



**Written Comments by Liechtenstein**  
**on the Draft Texts of the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes**  
**(“pure MLA”-version 12/03/2020 – “Swiss Draft”)**  
**and the Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes**  
**(version 20/03/2020 – “Core Group Draft”)**

---

Liechtenstein welcomes the two new drafts on a Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity and War Crimes i.e. the “pure-MLA version” (Swiss Draft) and the “Core Group Draft”. Liechtenstein is proud to co-sponsor the Mutual Legal Assistance Initiative, and foremost we would like to reiterate our full support for the general direction of the Initiative. Both draft texts have considerably gained in quality compared to the last draft that was discussed in January in The Hague. However, we still see room for improvement. In our comments, we would like to stress two key elements which we believe should be examined with the utmost attention:

1. We would like to stress that in both drafts the crime of aggression is still not embedded at the same level as the other three core crimes. Differential treatment of the four crimes contained in article 5 of the Rome Statute has no justification of substance – especially in light of the fact that the ICC has been able to exercise jurisdiction over the crime of aggression since July 2018. Liechtenstein therefore proposes to adapt this different treatment of the four core crimes in the drafts.
2. Liechtenstein is seriously worried about Article 2 of the Core Group Draft, i.e. the “copy paste” solution. Such a solution bears the possibility to open up negotiations on the definitions of the core crimes contained in the Rome Statute, which we want to avoid in this as well as in all other contexts. The definitions of the core crimes contained in the Rome Statute have been used inside and outside the Rome Statute context and

are internationally established. The opening of negotiations on the definitions would set a precedent and could lead to a situation where the definitions are called into question or result in controversial discussions on amendment proposals.

Both these key elements could be best accommodated, if the Convention would be simplified to a pure MLA-Convention. Liechtenstein therefore has a strong preference to use the “pure-MLA version” that was proposed by the Swiss Delegation as the basic for further negotiations from now on.

Liechtenstein furthermore would like to share some concrete suggestions and questions regarding the proposed drafts:

- Liechtenstein suggests to change the title of the Convention to “Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and The Crime of Aggression”.
- Concerning the “pure-MLA version”, Liechtenstein suggests to shift the crime of aggression from Article 2, Paragraph 2 to Article 2, Paragraph 1.
- Concerning the “pure-MLA version”, Article 16, Paragraph 5, Liechtenstein would like to know whether the drafters already have an opinion on how the mentioned “transmission of requests by secure electronic means” could be carried out or whether an IT-solution is already being considered?
- Concerning the “pure-MLA version”, Article 23, Liechtenstein would like to ask for more information about the term “interested persons”. It would be particularly interesting to know what kind of persons are subsumed under this term.
- Concerning the “pure-MLA version”, Article 31, Liechtenstein would like to know why the transmission of objects, documents, records or evidence should be included in the Convention at such a level of detail? The description seems a little too detailed for a convention of this kind.
- Concerning the “pure-MLA version”, Article 35, Liechtenstein would like to know why the provision on electronic surveillance is necessary in this detailed form? Would it not be sufficient to make a general reference to the possibility of electronic surveillance under a paragraph on "Special investigative techniques"?
- Liechtenstein is of the opinion that the Articles 45 (Rule of speciality), 47 (non bis in idem) and 48 (handing over of property) of the “pure-MLA version” are important elements that should be included in a Convention of this kind.
- While the “Core Group Draft” contains a separate chapter on victims, witnesses and experts, this chapter is missing in the “pure-MLA version”. Liechtenstein would like to know what was the reason for deleting these provisions?

Liechtenstein would be very grateful to the core group if these elements were included in the next draft and would like to, once again, assure the core group of Liechtenstein's support in this very important process.