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UN Cybercrime Convention: Implementing the Mutual Legal Assistance in the Digital Age

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cybercrime,
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Abstract

Objective: to explore the evolution and comparative effectiveness of mutual legal assistance as a practical alternative to universal jurisdiction in the context of countering transnational cybercrime based on the provisions of the UN Cybercrime Convention.

Methods: the paper employs the method of in-depth legal analysis of international legal tools with an emphasis on the provisions of the United Nations Cybercrime Convention. The author has conducted a comparative legal study of the mechanisms of universal jurisdiction and mutual legal assistance, including the study of historical precedents of the application of universal jurisdiction and the evolution of the mutual legal assistance concept within common law, bilateral and multilateral international agreements. Special attention is paid to the analysis of the Hague Convention on Mutual Legal Assistance as a model for organizing international cooperation. The research relies on doctrinal developments and practical results of the application of the legal mechanisms under consideration in the fight against digital threats.

Results: the analysis demonstrated that, despite the humanitarian potential of universal jurisdiction, which allows national courts to carry out extraterritorial prosecution of serious crimes, its practical application is significantly hampered by opposition from sovereign states and selective law enforcement under political influence. An effective consensual alternative is the mechanism of mutual legal assistance, which promotes international judicial cooperation and ensures coordinated counteraction

to cross-border cybercrime while preserving national sovereignty. The author shows that the UN Cybercrime Convention effectively integrates the mutual legal assistance principles through consultations, coordination of jurisdictions, extradition, and transfer of convicted persons and criminal proceedings.

Scientific novelty: the study offers an innovative approach to analyzing the relationship between traditional and modern international legal mechanisms under the global digitalization. The author substantiates the conceptual position according to which the mutual legal assistance, conditioned by both common law practice and modern contractual initiatives, represents a unique comprehensive toolkit that allows overcoming the systemic limitations of universal jurisdiction in the digital age. The research demonstrated that mutual legal assistance *de facto* creates a consensual practice of applying universal jurisdiction based on the voluntary consent of states, which qualitatively distinguishes it from traditional approaches. For the first time, the implementation of the mutual legal assistance principles in a specialized international treaty on cybercrime was systematically analyzed.

Practical significance: the results obtained highlight the critical role of mutual legal assistance in strengthening global judicial cooperation and effectively curbing transnational cybercrime. The study demonstrates the practical effectiveness of the UN Cybercrime Convention as an effective international legal tool that ensures a balance between the sovereignty of states and the need for international judicial cooperation.

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Introduction

It is a fundamental value of humans to seek global peaceful cohabitation to secure continuing civilizational existence, lest violence prevail and anarchism dominate. To avoid this bleak consequence, the international community manages to utilize cosmopolitan legal tools to enforce justice. In international law, several norms serve to provide global access to justice and enhance the international rule of law. A chief norm is universal jurisdiction, which refers to a state's ability to prosecute core crimes extraterritorially even in the absence of a direct nexus to the criminal act. Domestic courts can prosecute heinous crimes globally to promote access to justice. Despite its humanitarian purposes, universal jurisdiction faces challenging obstacles that hinder its application. Sovereign motivation might drive states to refuse foreign jurisdictions over a crime that occurred within national territory. In addition, selective application under political influence undermines the global trustworthiness of universal jurisdiction.

Thus, justice requirements implied developing a suitable norm to replace universal jurisdiction but, in the same time, achieves its humanitarian ends. To tackle sovereign objections, this norm was established on states' consent. Then, international law introduces the concept of mutual legal assistance (MLA) as a practical alternative of universal jurisdiction. MLA offers a consensual exchange of duties among states to collaborate judicially against international severe crimes. Customary international law includes MLA roots, which were grown up by integrating this concept into bilateral and multilateral treaties. Given its effectiveness against international crimes, international law manages to employ MLA in the digital realm, where crimes' severity still jeopardizes justice.

The openness and borderlessness of cyberspace profile criminal acts committed therein by universalism. In the absence of boundaries, cybercrimes' impacts extend far beyond national borders in the real world. To avoid a legal vacuum in cyberspace,

doctrine and jurisprudence sought to employ traditional universal legal notions against cybercrimes. Nevertheless, the inability to apply universal jurisdiction triggered the need to find an adequate alternative. MLA was introduced to facilitate global judicial cooperation to suppress cybercriminals as the required alternative.

Therefore, the research explores the adoption of MLA in international treaties concerning cybercrime by reviewing its roots and nexus to relevant international law norms, i.e., universal jurisdiction. Then, it sheds light on the UN Convention on Cybercrime as the prominent international legal instrument combating cybercrime, elaborating on how this Convention manifested effective implementation of the MLA norm. Thus, it contributes to knowledge by presenting a comprehensive explorative study revealing the established legal approaches to incorporate MLA in a treaty framework regarding the digital realm.

1. Mutual Legal Assistance and Universal Jurisdiction: Interfering Concepts

Universal jurisdiction and mutual legal assistance (MLA) are critical concepts in addressing cross-border severe crimes. Universal jurisdiction permits domestic courts to prosecute gross crimes extraterritorially. However, its application is often limited by political and legal challenges, as not all countries agree on its scope or implementation. The concept of mutual legal assistance manifests in inter-state cooperation schemes to facilitate the prosecution of cross-border crimes. However, critical procedural and legal challenges frustrate the realization of accurate MLA implementation. This foreword indicates the interfering nexus between both notions.

1.1. Universal jurisdiction in International Law: Status Quo

Abdelkarim (2024) indicates that scholars describe universal jurisdiction as the ability of a state to prosecute international crimes regardless of where they occurred or the nationalities of the involved parties. It is a legal tool to address crimes that threaten global order, such as genocide and war crimes. According to Yee (2011), international jurisprudence laid the foundational logic of universal jurisdiction as the International Court of Justice, in the *Barcelona Traction* case,¹ indicated the existence of an *erga omnes* obligation upon states and other members of the international community to impose national jurisdiction whenever a fundamental human right is threatened. Each state is legally interested in utilizing national judicial toolkits to suppress gross human rights violations.

