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## **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

### **Guiding questions on the chapters on international cooperation, technical assistance, preventive measures, the mechanism of implementation and the final provisions, and the preamble, of a comprehensive international convention on countering the use of information and communications technologies for criminal purposes**

**Note by the Chair**

#### *Summary*

In preparation 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, the present document was prepared by the Committee Chair with the support of the secretariat. It contains questions to guide the discussions on the chapters on international cooperation, technical assistance, preventive measures, the mechanism of implementation and the final provisions, and the preamble.



1. In preparation 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, and in line with the road map and mode of work for the Ad Hoc Committee approved at its first session (A/AC.291/7, annex II), in particular its paragraphs 3 and 4, Member States were invited to provide to the secretariat draft texts of chapters or provisions on international cooperation, technical assistance, preventive measures, the mechanism of implementation and the final provisions, and the preamble, to be examined during the third session.
2. On the basis of those proposals (see [A/AC.291/12](#), [A/AC.291/12/Add.1](#) and [A/AC.291/12/Add.2](#)), the Chair of the Ad Hoc Committee, with the support of the secretariat, prepared the present document containing lists of questions related to the above-mentioned draft text. The questions may serve to facilitate the discussions of the Ad Hoc Committee at its third session.

## **Guiding questions on the chapters on international cooperation, technical assistance, preventive measures, the mechanism of implementation and the final provisions, and the preamble, of a comprehensive international convention on countering the use of information and communications technologies for criminal purposes**

### **I. International cooperation**

#### *General principles and scope of the provisions on international cooperation*

1. What forms of international cooperation should be stipulated in the convention? In addition to extradition, mutual legal assistance and law enforcement cooperation, should the convention cover transfer of sentenced persons; transfer of criminal proceedings; joint investigation; and international cooperation for the purposes of confiscation, and return and disposal of confiscated assets?
2. What should be the scope of offences to which the international cooperation mechanisms stipulated in the convention apply? The proposals submitted by Member States indicate a common understanding that the extradition provisions would apply only to offences established in accordance with the convention. In relation to other forms of international cooperation such as mutual legal assistance, transfer of criminal proceedings and cooperation between law enforcement, should these provisions apply to the collection and sharing of electronic evidence for offences beyond those established in accordance with the convention? If so, should they apply regardless of the penalties for the offences where electronic evidence needs to be collected and shared, or should the scope be limited to “serious offences”?
3. Should the provisions on extradition and mutual legal assistance follow the models established by the United Nations Convention against Transnational Organized Crime or the United Nations Convention against Corruption, and, if so, to what extent?
4. Should the international cooperation provisions apply to the investigation and prosecution of civil and administrative cases related to the liability of legal persons for committing an offence established in accordance with the convention?
5. Should the convention include a threshold penalty period for the offences to which the extradition article may apply (e.g. offences subject to a maximum penalty of not less than a given number of years of imprisonment)?
6. How can consistency be ensured between international cooperation provisions and the respect of human rights?

7. How should the chapter on international cooperation determine the requirements for the protection of personal data for the purposes of the convention?

*Transmission of requests and materials*

8. What channels for transmission of requests for extradition should be provided for in the convention?
9. What channels of transmission for mutual legal assistance requests should be provided for in the convention, in particular considering the nature of offences due to be covered by the convention?
10. What means of transmitting requests are needed to facilitate international cooperation, in particular considering the nature of offences due to be covered by the convention? Could requested documents or electronic evidence be transmitted by electronic means?
11. What key information would have to be submitted in a request for international cooperation under the convention? For example, should provisions set out the minimum information required?
12. What mechanism should the convention establish for handling mutual legal assistance or extradition in urgent circumstances? Should the International Criminal Police Organization (INTERPOL) channel be used? If so, how would urgent circumstances be defined? What kinds of request would be transmitted through the channel?

*Grounds for refusal*

13. Should the convention specify grounds for refusing an extradition request? If so, which grounds should be included for refusing the extradition?
14. Should the convention specify grounds for refusing a mutual legal assistance request? If so, which grounds should be included for refusing mutual legal assistance?
15. Should the convention simply defer grounds for refusing an extradition or mutual legal assistance request to the domestic legislation of the State party and applicable treaties?
16. Should the convention include a clause stating that the offences established in accordance with the convention shall not be considered a political offence, and that international cooperation shall not be rejected solely on those grounds?

*Other questions*

17. Should the convention include specific provisions on mutual legal assistance regarding provisional measures? If so, what specific provisions should be included? For example, should they include the expedited preservation of stored computer data and electronic information, and expedited disclosure of preserved traffic data?
18. Should the convention include specific provisions on investigative powers? If so, what specific provisions should be included? For example, should they include access to stored computer data and electronic information, real-time collection of traffic data and interception of content data?
19. Should the convention include a provision on transborder access to [data] [information]? It would allow for a State to access stored [computer data] [electronic information] without the authorization of the State party where such [data are] [information is] geographically located, if the [data are] [information is] publicly available, or if access to the [data] [information] is through a computer system located in its territory and that State obtains the consent of the person who has lawful authority to disclose the [data] [information] through that computer system.
20. Should the convention include provisions to facilitate the return of assets? How should the convention address international cooperation for purposes of seizure and

confiscation, and return and disposal, of confiscated assets, in particular as regards the difference between the approaches of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption?

