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LJUBLJANA-THE HAGUE CONVENTION: AN IMPORTANT TOOL FOR JUDICIAL COOPERATION WITH WESTERN BALKANS

by Gaetano Calcagno*

SUMMARY: 1. Introduction. – 2. Judicial Cooperation with Western Balkans and the Ljubljana-The Hague Convention. – 2.1 The Role of the Western Balkans. – 3. Practical Means Provided for by the Ljubljana-The Hague Convention to Investigate and Prosecute International Crimes, and Their Application to Transnational Crime. – 4. Judicial Cooperation with Western Balkans and Their EU Accession Process. – 5. The Ljubljana-The Hague Convention and its Relationship with the Statute of the International Criminal Court: Profiles of International Law.

1. Introduction

Judicial cooperation with Western Balkans is essential to upholding justice, combatting transnational crime, and safeguarding human rights. It could also facilitate the exchange of information and evidence.

A recent initiative aimed at promoting judicial cooperation is the Ljubljana-The Hague Convention, also known as the MLA Convention, which was adopted at the outcome of the Ljubljana-The Hague Conference on May 26, 2023. This tool is primarily intended for all States as a practical means of strengthening their capacity for the investigation and prosecution of international crimes. However, at the same time, it could also contribute to strengthening the Rule of Law in the Western Balkans and, therefore, promote the EU accession process. Indeed, Slovenia is one of the main promoters of the Convention, while Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, and Slovakia are included in the list of conference participants.

2. Judicial Cooperation with Western Balkans and the Ljubljana-The Hague Convention

The globalization of criminal activities requires enhanced forms of international cooperation. To combat transnational crime, the investigation and prosecution phases cannot be constrained by national borders. A more expansive perspective on judicial collaboration is imperative.

In the aftermath of the profound global transformations of the Nineties, which encompassed the dissolution of the Iron Curtain and the denouement of the Cold War, the foundations for effective collaboration within all domains of social life were laid¹.

DOUBLE BLIND PEER REVIEWED ARTICLE

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¹ Western Balkans countries (Albania, Montenegro, Kosovo, North Macedonia, Serbia, Bosnia and Herzegovina, and Croatia) have gone through a serious situation after the 1990s. For example, anarchy for a longer period dominated the Albanian political scene and a difficult democratic transition, then the violent dissolution of Yugoslavia proved that the democratic transition in these areas would be very costly and great commitment would be required in this part of Europe. F. HALITI, *The Organized Crime in Western*

Criminal organizations in the Western Balkans, a region characterized by the presence of numerous criminal organization groups, have exploited this phenomenon.

An important initiative aimed at promoting judicial cooperation is the *Convention on International Cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity, war crimes and other international crimes* (or the MLA Convention), adopted in Ljubljana on May 26, 2023.

The initiative was launched in 2011 by Belgium, the Netherlands, Slovenia, and Argentina, followed by the participation of Senegal and Mongolia. This treaty is a significant step forward in the fight against impunity and the pursuit of justice for victims of international crimes. It is composed of VII chapters and 87 articles, and its objectives are the establishment of central cooperation bodies, the definition of the status of victims, witnesses, experts, and other persons, the provision of international legal assistance and extradition procedures, the facilitation of the transfer of prisoners and the settlement of disputes.

The Ljubljana-The Hague Convention was signed on February 14, 2024, at the Peace Palace in The Hague, the seat of the International Court of Justice. The treaty has been signed by 36 States², but the number of signatories is expected to increase as 68 states have approved the text. Ukraine and the United Kingdom have signed the treaty; however, several countries, including the United States, Russia, and China, have not yet signed it.

In the preparatory work, the States parties have repeatedly emphasized the need to identify a tool for judicial cooperation in the prosecution of international crimes. Specifically, the States have highlighted that strengthening mutual legal assistance is essential not only during the investigative phase of prosecuting international crimes but also as an effective tool for establishing direct communication channels aimed at accelerating judicial cooperation.

Preliminary to the discussion, it is vital to note that art. 2 provides that States shall be obliged to implement the provisions of the Convention about the offenses delineated in art. 5, which relate to the crimes of genocide, crimes against humanity, war crimes, and international crimes. Paragraph 2 further specifies that each State Party may, at the time of signature or when depositing the instrument of ratification, acceptance, approval, or accession to the Convention, declare that it shall also apply this Convention to the crime or crimes listed in any of the annexes to this Convention.

Of particular importance in international law is the obligation of States Parties to the Convention to either prosecute or extradite to another State, or to an international judicial body, the alleged perpetrators of international crimes. According to this principle, known as *aut dedere aut judicare*, the State on whose territory a perpetrator of international crimes is found is obliged to bring him to trial and exercise its criminal jurisdiction or to accept a request for extradition from another State. Under art. 14 of the MLA Convention, the “*State Party that has a person alleged to have committed any crimes to which this Convention applies in accordance with article 2 is found, shall in the cases contemplated in Article 8, if it does not extradite or surrender the*

Balkans in the age of globalization – Trafficking in narcotics and money laundry, in Prizren Social Science Journal, No. 5, 2021, pp. 56-64.