¹ Case concerning the *Barcelona Traction, Light and Power Company, Limited*, Second Phase, Judgment. *ICJ Reports*. (1970). 3.

Furthermore, universal jurisdiction is supported by treaties and customary international law, although its interpretation varies. Customary law and international judgments have contributed to its recognition as a principle for prosecuting core international crimes. He adds that universal jurisdiction presents a major evolution in international criminal justice by allowing states and international bodies to prosecute grave crimes regardless of where they occurred or the nationalities involved. This principle curtails the impunity of international criminals and reinforces global justice in the face of severe human rights violations. Notably, as Mung'omba (2022) points out, it does not require a direct connection between the prosecuting body and the location of the crime, which distinguishes it from conventional territorial laws.

Practicing universal jurisdiction against core international crimes fulfills a binding *jus cogens* obligation—a duty of the international community to safeguard human rights and ensure world peace (Abdelkarim, 2024). This viewpoint is supported by the International Law Commission's stance that protecting fundamental human rights and prohibiting severe crimes such as war crimes, aggression, and slavery creates an international duty to intervene (James et al, 2016; Pielemeier, 2025). In this venue, Hartig (2023) figures out a clear distinction between universal jurisdiction and other related principles in international law. She emphasizes that universal jurisdiction uniquely enables a state to act as an agent of the international community, allowing it to prosecute crimes without requiring any connection between the crime's location and the prosecuting jurisdiction. This differs from cases in which a state prosecutes a foreigner for a crime committed abroad—such prosecutions fall under the principle of representation because the state is acting solely on its behalf rather than on behalf of the international community. Moreover, Hartig (2023) contrasts universal jurisdiction with treaty-based jurisdiction. While treaty-based approaches are bound by the specific terms of the treaty and the processes of domestic ratification, universal jurisdiction stands alone as an independent legal principle. Its legitimacy and applicability are reinforced by international legal precedents dating back to the landmark Nuremberg trials, which helped crystallize universal jurisdiction as a tool for prosecuting international core crimes.

However, Fernandez-Jankov (2025) challenges the traditional notion of state sovereignty by arguing that the domestic implementation of universal jurisdiction is not optional but a fundamental and binding obligation under international law. She emphasizes that universal jurisdiction differs from other jurisdictional bases, such as territoriality, nationality, or the protective principle, because it does not rely on a direct connection between the state and the crime. Instead, it mandates state action against international crimes that violate core peremptory norms (*jus cogens*), including genocide, torture,

and crimes against humanity. Furthermore, she posits that universal jurisdiction acts as a «conditio sine qua non» for fulfilling international legal obligations. Differently put, every state has a duty to either prosecute or extradite individuals accused of such heinous crimes, regardless of any direct link to its territory. This collective responsibility underscores the idea that these crimes are offenses against the entire international community rather than isolated national issues, thereby reinforcing the rule of law on a global scale. Her perspective ultimately redefines state jurisdiction: while traditional jurisdictional methods allow states a degree of discretion based on territorial or national connections; universal jurisdiction imposes an imperative duty that transcends these limits to ensure that international crimes are subject to accountability worldwide.

Despite universal jurisdiction's humanitarian ends, without a carefully defined framework, universal jurisdiction risks being misused as a political tool (Yee, 2011; Abdelkarim, 2024). When foreign courts intervene in national legal matters, they may essentially become "tyrannical judges" over their own politicians or non-political international criminals, thereby undermining the sovereignty and independence of national judiciaries. Yee (2011) stresses on universal jurisdiction selective application motivated by mere political incentives, relying solely on the concerned state's political strength in the international community. In particular, with the complete absence of a comprehensive treaty on universal jurisdiction organizing its scope and application, undesired sorts of its application prevail, achieving consequences contradicting to universal jurisdiction pure humanitarian ends.

In the same vein, the African Union (AU) has been particularly critical, viewing such practices as a Western tactic to control or subjugate African legal systems.² The AU emphasizes that domestic proceedings should be given priority and that international interventions, such as the case against former Sudanese President Omar El-Beshir, violate the principle of complementarity, which reserves international jurisdiction as secondary if national courts have not yet acted. Moreover, African delegates at UN meetings have stressed that the application of universal jurisdiction must take into account the unique characteristics of domestic judicial systems.³ Requiring the consent of national jurisdictions before foreign proceedings can begin is key to avoiding selective or biased prosecutions.

² African Union Doc PSC.PR/COMM.(DXIX) Communiqué, Peace and Security Council 519th. (2015, June 26). <https://clck.ru/3Qfc7s>

³ The UNGA Sixth Committee (Legal). (2021, October 22). Concluding Debate on Universal Jurisdiction Principle, Sixth Committee Speakers Wrestle with Challenging Balance between State Sovereignty, Fighting Impunity. (SEVENTY-SIXTH SESSION, 15TH MEETING (AM)), GA/L/3642. <https://clck.ru/3QfcA2>

Ultimately, misusing universal jurisdiction disrupts the international legal order and strains diplomatic relations, and jeopardizes the effective prosecution of serious crimes by allowing high-ranking offenders to escape justice, thereby fostering a climate of impunity. A conclusion that invites further reflection on maintaining the balance between international justice and national sovereignty, and ensuring that the fight against gross human rights violations does not become entangled in political agendas. Therefore, the utility of universal jurisdiction implies developing a mechanism capable of handling the practical odds of this principle.

1.2. Emergence of Mutual Legal Assistance

1.2.1. What is MLA?

Being practically challenging to utilize universal jurisdiction to prosecute heinous crimes, legal systems adopted a novel notion to facilitate the application of universal jurisdiction. The latter has become a key focus in international legal practice through the mechanism of mutual legal assistance. Mutual Legal Assistance (MLA) is a vital mechanism for international collaboration to combat crime across borders. It enables countries to cooperate in preventing, investigating, and prosecuting criminals who exploit jurisdictional boundaries to evade justice.

