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Compilation of proposals and comments submitted by Member States on provisions on international cooperation, technical assistance, preventive measures and the mechanism of implementation, the final provisions and the preamble of a comprehensive international convention on countering the use of information and communications technologies for criminal purposes

Addendum

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Additional submissions

The present addendum contains submissions from Member States, received after 8 July 2022, for consideration by the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes at its third session.

Colombia

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[13 July 2022]

The Republic of Colombia presents below its views on the elements that it considers should be present in the sections on international cooperation, technical assistance, preventive measures, implementation mechanisms and final provisions, and the preamble of the convention on cybercrime under negotiation.

For the preparation of this text, the Colombian inter-institutional team analysed the impact that the Council of Europe Convention on Cybercrime (the Budapest Convention) has had on our country. This text calls for including what, in our opinion, should be improved in the field of cybercrime and thus for having more instruments for law enforcement agencies.

Preamble

The States Members of the United Nations, recognizing the value of fostering cooperation, and the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, inter alia, by adopting appropriate legislation, all in accordance with the protection of human rights and fundamental freedoms.

Recalling Security Council resolutions [2322 \(2016\)](#), [2331 \(2016\)](#), [2341 \(2017\)](#) and [2396 \(2017\)](#), General Assembly resolutions 193 (2014) and [S-30/1](#), Conference of the Parties to the United Nations Convention against Transnational Organized Crime resolutions 8/1, 9/3 and 10/4, Commission on Crime Prevention and Criminal Justice resolution 26/4 (2017) and Economic and Social Council resolutions 2019/19 and 2019/21, which encourage the collection and preservation of digital evidence.

International cooperation

General principles relating to international cooperation (article 23 of the Budapest Convention)

Principles relating to extradition

Extradition

1. This article applies to extradition between Parties for the criminal offences established in accordance with articles defining cyber-dependent crimes and cyber-enabled crimes such as child sexual abuse, computer fraud and personal data breach, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty. (art. 24, para. 1 (a), of the Budapest Convention)
2. The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them. (art. 24, para. 2, of the Budapest Convention)
3. If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect

to any criminal offence referred to in paragraph 1 of this article. (art. 24, para. 3, of the Budapest Convention)

4. Parties that do not make extradition conditional on the existence of a treaty shall recognize the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves. (art. 24, para. 4, of the Budapest Convention)

5. Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition. (art. 24, para. 5, of the Budapest Convention)

General principles relating to mutual assistance (article 25, paragraphs 1–5, of the Budapest Convention)

1. The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.

2. Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in the section related to the procedures pertaining to mutual assistance requests in the absence of applicable international agreements.

3. Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including the International Criminal Police Organization (INTERPOL) I-24/7 system or email, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.

4. Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse cooperation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in the articles defining cyber-dependent crimes and cyber-enabled crimes such as child sexual abuse, computer fraud and personal data breach solely on the ground that the request concerns an offence which it considers a fiscal offence.

5. Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

Spontaneous information (article 26, paragraphs 1 and 2, of the Budapest Convention)

Procedures pertaining to mutual assistance requests in the absence of applicable international agreements

1. Application in the absence of a treaty or arrangement (art. 27, para. 1, of the Budapest Convention)

2. Central authority (art. 27, para. 2 (a) and (b), of the Budapest Convention)

2. (c) Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the secretariat of the Convention the names and addresses of the authorities designated in pursuance of this paragraph; (art. 27, para. 2 (c), of the Budapest Convention)

2. (d) The secretariat of the Convention shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times. (art. 27, para. 2 (d), of the Budapest Convention)
3. Mutual assistance (art. 27, para. 3, of the Budapest Convention)
4. Refusal of assistance (art. 27, para. 4 (a) and (b), of the Budapest Convention)
5. Postponement of action (art. 27, para. 5, of the Budapest Convention)
6. Considerations before postponing assistance (art. 27, para. 6, of the Budapest Convention)
7. Outcome of the execution of a request for assistance (art. 27, para. 7, of the Budapest Convention)
8. Confidentiality of the request for assistance (art. 27, para. 8, of the Budapest Convention)
9. Article 27, paragraph 9 (a)–(e), of the Budapest Convention
10. Confidentiality and limitation on use (art. 28, paras. 1, 2 (a) and (b), 3 and 4, of the Budapest Convention)

Specific provisions

Mutual assistance regarding provisional measures

1. Expedited disclosure of preserved traffic data:
2. Where, in the course of the execution of a request made pursuant to expedited disclosure of preserved traffic data to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted. (art. 30, para. 1, of the Budapest Convention)
3. Disclosure of traffic data under paragraph 1 (art. 30, para. 2 (a) and (b), of the Budapest Convention)
4. Mutual assistance regarding accessing of stored computer data:
 - (a) A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that have been preserved pursuant to the expedited preservation of stored computer data. (art. 31, para. 1, of the Budapest Convention);
 - (b) The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in the article on general principles relating to international cooperation, and in accordance with other relevant provisions of this chapter; (art. 31, para. 2, of the Budapest Convention)
 - (c) Answer to the request; (art. 32, para. 3 (a) and (b), of the Budapest Convention)
 - (d) Mutual assistance regarding the real-time collection of traffic data; (art. 33, paras. 1 and 2, of the Budapest Convention)
 - (e) Mutual assistance regarding the interception of content data. (art. 34 of the Budapest Convention)

Mechanism for implementation (article 35 of the Budapest Convention)

1. Each Party shall designate a point of contact to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning

criminal offences related to the use of information and communications technologies for criminal purposes.

Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:

- (a) The provision of technical advice;
 - (b) The preservation of data pursuant to articles 29 and 30;
 - (c) The collection of evidence, the provision of legal information and the locating of suspects.
2. The points of contact shall coordinate meetings (at least twice a year) to review and suggest updates to the convention and follow up on the development of cybercrime.
 3. (a) A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis;
 - (b) If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to coordinate with such authority or authorities on an expedited basis.
 4. Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

New language proposals:

The Parties shall implement mechanisms to foster software design among developing countries to promote local development and computer security in the public and private sectors to prevent cybercrime.

The Parties shall facilitate the dissemination of technologies necessary to improve the local capabilities of less developed countries in the fight against cybercrime. Building administrative and technical capacities to preserve the technological developments achieved and promote new advances will be part of the cooperation programmes with developing countries.

The prevention of cybercrime shall be a central element of programmes to combat crime in cyberspace. The Parties shall promote the development of educational mechanisms for the public and support the development of affordable technologies capable of addressing the threats posed by cybercrime.

Jamaica (on behalf of the Caribbean Community)

[Original: English]
[12 July 2022]

Chapter 4 – International cooperation in criminal matters

Article: International cooperation

1. States Parties shall cooperate in criminal matters in accordance with this chapter of the Convention.
2. In matters of international cooperation, whenever dual criminality is considered a requirement, it is deemed fulfilled irrespective of whether the laws of the requested State Party place the criminal offence within the same category of offence or create the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article: Extradition

1. This article shall apply to the criminal offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.
2. Notwithstanding paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the criminal offences established in accordance with this Convention that are not punishable under its own domestic law.
3. If the request for extradition includes several separate criminal offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.
4. Each of the criminal offences to which this article applies is deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.
5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any criminal offence to which this article applies.
6. A State Party that makes extradition conditional on the existence of a treaty shall:
 - (a) At the time of the deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and
 - (b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.
7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize criminal offences to which this article applies as extraditable offences between themselves.
8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for the extradition and the grounds upon which the requested State Party may refuse extradition.
9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any criminal offence to which this article applies.
10. Subject to its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.
11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of a criminal offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the

State Party seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other criminal offence of a serious nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and the requested State Party and the requesting State Party agree with this option and other terms that the States Parties may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purpose of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirement of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. A person against whom proceedings are being taken in connection with any of the criminal offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

16. A State Party may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article: Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangement on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for criminal offences established in accordance with this Convention, in order that they may complete their sentences there.

Article: Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the criminal offences established in accordance with this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with [criminal liability of legal persons] of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of documents in court proceedings;
- (c) Executing searches and seizures, and freezing;
- (d) Examining electronic information and data, objects and sites;
- (e) Providing information, and evidentiary items to include electronic information, and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;
- (j) Identifying, freezing and tracing proceeds of crime in accordance with (chapter on asset recovery) of this Convention;
- (k) The recovery of assets, in accordance with [chapter on asset recovery] of this Convention.

4. Without prejudice to its domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State Party of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that the said information shall remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. This article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to a request made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. Where States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply, unless the States Parties agree to apply paragraphs 9 to 29 of this article instead of the treaty.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. A requested State Party, in responding to a request for assistance pursuant to this article in the absence of a dual criminality, shall take into account the purposes of this Convention, as set forth in article 1.

10. States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action, but such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other articles of this Convention.

11. Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

12. A person who is being detained or serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to criminal offences established in accordance with this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate, to the transfer.

13. For the purposes of paragraph 12 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in custody of the State Party to which he or she was transferred.

14. Unless the State Party from which a person is to be transferred in accordance with paragraphs 12 and 13 of this article so agrees, that person, whatever his or her nationality, shall be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State Party to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

15. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority.

16. The Secretary-General of the United Nations shall be notified of the central authority designated for the purpose of paragraph 15 at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention.

17. Requests for mutual legal assistance and any communication related to such assistance shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization (INTERPOL), if possible.

18. Requests under paragraph 17 shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

19. The requested State Party shall accept a request in electronic form. A State Party may also accept a request transmitted orally and may require confirmation in electronic form. It may require appropriate levels of security and authentication before accepting the request.

20. A request for mutual legal assistance shall contain:

- (a) The identity of the authority making the request;
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and function of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible, the identity, location and nationality of any person concerned; and
- (f) The purpose of which the evidence, information or action is sought.

21. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it facilitates such execution.

22. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

23. Wherever possible and consistent with its domestic law, when a person is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the person in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

24. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the

requesting State Party shall inform the requested State Party of the disclosure without delay.

25. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

26. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with this article;
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subjected to investigation, prosecution or judicial proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

27. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

28. Reasons shall be given for refusal of mutual legal assistance.

29. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

30. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

31. Before refusing a request pursuant to paragraph 26 of this article or postponing its execution pursuant to paragraph 30 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

32. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she have been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

33. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a

substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

34. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents and information in its possession that under its domestic law are available to the general public;

(b) May provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

35. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance this article.