² As of May 25, 2024, the Treaty has been signed by 36 States: Albania, Argentine, Austria, Belgium, Bulgaria, Central African Republic, Chile, Costa Rica, Croatia, Czechia, Democratic Republic of Congo, Denmark, Finland, France, Germany, Ghana, Ireland, Liechtenstein, Lithuania, Luxemburg, Malta, Moldova, Montenegro, Netherlands, North Macedonia, Norway, Poland, Rwanda, Senegal, Slovakia, Slovenia, Sweden, Swiss, Ukraine, Uruguay.

person to another State or a competent international criminal court or tribunal, submit the case to its competent authorities for the purposes of prosecution”³.

In addition to being recognized in certain treaties concerning international crimes, the *aut dedere aut judicare* principle is referenced in art. 9 of the Draft Code of Crimes against Peace and Security of Mankind of the International Law Commission⁴, and it was analyzed by the International Court of Justice in the case of *Belgium v. Senegal*⁵.

Another fundamental provision for the application of the MLA Convention is art. 8, which requires the State party, in accordance with its domestic law, to take the necessary measures to establish its jurisdiction over the crimes to which that Convention applies “*when the crimes are committed in any territory under its jurisdiction or on board a vessel or aircraft registered in that State and when the alleged offender is a national of that State*”⁶.

2.1 The Role of the Western Balkans

The Ljubljana-Hague Convention is a significant milestone in judicial cooperation because the Western Balkans have played a decisive role compared to the past. The initiative was launched in 2011 by Belgium, Netherlands, Slovenia, and Argentina, followed by the participation of Senegal, and Mongolia⁷. In addition to being one of the main promoters of the MLA Convention, Slovenia has been a key player in the formation process of the Convention for 12 years, and on May 26, 2023, it hosted the

³ See, art. 14, MLA Convention.

⁴ Il principio *aut dedere aut judicare* è stato individuato come cardine del sistema di repressione dei crimini contro l'umanità, dei crimini di guerra e dei crimini di genocidio nel Progetto di Codice dei crimini contro la pace e la sicurezza dell'umanità, adottato in seconda lettura dalla Commissione di diritto internazionale nel 1996. L'obiettivo della Commissione era quello di elaborare un meccanismo che eliminasse ogni possibilità di rifugio per i presunti autori di un crimine internazionale, lasciando, tuttavia, agli Stati totale libertà nella scelta tra le due opzioni di estradare o giudicare. L'art. 9 stabilisce infatti che, fatta salva la competenza di un tribunale penale internazionale, lo Stato nel cui territorio l'autore presunto del crimine è scoperto deve estradarlo o perseguirlo. A. CALIGIURI, *L'obbligo aut dedere aut judicare nel diritto internazionale*, in *Pubblicazioni della Facoltà di Giurisprudenza*, Università di Macerata, Milano, 2012; ILC, *The obligation to extradite or prosecute (aut dedere aut judicare)*, in *Final Report of the International Law Commission*, 2014.

⁵ “La Corte Internazionale di Giustizia, dopo aver ricordato che l'art. 7, par. 1, della Convenzione contro la tortura risulta modellato su una disposizione analoga contenuta nella Convenzione dell'Aja del 1970 sulla repressione della cattura illecita di aeromobili, ha affermato che lo Stato parte della Convenzione resta, in ogni caso, tenuto ad adempiere l'obbligo di giudicare ove l'accusato sia presente sul territorio sottoposto alla sua giurisdizione, ancorché, beninteso, spetti alle autorità giudiziarie nazionali la valutazione se le prove raccolte siano o meno idonee a consentire la celebrazione di un processo. L'obbligo di giudicare, in linea con la tesi sostenuta in proposito dal Belgio, sorge a prescindere da una preventiva richiesta di estradizione formulata da altri Stati aventi titolo per giudicare”. E. NALIN, *L'istituzione delle Camere Straordinarie Africane in attuazione della sentenza della Corte Internazionale di Giustizia Belgio c. Senegal*, in *La Comunità Internazionale*, 68, No. 3, 2013, pp. 545-568; ICJ, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012, in *I.C.J. Reports*, 2012, p. 445.

⁶ See, art. 8, MLA Convention.

⁷ “Since 2011, the MLA Initiative Core Group has been focused on enlisting support for the Initiative among states, both bilaterally and within the multilateral fora. The MLA initiative is supported by 80 states from all over the world. The draft convention was prepared during two Preparatory Conferences held in the Netherlands in 2017 and 2019. The Draft Convention, which constituted the initial draft text (called the “zero draft”) for the work of the Diplomatic Conference, was the result of three rounds of virtual consultations in June-November 2021 and June 2022”. M. PLACHTA, *Crimes against Humanity and Warcrimes*, in *International Enforcement Law Reporter*, Vol. 39, No. 6, pp. 246-250.

conference for the adoption of the Convention. Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, and Slovakia are included in the list of conference participants.

The crucial role played by the Western Balkan States stems from the fact that in these countries, victims of international crimes have not received compensation, despite having suffered such crimes. In Bosnia-Herzegovina, for example, according to the NGO Trial International, more than 20,000 women and men were raped or abused during the 1992-95 war, only 1,000 victims have received any compensation. Some survivors are taking individual legal actions in criminal and civil courts to seek reparations, but many do not trust the judicial institutions in their own country.