According to the European Commission, mutual legal assistance is a cooperative process where countries exchange information and evidence to support criminal investigations across borders (Abdelkarim, 2024). In response to the challenges of universally applying jurisdiction, especially concerns about undermining national judicial independence, states have established multilateral agreements that organize inter-state judicial cooperation. This framework ensures that judicial proceedings initiated via mutual legal assistance occur with the consent and coordination of the involved states parties, thereby preserving the independence and trustworthiness of national judiciaries while still addressing international crimes.

A notable case raising questions on this notion is the Boston College case, which raises significant legal and ethical questions on the MLA notion. This concept invokes inter-state complexities of international cooperation in criminal investigations. In this case, the application of the treaty between the US and the UK, which permits the exchange of evidence, challenges the promise of confidentiality made to interviewees, which was central to the oral history project⁴. Ethically, the case underscores the responsibility of researchers and institutions to protect their participants, especially in sensitive contexts like post-conflict

⁴ Harrington, J. (2012). Mutual legal assistance, Boston College, and tales from the Troubles, EJIL TALKS. <https://clck.ru/3QfhBd>

societies. The breach of confidentiality could deter future participants from engaging in similar projects, potentially stifling efforts to preserve historical narratives. Moreover, it raises questions about the moral obligations of academic institutions when faced with legal demands that conflict with their ethical commitments.

However, international law still lacks a comprehensive approach to interpreting MLA and integrating it into a practical legal framework. A multilateral legal instrument to enhance inter-state cooperation on mutual legal assistance (MLA) and extradition for prosecuting international crimes proves an urgent need.

1.2.2. A Treaty Perspective: the Hague Convention on Mutual Legal Assistance

A key manifestation of MLA is the establishment of Mutual Legal Assistance Treaties (MLATs), which are bilateral or multilateral agreements that foster government-to-government cooperation in criminal investigations and prosecutions (Vu, 2023). These treaties are crucial for addressing crimes with foreign elements and transnational organized crime. Requests for MLA are typically made by senior officials like Attorney Generals on behalf of law enforcement or prosecuting agencies, ensuring a structured approach to sharing evidence and expertise globally.

De Busser (2017) highlights the long yet underappreciated history of mutual legal assistance (MLA), especially its connection to extradition. The origins of extradition as a form of inter-state cooperation in criminal matters date back to ancient treaties, such as the one between Egyptian Pharaoh Ramses II and Hittite King Hattusili. A key feature of these agreements was reciprocity, reflecting their primary focus on protecting state interests rather than individuals. Another historical aspect of MLA is the use of diplomatic channels for transferring requests, a practice that persists in older agreements. This underscores the state-centered nature of such cooperative mechanisms. Then, after World War II, MLA gained a European centricity due to its adoption by the Council of Europe in 1959. A convention was adopted organizing a European scheme of MLA. On the UN level, MLA was incorporated explicitly in the 2004 UN Convention on Organized Crime⁵. Article 18 addresses states parties to utilize MLA to combat transnational organized crimes because this notion proves effective against cross-border illegal activities. The universal theme of MLA enables it to enhance inter-state endeavors to suppress international crimes, with ultimate compliance with domestic laws.

⁵ United Nations Convention against transnational organized crime and the protocols thereto. (2004). UN. <https://clk.ru/3QfcGa>

The Hague Convention on Mutual Legal Assistance,⁶ adopted on 26 May 2023, introduces an exemplary method for organizing universal jurisdiction among states parties. Its preamble asserts that combating impunity for international core crimes is a universal duty, obliging states to unite their legal efforts to ensure that perpetrators do not escape justice (Sadat, 2023). To support this goal, the Convention redefines the notion of «core crimes» so that judicial bodies have a clear, disciplined threshold for applying its mechanisms. A key feature of the Convention is the extension of state jurisdiction over crimes committed abroad when the perpetrator is present within a state's territory (Sadowski, 2025). It establishes a robust multilateral framework that codifies clear obligations to ensure their applicability and efficiency. Such firm, treaty-based obligations are less common in agreements that depend solely on customary international law or loosely structured bilateral treaties. Therefore, the Convention considers respect for the independence of national judiciaries by stipulating state consent to implement the judicial proceedings under the agreement.

A prominent duty under the Convention is the *aut dedare aut judicare* obligation. This obligation implies that the state where a perpetrator is found must either surrender the case or prosecute the individual under its jurisdiction (as specified in Article 8). This requirement acts as a form of mutual legal assistance, ensuring that states cooperate by transferring cases in a manner that respects each party's judicial independence⁷. To address the practical difficulties posed by cross-border legal proceedings, the Convention utilizes distance video conferencing and telecommunications. This provision ensures that witness testimonies and expert evidence can be effectively collected and heard during trials, even if witnesses are not physically present in the courtroom, thereby enhancing the overall effectiveness of the judicial process (Sadat, 2023). A dual approach that reinforces cooperation between states parties and modernizes trial procedures, ensuring that key evidence is preserved and justice is upheld despite geographical constraints.

However, this provision was initially met with opposition from France and the UK⁸. These states argued that the requirement of the defendant's presence was not

⁶ Government of the Republic of Slovenia. (2023). The Ljubljana–The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crime. <https://clck.ru/3Qfd7t>

⁷ Pillai, P. (2023, August 4). Symposium on Ljubljana – The Hague Convention on Mutual Legal Assistance: Critical Reflections – Lessons Learned: Civil Society Engagement in Treaty Negotiations. OpinioJuris. <https://clck.ru/3QfhHm>

⁸ Government of the Republic of Slovenia. (2023). Final document – English: Mutual Legal Assistance and Extradition Initiative (MLA Initiative). <https://clck.ru/3Qfd8n>

clearly established in either the treaty or customary international law, and therefore demanded a flexible approach to its application (Sadat, 2023). Ultimately, a consensus was achieved through a reservation-based mechanism that permits states parties to limit the scope of Article 8 under domestic laws (Sadowski, 2025). The Convention promotes international legal cooperation and embeds safeguards that protect national judicial independence while enhancing the global fight against impunity for grave crimes. This development marks a significant step forward in aligning international legal practice with the need for consistent and disciplined application of universal jurisdiction.