Article: Spontaneous information

1. Without prejudice to its domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to the criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

2. The transmission of information pursuant to this article shall be without prejudice to inquiries and criminal proceedings in the State Party of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that the said information shall remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing information in its criminal proceedings that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

Article: Mutual legal assistance regarding provisional measures

(a) Assistance: preservation of computer data and information (expedited preservation of stored computer data)

1. A State Party may request another State Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of the requested State Party and in respect of which the requesting State Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of data.

2. A request for preservation made under paragraph 1 shall specify:

(a) The authority seeking the preservation;

(b) The criminal offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;

(c) The stored computer data to be preserved and their relationship to the criminal offence;

(d) Any available information identifying the custodian of the stored computer data or the location of the computer system;

(e) The necessity of the preservation; and

(f) That the State Party intends to submit a request for the mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.

3. Upon receiving the request from another State Party, the requested State Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to provide such preservation.

4. A State Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored data may, in respect of criminal offences other than those established in accordance with this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.

5. In addition to paragraph 4, a request for preservation may only be refused if:

(a) The request concerns a criminal offence which the requested State Party considers a political offence or an offence connected with a political offence; or

(b) The requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

6. Where the requested State Party believes that preservation will not ensure the future availability of the stored computer data or will threaten the confidentiality of or otherwise prejudice the requesting State Party's investigation, it shall promptly so inform the requesting State Party, which shall then determine whether the request should nevertheless be executed.

7. Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than ninety days, in order to enable the requesting State Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the stored computer data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

Article: Expedited production of stored computer data in an emergency

1. Each State Party shall adopt such legislative and other measures as may be necessary, in an emergency, for its point of contact for the 24/7 network referenced in [article on the 24/7 network] of the Convention ("point of contact") to transmit a request to and receive a request from a point of contact in another State Party seeking immediate assistance in obtaining from a service provider in the territory of that State Party the expedited production of specified, stored computer data in that service provider's possession or control.

2. Each State Party may reserve the right not to disclose the specified stored computer data to the requesting State Party until the requesting State Party transmits an emergency mutual legal assistance request in accordance with [article on emergency mutual legal assistance requests].

3. A State Party may, at the time of signature of this Convention or when depositing its instrument of ratification, acceptance or approval, declare that it will not execute requests under paragraph 1 seeking only the disclosure of subscriber information.

4. Each State Party shall, pursuant to paragraph 1, adopt such legislative and other measures as may be necessary to enable:

(a) Its authorities to seek computer data from a service provider in its territory following a request under paragraph 1;

(b) A service provider in its territory to disclose the requested computer data to its authorities in response to a request under subparagraph (a); and

(c) Its authorities to provide the requested computer data to the requesting State Party.

5. The request under paragraph 1 shall specify:
 - (a) The competent authority seeking the computer data and date on which the request was issued;
 - (b) A statement that the request is issued pursuant to this Convention;
 - (c) The name and address of the service provider or providers in possession or control of the computer data sought;
 - (d) The offence or offences that is or are the subject of the criminal investigation or proceedings and a reference to its or their legal provisions and applicable penalties;
 - (e) Sufficient facts to demonstrate that there is an emergency and how the data sought relate to it;
 - (f) A detailed description of the computer data sought;
 - (g) Any special procedural instructions; and
 - (h) Any other information that may assist in obtaining disclosure of the requested computer data.
6. The requested State Party shall accept a request in electronic form. A State Party may also accept a request transmitted orally and may require confirmation in electronic form. It may require appropriate levels of security and authentication before accepting the request.
7. A State Party may, at the time of signature of this Convention or when depositing its instrument of ratification, acceptance or approval, declare that it requires the requesting State Party, following the execution of the request, to submit the request and any supplemental information transmitted in support thereof, in a format and through such channel, which may include mutual assistance, as specified by the requested State Party.
8. The requested State Party shall inform the requesting State Party of its determination on the request under paragraph 1 on a rapidly expedited basis and, if applicable, shall specify any conditions under which it would provide the data and any other forms of cooperation that may be available.
9. If a requesting State Party cannot comply with a condition imposed by the requested Party under paragraph 8, it shall promptly inform the requested State Party. The requested State Party shall then determine whether the information or material should nevertheless be provided. If the requesting State Party accepts the condition, it shall be bound by it.
10. The requested State Party that supplies information or material subject to such a condition may require the requesting State Party to explain in relation to that condition the use made of such information or material.

Article: Emergency mutual assistance

1. Each State Party may seek mutual assistance on a rapidly expedited basis where it is of the view that an emergency exists. A request under this article shall include, in addition to the other contents required, a description of the facts that demonstrate that there is an emergency and how the assistance sought relates to it.
2. A requested State Party shall accept such a request in electronic form. It may require appropriate levels of security and authentication before accepting the request.
3. The requested State Party may seek, on a rapidly expedited basis, supplemental information in order to evaluate the request. The requesting State Party shall provide such supplemental information on a rapidly expedited basis.

