



# General Assembly

Distr.: General  
16 September 2022  
English  
Original: Spanish

## **Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes**

**Third session**

New York, 29 August–9 September 2022

### **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**

#### **Contents**

	<i>Page</i>
Additional submissions .....	2
Venezuela (Bolivarian Republic of) .....	2



## **Additional submissions**

The present addendum contains a submission from one Member State, received after 31 August 2022, for the third session of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes.

### **Venezuela (Bolivarian Republic of)**

[Original: Spanish]  
[13 September 2022]

#### **International cooperation**

There is an urgent need to make progress in reducing the different types of inequalities in technological development and in strengthening national legal mechanisms in this area, based on the intentions and provisions of the future convention, and also framed in terms of the purposes and principles of the Charter of the United Nations, including respect for the sovereignty and sovereign equality of States, constructive dialogue, and the condemnation of the application of unilateral coercive measures, which are not in line with the Charter.

Venezuela is in favour of the inclusion of comprehensive cooperation provisions in the convention. In that connection, the new legal instrument should include cooperation provisions related to the exchange and transfer of technology, training and research, prevention, mutual legal assistance, legal cooperation on extradition, the transfer of convicted persons, the transfer of criminal proceedings, joint investigations, and international cooperation for purposes of confiscation, return and disposal of confiscated assets. This would ensure that the convention contains as many mechanisms as may be necessary once it enters into force.

The scope of criminal offences to which international cooperation mechanisms should apply should be equally broad. Given the unquestionable evolution of crimes related to information and communications technology (ICT) throughout the world, the provisions for gathering electronic evidence should apply to crimes beyond those established in accordance with the convention, with a view to expanding its focus and scope.

With respect to the agreement reached on the issue of extradition, Venezuela considers that the obligation applies initially to crimes established in the convention, in accordance with the domestic law of each State and the treaties and bilateral agreements signed.

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 extradition and the grounds upon which the requested State party may refuse extradition.

There is a legal basis in the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption, which address the issue of refusing extradition and the alternatives that can be sought in the case of a refusal.

The position of the Bolivarian Republic of Venezuela is that in order to grant the extradition of a person, the general principles of territoriality, dual criminality, limitation of penalties, no statute of limitations, no extradition for political offences, sufficient gravity of the offence, nature of the crime, prohibition of the extradition of nationals and reciprocity, must exist and be complied with, in accordance with its domestic law.

For Venezuela, data protection is a key aspect that must be reflected in the convention. The convention should guarantee the inalterability of evidence by establishing

mechanisms to protect the identity and integrity of the information itself and of all those involved.

With respect to data protection, the convention must, as a matter of priority, include provisions that guarantee the security, confidentiality, integrity and authenticity of information transmitted in compliance with the procedures established by the convention, including the mandatory use of electronic security certification and electronic signatures under the domestic laws of each State, as well as encryption mechanisms for documents transmitted in response to requests submitted pursuant to the convention. These provisions will ensure that States have the full sovereign right to establish limits on transnational exchange based on key factors for protecting critical national infrastructure and State security, as well as territorial integrity and other issues of utmost national interest.

Venezuela is not in favour of transborder access to computer data. The States parties to the convention should be governed by the traditional primacy of international law as set forth in article 4 of the United Nations Convention against Transnational Organized Crime, which stipulates that States must carry out their obligations in a manner consistent with the principles of sovereign equality and territorial integrity, as well as non-intervention in the domestic affairs of other States. Nothing in the convention shall entitle a State party to undertake functions in the territory of another State that are reserved exclusively for the authorities of that other State by its domestic law, in order to safeguard the sovereignty and independence of Member States.

The return of property is of particular importance to Venezuela, which is of the view that the issue requires a special section in the convention.

The United Nations Convention against Transnational Organized Crime contains, in articles 12, 13 and 14, provisions relating to the confiscation and seizure of assets, international cooperation for purposes of confiscation, and disposal of confiscated proceeds of crime or property. We consider that these provisions constitute a basis on which to work and strengthen. According to these articles, priority consideration should be given to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

States parties to international treaties assume obligations and duties, under international law, to respect, protect and fulfil human rights. Accordingly, when States are parties to international human rights treaties, they undertake to adopt domestic measures and laws that are compatible with their treaty obligations and duties, as is the case of Venezuela.

In the light of the above, we consider that the references to human rights contained in the general provisions and in the preamble sufficiently cover the human rights dimension of the future convention.

### **Technical assistance**

It is essential that the future convention establishes, as a form of cooperation in order for all States parties to effectively achieve the objectives set out in the convention and the relevant safeguards to address and counteract the effects of structural inequalities in the area of ICT, as well as economic and trade barriers, training mechanisms and technology transfer, without distinction on political or geographical grounds, on the basis of the principles of national sovereignty and sovereign equality of States set forth in the Charter of the United Nations.