Nevertheless, by framing cooperation as a mutual legal assistance obligation, the Convention reinforces a state's commitment to its conventional obligations without undermining domestic judicial processes. Many earlier instruments risked weakening national legal integrity through foreign interventions (Sadowski, 2025). The Convention, by solidifying the principles of mutual assistance and respect for national sovereignty, builds trust among states parties and ensures a coordinated and trusted process in international criminal justice. In this context, Pillai⁹ argues that the MLA in the Convention introduces a *de facto* consensual practice of universal jurisdiction. The concept of legal assistance tackles sovereign opposition to universal jurisdiction since states tend to admit foreign judicial proceedings under a consensual treaty MLA obligation (Sadowski, 2025). A conventional cohesion that enhances universal jurisdiction applicability in international legal practice because of its unified framework, which eliminates logistical and legal obstacles hindering the universal prosecution of gross human rights violations.

In summary, compared to other international legal agreements, whether bilateral mutual legal assistance treaties, regionally focused conventions, or broader instruments like the Rome Statute, the Hague Convention on Mutual Legal Assistance offers a more structured, technologically adaptive, and sovereignty-respecting method for international cooperation. It stands out by codifying obligations explicitly and ensuring that the fight against impunity for severe international crimes is pursued in a manner that upholds both global justice and national judicial independence.

⁹ Pillai, P. (2023, August 4). Symposium on Ljubljana – The Hague Convention on Mutual Legal Assistance: Critical Reflections – Lessons Learned: Civil Society Engagement in Treaty Negotiations. OpinioJuris. <https://clck.ru/3QfhHm>

2. In the UN Cybercrime Convention

2.1. A Brief

After 20 years of debating and negotiating, the United Nations General Assembly has consensually adopted a universal convention on cybercrimes.¹⁰ The treaty aims to strengthen international cooperation in combating cybercrime and sharing electronic evidence for serious crimes. It was the fruit of extensive endeavours started from the UN's resolution 74/247 (2019), which established an open-ended committee to create a global convention on combating the criminal use of information and communication technologies (ICTs), considering existing international and regional efforts. The committee's operational framework in New York and Vienna, starting January 2022, aims to produce a draft convention for the UN General Assembly's seventy-eighth session according to Resolution 75/282 (2021). The proposed United Nations Convention against Cybercrime emphasizes the urgent need for international cooperation to prevent and counter cybercrime, given its adverse economic, social, and legal impacts (Osula, 2015). It will provide tools and a legal framework for tackling cybercrime and facilitate evidence-sharing in electronic forms for various crimes, e.g., money laundering, terrorism, trafficking, corruption, and drug-related offenses.

The Convention was officially adopted on 24 December 2024, reflecting a cosmopolitan consensus on the necessity of gathering states' efforts to combat cybercrimes to secure human communications in cyberspace. As included in its preamble, cyberspace communications technologies have vast potential for societal development and offer opportunities for criminal activities that harm individuals, enterprises, and nations. These technologies have amplified the scale, speed, and scope of crimes such as terrorism, trafficking, smuggling, drug offenses, and cultural property theft. Therefore, to combat cybercrime, the need is immense for global criminal justice policies, including legislation, procedural powers, and international cooperation, under a treaty framework. This includes denying safe havens to cybercriminals through prosecution, enhancing state coordination, and providing technical assistance, particularly to developing countries, to strengthen their frameworks and capacities for preventing, detecting, investigating, and prosecuting cybercrime.

2.2. Absence of Universal Jurisdiction

Article 22 (2) of the Convention explicitly addresses that a state party can impose national jurisdiction under the passive personality perspective. A state party can prosecute perpetrators of cybercrimes extraterritorially if the victim holds its nationality. This reflects

¹⁰ UN General Assembly adopts milestone cybercrime treaty. (2024, December 24). <https://clck.ru/3Qfd9n>

a limited application of universal jurisdiction because imposing extraterritorial jurisdiction is conditioned by the victim's nationality. It is not absolute for a state party to practice jurisdiction over cybercrime prosecution under the convention despite its universal theme. Moreover, skeptics ignite harsh debates regarding the passive personality approach to sovereignty, due process, and human rights implications.

Scher-Zagier (2024) indicates that Article 22 of the Convention has sparked significant debate due to its jurisdictional provisions, particularly the inclusion of passive personality jurisdiction. According to the aforementioned explanation, this principle permits a state to claim jurisdiction over crimes committed outside national borders if its nationals are harmed. While this approach aims to address the transnational nature of cybercrime, it raises concerns about sovereignty and legal overreach. Critics argue that by adopting this provision, states effectively relinquish their exclusive right to regulate the conduct of their citizens within their territory (Scher-Zagier, 2024). As a result, one state enforces its laws extraterritorially, conflicting with the domestic laws of another state. A bleak scenario of international justice in the digital realm, because jurisdictional conflicts severely jeopardize prosecution endeavours. Nevertheless, supporters present this jurisdiction as a necessary tool to combat cybercrime, which often transcends borders and exploits jurisdictional gaps (Scher-Zagier, 2024). The provision reflects the growing need for international cooperation in addressing crimes that impact individuals and entities across multiple nations. Therefore, he advocates for passive personality jurisdiction as a revolutionized application of traditional jurisdictional notions adaptable to the specific universal nature of cybercrimes.