It is clear from the statements of the Western Balkan representatives that they supported a proposed Convention to facilitate judicial cooperation and mutual legal assistance. Indeed, they supported an instrument that would set out the purposes for which assistance may be requested, the required format of requests, the criteria for refusing assistance, and the procedures for carrying out requests related to confiscation, criminal proceeds, joint investigations, and special investigative techniques.

It is important to note that the Ljubljana Conference took place at a crucial time for Slovenia, which was vying for a non-permanent seat on the United Nations Security Council. The international community was positively impacted by Slovenia's active participation in the conclusion of the Convention. Indeed, on June 7, 2023, Slovenia was successfully elected as a non-permanent member of the Security Council, alongside Algeria, Guyana, South Korea, and Sierra Leone. Furthermore, the fact that the agreement was reached in Ljubljana after two weeks of negotiations involving delegations from over 70 states was a source of great pride for Slovenia.

3. Practical Means Provided for by the Ljubljana-The Hague Convention to Investigate and Prosecute International Crimes, and their Application to Transnational Crime

The Ljubljana-The Hague Convention (or the MLA Convention) provides practical means to facilitate judicial cooperation in the investigation and prosecution of international crimes. Furthermore, they are also crucial in activities aimed at combating transnational crime. Let us consider, for instance, Mutual Legal Assistance, spontaneous exchange of information, and procedures aimed at facilitating extradition.

These practical measures are also contained in the *United Nations Convention against Transnational Organized Crime* (or the UNTOC Convention), which was opened for signature by States Parties at the Palermo Conference on November 15, 2000. This Convention is the most important international instrument in the fight against transnational crime and it entered into force on September 29, 2003.

One of the main important international instruments facilitating judicial cooperation and supporting the fight against transnational crime is mutual legal assistance⁸. It is a mechanism that facilitates the exchange of information, the transmission of evidence, the execution of arrest warrants, and the criminal investigations among judicial authorities of different countries⁹.

⁸ See, A. BISSET, *The Mutual Legal Assistance Treaty for Core Crimes: A Project in Need of Purpose*, in *Nordic Journal of International Law*, 2023, pp. 218-247.

⁹ MLATs are treaty-based reciprocal obligations to provide legal assistance, developed as evidence-gathering tools in regard to specific transnational crimes. An MLAT obligation is engaged by a request

The Ljubljana-The Hague Convention regulates mutual legal assistance in Part III of the Convention. Art. 23 of the MLA Convention provides that States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings in relation to the crimes to which they apply to the Convention. It may include: Taking evidence or statements from persons, including, as far as consistent with the domestic law of the requested State Party, by video conference; Examining objects and sites; Providing information, evidentiary items, and expert evaluations; Executing searches, seizures, and confiscations; Effecting service of judicial documents; Providing originals or copies, if need be certified, of relevant documents, records and computer data, including official, bank, financial, corporate or business records; Facilitating the voluntary appearance of persons and the temporary transfer of detained persons, in the requesting State Party; Using special investigative techniques; Conducting cross-border observations; Setting up joint investigation teams; Taking measures that allow for the adequate protection of victims and witnesses and their rights; Providing any other type of assistance that is not contrary to the domestic law of the requested State Party¹⁰. Moreover, art. 26 states that requests for mutual legal assistance must be treated as confidential and, if the State Party cannot comply with this obligation, it shall promptly inform the requesting State Party¹¹.

It is important to note that the Ljubljana-The Hague Convention is more detailed than the UNTOC Convention because it is an international tool intended to promote judicial cooperation in investigating and prosecuting international crimes. Its application could also support the fight against transnational crime. Indeed, at the operational level, different judicial authorities may cooperate in the fight against transnational crime, as is the case in judicial cooperation for the prevention and suppression of international crime.

Another fundamental tool aimed at promoting judicial cooperation is the *joint investigation team*. Art. 41 of the MLA Convention states that the competent authorities of two or more States Parties, by mutual agreement, may take the necessary measures, under their domestic law and international law, to establish a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the States Parties involved¹². By using this tool, authorities from various countries can collaborate and coordinate their investigations in a more effective and efficient manner. This enables greater sharing of information, resources, and cooperation among law enforcement authorities.

A joint investigation team may operate in accordance with the general condition outlined in the Convention: The leader or leaders of the team shall be representatives of the competent authorities participating in criminal investigations from the State Party in which the team operates; the leader or leaders of the team shall act within the limits of their competence under their respective domestic laws; the team shall carry out its operations in accordance with the domestic law of the State Party in which the

from the authorities of the requesting state to the central authority of the requested state. The requested state is then obliged to use its own statutory authority on behalf of the requesting state. These local authorities execute requests under the *lex loci*; they do not allow the conduct of a transnational investigation by the requesting authorities in their jurisdiction. N. BOISTER, *An introduction to Transnational Criminal Law*, Second Edition, Oxford, 2018, pp. 311-332.

¹⁰ See, art. 24, MLA Convention.

¹¹ See, art. 26, MLA Convention.