In order to prevent and counter the use of ICT for criminal purposes, Venezuela wishes to emphasize the importance of ensuring that the convention provides for the establishment of protection and support measures for those countries that are victims of unilateral coercive measures, which are not in line with the Charter of the United Nations.

It should be noted that countries subject to these illegal measures may potentially be unable to update their technological systems and equipment because, in many cases, the companies that supply such products are threatened with so-called sanctions if they do business with such countries. This situation impedes regular exchanges, results in increased transaction costs for countries subject to such measures, and creates additional obstacles to effective cooperation against such crimes.

Moreover, these measures provide for the arbitrary withholding and blocking of the assets of countries subject to such measures, which, predictably, hinders the acquisition and updating of technologies required to guarantee the right to development and the human rights of peoples and for prevention, control and cooperation in the fight against the use of ICT for criminal purposes.

In this context, these measures will impede participation on equal terms in any proposed international cooperation and technical assistance envisaged in the convention or any other instrument of this nature. For this reason, the future convention must include safeguards that can be invoked in such cases. For example, a system of alerts could be created for specific situations in which cooperation and assistance under the convention are affected by this type of measure; the system could also be extended to cover other constraints of a similar nature.

Venezuela is in favour of States parties considering providing the widest measure of technical assistance, upon request and in coordination with the requesting State, and in line with the national development priorities of each country, with a view to building, regaining, strengthening and expanding national and regional capacities.

It is essential that such assistance be implemented in accordance with the principles of fairness, impartiality, equality, non-selectivity, non-politicization and transparency, with constant and strengthened exchange of good practices between different States, both South-South, North-South and triangular, and with an intersectional and gender perspective.

Specific needs include the creation and continuous exchange of expert missions to evaluate and improve capacities, the exchange of knowledge and experiences, specific positive practices, joint research and innovation, mechanisms for training and developing human capital, and predictable, proportional and equitable sources of financing at various levels, with a view to addressing national priorities, in full and constant coordination with, and at the request of, each State.

Both technical assistance and capacity-building should be fully included in the future convention. The two concepts are complementary rather than contradictory, as the scope of each may be different. Targeted assistance may be provided in a more timely or urgent manner, but the aim to work towards, on a structural level, is for each State to be able to respond in a progressively independent manner, eventually cutting the chains of dependence that weaken the fight against such crimes, while at the same time strengthening the innovation and individual capacity of each State's mechanisms for countering the use of ICT for criminal purposes.

Venezuela is in favour of the designation of a 24-hour, 7-days-a-week focal point by each State party for the purpose of monitoring the provisions of the convention and considers that additional resources should be allocated to States for this purpose.

In addition, in the event that other mechanisms are established that require ongoing or periodic attention to comply with the convention, the procedures for accessing resources must be clearly and transparently established, so that States, in particular developing countries, can comply with such requirements, including by requesting financial and other assistance.

For Venezuela, the participation of civil society is extremely important, with civil society understood in its broadest sense, including not only non-governmental organizations, but also community-based movements, organized communities, communes, social movements and, in particular, those living in the global South, who often find it difficult to participate in such mechanisms due to lack of resources.

In this regard, Venezuela supports the spirit of the mechanisms established by the United Nations to ensure the participation of these groups, based on its own experience in the area and its role in countering the use of ICT for criminal purposes, including technical assistance and capacity-building, in a dynamic and self-sustaining system.

The participation of the private sector, in particular manufacturers and suppliers of communication technology and services, is also of capital importance, as the sector pioneers many advances, which must comply with national and international laws. The private sector must also fulfil its social responsibilities and cooperate with States in complying with laws and pursuing social development and human dignity. This includes both large and small businesses; large technology and communications corporations, in particular, should be called upon to act in a transparent manner to ensure a just and inclusive social order. Cooperation with the private sector should be encouraged in full coordination with States.

At the same time, the intergovernmental nature of the convention and the primacy of national laws in this area should be emphasized, in order to prevent actors from using such cooperation for political ends or criminal purposes, to the detriment of the convention itself.

### **Preventive measures**

The criminal offences established under the convention that have the greatest impact on the enjoyment of human rights by affected populations are, without a doubt, those that target the critical infrastructure of States parties, that is to say the technological platforms that support information systems that meet the vital needs of society.

The relevant international protocols and standards make reference to protection measures based on information security, computer security and cybersecurity, in order to mitigate vulnerabilities and the risk of attacks on critical infrastructure. As such, the link between countering the use of ICT for criminal purposes and implementing information security measures is inextricable. There is a direct relationship between combating cybercrime and cybersecurity.