Being a crime that transcends national borders and exploits the anonymity inherent to cyberspace, the traditional limits of jurisdiction must yield to a more universal legal mandate to prosecute cybercrime. Kittichaisaree (2017) argues that technical challenges—especially those introduced by cloud computing—complicate the implementation of universal jurisdiction in cyberspace, as multiple states may assert extraterritorial jurisdiction over cloud-based activities. He notes that existing legal instruments permit the prosecution of an unauthorized broadcast originating from a vessel on the high seas, and he extends this reasoning to cover cyber broadcasts by internet platforms such as Facebook¹¹ and YouTube¹². Accordingly, states are given a legitimate basis to enforce

¹¹ The social network belongs to Meta, which is recognized as an extremist organization, its functioning is prohibited in the territory of the Russian Federation.

¹² The foreign person owning the YouTube informational resource violates the legislation of the Russian Federation.

their jurisdiction to suppress cybercriminals. Given the rapidly expanding and low-cost nature of cybercriminal activities compared to their severe impacts, Kittichaisaree (2017) concludes that the Budapest Convention on Cybercrime (2014) should be universalized to create a global framework for prosecuting cyber terrorists. Likewise, drawing on the well-established international legal principle of «aut dedere aut judicare» (either extradite or prosecute), Iftikhar (2024) contends that states must take active responsibility for ensuring that cybercriminals do not evade justice. In practice, this means that if a cybercriminal is identified within a state's territory, that state is compelled either to prosecute the individual under its own legal system or to extradite them to a jurisdiction that is both willing and able to try the case. This approach is advanced as a necessary response to the challenges posed by the borderless nature of cyberspace, where traditional mechanisms of jurisdiction prove ineffective (Iftikhar, 2024). Cyberterrorism as a global threat: a review on repercussions and countermeasures. PeerJ Computer Science, 10, e1772. <https://doi.org/10.7717/peerj-cs.1772>). Universal jurisdiction offers a firm legal groundwork for a cooperative and effective international response against cybercrime, insisting on either prosecuting or extraditing alleged perpetrators, regardless of where in the digital sphere their crimes originated.

Deriving from this logic, passive personality jurisdiction addressed in Article 22 (2) proves insufficient to suppress cybercriminals because it limits national jurisdiction to a *prima facie* condition: the victim is a national. Thus, the Convention deprives states parties of prosecuting cybercrimes in the absence of this procedural nexus, which hinders global endeavours to realize justice in the digital realm. Because negotiating states strictly advocated for sovereignty, the Convention adopted passive personality as a limited practical alternative to universal jurisdiction. However, as a practical alternative, passive personality could never close the gap instead of universal jurisdiction. Therefore, the Convention integrated the notion of MLA as an obligation upon states parties to ensure universal prosecution of cybercrimes and deprive the perpetrators of havens to impunity.

2.3. MLA in the Convention: Obligatory Duties

Since MLA offers a practical consensual approach to utilize cosmopolitan efforts against transnational crimes, it becomes a popular treaty solution to tackle hardships concerning imposing universal jurisdiction within a conventional framework (Vũ, 2023). States that solidly refuse universal jurisdiction within national territory find it acceptable to collaborate under a conventional MLA clause. Consequently, the Convention adopted MLA in several positions to facilitate judicial proceedings to suppress cybercrimes. The United Nations

Office on Drugs and Crime (UNODC) states that MLA is a mechanism that facilitates international cooperation by enabling countries to share electronic evidence and assist in investigations across borders. This is crucial for addressing the challenges posed by crimes involving cyberspace technologies. Correspondingly, the Convention provides a framework for countries to collaborate effectively while respecting human rights and legal safeguards. It also aims to streamline traditional investigative methods to adapt to the digital environment.

2.3.1. Coordination Through Consultation

Art 22 (5) includes inherent coordination between states parties upon practicing jurisdiction over a single cybercrime. This presents an initial manifestation of MLA by enforcing mutual consultations over jurisdictional issues concerning the prosecution of a cybercrime to prevent jurisdictional conflicts in cyberspace. The consultation clause is a coordination mechanism set out in the Convention to address the challenges posed by cybercrime's transnational nature. By referencing to provisions 1 and 2 of the same article, the text that the Convention establishes a permission for multiple States to claim jurisdiction over a particular cybercrime incident, based on factors, e.g., where the offense was committed, where its effects were felt, or the nationality of either the perpetrator or the victim. The core of the provision is the requirement for the competent authorities to consult with one another to coordinate their actions, which might include sharing information, aligning investigative strategies, and clarifying jurisdictional boundaries.

The clause covers instances where a State Party is either formally notified or becomes unintentionally aware that another State is pursuing legal action for the same conduct. This ensures that states remain vigilant about potential overlaps in their legal proceedings. It seeks to avoid duplication of judicial proceedings because cybercrimes, due to their transnational nature, often span multiple jurisdictions. Without coordination, different states might undertake parallel investigations or prosecutions. This coordinated consultation helps avoid duplication of efforts and minimizes the risk of conflicting legal actions. Moreover, early collaboration in the investigative process, states parties can pool resources and expertise, ensuring a more efficient response to complex, cross-border criminal activities. Furthermore, inter-state coordination contributes to avoiding situations where the rights of those under investigation might be compromised by multiple, potentially overlapping legal actions. It supports a balanced approach where law enforcement efforts do not inadvertently violate due process standards across different jurisdictions.

Thus, when a state party becomes aware that another has initiated judicial proceedings related to the same cybercrime, the coordination clause obliges the involved authorities to engage in consultation. The objective of this coordinated dialogue is to harmonize their actions, ensure an efficient and effective investigation, and ultimately deliver effective justice that respects the legal frameworks of all involved states parties.