¹² See, art. 41, MLA Convention.

team operates; the members and seconded members of the team shall carry out their tasks under the leadership of the persons referred to in subparagraph, taking into account the conditions set by their own authorities in the agreement on establishing the team; the State Party in which the team operates shall make the necessary organizational arrangements for it to carry out its operations¹³.

From an operational perspective, a joint investigation team is essential as it facilitates the investigative activity. This phase is aimed at preventing and combating transnational crime and it could contribute to facilitating judicial cooperation¹⁴.

Another important tool of the Ljubljana-The Hague Convention is the *spontaneous exchange of information*. It is not included in the part relating to mutual legal assistance but in Part I, in art. 17. Thanks to this article, without prior request and prejudice to its domestic law, a judicial authority may transmit information relating to the crimes to which it applies this Convention to another State Party where the former State Party believes that such information could assist the latter State Party in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party in accordance with the MLA Convention¹⁵. It is essential because comparing and sharing information among the various individuals involved in the investigation can provide a more comprehensive overview, leading to a better understanding of the facts and a more accurate collection of evidence.

The *United Nations Convention against Transnational Organized Crime* (the UNTOC Convention) regulates the spontaneous exchange of information under art. 28, which concerns the collection, exchange, and analysis of information on the nature of organized crime. Regarding this tool, the MLA Convention is a more thorough and detailed version than the UNTOC Convention, as it specifies that the spontaneous exchange of information must take place without prejudice to investigations and criminal proceedings in the providing State Party. Indeed, the UNTOC Convention argues only that States Parties shall consider developing and sharing analytical expertise concerning organized criminal activities with each other and through international and regional organizations. Moreover, the Ljubljana-The Hague Convention specifies that the competent authorities receiving the information shall comply with a request of the providing State Party that the information remains confidential, even temporarily, or with restrictions on its use.

A comparison of the main international instruments promoting judicial cooperation shows that the Ljubljana-The Hague Convention incorporates numerous practical measures provided for in previous conventions, starting with the UNTOC Convention. The Ljubljana-The Hague Convention stands out for its detailed provisions that leave no room for gaps. Moreover, upon closer inspection, the practical instruments mentioned in the MLA Convention relate to judicial cooperation on evidence, which is one of the most essential aspects of a trial¹⁶.

¹³ See, art. 41, MLA Convention

¹⁴ See, art. 41, MLA Convention.

¹⁵ See, art. 17, MLA Convention.

¹⁶ La coopération des Etats avec les juridictions pénales internationales présente une spécificité certaine par rapport aux mécanismes de la coopération internationale en matière pénale, qui peut être résumée par l'opposition entre verticalité et horizontalité des régimes applicables. Plus qu'une renationalisation, c'est une harmonisation que la mise en œuvre des obligations de coopérer dans les ordres internes engendre, voire une banalisation en oblitérant les traits les plus marqués de la verticalité, tels qu'ils découlent notamment des décisions des juridictions. M. UBEDA-SAILLARD, *Coopération avec les juridictions pénales internationales*, in *Droit International Penal*, CEDIN, Second Edition, 2012.

Therefore, it is certain that the Ljubljana-The Hague Convention will succeed in developing judicial cooperation with the Western Balkans. As previously mentioned, the Convention has been signed by many Balkan States, and its implementation will be effective in the fight against transnational crime.

4. Judicial Cooperation with Western Balkans and Their EU

Upholding justice, combating transnational crime, and safeguarding human rights require judicial cooperation with the Western Balkans.

The Western Balkans are known as the region where illicit organized crime routes operate. Indeed, transnational crime is usually adapted to local and economic conditions¹⁷. Therefore, judicial cooperation is crucial to combat these illegal activities and to prosecute their perpetrators.

The EU has tried to promote judicial cooperation and the importance of strengthening the rule of law in the Western Balkans. This process has mainly involved six countries: Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia because they are not EU Member States yet¹⁸.

A recent project promoted by EUROJUST (European Union Agency for Criminal Justice Cooperation) is *Western Balkans Criminal Justice*, also known as WBCJ. The main objective of the project is to strengthen cooperation within the Western Balkans and between the region and the EU in the fight against organized crime and terrorism, using modern tools and instruments, to promote a higher level of interaction and integration between the EU and the Balkans in the field of criminal justice. The principal project's objectives are: Provide resources to Western Balkan national authorities to increasingly use Eurojust-style judicial cooperation tools and instruments to investigate and prosecute organized crime in the region; Integrate Western Balkans partners further in Eurojust activities and in practitioners' networks supported by Eurojust, such as the JITs network, the European Judicial Network, and the European Judicial Cybercrime Network. The EUROJUST's activity will be offered through: sharing the expertise and best practices of Eurojust and the EU Member States

¹⁷ "In addition, it is characterized by the permanent connection of a large number of persons in criminal associations in which there is a relationship of subordination, division of roles and loot, and conspiratorial action. Organized crime is given special weight by the planned, permanent, secret, professionalized and targeted commission of criminal acts that excludes all coincidence and negligence, while in achieving its goal it uses intimidation and violence and all forms of corruption". E. RADOSAVLLJEVIC, *Compliance of Domestic Criminal Legislation in the Field of International and Judicial Cooperation with the EU Acquis in the Fight against Organized Crime – Security Aspect*, Zbornik Radova, 2020, pp. 1575-1586.

