

Towards a Multilateral Treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of the Most Serious International Crimes

Preparatory Conference – Doorn (The Netherlands), 16-19 October 2017

CHAIRS' CONCLUSIONS

The Preparatory Conference was very successful, attracting 103 participants from 41 co-sponsoring States from all over the world as well as practitioners and civil society (EU Genocide Network, Amnesty International, Coalition for the ICC and Parliamentarians for Global Action). This has been a major step forward towards the creation of a multilateral treaty concerning mutual legal assistance and extradition for core international crimes. The fact that so many States are participating is very encouraging and we are committed to continue on this path and meet again in the near future.

Based on the presentations and discussions in the plenary sessions and the working group sessions, the chairman has reached the following conclusions.

1. Necessity of the treaty:

In November 2011, Belgium, the Netherlands and Slovenia organized an expert meeting concerning mutual legal assistance between States for the national adjudication of core international crimes. Experts from nineteen different States from all around the world unanimously concluded that there was a legal gap in the international legal framework, causing legal and practical obstacles for interstate cooperation. Based on the outcome of this expert meeting, the three convening States, together with Argentina, launched the so-called MLA Initiative. Senegal has since joined these States in this Initiative and in fact, we are delighted and honored to share with you that as of very recently, Mongolia has joined our Core Group as well.

All participants here today reaffirmed their commitment to end impunity for the crimes of genocide, crimes against humanity and war crimes. This includes the thorough investigation and prosecution of these crimes at the domestic level, for which interstate cooperation is essential.

The current international procedural legal framework for mutual legal assistance and extradition for core international crimes is incomplete and outdated. The adoption of a new multilateral treaty would facilitate more effective practical cooperation between States investigating and prosecuting these crimes.

Currently, 57 States coming from the five UN regional groups have expressed their explicit support for the MLA Initiative – through the signing of the Joint Statement and/or the Permanent Declaration – and this number is expected to grow.

2. Elements of the treaty – Crimes:

The large majority of participants agreed that the MLA treaty should extend to the crimes of genocide, crimes against humanity and war crimes. None of the participants suggested that the treaty would apply to less crimes than the ones listed in the 1998 Rome statute. The definitions of the crimes are not to be re-negotiated. The participants agreed that the MLA treaty should provide for the possibility of using broader definitions of the crimes based on reciprocity. In terms of the technique used to incorporate the definitions of the crimes in the MLA treaty, participants expressed a clear preference for the "copy-paste" option.

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3. Elements of the treaty – Mutual Legal Assistance and Extradition:

Participants voiced their support for drawing from similar, previously-adopted and widely accepted provisions from modern treaties on mutual legal assistance dealing with other international or transnational crimes, such as the UN Convention against Transnational Organized Crime (UNTOC) and the UN Convention against Corruption (UNCAC). Participants agreed that this does not preclude the inclusion of other provisions to the treaty.

At this stage, participants did not negotiate on the wording of the treaty provisions. However, the discussions did make clear the type of provisions most participants would prefer to have in the treaty. These include specific provisions and other technical provisions that will meet the needs of practitioners.

4. Forum of negotiations:

A large majority of participants expressed that negotiations on a stand-alone basis would be most advantageous, while at the same time exploring ways to work in synergy with the United Nations.

5. Way forward:

Excellencies, dear colleagues and friends, the core group members will meet just after the closure of the Preparatory Conference and in the following weeks in order to take stock of the very fruitful debates we had during these last days. We are inspired by your countless and valuable contributions and specifically have taken notice of your desire for a preliminary draft text and accompanying timeframe – which we will start working on. Taking these and all of your other expert opinions into account, we will come back to you very soon with new proposals on the way forward. In the meantime and thereafter, we will continue to seek the insights and support from practitioners and civil society organizations. Our goal was to add new steps towards the negotiations of a new multilateral treaty. On this, we have been extremely successful, thanks to your active participation.