2.3.2. International Cooperation Principles

Article 35 of the Convention organizes international cooperation on the collection, preservation, and sharing of electronic evidence for criminal investigations and judicial proceedings related to cybercrime by addressing the governing principles of these processes. This provision applies to electronic evidence collected concerning cybercrimes, including evidence stored on or transmitted through information and communications technology systems, which may be crucial to establishing the commission of criminal conduct in the digital realm.

It aims to facilitate international cooperation on sharing digital evidence by establishing a legal framework for obtaining, preserving, and sharing the evidence. Its design promotes the integrity of the evidence required for a cybercrime investigation while safeguarding the legal rights of those involved. Any request to collect or exchange electronic evidence must comply with domestic law and international obligations, following procedures that ensure the request is lawful, necessary, and proportionate to the crime being investigated. This accords with the Regulation on European Production and Preservation Orders for electronic evidence in criminal matters¹³. Therefore, the evidence acquired according to Article 35 should serve exclusively the criminal investigation or judicial proceedings for which it was requested. This limitation is crucial to protect individuals' rights and to prevent potential misuse of sensitive personal or commercially sensitive information. Recognizing that the collection and sharing of electronic data come with unique technical and legal challenges, Article 35 sets out procedures to maintain a firm chain of custody. Moreover, it ensures that the evidence is gathered, stored, and transmitted in a manner that upholds its authenticity and admissibility in court. This, ultimately, helps prevent evidence abuse or its use in ways that would violate fundamental rights.

To enhance human rights protection, Article 35 establishes an oversight mechanism to surveil the evidence exchange. Judicial or administrative review contributes to preventing abusive procedures and ensuring that the rights protected under domestic

¹³ EC. (2018, April 17). COM(2018) 225 final. <https://clck.ru/3QfdJS>

and international law are not violated during the process of evidence acquisition and sharing.

The significance of Article 35 is grounded in its contribution to enhancing cross-border cooperation by providing a common set of rules and procedures. In addition, Article 35 supports efficient mutual inter-state judicial operations against cybercrime. This cooperation is essential for tackling complex, transnational offenses and for building mutual trust between legal systems that may otherwise have divergent rules regarding evidence and privacy¹⁴. Moreover, this article seeks to strike a balance between empowering law enforcement to combat cybercrime and ensuring that fundamental rights are protected. Consequently, it promotes legal certainty since it offers obvious rules on the collection and exchange of electronic evidence. This certainty prevents potential conflicts of law or abuses that might otherwise arise when digital data crosses international borders (Iftikhar, 2024).

2.3.2.1. Unified Extradition Framework

Extraditing suspects of cybercrimes proves a complicated, conflicting legal issue because of the specific transnational nature of these crimes. A single cybercrime can involve several jurisdictions. Therefore, Article 37 of the Convention provides a detailed legal framework of MLA concerning the extradition of cybercriminals. The article applies to cybercrime offenses defined exclusively in the Convention when the suspect is present in the requested state's territory. Extradition is allowed solely if the alleged offense is punishable under the laws of both the requesting and requested states. For cases where extradition is sought to enforce a final sentence, the requested State may proceed under its domestic law. A state party may, if permitted by domestic laws, extradite for offenses established by the Convention even if those offenses are not punishable under its national law. In cases where an extradition request covers several offenses, with at least one being extraditable and others not strictly so but related, the entire request may be processed under the provisions of this article. The Convention adopted a broadening approach to extradite cybercriminals because extradition presents an effective toolkit to cut off serious perpetrators and defend the international community (Ochi, 2024). Moreover, this approach complies with the flexibility required to maintain an effective standard of MLA (Abdelkarim, 2024) under the conventional obligation to aut dedare aut

¹⁴ Pillai, P. (2023, August 4). Symposium on Ljubljana – The Hague Convention on Mutual Legal Assistance: Critical Reflections – Lessons Learned: Civil Society Engagement in Treaty Negotiations. OpinioJuris. <https://clck.ru/3QfhHm>

judicature of cybercriminals. Extradition in this context gains priority because it suppresses a severe criminal activity.

Imposing a legitimating shield on the extradition framework, the Convention submits extradition requests to the domestic laws or applicable treaties of the requested state, including conditions related to minimum penalties and grounds for refusal. States are encouraged to expedite procedures, simplify evidentiary requirements, and—where necessary in urgent cases—take provisional measures, such as temporary custody via available channels like INTERPOL, to ensure the suspect's presence at extradition proceedings. Furthermore, if a suspect is a national, the requested state must forward the matter for prosecution, or consider alternative measures such as conditional extradition, while ensuring the suspect's fair treatment and protecting their rights. Most prominently, extradition cannot be granted on discriminatory grounds, e.g., due to race, religion, etc., or solely refused due to fiscal aspects; any refusal must be accompanied by consultation and a clear communication of reasons according to the basic rules of extradition in international law (Ochi, 2024). Last, states parties must designate an authority for extradition matters to maintain an up-to-date global register, and states should push forward to enhance extradition frameworks through bilateral or multilateral agreements. States then would close the gap created in legal practice regarding extradition by the absence of a global comprehensive convention (van der Wilt, 2018; Tosza, 2024). Needless to say, the extension of this legal vacuum to cyberspace offers perpetrators a sally port to enhance their impunity and evade justice. In addition, this supplemental role of bilateral agreements converges with Article 28 of the European Convention on Extradition,¹⁵ which encourages states parties to limit their bilateral agreements to achieve the purposes and objectives of this regional agreement.

2.3.2.2. Inter-State Party Transfer of Sentenced Criminals

Article 38 of the UN Cybercrime Convention establishes an optional mechanism for states parties to cooperate by transferring convicted individuals, thereby they can complete their sentences in another country. The transfer scheme proves advantageous to the sentenced person since transferring to their home territory, or another admissible jurisdiction, improves the comfort and support systems available to the sentenced person, including access to family, community, and familiar legal processes. For the states parties, this mechanism fosters closer inter-state cooperation, potentially easing administrative burdens and reinforcing mutual trust in handling persons convicted of cybercrime-related offenses.