The prevention of attacks on critical infrastructure must be approached from a cybersecurity perspective. The central theme of the convention is offences facilitated by ICT, including crimes against critical infrastructure; accordingly, removing the concept of cybersecurity and associated protocols from the content of the convention would leave a gap and mean that preventive measures for critical infrastructure were not taken into account.

Likewise, prevention techniques should be included in training courses; these should be accompanied by public awareness-raising campaigns, the exchange and transfer of technology, and urgent consideration and management of attacks and other potential emergencies, in recognition of the fact that we all have common and differentiated responsibilities.

The preventive measures endorsed by the convention should include actions to promote the autonomy of States in developing new technology, including software and hardware, improved operational protocols that enhance security, and updated legislation.

Venezuela condemns and prosecutes the production and trafficking of child and adolescent sexual abuse and sexual exploitation material, and is in favour of strengthening all laws that protect this vulnerable group from the actions of criminals. We also consider it necessary to prioritize preventive measures for other groups at risk of being exposed to vulnerable situations, such as women, persons with disabilities, young people and elderly persons.

With regard to the participation of other actors in preventive measures, Venezuela believes that civil society, the private sector and academia, among others, should be guided by the respective national laws, while States should promote norms and

standards to strengthen the capacity of such actors to cooperate with States through technical information, joint research, the harmonization of national and social development priorities, technical training in new technologies, technology transfer and exchange and, with respect to the security of critical infrastructure, the promotion of mechanisms to ensure the utmost cooperation, immediacy and transparency in the provision of assistance in emergency situations.

It should be emphasized that the private sector has an obligation and a social and ethical responsibility to contribute actively in all areas to prevent ICT from being used for criminal purposes, including through regular dialogue with and oversight of States through their specialized bodies, the establishment of standard procedures for cooperation and evaluation, the promotion of the participation of the public and other social actors, and the progressive adaptation of laws to new technological and global realities.

### **Mechanisms for implementation**

With respect to mechanisms for implementation, Venezuela considers that States parties should take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of their domestic law, to ensure the implementation of their obligations under the convention.

In this connection, Venezuela is in favour of the establishment of a conference of States parties as a body for taking decisions, reviewing the implementation of the convention and evaluating new commitments.

The conference of States parties could be complemented by the creation of an executive body or entity tasked with reviewing the implementation of the convention. Venezuela believes that there is merit in evaluating proposals of this nature, provided that there is equitable and balanced representation among the States parties and the appropriate internal technical advisory bodies and consultation mechanisms, including regarding the frequency of meetings, continuous interaction with those States that are not part of such a body but that require such engagement, and the option to participate as an observer in such a body, as appropriate.

### **Reservations**

International treaties are an expression of consensus with the creation of international norms, and States parties are internationally bound by the provisions of the convention to the extent that they have given their consent in that regard.

In that connection, the right of States to determine the content and scope of the norms of the convention and to exclude or modify the legal effects of certain clauses or provisions of the convention must be recognized. In that regard, Venezuela understands that reservations can be necessary and useful in order to guarantee the universality of international treaties and that, in some cases, the use of reservations contributes to States being able to make the final decision to sign and ratify a treaty. Nevertheless, it could be agreed that reservations cannot be made, or only in a limited manner, to certain provisions, for reasons inherent to the very nature of the meaning of the convention and its genuine social and legal functions; however, this will have to be determined in the course of the negotiations.

### **Mechanisms for settlement of disputes**

The dispute settlement mechanisms to be applied in the future convention should specify that the States parties shall settle any disputes concerning the interpretation or application of the convention by peaceful means of their choice, as recognized in international law or as previously agreed on by the parties. For example, some States, for reasons of domestic law, may not recognize the jurisdiction of certain international bodies or courts, or other similar reservations, but this does not restrict compliance with or accession to the convention as a whole.

**Final provisions**

Venezuela is of the view that the future convention should contain a section on final provisions, in line with the standard structure of similar instruments and, in particular, in order to set out the preparatory work for its entry into force, national legislative reform and basic procedural elements, among other things.

The convention should include provisions relating to the possible creation of additional protocols to the convention in the future, in the context of the changing dynamics in the field of ICT and shifting social, political and economic realities.

**Preamble**

The following principles should be reflected in the preamble to the convention:

- Principles and purposes of the Charter of the United Nations: sovereignty, self-determination of peoples, peaceful settlement of disputes
  - Digital sovereignty
  - Preventing and countering the use of ICT for criminal purposes
  - International cooperation and solidarity
  - Promotion and strengthening of multilateralism
  - Sustainable development and poverty eradication
  - Technology transfer
  - Transparency
-