¹⁸ "It was noted that internally, the region is going through profound economic, political and social transformations. These have led states to face several challenges related to respect for democratic processes, the rule of law and weak governance, that have created vulnerabilities within states. This situation, in addition to unemployment and other economic problems, especially those consequents to the pandemic crisis and ethnic strife, may set the stage for new and further tensions that could destabilise the region. The perduring difficulties to reconcile with the past, which generate and fuel further disputes, exacerbate the situation. Special attention was also devoted to organised crime, which represents one of the most serious security threats between the Western Balkans and the EU. It encompasses different issues, such as illegal trafficking, trafficking of human beings and money laundering. The current geopolitical situation has further aggravated the grip and wide range of organised crime action, precisely because conditions of unrest and instability represent the most fertile ground for the proliferation of action of criminal groups – as the situation following the dissolution of Yugoslavia has shown". M. BONOMI, L. CHIOLDI, I. RUSCONI, *New Visions for the Western Balkans: EU Accession and Regional Security*, in *Documenti IAI*, 2023.

on how to use judicial cooperation instruments and instruments; direct funding of operational meetings and joint investigation teams in the region, even when only regional participants are included; Organization of coordination meetings and coordination centers to exchange evidence and carry out investigative and judicial measures; provision of modern equipment, including translation and interpretation services.

As mentioned above, the Ljubljana-Hague Convention provides many instruments that could help to improve judicial cooperation with the Western Balkans. Their practical implementation could also contribute to strengthening the rule of law in the Western Balkans and facilitate the EU accession process, as they are used daily by the judicial authorities of EU Member States. In addition, these practical means are aimed not only at the investigation and prosecution of international crimes but also at the investigation and prosecution of transnational crime. For example, the Ljubljana-The Hague Convention includes mechanisms intended to facilitate extradition procedures, but within the framework of the European Union, there is the *European Arrest Warrant*, a mechanism introduced to simplify and speed up the extradition process between EU Member States. It is also important to bear in mind that the utilization of mutual legal assistance and joint investigation teams is well established in the legal system of the European Union.

There have been significant developments in European Union law on judicial cooperation in recent years. It is necessary to report on Regulation 2018/1727 and Regulation 2022/838, which have increased the tools to promote the preservation, analysis, and storage of evidence relating to genocide, crimes against humanity, war crimes, and related offences. The first one established the European Agency for Criminal Justice Cooperation (Eurojust), replacing and repealing the previous Council Decision 2002/187/GAI concerning the Judicial Cooperation Unit (based in The Hague). In addition, Annex I to the Regulation identifies serious forms of transnational crime falling within the Agency's jurisdiction, including the so-called core international crimes (genocide, crimes against humanity, and war crimes). The second one, on the other hand, increased the tools aimed at preserving, analyzing, and conserving evidence related to genocide, crimes against humanity, war crimes, and related offenses, to facilitate Eurojust's activities through close cooperation with the International Criminal Court and any other judicial body aimed at combating crimes that threaten international peace and security. Furthermore, based on the amendments to Regulation 2018/1727, the new database on international crimes, CISED (Core International Crimes Evidence Database), has been established to preserve, store, and analyze evidence of major international crimes, to support competent authorities in investigating the commission of core international crimes¹⁹.

The Western Balkans' role in the Ljubljana-The Hague Conference and their subsequent adoption of its practical means are poised to enhance the effectiveness of their legal systems and facilitate more efficient cooperation with EU Member States. Indeed, Bulgaria, Croatia, Hungary, Romania, and Slovenia are EU Member States, while Albania, Bosnia Herzegovina, North Macedonia, Montenegro, and Serbia are

¹⁹ “La CISED è alimentata, su base volontaria, dagli Stati membri e terzi che abbiano un magistrato di collegamento presso Eurojust e grazie a nuove specifiche tecnico-informatiche (CISED indicizza dati ed eventi secondo parametri di tempo e di luogo così migliorandone l’analisi operativa) supera l’obsolescenza dell’esistente case management system di Eurojust, consente di raccogliere, conservare e analizzare una quantità massiccia di dati in modo efficiente e sicuro e aumenta qualità, rapidità ed efficienza di indagini e azioni penali riguardanti i crimini internazionali”. P. BARGIACCHI, *Il contributo di Eurojust al perseguimento dei crimini internazionali commessi in Ucraina*, in *EUWEB Legal Essays, Global & International Perspectives*, n. 2, 2023, pp. 14-29.

candidate countries. Furthermore, Kosovo has formally requested to be granted the status of candidate country²⁰.

The Treaty on European Union delineates the conditions, as set out in art. 49, and the principles to which any country aspiring to become a member state of the European Union must adhere. The accession of a State to the European Union is dependent on the fulfillment of certain criteria. These criteria were established by the Copenhagen European Council in 1993 and subsequently reinforced by the Madrid European Council in 1995. They are: stability of institutions guaranteeing democracy, the Rule of Law, human rights, and respect for and protection of minorities; a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards, and policies that make up the body of EU law (the ‘*acquis*’), and adherence to the aims of political, economic and monetary union.