¹⁵ ETS 24 – Extradition. (1957, December 13). <https://clck.ru/3QfdLf>

Under Article 38, states parties are encouraged to conclude bilateral or multilateral agreements or arrangements to enable the transfer of persons who have been sentenced to imprisonment or another form of deprivation of liberty for cybercrime-related offenses, allowing them to serve the remainder of their sentence in another country's territory. The transfer should be done in compliance with the fundamental legal instruments on human rights (Ochi, 2024). This provision ensures that any transfer respects human rights standards and that the treatment of the person remains in line with fundamental legal and ethical norms.

The provision enhances the legitimacy of the transfer as it demands that states parties consider several critical factors when opting for a transfer. 1. Consent: Ensuring that the person concerned agrees to the transfer. 2. Rehabilitation: Considering whether the transfer might benefit the individual's rehabilitation process. 3. Reintegration: Assessing if serving the sentence in a familiar environment would facilitate the eventual reintegration of the individual into society.

In essence, Article 38 offers a flexible, rights-respecting framework for permitting sentenced individuals to serve their sentences in a territory where they have stronger ties or better rehabilitation prospects. It recognizes that, beyond punishment, factors such as consent, rehabilitation, and reintegration are crucial for the fair and effective application of justice in cybercrime cases.

2.3.2.3. Transfer of Criminal Proceedings

Article 39 of the Convention facilitates international judicial cooperation since it permits states parties to transfer criminal proceedings related to offenses under the Convention. Its primary purpose is to enhance the efficiency and effectiveness of transnational cybercrime prosecutions through a more concentrated and coherent process. Cybercrime investigations frequently span multiple jurisdictions, which can lead to fragmented and inefficient legal proceedings. Thus, Article 39 encourages the parties to consider transferring the criminal prosecution of an offense to one jurisdiction when it is in the interests of the proper administration of justice. The idea is to concentrate prosecution efforts in a single, centralized forum, thereby reducing duplication, minimizing conflicting procedures, and ultimately streamlining the entire judicial process.

Indeed, concentrating proceedings in a single jurisdiction improves coordination between investigative agencies and ensures that crucial evidence is managed effectively. This consolidation offers an organized approach to complex cases, which is particularly valuable when technical evidence, digital data, or multiple international elements are involved. Since states traditionally condition the transfer of criminal proceedings on

the existence of a bilateral or multilateral treaty governing such transfers, Article 39(2) permits states parties to request transfer from another state with which no treaty exists, depending solely on the Convention as the legal basis for that transfer. Furthermore, this provision ensures that a lack of a specific treaty does not become an obstacle to international cooperation. By allowing the Convention to serve as a legal foundation for transferring proceedings, it supports seamless judicial collaboration (de Jonge, 2020), in particular in urgent or complex cybercrime cases where traditional treaty frameworks might be lacking or insufficient. In addition, practical odds contribute to the transfer failure between different jurisdictions because of alien elements the transferred cases include, *inter alia*, logistical delays and technical shortcomings (de Jonge, 2020). He addresses the European Convention on the Transfer of Proceedings in Criminal Matters¹⁶ as the regional legal ground of criminal proceedings transfer, asserting that open-borders spheres imply a unified consensual legal framework governing the transfer process. The openness of cyberspace justifies adopting this scheme in the Convention to facilitate cybercriminals' prosecution and trying. Therefore, he advocates that cyberspace has added a *locus delicti* ground for human interactions on the Internet. Its universality facilitates achieving criminal purposes transnationally, which grants the criminal proceedings transfer a cosmopolitan perspective.

Thus, Article 39 enhances judicial efficiency by authorizing the transfer of proceedings to prevent the pitfalls of jurisdictional fragmentation. This creates clearer evidentiary chains, a more straightforward application of the law, and a reduction in procedural delays that might otherwise jeopardize successful prosecutions in cybercrimes.

2.3.2.4. General Principles of MLA

Article 40 of the Convention refers to practical, procedural measures required to promote international cooperation under the notion of MLA in combating cybercrime. In essence, this article is designed to establish the framework for the rapid, secure, and lawful exchange of electronically stored evidence among states parties. In a world where cyber-incidents, and the data or communications that prove them, cross national boundaries, Article 40 sets out the obligations of participating states to provide assistance when one state needs evidence from another for criminal investigations or prosecutions. It recognizes that effective investigations of cybercrime depend on the ability to obtain, preserve, and share electronic evidence without undue delay (De Busser, 2017; Kerttunen & Rantala, 2022), demanding states parties to implement the necessary technical and legislative measures

¹⁶ Council of Europe. (1972, May 15). ETS No. 73. <https://clck.ru/3QfdV3>

that ensure a rapid and secure processing of evidence requests. Therefore, it codifies states' responses to requests for digital evidence from one another, thereby strengthening the overall international legal framework, creating a legal foundation for MLA.

While the article obliges states to cooperate, it underscores the importance of respecting national legal systems and sovereign decision-making. Differently put, although a state must assist a foreign authority's request for evidence, the process must comply with domestic laws. States retain control over the evidence located within their territory; any cross-border sharing must be done with due regard for constitutional guarantees and the rule of law, which presents a balancing scheme between MLA and national sovereignty¹⁷ (Abdelkarim, 2024). Indeed, the Convention approach herein promotes trust among states parties because assuring a clear process that comply with national laws and protect human rights encourages them to share sensitive evidence.

An essential aspect of Article 40 is its built-in respect for fundamental rights. As states parties collaborate to exchange electronic evidence, they should avert undermining human rights, particularly with respect to privacy and data protection. Hence, the article requires that any measures to collect, transmit, or use such evidence be consistent with a state's international human rights obligations. This balance is critical for ensuring that the fight against cybercrime does not undermine individual liberties.

