



INTERNATIONAL ACCOUNTABILITY IN ASIA: MUTUAL LEGAL ASSISTANCE CONVENTION FOR ATROCITY CRIMES BACKGROUND

From 15-26 May 2023, the States that comprise the Mutual Legal Assistance Initiative (MLA Initiative) will hold diplomatic negotiations in Slovenia on the draft Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes (the draft MLA Convention, available [here](#)). This backgrounder provides an overview of the purpose and importance of the draft MLA Convention to Asian States, with additional resources below.

What is Mutual Legal Assistance and Extradition?

In criminal matters, '[mutual legal assistance](#)' refers to the 'process by which States seek and provide assistance in gathering evidence for use in criminal cases'. Where a crime's effects or offenders cross the borders of the State that wishes to prosecute, mutual legal assistance agreements provide a clear process to share evidence and support criminal proceedings. This is so that the jurisdiction considering or pursuing criminal proceedings (the 'Requesting State') has the necessary access to the resources, information, and people required to ensure justice is achieved under domestic law.

It is very common for States to have mutual legal assistance agreements in place. For example, the Association of Southeast Asian Nations (ASEAN) has its own regional [Treaty on Mutual Legal Assistance in Criminal Matters](#) (ASEAN MLAT), which has been ratified by all ASEAN member states.

'[Extradition](#)' refers to the 'formal process whereby a State requests the enforced return of a person accused or convicted of a crime to stand trial or serve a sentence in the [R]equesting State'. Extradition may be considered a type of 'assistance' and thus included in mutual legal assistance agreements, or it may be governed by separate treaties.¹

Both mutual legal assistance and extradition agreements enable State-to-State cooperation to help fight impunity.

Are There Already Obligations To Cooperate Under International Law for International² and Transnational³ Crimes?

Some treaties—particularly on transnational crimes⁴—require States to *cooperate*, but do not clarify what 'cooperation' or 'assistance' mean. Mutual legal assistance agreements and extradition treaties do this by providing specifics, including: how States agree to share resources and duties in an investigation; how Requesting States must make requests for assistance and who receives them; what Requested States (the State receiving the request) will do to assist identifying witnesses or suspects or facilitate their travel to the Requesting State; what Requested States will do to process and serve court documents; and when a Requested State may or must refuse requests for assistance or extradition.

Moreover, some treaties like the Geneva Conventions obligate States Parties to investigate violations of the relevant treaty and extradite or prosecute the Accused. This 'extradite or prosecute' obligation is also known as the principle of *aut dedere aut judicare*. This obligation is also found in the Convention against Torture (arts 6-7), to which [27 Asian States](#) have agreed to be bound.

Who Is The MLA Initiative And What Does The Draft MLA Convention Do?

The MLA Initiative³ is a State-led process (meaning outside of the United Nations treaty-making system) that

¹ For example, the ASEAN MLAT does not provide the processes for extradition and not every ASEAN State has domestic laws on extradition.

² Collectively, the core international crimes are genocide, war crimes, and crimes against humanity, and depending on the jurisdiction, this may also include torture and enforced disappearances.

³ Transnational crimes include crimes that cross borders, such as: drug trafficking, human trafficking, and all other types of trafficking; migrant smuggling; money laundering; and certain types of cybercrime.

⁴ See: The *UN Convention against the Illicit Traffic in Narcotic Drugs* (art 7); the *Convention against Transnational Organised Crime* (art 18(2)), and the *Convention against Corruption* (art 46).

began in 2011. Its purpose is to promote the adoption of the draft MLA Convention. It is led by the 'Core Group'—Argentina, Belgium, the Netherlands, Senegal, Slovenia, and importantly for Asia, Mongolia—and its work has now garnered the support of [77 States](#) (as of March 2023). Within Asia, additional supporting States include Samoa and Vietnam.

Overall, the draft MLA Convention: defines the particular atrocity crimes to which the Convention will apply; details particular processes for both procedural assistance and extradition of persons accused of these crimes; provides the process for transfer of sentenced persons after the judicial proceedings; and addresses the rights of victims, witnesses, and others within these processes.

As stated by the MLA Initiative's [Explanatory Note](#), the draft MLA Convention is needed because other treaties on atrocity crimes do not focus on methods of State-to-State cooperation, and treaties that require cooperation do not address all atrocity crimes. The draft MLA Convention fills this gap in international law.

The MLA Initiative indicates that it will welcome all States that have yet to pledge support to attend the May 2023 negotiations as 'Observer States'.

Why Is The Draft MLA Convention Important For Asian States?

Asian States are bearing the high cost of continued impunity for regional actors' atrocity crimes. The draft MLA Convention provides an opportunity for Asian jurisdictions to centre cooperation for international justice *within* the region and builds on [existing mechanisms](#) and related [regional expertise](#) to do so. Finally, it provides a greater possibility for so-called South-South cooperation, allowing Asian States to engage more readily with experienced authorities in Africa and Latin America.

The draft MLA Convention supports the possibility of *domestic* investigation and prosecution of atrocity crimes—particularly important when recognising most '[international criminal justice mechanisms developed \(and continue to operate\) far away from the region](#)'. By addressing the significant practical challenges faced by domestic prosecutorial authorities, law enforcement, and human rights defenders in bringing legal cases to combat impunity, the draft MLA Convention brings justice closer to affected communities.

The draft MLA Convention *is separate from* the Rome Statute, although it incorporates Rome Statute definitions of crimes. States do not have to agree to the jurisdiction of the International Criminal Court to participate. For States that are signatories to the Rome Statute, the draft MLA Convention supports fulfilling the principle of complementarity by preferencing and supporting national courts to prosecute rather than the ICC.

Isn't There Also A Crimes Against Humanity Draft Treaty?

The draft MLA Convention is separate from the United Nations drafting process on the [Draft Articles on Prevention and Punishment of Crimes Against Humanity](#) (the draft CAH Articles). The draft CAH Articles address the lack of a dedicated crimes against humanity treaty, with provisions that provide a legal and procedural framework for preventing and prosecuting these crimes outside of the International Criminal Court (for more information, see [here](#) and [here](#)).

While the draft CAH Articles and draft MLA Convention have similar provisions regarding mutual legal assistance and extradition, each is a distinct and important tool for fighting impunity.

Where Can We Find Out More?

Further information on the MLA Initiative, including how States may register support, is available [here](#). The Initiative may be contacted at: mla-initiative.mzz@gov.sj.

Asian civil society interested in learning more can be in contact with the Asia Justice Coalition secretariat at: asiajusticecoalition@protonmail.com.