Article 40. Jurisdiction

[relocate chapter, stand-alone, after criminalization: Norway, UK, Canada, Brazil, Nigeria, Malaysia, Uruguay, United States, Australia, Jamaica on behalf of Caricom, Singapore, EU and mS, Chile, Russian Fed., Iran, Liechtenstein]

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the [offences established in accordance with this Convention (delete in relation to sub-para 2: India)] [offences committed with the use of ICTs (India) (retain original: Germany, New Zealand, USA, Singapore)] when:

 (a) The offence [is committed in ~~/ involves (Mexico) (retain original: Brazil, Malaysia, US, Australia, Japan, Singapore, Algeria, Norway, EU and mS, Rep of Korea, Indonesia, Jamaica on behalf of Caricom)~~] the territory of that State Party. ~~[For the purpose of this provision, with regard to offences targeting electronic data, the offence is considered committed where the alleged offender is found at the time of the offence or where the electronic data is stored (Viet Nam) (retain original: Malaysia, US, Australia, Japan, Singapore, Algeria, Norway, EU and mS, Rep of Korea, Jamaica on behalf of Caricom,~~~~Liechtenstein, New Zealand, Canada)];~~ or

 (b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party[, or a space object or satellite registered under the laws of the State Party (Iran) (delete: UK, EU, Canada, Brazil, Malaysia, US, Australia, Japan, Singapore, Norway, EU and mS, Chile, Rep of Korea, Israel, Jamaica on behalf of Caricom, Liechtenstein, New Zealand)] at the time that the offence is committed.

**Retain original article**: Singapore, Canada, USA, UK, EU and mS.

2. [Subject to article 4of this Convention (delete: Mexico, Colombia – reservation: EU and mS, Norway) (retain original: Iran, Pakistan, Egypt, India, China, Australia, USA)], a State Party may also establish its jurisdiction over any [such / other (India) (retain original: Pakistan, Egypt, EU and mS, Australia, USA, UK, Algeria, Norway, Singapore)] offence when:

 (a) The offence is committed against a national (Singapore, Canada, EU and mS, Jamaica on behalf of Caricom, Liechtenstein) (retain: Indonesia, Eritrea) [under the laws (Australia)]] of that State Party; or (retain original with deletion: Jamaica on behalf of Caricom; retain original: Pakistan, Algeria, Egypt, India, China)

 (b) The offence is committed by a national (Singapore, Canada, EU and mS, Liechtenstein, Jamaica on behalf of Caricom) (retain: Indonesia, Eritrea) of that State Party or a stateless person who has his or her habitual residence in its territory; or (retain original with deletion: Jamaica on behalf of Caricom. Retain original: Pakistan, Algeria, Egypt, India, China)

 (c) The offence is [one of those established in accordance with article [money laundering] of this Convention and is (USA, Canada)] committed outside its territory with a view to the commission of an offence established in accordance with [article [money laundering] of (USA, Canada)] this Convention within its territory; or (Delete sub-para: Japan, Colombia, Germany, EU and mS, UK, Norway) (retain original sub-para: India, Algeria)

 Alt(c) The offence is one of those established in accordance with Article 33 paragraph (1) (b) (ii) and is committed outside its territory with a view to the commission of an offence established in accordance with Article 33 paragraph 1 (a) (i) or 33 paragraph 1 (b) (i) of this Convention within its territory; or (Jamaica on behalf of Caricom, Singapore, USA) (reservation: Iran)

 Alt.2(c). The offence is committed wholly or partly outside the territory of [that alt.: the (Brazil)] State Party but its effects [in the territory of the State Party] constitute an offence or result in the commission of an offence [moved: in the territory of the State Party (Brazil)]. (Russian Fed., Iran) (reservation: Colombia, Honduras, Norway) (delete: USA, Switzerland, UK, Australia)

 (d) The offence is committed against the State Party; or (Delete sub-para: Israel, Canada, Australia, New Zealand, Switzerland) (Retain: Pakistan, Algeria, Egypt, EU and mS, India, China, Iran, USA)