Promoting judicial cooperation is essential for a candidate country to the European Union because it represents one of the fundamental aspects of the EU *acquis* (the third criterion). However, it is equally important to ensure adherence to democratic principles and the Rule of Law (the second criterion). Specifically, the third criterion pertains to the set of legal rights and obligations, as well as political objectives, that unite and bind the member states of the European Union. Countries that wish to accede to the international organization are expected to accept these criteria unconditionally. Candidate countries are obligated to accept the “*acquis*” to accede to the European Union, and for full integration into the Union, they are required to incorporate it into their national laws, adapting and reforming them accordingly. It includes: the principles, and the political objectives identified in the Treaties and in the legal order of the European Union; the case law of the Court of Justice of the European Union; the declarations and resolutions adopted in the European Union; acts concerning justice and internal affairs; acts related to the Common Foreign and Security Policy (CFSP); international agreements concluded by the European Union.

It is imperative to recognize that the Balkan states will have to embark on a reform process that will prove beneficial in bringing their judicial systems into line with the standards set by the Ljubljana-The Hague Convention, major international agreements, and European Union law. Indeed, the Western Balkans are characterized by a judicial system that still faces many challenges, including corruption, slow legal processes, lack of resources, and politicization. Furthermore, corruption and violations of judicial independence are equally detrimental to the rule of law and the protection of human rights. Therefore, any attempt to compromise these principles during judicial reform is likely to result in adverse consequences, as the independence of the judiciary is an indispensable component of a constitutional state²¹.

²⁰ Available at: https://european-union.europa.eu/principles-countries-history/eu-enlargement_it.

²¹ “*It is impossible for the state to perform its functions to protect human rights and freedoms and the rights and interests of legal entities, control the legality and constitutionality of public authorities’ activities, and guarantee the system of separation of state powers in general in cases of political or other pressure on judges. It is clear that political influence on the judiciary seriously upsets the balance in constitutional systems of government because, in this case, there is a kind of skew towards the legislature, executive, or excessive concentration of power by a political party that has a majority in parliament and controls the government. On the other hand, corruption is not only the cause of the ineffectiveness of the human rights protection system but also a factor that significantly distances a country from the rule of law and poses a threat to national security*”. O. BORYSLAVSKA, *Judicial Reforms in Eastern Europe: Ensuring the Right to a Fair Trial or an Attack on the Independence of the Judiciary?*, in *Access to Justice in Eastern Europe*, 2021.

The delay in the accession process resulting from the absence of reforms in the judiciary system is evident, for example, in Serbia, where over the years few chapters have been opened compared to what initially was hoped for by the Member States. Instead, a candidate country in which it is possible to observe a reform process is Montenegro. Through the process of European integration, Montenegro is gradually transferring the legal *acquis* of the EU into its legislation²².

The Czech Republic's accession to the European Union provides a pertinent example of how the presence of a stable and efficient judicial system can facilitate such integration. The European Union commended the Czech Republic for its efforts to streamline court proceedings and address issues of judicial insufficiency. These reforms were initiated in 2000 and primarily focused on the judicial and administrative systems, after extensive policy development²³.

Another example is the case of Croatia. Among the elements that have positively contributed to facilitating Croatia's accession to the European Union, we find the constitutional amendments concerning the introduction of public competition as a system for recruiting judges; the weakening of their immunity regime; the strengthening of training and specialization, with the establishment of a Judicial Academy dedicated to them; the redefinition of the competences of the two self-governing bodies, with the reserve for them to adopt all measures concerning the career of magistrates²⁴.

It can be posited that the accession of Albania, Bosnia and Herzegovina, North Macedonia, and Montenegro to the European Union will be facilitated by the Ljubljana-The Hague Convention. However, the countries must implement reforms that focus on enhancing the overall judicial system. Instead, for the Balkan countries that are already EU Member States²⁵, the MLA Convention will play a crucial role in promoting judicial cooperation and their capacity to investigate and prosecute international crimes and transnational crimes.

²² “Significant steps in this regard have already been taken with the adoption of the Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union, as well as through the training program implemented in 2019 and 2020. This law introduced into the domestic legal system instruments such as the European arrest warrant, the European investigation order, the Decision on financial penalties, the European protection order, etc. It is important to note that these mechanisms are based on the principle of mutual recognition of the decisions of EU member states and as such differ from those currently applied in our country, as well as that the mentioned law will be applied from the day of Montenegro's accession to the European Union”. O. MITROVIĆ, *International Judicial Cooperation in Criminal Matters in Montenegro*, in *EUWEB Legal Essays, Global & International Perspectives*, n. 1, 2024, pp. 84-86.

²³ “Sotto questo profilo, i documenti risultanti di maggior rilievo sono due *koncepce*, adottate dal Ministro della Giustizia agli inizi del processo di riforma: la ‘Koncepce sulla riforma del sistema giudiziario’ che, per l’ampiezza e la portata dei contenuti, può essere considerata una sorta di linea-guida per tutto il processo di riforma e la ‘Koncepce sulla stabilizzazione’, che ne ha analizzato i primi risultati. La prima delle due *Koncepce* ha guidato e indirizzato (sotto il coordinamento del Ministro della Giustizia) i progetti di legge che, coinvolgendo non solo gli aspetti più strettamente legati alla preparazione e allo status dei magistrati, ma anche le innovazioni normative in materia civile, penale e amministrativa, erano destinati a portare a compimento la riforma del sistema, perseguendo l’obiettivo di adeguarlo all’entrata nell’Unione europea”. T. CERRUTI, *L’Unione europea alla ricerca dei propri confini: i criteri politici di adesione e il ruolo dei nuovi Stati membri*, Torino, 2010, pp. 149-168.

