

## *Background Information:*

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

It is the solemn responsibility of all States to comply with their international obligations to end impunity for the crimes of genocide, crimes against humanity and war crimes. This responsibility notably includes thorough investigation and prosecution at the domestic level of persons responsible for such crimes. Not just to adequately penalise violations of international law, but also to avoid the recurrence of such heinous atrocities.

Because of the very nature of these most serious international crimes, suspects, witnesses, evidence or assets relating to these crimes are quite often not limited to the territory of one single State. Meaning that States which have to investigate and prosecute these crimes will have to cooperate practically and judicially in order to be truly effective in the fight against impunity and comply with their international obligations. This is the only way to avoid creation of safe havens for perpetrators of mass atrocities.

As a practical tool to enable States to both comply with their international obligations and empower their national judiciaries, the Kingdom of the Netherlands, the Kingdom of Belgium and the Republic of Slovenia, propose to set up a modern procedural multilateral treaty on MLA and extradition which would facilitate better practical cooperation between States investigating and prosecuting these crimes.

A first expert meeting held on the subject, where practitioners and legal experts from nineteen countries across five continents found that the international procedural legal framework for mutual legal assistance and extradition for these international crimes is incomplete and outdated. An increasing number of like-minded States share this conclusion. Therefore, the only way to fill this gap is to open negotiations for a new multilateral instrument for international cooperation.

The envisaged treaty could be based upon existing procedural provisions from more recent 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–, to be adapted for cooperation in the investigation and prosecution of crimes of genocide, crimes against humanity and war crimes. It could be negotiated within a UN framework, with the aim of universal adoption.

#### **Why a treaty specifically on mutual legal assistance and extradition for crimes of genocide, crimes against humanity and war crimes?**

Effective investigation and prosecution of mass atrocities at the national level requires international legal cooperation. As indicated above, suspects, witnesses, evidence or assets relating to these crimes are quite often not limited to the territory of one single State. While not all States require the same level of formality for international legal cooperation, experience has shown that a reply to a request for assistance can be obtained much sooner when there is a formal agreement in place. When there is either a bilateral or multilateral convention, the countries in question have a duty to respond to requests for legal assistance. Moreover, enhancing mutual legal assistance is not only essential for the investigation and prosecution of these international crimes but is also an effective way to designate direct channels of communication to speed up the judicial cooperation and to exchange best practices,

know-how and expertise. A multilateral instrument could provide a more coherent approach for all countries dealing with these matters.

**For whom is this new instrument meant?**

Such an instrument is meant for all States to investigate and prosecute, at the domestic level, crimes of genocide, crimes against humanity and war crimes and all states supporting the domestic prosecution of international crimes in other states.

**Would this project entail extensive negotiations on new concepts or provisions?**

Since the relevant crimes have already been defined in existing conventions and international customary law, there would be no need for lengthy debates on definitions. Provisions of mutual legal assistance and extradition have also previously been negotiated for existing treaties such as the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. These agreed upon definitions and procedures can be combined to ensure an effective system for international cooperation.

**Why can we not use existing multilateral treaties?**

The treaties addressing these international crimes -the Genocide Convention, the Geneva Conventions- contain only limited and largely outdated provisions for mutual legal assistance and extradition, if any. Existing multilateral treaties that do have provisions on mutual legal assistance and extradition – such as UNTOC and the UN Convention against Torture –, only apply to the crimes covered by those treaties. The crimes of genocide, crimes against humanity and war crimes do not fit the legal definition of the crimes to which those treaties apply, rendering them useless for this purpose. Hence the need for a new treaty.

**Why should such an instrument be a priority?**

Because the crimes of genocide, crimes against humanity and war crimes are the most serious crimes of international concern and because all States are under the obligation to investigate and prosecute them effectively. The adoption of the new treaty will permit all States to be efficient in their fight against impunity.