Cybercriminals benefit from the borderless nature of digital networks. Then, when malicious actors leave traces of their activities spread over several jurisdictions, no single country's investigation tools prove sufficient to combat them. Thus, to make practical cooperation feasible, Article 40 calls for the establishment of ad hoc administrative and technical channels. This may include designating national points of contact or creating secure systems for the exchange of electronic evidence to reduce delays and prevent the bureaucratic obstacles that could otherwise stymie timely investigations into cyber-offences.

To sum up, Article 40 is pivotal because of its contribution to bridging the practical gap between different legal systems and technological realities. It provides a mechanism for states to collectively and effectively pursue cybercriminals, while also setting guardrails that ensure cooperation does not undermine legal or human rights standards. However, its actual utilization relies crucially on national adaptations because states parties will incorporate Article 40 into domestic legislation via approaches reflecting local

¹⁷ Pillai, P. (2023, August 4). Symposium on Ljubljana – The Hague Convention on Mutual Legal Assistance: Critical Reflections – Lessons Learned: Civil Society Engagement in Treaty Negotiations. OpinioJuris. <https://clck.ru/3QfhHm>

legal traditions. Consequently, implementing covenant obligations might vary between states parties. Therefore, a harmonizing body should take over the dilemma and introduce harmonized implementation schemes adaptable to states parties' jurisdictions.

Conclusions

Despite being a solid norm in international law, universal jurisdiction still challenging legal and practical odds that hinder its accurate utilization. The state-of-the-art reveals a widespread official refusal to submitting a national crime to foreign jurisdictions, leading to the creation of MLA. This norm was consensually introduced to international legal practice to cure deficiencies resulting from universal jurisdiction inability. MLA manifests a universal admissible form of inter-state legal cooperation aiming to suppress severe criminals. In particular, the notion proves appropriate to combat serious transnational crimes because of its global consensus.

The research proves that the MLA effectiveness to combat international core crimes has motivated international organizations and jurists to adopt it under a covenant framework to combat cybercrimes. The latter exploit the vague and borderless nature of cyberspace, creating serious transnational criminal activities. Therefore, MLA presents an appropriate solution to be adopted within an international treaty on cybercrime, i.e., the UN Cybercrime Convention, due to proving advantageous as a practical alternative to universal jurisdiction. As revealed by the research, MLA obligations' adaptability to national juridical backgrounds enhances its adoption by the Convention to combat cybercrime.

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Конвенция Организации Объединенных Наций против киберпреступности: имплементация концепции взаимной правовой помощи в цифровую эпоху

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Ключевые слова

взаимная правовая помощь, киберпреступность, кибертерроризм, международное право, международное сотрудничество, международное уголовное право, право, цифровые технологии, экстрадиция, юрисдикция

Аннотация

Цель: исследовать эволюцию и сравнительную эффективность взаимной правовой помощи как практической альтернативы универсальной юрисдикции в контексте противодействия транснациональной киберпреступности на основе положений Конвенции Организации Объединенных Наций против киберпреступности.

Методы: в работе применен метод углубленного юридического анализа международных правовых инструментов с акцентом на нормативных положениях Конвенции Организации Объединенных Наций против киберпреступности. Автором проведено сравнительно-правовое исследование механизмов универсальной юрисдикции и взаимной правовой помощи, включающее изучение исторических прецедентов применения универсальной юрисдикции и эволюции концепции взаимной правовой помощи в рамках общего права, двусторонних и многосторонних международных соглашений. Особое внимание уделено анализу Гаагской конвенции о взаимной правовой помощи как образцовой модели организации международного сотрудничества. Исследование опирается на доктринальные разработки и практические результаты применения рассматриваемых правовых механизмов в борьбе с цифровыми угрозами.

Результаты: проведенный анализ продемонстрировал, что, несмотря на гуманитарный потенциал универсальной юрисдикции, позволяющей национальным судам осуществлять экстерриториальное преследование тяжких преступлений, ее практическое применение существенно затруднено вследствие противодействия со стороны суверенных государств и избирательного правоприменения под политическим влиянием. Эффективной консенсусной альтернативой

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выступает механизм взаимной правовой помощи, способствующий международному сотрудничеству судебных систем и обеспечивающий координированное противодействие трансграничной киберпреступности при сохранении национального суверенитета. Установлено, что Конвенция Организации Объединенных Наций против киберпреступности эффективно интегрирует принципы взаимной правовой помощи через механизмы консультаций, координации юрисдикций, экстрадиции, передачи осужденных и уголовного производства.

Научная новизна: исследование предлагает новаторский подход к анализу соотношения традиционных и современных международно-правовых механизмов в условиях цифровизации глобального пространства. Автором обоснована концептуальная позиция, согласно которой эволюция взаимной правовой помощи, обусловленная как практикой общего права, так и современными договорными инициативами, представляет собой уникальный комплексный инструментарий, позволяющий преодолеть системные ограничения универсальной юрисдикции в эпоху цифровых технологий. Продемонстрировано, что взаимная правовая помощь де-факто создает консенсусную практику применения универсальной юрисдикции, основанную на добровольном согласии государств, что качественно отличает ее от традиционных подходов. Впервые проведен системный анализ имплементации принципов взаимной правовой помощи в специализированном международном договоре по киберпреступности.

Практическая значимость: полученные результаты подчеркивают критическую роль взаимной правовой помощи в укреплении глобального сотрудничества судебных органов и эффективном пресечении транснациональной киберпреступной деятельности. Исследование демонстрирует практическую эффективность Конвенции Организации Объединенных Наций против киберпреступности как действенного международно-правового инструмента, обеспечивающего баланс между суверенитетом государств и необходимостью международного судебного сотрудничества.

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Автор сообщает об отсутствии конфликта интересов.

Финансирование

Исследование не имело спонсорской поддержки.

Тематические рубрики

Рубрика OECD: 5.05 / Law

Рубрика ASJC: 3308 / Law

Рубрика WoS: OM / Law

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