21. Should the convention include a provision for States parties to establish a 24/7 network of points of contact? What would be the purpose of such a network and its relationship with networks established under existing international instruments and frameworks?

22. Should the convention include a specific provision on international cooperation for carrying out electronic surveillance and other types of covert special investigative techniques, as part of cross-border [cybercrime] [criminal uses of information and communications technologies] investigations?

23. Should the convention include a provision permitting the organization of hearings held by video or telephone conference for the taking of evidence, and enabling such hearings to be conducted through the use of the requesting State's diplomatic missions and consular posts with respect to their own nationals on a voluntary basis, as part of consular functions?

## **II. Technical assistance**

24. Which specific areas of technical assistance should be covered by the convention?

25. Which principles should be used to guide technical assistance and capacity-building efforts? Should these include drawing on best practices? How can the convention ensure such assistance takes into consideration a gender perspective?

26. What are the specific needs of developing countries in countering the use of information and communications technologies for criminal purposes and how could they be addressed in the technical assistance chapter of the convention?

27. Should the convention include provisions on the specific roles of the United Nations Office on Drugs and Crime (UNODC)? Should it also include provisions on the role of INTERPOL and other relevant international bodies and organizations?

28. Which methods and means of providing technical assistance should be covered by the convention?

29. Why do some States use the term "technical assistance" and others "capacity-building"? What is the difference between them? Should the convention include provisions on capacity-building? If so, what should they entail?

30. Should the convention include provisions that are aimed at assisting States parties with resources for a 24/7 point of contact?

31. What, if any, could be the role of the private sector and non-governmental organizations in technical assistance or capacity-building?

## **III. Preventive measures**

32. On which areas should the chapter on preventive measures focus? Are there particular groups, such as children, for whom preventive measures would need to be prioritized?

33. How should Member States prevent cyber-criminal attacks targeting critical infrastructures?

34. In which areas would the convention require that States parties take measures to cooperate with civil society, the private sector and academia, with a view to

preventing the use of information and communications technologies for criminal purposes?

35. Should the convention provide for the designation of a national authority responsible for preventing the use of information and communications technologies for criminal purposes?

36. Should the convention include a provision requiring States parties to create responsibilities for the private sector to establish and implement standards that are aimed at enhancing measures to prevent criminal uses of information and communications technologies? Should the convention include provisions that are aimed at harmonizing domestic legislation in that regard, in order to provide clear guidance for the private sector to prevent crime?

37. How should the convention encourage States parties to raise awareness of the threat of [cybercrime] [criminal uses of information and communications technologies] and encourage companies, organizations and individuals to take action that will make them more resilient to [cybercrime] [criminal uses of information and communications technologies]?

#### **IV. Mechanism of implementation**

38. What mechanisms of implementation of the convention should be provided for in the convention?

39. What is the most acceptable option, from the following, for the drafting of the chapter on the mechanism of implementation:

(a) A structure similar to that established by the United Nations Convention against Transnational Organized Crime or the United Nations Convention against Corruption, namely, the mechanism of a Conference of Parties;

(b) A structure similar to that established for the implementation of the three international drug control conventions, namely, the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which entrusts the Commission on Narcotic Drugs and the International Narcotics Control Board to follow up on convention implementation? For example, implementation of the convention could be considered by the Commission on Crime Prevention and Criminal Justice and be focused on targeted periodic reviews of implementation, as well as under an annual agenda item for the Commission on Crime Prevention and Criminal Justice;

(c) The establishment of a specific body for the review of the implementation of the convention, either independently or under a Conference of Parties (similar to the structure of the Committee on the Peaceful Uses of Outer Space, which has a Scientific and Technical Subcommittee)?

40. How can the convention ensure that the implementation mechanism makes best use of the experience and expertise of relevant non-governmental organizations, civil society organizations, academic institutions and the private sector?

#### **V. Final provisions**

41. Should the convention include a provision on the effects of the convention with a view to defining the relationship of the convention with other treaties, agreements or arrangements on matters dealt with in the convention?

42. Should the convention include a provision on the development of additional or supplementary protocols and their relationship with the convention? If so, what should be the nature of the mandated body and procedure for the elaboration and adoption of protocols to the convention?

43. Should the convention allow for reservations by States parties, and, if so, what should be the limitations to such reservations?
44. What dispute settlement mechanism should the convention provide for?
45. What should be the number of necessary ratifications by States parties for the entry into force of the convention? How many days should pass after the deposit of the last required instrument of ratification or accession before the entry into force of the convention?
46. Should the convention allow for amendments and, if so, what procedure should be foreseen?

## **VI. Preamble**

47. What principles and main elements should be included in the preamble?
  48. Do Member States agree to waiting until progress has been made on the substantive articles of the convention before drafting the content of the preamble?
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