financial mechanisms established by regional bodies could further support implementation. Regional organisations could create funds to finance the development of legal infrastructure, advanced investigative tools, and capacity-building programmes. These funds would be particularly valuable for states with limited resources, ensuring their meaningful participation in the Convention's framework. These two possibilities may aid in creating a symbiotic framework where global solidarity is enhanced by regional-specific investment,

[127] ASEAN Agreement on Transboundary Haze Pollution (adopted 10 June 2002, entered into force 25 November 2003) (ASEAN).

[128] Inter-American Convention on Mutual Legal Assistance in Criminal Matters.

ensuring that the Convention is implemented equitably and effectively across diverse legal systems.

The Ljubljana-The Hague Convention, while a critical instrument for enhancing mutual legal assistance in prosecuting the most heinous international crimes, risks reinforcing global inequities if its limitations are not addressed. Its state-centric approach, coupled with uniform obligations, overlooks the stark disparities between the Global North and South. The Convention's reliance on a one-size-fits-all framework exacerbates existing power imbalances, leaving less-resourced states struggling to meet obligations and depriving marginalised victims of the justice they deserve. Without reform, it risks becoming a mechanism that disproportionately benefits wealthier, more developed states while sidelining those most in need of support. Ultimately, any effort aimed at universalising international criminal justice must actively incorporate Third World perspectives, needs and challenges, fostering a framework that is both equitable and reflective of diverse global realities. This would ensure that a soft law mechanism such as this could serve as a stepping stone leading to wider acceptance, eventually transforming into binding hard law as consensus grows.

To be truly effective, developed nations, which possess the resources, as well as the historical responsibility for global injustice, must take on a larger share of the burden to undo these inequities. Financial and technical support for less-resourced states will enable them to build the necessary legal and institutional frameworks for meaningful mutual assistance, ensuring that all states, regardless of their economic status, can effectively participate in the Convention's objectives. This approach is neither novel nor untested but simply unused in the context of legal assistance or international criminal justice and prosecution. Furthermore, regional mechanisms should harmonise legal standards, facilitate joint investigations, and mediate inter-state disputes, ensuring that all member states can contribute meaningfully.

The Ljubljana–The Hague Convention cannot afford to be another hollow promise in the realm of international justice. It must transcend procedural formalities, address structural inequalities, and prioritise substantive accountability. Anything less will render it a failure in the fight for global justice.