²⁴ T. CERRUTI, *L’adesione della Croazia all’Unione europea e i criteri politici*, in *Federalismi.it*, 2013, pp. 1-26.

²⁵ Bulgaria, Croatia, Hungary, Romania, and Slovenia are EU Member States.

5. The Ljubljana-The Hague Convention and Its Relationship with the Statute of the International Criminal Court: Profiles of International Law

The Ljubljana-Hague Convention is noteworthy for its function in the broader framework of international criminal justice, as well as for its role as a pivotal instrument in facilitating the accession process of the Balkan states to the European Union. It is consistent with another important international instrument: the Statute of the International Criminal Court (also known as the Rome Statute).

The Statute of the International Criminal Court was opened for signature on July 17, 1998, and it entered into force on July 1, 2002²⁶. The Statute established the International Criminal Court, defining its fundamental principles, jurisdiction, composition, and functions of the organs of the international organization, as well as its relationship with the United Nations, intergovernmental, international, and non-governmental organizations, and the establishment and functions of the Assembly of States Parties. Therefore, it establishes a system of international criminal justice that centers on an international court, the International Criminal Court, capable of prosecuting and judging those charged with international crimes.

The Statute details a mechanism, known as the principle of complementarity, which assigns national laws and jurisdictions a pivotal function in the implementation and enforcement of effective prosecution of international crimes. This principle also allows for the avoidance of court intervention until national jurisdictions are willing or able to prosecute alleged perpetrators. It can be argued that the Statute promotes a decentralized system while affirming a subsidiary and supplementary role of the ICC in monitoring and taking precedence over national jurisdictions whenever necessary. This mechanism is evident from reading the tenth paragraph of the Preamble and arts. 1, 17, and 53 of the Statute of the International Criminal Court.

It is therefore essential that States' legal systems adapt to prosecute international crimes and facilitate the Court's functioning when it is activated²⁷.

As previously mentioned, the Ljubljana-The Hague Convention can be regarded as a significant development due to its adoption of a forward-thinking approach in the domain of international criminal law. It not only aligns with the Statute of the International Criminal Court in its efforts to prevent and prosecute international crimes but also notably fosters a genuine dialogue between the relevant judicial authorities, thereby contributing to the enhancement of international criminal justice. Likewise, the Ljubljana-The Hague Convention specifies under art. 14 that "*if it does not extradite or surrender the person to another State or to a competent international criminal court or tribunal, submit the case to its competent authorities for the purposes of prosecution*". As demonstrated in the analysis, the Ljubljana-The Hague Convention stipulates the obligation of States parties to the Convention to either initiate legal proceedings against or extradite alleged perpetrators of international

²⁶ The Statute entered into force following the 60th ratification, as stipulated in art. 126.

²⁷ "*Si les Etats doivent soutenir la CPI et lui donner les moyens de fournir un accès à la justice au plus grand nombre possible de victimes, il n'en reste pas moins que la CPI, seule, ne pourra jamais juger de tous les crimes relevant de sa compétence et restaurer toutes leurs victimes dans le droit. Les Etats ne peuvent en aucun cas s'arbitrer derrière la création d'une nouvelle juridiction complémentaire pour se soustraire à leur propre responsabilité et obligation : de faire justice et garantir le respect des droits des victimes de graves violations. Les Etats en ont l'obligation juridique comme souligné dès l'introduction de cette contribution. Ils doivent assumer et assurer leur fonction de premier acteur responsable de poursuivre les auteurs de crimes internationaux*". C. APTEL, *La complémentarité en droit international pénal et les droits des victimes en droit international des droits de l'homme*, in *Quelle(s) complémentarité(s) en Droit International Pénal?*, 2017, pp. 27-40.

crimes to another State or a judicial authority. Consequently, following the principle of *aut dedere aut judicare*, the State within whose territory a perpetrator of international crimes is apprehended is obligated to initiate legal proceedings and exercise its criminal jurisdiction, or to accede to a request for extradition from another State.

The Ljubljana-The Hague Convention has the potential to establish a direct dialogue with judicial authorities. In other words, this direct communication between judicial authorities will be a factor in promoting judicial cooperation among the States parties to the Convention²⁸. For instance, the *United Nations Convention Against Transnational Organised Crime* (UNTOC) was conceived with the express aim of facilitating dialogue between police and judicial authorities in the global fight against transnational crime. This initiative has yielded commendable outcomes. Indeed, an examination of past experiences in the field of international criminal justice reveals that direct dialogue between judicial authorities regarding both the prevention and repression of international crimes and the fight against transnational crime could have a positive impact and overcome all the challenges that may arise²⁹. In addition, this factor may also have implications for the judicial reforms that the states will be required to implement³⁰, with a potential enhancement to the legal systems of the Western Balkan states as an outcome.