4. Once satisfied that an emergency exists and the other requirements for mutual assistance have been satisfied, the requested State Party shall respond to the request on a rapidly expedited basis.
5. Each State Party shall ensure that a person from its central authority or other authorities responsible for responding to mutual assistance requests is available on a twenty-four-hour, seven-day-a-week basis for the purpose of responding to a request under this article.
6. The central authority or other authorities responsible for mutual assistance of the requesting and requested States Parties may mutually determine that the results of the execution of a request under this article, or an advance copy thereof, may be provided to the requesting State Party through a channel other than that used for the request.
7. Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested States Parties, article 27 (Procedures pertaining to mutual assistance requests in the absence of applicable international agreements) and article 28 (Confidentiality and limitation on use) of the Budapest Convention shall apply to this article.
8. Where a treaty or arrangement exists, this article shall be supplemented by such treaty or arrangement unless the States Parties concerned mutually determine to apply any or all of the provisions of the Convention referred to in paragraph 7 of this article in lieu thereof.
9. Each State Party may, at the time of signature of this Convention or when depositing its instrument of ratification, acceptance or approval, declare that requests may also be sent directly to its judicial authorities, or through the channels of the International Criminal Police Organization (INTERPOL) or to its 24/7 point of contact established under article 35 of the Convention. In any such cases, a copy shall be sent at the same time to the central authority of the requested State Party through the central authority of the requesting State Party. Where a request is sent directly to a judicial authority of the requested State Party and that authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform the requesting State Party directly that it has done so.

Article: Assistance: seizure of, access to, collection and disclosure of computer data and information

1. Where, in the course of the execution of a request made pursuant to [article on mutual legal assistance regarding provisional measures – expedited preservation of data] to preserve traffic data concerning a specific communication, the requested State Party discovers that a service provider in another State was involved in the transmission of the communication, the requested State Party shall expeditiously disclose to the requesting State Party the required traffic data and any other digital information deemed sufficient to identify that service provider and the path through which the communication was transmitted.
2. Disclosure of traffic data under paragraph 1 may only be withheld if:
 - (a) The request concerns a criminal offence which the requested State Party considers a political offence or an offence connected with a political offence; or
 - (b) The requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

Article: Mutual assistance regarding accessing of stored computer data

1. A State Party may request another State Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested State Party, including data that have been preserved pursuant to [article on mutual legal assistance regarding provisional measures – expedited preservation of data].

2. The requested State Party shall respond to the request through the application of international instruments, arrangements and laws referred to in [article on general principles relating to international cooperation], and in accordance with other relevant provisions of this chapter.
3. The request shall be responded to on an expedited basis where:
 - (a) There are grounds to believe that relevant data are particularly vulnerable to loss or modification; or
 - (b) The instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited cooperation.

Article: Mutual assistance regarding the interception of content data

The States Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.

Article: Trans-border access to stored computer data with consent or where publicly available

A State Party may, without the authorization of another State Party:

- (a) Access publicly available (open source) stored computer data, regardless of where the data are located geographically; or
- (b) Access or receive, through a computer system in its territory, stored computer data located in another State Party, if the State Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.

Article: Access to information technology – information across borders

A State Party may, without obtaining an authorization from another State Party:

- (a) Access information technology information available to the public (open source), regardless of the geographical location of the information;
- (b) Access or receive, through information technology in its territory, information technology information found in the other State Party, provided it has obtained the voluntary and legal agreement of the person having the legal authority to disclose the information to that State Party by means of the said information technology.

Article: Mutual assistance regarding the real-time collection of traffic data

1. The States Parties shall provide mutual assistance to each other in the real-time collection of the traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.
2. Each State Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.

Article: Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to counter the criminal offences established in accordance with this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of criminal offences established in accordance with this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries in respect of criminal offences established in accordance with this Convention concerning;

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit criminal offences established in accordance with this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services, and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of criminal offences established in accordance with this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements and arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for the mutual law enforcement cooperation in respect of criminal offences established in accordance with this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to criminal offences established in accordance with this Convention committed through the use of modern technology.

Article: Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the use of special investigative techniques, such as electronic or other forms of the surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating the use of information and communications technologies for criminal purposes.

2. For the purposes of investigating the criminal offences established in accordance with this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in

compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangements as set forth in paragraph 2 of this article, a decision to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use special investigative techniques at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing traffic data to continue uninterrupted or to be removed or replaced in whole or in part.

Article: Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of a criminal offence established in accordance with this Convention in cases where such transfer is considered to be in the interest of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article: Collection, exchange and analysis of information on the use of information and communications technologies for criminal purposes

States Parties shall consider developing and sharing with each other and through international and regional organizations statistics and analytical expertise concerning the use of information and communications technologies for criminal purposes, with a view to developing, in so far as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and counter the use of information and communications technologies for criminal purposes.

Article: 24/7 network

1. Each State Party shall designate a point of contact available on a twenty-four-hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:

- (a) The provision of technical advice;
- (b) The preservation of data pursuant to [articles on expedited preservation of stored computer data and expedited disclosure of preserved traffic data];
- (c) The collection of evidence, the provision of legal information and the locating of suspects.

2. A State Party's point of contact shall have the capacity to carry out communications with the point of contact of another State Party on an expedited basis.

3. If the point of contact designated by a State Party is not part of that State Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to coordinate with such authority or authorities on an expedited basis.

4. Each State Party shall ensure that the trained and equipped personnel are available, in order to facilitate the operation of the network.

Chapter 5 – Technical assistance

Article: Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigators, judicial officers, financial intelligence units and customs personnel, and other personnel charged with the prevention, detection and control of the criminal offences established in accordance with this Convention. These programmes may include secondments and exchanges of staff and shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the criminal offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of data;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in countering the use of information and communications technologies for criminal purposes;

(e) Collection of evidence;

(f) Modern law enforcement equipment and special investigative techniques, including electronic surveillance, and undercover operations;

(g) Methods used in countering criminal offences committed through the use of information and communications technologies;

(h) Methods used in the protection of victims and witnesses who cooperate with judicial authorities;

(i) Training in national and international regulations.