It is noteworthy that the Balkan States that have signed and ratified the Statute of the International Criminal Court are Serbia, Hungary, Slovenia, North Macedonia, Bosnia and Herzegovina, Bulgaria, Romania, Moldova, Montenegro, and Albania. This aspect is of considerable importance. It can be deduced that the participation of the Western Balkan States in the Ljubljana-The Hague Convention, in conjunction with their involvement in the Statute of the International Criminal Court, will serve as a pivotal factor in the promotion of judicial cooperation.

In conclusion, it can be asserted that the mechanisms established by the Ljubljana-The Hague Convention, which are designed to enhance cooperation among the judicial authorities of the Member States, alongside the crucial involvement of the Balkan States in this international criminal justice framework, will play a vital role in fostering judicial cooperation. It is reasonable to hypothesize that this factor will engender beneficial effects in two areas. Firstly, it could have a significant impact on the prevention and prosecution of international crimes. Secondly, it could contribute to the efforts to combat transnational crime.

²⁸ See, F. PALAZZO, *Crimini internazionali e giurisdizione interna*, in *Editoriale Diritto penale*, 2024, pp. 156-153.

²⁹ “Du point de vue de l’entraide pénale pure, les mesures de contrainte judiciaire, les saisies/perquisitions, l’accès aux documents, l’accès aux témoins membres des forces armées, témoins détenus, ou témoins sachant, aux victimes, aux scènes de crimes, elles-mêmes, aux relevés et interceptions téléphoniques, emails, documents officiels, ou autres informations médico-légales, sont un défi multiforme, rendu compliqué par la situation politique nationale, les contraintes géopolitiques régionales, les difficultés sécuritaires et logistiques, et l’organisation matérielle des pays concernés”. P. TURLAN, *La Coopération des Etats : un enjeu majeur*, in J. FERNANDEZ, O. DE FROUVILLE (eds.), *Les mutations de la Justice Pénale Internationale*, Editions A. Pedone, 2018, pp. 121-130.

³⁰ See, M. UBEDA-SAILLARD, *L’efficacité des poursuites face à la place primordiale des hautes représentations pour l’Etat qu’ils incarnent et de la communauté internationale*, in T. HERRAN (eds.), *Les 20 ans du Statut de Rome : bilan et perspectives de la Cour pénale internationale*, Editions A. Pedone, 2020.

LJUBLJANA-THE HAGUE CONVENTION: AN IMPORTANT TOOL FOR JUDICIAL
COOPERATION WITH WESTERN BALKANS

ABSTRACT

Judicial cooperation is crucial in the fight against transnational crime. An important initiative aimed at promoting judicial cooperation is the *Convention on International Cooperation in the investigation and prosecution of the crime of genocide, crimes against humanity, war crimes, and other international crimes* (or the MLA Convention), adopted in Ljubljana on May 26, 2023. It is a significant milestone in judicial cooperation and the Western Balkans have played a decisive role. Indeed, Slovenia has been a key player in the formation process of the Convention for 12 years, and on May 26, 2023, it hosted the conference to adopt the Convention. Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, and Slovakia are included in the list of conference participants.

The Ljubljana-The Hague Convention has the potential to establish a direct dialogue with judicial authorities to combat international crimes and transnational crime. It could also facilitate the EU accession process for the Western Balkans countries that are not yet EU Member States.

KEYWORDS

EU Accession Process, Judicial Cooperation, MLA Convention, Transnational Crime, Western Balkans States.

CONVENZIONE LUBIANA-L'AIA: UNO STRUMENTO IMPORTANTE PER LA
COOPERAZIONE GIUDIZIARIA CON I BALCANI OCCIDENTALI

ABSTRACT

La cooperazione giudiziaria è fondamentale nella lotta contro la criminalità transnazionale. Un'importante iniziativa volta a promuovere la cooperazione giudiziaria è la Convenzione sulla cooperazione internazionale nelle indagini e nel perseguimento del crimine di genocidio, dei crimini contro l'umanità, dei crimini di guerra e di altri crimini internazionali (o Convenzione MLA), adottata a Lubiana il 26 maggio 2023. Si tratta di una pietra miliare significativa nella cooperazione giudiziaria e i Balcani occidentali hanno svolto un ruolo decisivo. In effetti, la Slovenia è stata un attore chiave nel processo di formazione della Convenzione per 12 anni e il 26 maggio 2023 ha ospitato la conferenza per l'adozione della Convenzione. Albania, Bosnia-Erzegovina, Bulgaria, Croazia, Montenegro, Romania e Slovacchia sono inclusi nell'elenco dei partecipanti alla Conferenza.

La convenzione Lubiana-L'Aia ha il potenziale per stabilire un dialogo diretto con le autorità giudiziarie per combattere i crimini internazionali e la criminalità transnazionale. Potrebbe inoltre facilitare il processo di adesione all'UE per i Paesi dei Balcani occidentali che non sono ancora Stati membri dell'UE.

KEYWORDS

Convenzione MLA, Cooperazione Giudiziaria, Crimini Transnazionali, Processo di Adesione UE, Stati dei Balcani Occidentali.