2. Each State Party shall, to the extent necessary and possible, initiate, develop or improve specific training programmes for members of the judiciary, including magistrates.

3. Training to the same effect as that undertaken pursuant to paragraphs 1 and 2 of this article shall be introduced and applied within the prosecution service in those States Parties where the service does not form part of the judiciary but enjoys independence similar to that of the judiciary.

4. States Parties shall assist one another in planning and implementing research and training programmes designed to enable the sharing of expertise in the areas referred to in paragraphs 1, 2 and 3 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

5. States Parties shall promote training and technical assistance that will facilitate timely extradition and mutual legal assistance. Training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

6. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and under other relevant bilateral and multilateral agreements or arrangements.

Chapter 6 – Preventive measures

Article: Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the use of information and communications technologies for criminal purposes to:

(a) Supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure or location of information and communications technologies;

(ii) Links, including international links, with any person using information and communications technologies for criminal purposes;

(iii) Criminal offences that any person using information and communications technologies for criminal purposes have committed or may commit;

(b) Provide substantial help to competent authorities that may contribute to depriving any person using information and communications technologies for criminal purposes of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of a criminal offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of a criminal offence established in accordance with this Convention.

4. Protection of a person referred to in paragraphs 2 and 3 of this article shall be as provided for in [article] of this Convention.

5. Where a person referred to in paragraph 1 of this article is located in one State Party and can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set out in paragraphs 2 and 3 of this article.

Article: Collection, exchange and analysis of information on the nature of the use of information and communications technologies for criminal purposes

1. Each State Party may analyse, in consultation with experts, trends in the use of information and communications technologies for criminal purposes in its territory, the circumstances in which these crimes are committed, and the groups and technologies involved.

2. States Parties may develop and share, with each other and through international and regional organizations, analytical expertise concerning the use of information and communications technologies for criminal purposes. For that purpose, common definitions, standards, methodologies and information on best practices should be developed and applied as appropriate.

3. Each State Party shall monitor its policies and actual measures to combat the use of information and communications technologies for criminal purposes and make assessments of their effectiveness and efficiency.

Article: Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with its domestic law, to promote the active participation of individuals

and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against the use of information and communications technologies for criminal purposes and to raise public awareness regarding the existence, causes and gravity of and the threat posed by such crimes. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of, and promoting the contribution of the public to, decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of the use of information and communications technologies for criminal purposes, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning the use of information and communications technologies for criminal purposes. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary for:
 - (i) Respect of the rights or reputations of others;
 - (ii) The protection of national security, public order or public health.

2. Each State Party shall take appropriate measures to ensure that the relevant bodies in countering the use of information and communications technologies for criminal purposes referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute a criminal offence established in accordance with this Convention.

Article: Cooperation between national authorities and the private sector

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating, regulatory and prosecuting authorities and entities of the private sector, in particular financial institutions and Internet service providers, relating to matters involving the commission of criminal offences established in accordance with this Convention.

Chapter 7 – Mechanism of implementation

Article: Implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of the use of information and communications technologies for criminal purposes on society in general and, in particular, on sustainable development.
2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations to:
 - (a) Enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and counter the use of information and communications technologies for criminal purposes;
 - (b) Enhance financial and material assistance to support the efforts of developing countries to counter the use of information and communications technologies for criminal purposes effectively and to help them implement this Convention successfully;

(c) Provide technical assistance to any State Party who desires assistance in fully implementing their obligations under this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) Encourage and persuade other States and financial institutions, as appropriate, to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, the measures under this article shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international levels.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of the use of information and communications technologies for criminal purposes.

Article: Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with its domestic law, to ensure the implementation of its obligations under this Convention.

2. The criminal offences established in accordance with [articles ...] of this Convention shall be established in the domestic law of each State Party independent of any person involved in the use of information and communications technologies for criminal purposes, except to the extent that the persons mentioned in [article [x], paragraphs 2 and 3, on measures to enhance cooperation with law enforcement authorities,] of this Convention.

3. Each State Party may adopt stricter or more severe measures than those provided for by this Convention for preventing and countering the use of information and communications technologies for criminal purposes.

Article: Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to counter the use of information and communications technologies for criminal purposes and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set out in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under [articles on training and technical assistance; other measures: implementation of the Convention through

economic development and technical assistance; and prevention]¹ of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in the use of information and communications technologies for criminal purposes and on successful practices for countering such use;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention; and

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraph 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Chapter 8 – Final provisions

Article: Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation or any other peaceful means.

2. Any dispute between States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation or any other peaceful means within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article: Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [date] to [date] at [place].

2. This Convention shall also be open for signature by regional economic integration organizations, provided that at least one member State of the organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

¹ These are taken from articles 29, 30 and 31 of the United Nations Convention against Transnational Organized Crime.

4. A regional economic integration organization that has signed this Convention may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, the organization shall declare the extent of its competence with respect to the matters governed by this Convention. The organization shall also inform the depositary of any relevant modification in the extent of its competence.

5. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article: Entry into force

1. This Convention shall enter into force on the [ninetieth day after the date of deposit of the fortieth instrument of ratification], acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of the organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article: Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are States Parties to this Convention. These organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article: Denunciation

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations and this denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.
3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article: Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.
2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Preamble

The States Parties to this Convention,

Bearing in mind the purposes and principles of the Charter of the United Nations and the remit of the United Nations in harmonizing the actions of nations in achieving those purposes and fulfilling those principles,

Convinced that crimes using information and communications technologies are transnational crimes and, therefore, demand a global response from all States,

Acknowledging that the development of information and communications technologies over the last two decades has revolutionized the way in which societies operate,

Recognizing that, while information and communications technologies have contributed significantly to the development of States, the evolution of information and communications technologies and their increased use have led to the emergence of new opportunities for persons with ill intent to misuse these technologies to carry out criminal activities,

Deeply concerned about the international and domestic threat that crimes committed using information and communications technologies pose to societies and its impact on the well-being of individuals,

Considering that crime committed using information and communications technologies is a matter of grave concern to the whole international community, making international cooperation to prevent and control it essential,

Convinced of the need to establish common criminal measures with the purpose of protecting society against the scourge of these crimes through the implementation of appropriate legislation and administrative provisions,

Convinced also that the present Convention is necessary to prevent the misuse of information and communications technologies and to facilitate, both domestically and internationally, the detection, investigation and prosecution of any criminal offence committed through the use of information and communications technologies,

Acknowledging the need to uphold and respect human rights and the fundamental principles of due process of law and the rule of law in criminal, civil or administrative proceedings when acting pursuant to the measures established in accordance with this Convention,

Recognizing the principles of sovereignty, sovereign equality and territorial integrity of States,

Convinced that the availability of technical assistance can play an important role in enhancing the ability of States to prevent and counter crimes committed using information and communications technologies effectively, including through strengthening capacity and institution-building,

Recalling General Assembly resolution [74/247](#) of 27 January 2019, in which the Assembly decided to establish an open-ended ad hoc committee to elaborate a comprehensive international convention on countering the use of information and communications technologies for criminal purposes,

Have agreed as follows:

New Zealand

[Original: English]
[15 July 2022]

1. New Zealand is pleased to respond to the invitation from the Chair of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes requesting proposals for the third negotiating session, to be held from 29 August to 9 September, relating to:

- International cooperation;
- Technical assistance;
- Prevention measures;
- The mechanism of implementation;
- The final provisions; and
- The preamble.

2. In this submission, New Zealand makes proposals on the chapters relating to international cooperation, prevention measures and technical assistance. Alongside those suggestions, we provide (in brackets) examples from other relevant international instruments, which could serve as a good basis for our negotiations. We look forward to further constructive discussions on all issues at the third negotiating session.

Effective provisions on international cooperation, prevention and technical assistance go hand in hand

3. In New Zealand's view, this convention should seek to address and improve international responses to cybercrime, including through enhanced international cooperation, effective prevention measures and robust technical assistance to ensure universal implementation. Capacity-building is a key element. We cannot have a truly effective convention without ensuring that all States Parties have the ability to meet its standards.

We should look to build on existing instruments and ensure consistency with human rights obligations

4. The new convention should not conflict with or erode existing instruments, nor existing mutual legal assistance and information-sharing obligations or practices, but rather take them into account and build on them where appropriate. Further, all aspects of this convention should be consistent with States' existing international human rights obligations, which apply online just as they do offline, including the right to freedom of expression and the right not to be subjected to arbitrary and unlawful interference with privacy.

International cooperation

5. Given its frequently transnational and cross-border nature, the investigation and prosecution of cybercrime requires effective international cooperation, including timely access to relevant data and electronic evidence.

Mutual legal assistance

6. Existing provisions relating to mutual legal assistance (art. 18 of the United Nations Convention against Transnational Organized Crime and art. 25 of the Council of Europe Convention on Cybercrime (the Budapest Convention)) provide a good basis for our negotiations. As a general principle, States parties should afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this convention, subject to the full protection of human rights and fundamental freedoms.

7. We also recognize that current mutual legal assistance regimes and practices are not always well suited to respond to cybercrime activity where swift and agile responses are necessary to ensure information is preserved and shared in a timely fashion. Where possible, we should seek to improve the consistency and timeliness of mutual legal assistance responses, including developing and sharing best practices aimed at standardizing mutual legal assistance processes.

8. Recognizing the complexities of cybercrime investigations, and the need for expedited access to data, this convention should include, subject to robust human rights and procedural safeguards, provisions for mutual legal assistance requests relating to the matters set out at article 18, paragraph 3 (a)–(i), of the Organized Crime Convention, and specifically in relation to the collection of evidence in electronic form, mutual legal assistance requests relating to:

- Preservation of computer data in respect of which a State intends to submit a request for mutual legal assistance (art. 29 of the Budapest Convention);
- The search, access, seizure, securing and disclosure of data stored by means of a computer system (art. 31 of the Budapest Convention);
- The real-time collection of traffic data associated with specified communications transmitted by means of a computer system, as permitted under States' domestic law (art. 31 of the Budapest Convention);
- The real-time collection or recording of content data of specified communications transmitted by means of a computer system, to the extent permitted under applicable treaties and domestic laws (art. 31 of the Budapest Convention);
- Subject to appropriate safeguards, New Zealand could support a provision allowing requests for rapidly expedited mutual legal assistance for disclosure of computer data in emergency cases, for example, in situations where there is a significant and imminent risk to the life or safety of an individual.
- This convention should encourage the creation of well-resourced and well-trained central authorities to respond to mutual legal assistance requests, and promote high standards, for example, ensuring information provided can meet evidentiary requirements when requested for that purpose.

9. Subject to the inclusion of strong safeguards and human rights protections within this convention, New Zealand could support extending aspects of the provisions relating to the collection, preservation and sharing of electronic evidence to apply also to sufficiently serious criminal offending other than those offences established in this convention.

10. The convention should provide States parties with the ability to refuse to provide assistance because it would prejudice their sovereignty, security, ordre public or other essential interests. Additionally, States parties should be able to refuse to provide assistance in accordance with their domestic law, which may include the grounds of

absence of dual criminality or political offences or political motivation, but may not include grounds that the offence is also considered to involve fiscal matters (art. 18, paras. 21 and 22, of the Organized Crime Convention).

Extradition

11. The convention should contain extradition provisions applying to offences established by the convention. Article 16 of the Organized Crime Convention provides a good basis for negotiations, and as with mutual legal assistance, States Parties should be able to refuse extradition requests on the grounds established by their domestic law and applicable treaties. New Zealand supports the introduction of a provision allowing States to establish jurisdiction to prosecute offences established by this convention where an alleged offender is found in its territory and it does not extradite. We are also open to discussing whether this convention should include a mandatory obligation to consider prosecution under certain circumstances (*aut dedere aut judicare*), for example, in cases where there is sufficiently serious offending to trigger a mandatory obligation.

24/7 point of contact

12. We recommend including a provision that creates a 24/7 single point of contact system (art. 35 of the Budapest Convention) to ensure expeditious assistance in cybercrime investigations and for the collection of electronic evidence. We further suggest that we consider existing instruments and frameworks relating to communication between 24/7 contact points. We also note that between States there are varying degrees of capacity to resource and maintain a 24/7 single point of contact system. Therefore, we suggest that this convention's provisions on capacity-building ensure that States will have both the resources and training to adhere to this standard.

Law enforcement cooperation

13. In the interests of cultivating a proactive approach to international cooperation, the convention should encourage cooperation between competent authorities, including for the spontaneous sharing of information or data, relating to investigations or proceedings, within the limits imposed by domestic law and in the common interest of responding to criminal acts (art. 26 of the Budapest Convention; art. 18, para. 4, of the Organized Crime Convention; and art. 46, para. 4, of the United Nations Convention against Corruption).

Joint investigations

14. The convention should include provisions encouraging States parties to conclude bilateral or multilateral agreements or arrangements that would establish joint investigative bodies in relation to offences covered by this convention. In the absence of any such formal arrangements, States parties should allow for joint investigations on a case-by-case basis (art. 19 of the Organized Crime Convention).

Technical assistance

15. Effective capacity-building measures will increase the likelihood of widespread implementation of the convention and reduce the opportunity for cybercriminals to find safe havens. The convention should include provisions on training and technical assistance (art. 29 of the Organized Crime Convention) and on effective implementation of the convention through economic development and technical assistance (art. 30 of the Organized Crime Convention).

16. Capacity-building measures in the convention should emphasize the value of training and sharing best practices, including in relation to responding to mutual legal assistance requests efficiently, electronic evidence preservation, and evidence-sharing techniques. In this regard, we note that the United Nations Office on Drugs and Crime (UNODC) has significant experience in developing such tools, including guides relating to model mutual legal assistance requests, voluntary disclosure requests,

preservation requests and emergency disclosure requests. We therefore could envision a role for UNODC, as well as other organizations that have experience in facilitating international law enforcement cooperation, such as the International Criminal Police Organization (INTERPOL), in delivering the capacity-building programmes required to ensure this treaty is effective.

Prevention

17. This convention should recognize the importance of multisectoral cooperation in combating cybercrime, including the importance of ensuring that we develop a framework of cooperation built on trust and transparency between Governments and private sector actors. Moreover, New Zealand acknowledges that a whole-of-society approach is required in effectively preventing cybercrime. This convention should seek to foster broad participation in that regard (art. 13 of the Convention against Corruption).

18. New Zealand would encourage in this convention measures that emphasize the importance of building societal awareness of cybercrime risks through educational campaigns and training.

19. In addition, the convention should seek to foster an evidence-based approach to cybercrime prevention, including analysing cybercrime trends and their impacts on societies, including women, children and other vulnerable groups. This work should be done in consultation with relevant private sector actors, academia, indigenous groups and interested non-governmental organizations (art. 28 of the Organized Crime Convention). Likewise, the convention could also include provisions that encourage States Parties, in accordance with their domestic law, to foster cooperation between law enforcement and relevant private sector actors in combating the criminal activity established within this convention (art. 39, para. 1, of the Convention against Corruption).

Viet Nam

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A. Preventive measures

1. *Policies and practices to prevent and combat cybercrime/the use of information and communications technologies for criminal purposes*
 1. States Parties shall endeavour to establish and promote best practices and policies aimed at the prevention of cybercrime/using information and communications technologies (ICTs) for criminal purposes and other unlawful acts relating to ICT use.
 2. States Parties shall endeavour to prevent their own territory or computer systems/ICT systems/ICT devices located on their territory from being used for criminal purposes against other third parties and/or citizens of other Parties.
 3. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for cybercriminals/criminals using ICTs to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. Such measures should include the promotion of regulations and procedures designed to supervise virtual assets trading and cryptocurrency exchange platforms.
 4. States Parties shall endeavour to take appropriate measures to prevent reoffending, including reoffending targeting victims in other States Parties.
 5. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal systems, collaborate with other Member States, governmental

organizations, and relevant international and regional organizations in promoting and developing the measures referred to in this article.

6. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

2. *Raising public awareness of cybercrime prevention*

1. States Parties shall endeavour to promote public awareness regarding the existence, new forms, characteristics, gravity of and the threat posed by cybercrime/the use of ICTs for criminal purposes.

2. State Parties shall encourage government agencies to cooperate with private organizations and other individuals in running education, training and public awareness-raising programmes on preventing and combating cybercrime/using ICTs for criminal purposes.

3. *Public sector*

1. States Parties shall take appropriate measures, in accordance with the fundamental principles of their domestic law, to prevent offences covered by this Convention and other acts of cybercrime/using ICTs for criminal purposes in governmental organizations.

2. States Parties shall take appropriate measures, in accordance with the fundamental principles of their domestic law, to prevent computer systems/ICT systems/ICT devices and resources under control of governmental organizations from being abused in offences covered by this Convention and other acts of cybercrime/using ICTs for criminal purposes.

4. *Private sector*

1. Each State Party shall take appropriate measures, within its means and in accordance with the fundamental principles of its domestic law, to promote the active participation of the private sector, including Internet service providers, in the prevention of and the fight against cybercrime/the use of ICTs for criminal purposes.

2. Each State party shall take appropriate measures, in accordance with the fundamental principles of its domestic law, to prevent offences covered by this Convention and other acts of cybercrime/using ICTs for criminal purposes in the private sector.

5. *Control of products*

States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to establish policies of quality control of products applied in the protection of computer systems/ICT devices before such products are released to the public.

B. International cooperation

6. *International cooperation*

1. States Parties shall cooperate in investigating offences covered by this Convention, as well as any other acts of cybercrime/using ICTs for criminal purposes. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to cybercrime/the use of ICTs for criminal purposes.

2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the

conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.²

7. *International cooperation in raising the awareness of the public*

1. States Parties shall cooperate in the promotion of public awareness regarding the existence, new forms, characteristics, gravity of and the threat posed by cybercrime/the use of ICTs for criminal purposes.

2. State Parties shall cooperate in running education, training and public awareness-raising programmes on preventing and combating cybercrime/the use of ICTs for criminal purposes.

8. *Information exchange*

Each State Party shall, in accordance with fundamental principles of their domestic law, adopt effective measures to enhance and, where necessary, to establish as well as utilize existing channels of communication between its competent authorities and competent authorities of other State Parties in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including early warning to the other Parties and, if the Parties concerned deem it appropriate, links with other criminal activities.

9. *Freezing, seizure and confiscation*

Article 31 of the United Nations Convention against Corruption and article 12 of the United Nations Convention against Transnational Organized Crime may be applied, mutatis mutandis, to acts of cybercrime/using ICTs for criminal purposes. However, the notion of proceeds of crime should be defined so as to cover cryptocurrency or other data the value of which can be identified in the market.

10. *General provisions on asset recovery*

States Parties shall afford one another the widest measure of cooperation and assistance regarding the return of assets.

11. *Measures for direct recovery of property*

Article 53 of the Convention against Corruption may be applied, mutatis mutandis, to acts of cybercrime/using ICTs for criminal purposes.

12. *Mechanisms for recovery of property through international cooperation in confiscation*

Article 54 of the Convention against Corruption may be applied, mutatis mutandis, to acts of cybercrime/using ICTs for criminal purposes.

13. *International cooperation for purposes of confiscation*

Article 55 of the Convention against Corruption may be applied, mutatis mutandis, to acts of cybercrime/using ICTs for criminal purposes.

C. Technical assistance

14. *Technical assistance*

1. State Parties shall endeavour to provide, subject to the availability of resources, technical assistance programmes to developing and least developed States Parties,

² For example, the server used for operating online gambling and the organization which operates such a platform located in a State Party where online gambling, even an unregulated online gambling operation, is not a crime as such, involve tax evasion, labour abuse, human trafficking, etc.

upon request from such developing or least developed States Parties, to enhance the capabilities of competent authorities charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include the following:

- (a) Capacity-building and capacity development in policymaking;
- (b) Sharing experience and best practices to prevent, detect, investigate and punish acts of cybercrime/using ICTs for criminal purpose, including collecting, analysing and recovering digital data, and investigative methods in cyberspace.
- (c) Effective response in cyber incidents;
- (d) Effective measures to safeguard national critical information infrastructure;
- (e) Data security solutions, including with regard to personal data;
- (f) Training of experts in cybersecurity and computer network defence;
- (g) Enhancing public awareness and best practices for the safe use of the Internet.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article, and to that end shall also, when appropriate, promote cooperation and encourage discussion on issues of mutual interest through regional and international conferences and seminars.

3. States Parties shall encourage dialogue and exchanges between relevant authorities, including through personnel secondments and capacity-building and capacity development programmes.

4. States Parties shall promote the transfer of technologies, equipment, software and technical solutions aiming at preventing and countering cybercrime/the use of ICTs for criminal purposes.