 (e) The offence involves the [computer data] [electronic/digital information] of the State Party’s nationals, irrespective of the place of its physical storage, processing or screening. (Delete sub-para: Singapore, Jamaica on behalf of Caricom, Japan, UK, Pakistan, Algeria, Colombia, Netherlands, EU and mS, USA, Chile, Canada, Australia, Rep. of Korea, Jamaica on behalf of Caricom, Liechtenstein, Thailand, New Zealand, Norway, Switzerland) (Retain: Iran, India)

2bis. Each State Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in para. 2 of this article or any part thereof. (Israel) (Delete: Iran, EU and mS, USA, India, Venezuela, UK, Algeria, Egypt)

**Delete** in relation to para. 6: EU, Singapore, Canada, Israel, Liechtenstein, Norway. **Retain**: Brazil, India, UK, Pakistan, Egypt, USA, Australia, Iran.

3. For the purposes of the article on extraditionof this Convention, each State Party [shall alt: may (UK, Norway, Singapore) (retain original: Argentina)] take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

Move to extradition: Egypt

Retain original: Brazil, EU and mS, Argentina

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

Move to extradition: Egypt

Retain original: Brazil, EU and mS, Argentina

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions[, aiming to enhance the effectiveness of combatting the use of ICTs for criminal purposes (China, Iran)].

Retain original: Brazil, EU and mS, Argentina, Norway, Algeria, Dominican Rep., Chile, UK

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Retain para.: Brazil, EU and mS, Argentina, Norway, Egypt, USA, Chile, Honduras, South Africa, Australia, Algeria, Peru, India, Dominican Rep., Rep. of Korea

Retain article in original language: Russian Fed., Iran

Article 47. Real-time collection of traffic data

1. Each State Party shall ~~[, in accordance with fundamental principles of its domestic legal system, (Pakistan, South Africa) (delete: Mexico, Brazil)]~~ adopt such legislative and other measures as may be necessary to empower its competent authorities[, where there is reasonable [belief alt: grounds to suspect (Mexico, Iran, Venezuela, Kenya, South Africa)] that a criminal offence was committed or is being committed (delete: Norway, Brazil) (retain: Colombia) alt.: in accordance with domestic law (Brazil, Mexico, Pakistan) (delete: Colombia) [alt.3: just cause for suspicion (Norway) (delete: Colombia) (reservation: Iran)]], to undertake the following actions with respect to traffic data [end chapeau: Mexico] associated with specified communications in its territory transmitted by means of a [computer system] [information and communications technology system/device] in the territory of that State party (delete: USA, Egypt, Australia, Pakistan)]:

 (a) Collect or record, in real time, through the application of technical means in the territory of that State Party; and

 (b) Compel a service provider, within its existing technical capability:

(i) To collect or record, in real time, through the application of technical means in the territory of that State Party; or

(ii) To cooperate and assist the competent authorities in the collection or recording of, in real time [, through the application of technical means (Pakistan)];

such data associated with specified information in the territory of that State Party [transmitted by means of a computer system] (USA, Trinidad and Tobago on behalf of Caricom, New Zealand) [transmitted by means of an ICTs (Pakistan, Venezuela)].

2. Where a State Party, owing to the [fundamental alt: established (Australia, USA) (retain original: Iran)] principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1 (a), it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means in that territory.

3. Each State Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.

[4. The powers and procedures referred to in this article shall be subject to articles 41 and 42.] Delete sub-para 4: Mexico. Reservation: Iran.

**Delete article**: EU and mS, Norway, Singapore, Switzerland, Liechtenstein. **Retain article**: Iran, Brazil, Australia, USA, Russian Fed., Egypt, Nigeria, New Zealand, Trinidad and Tobago on behalf of Caricom, Eritrea, Algeria, Colombia, China, Pakistan, Namibia, Venezuela, Chile, Argentina, Indonesia, India, Thailand, Peru, Philippines, UK, Kenya

Article 48. Interception of [content data (Mexico)]

1. Each State Party shall adopt such legislative and other measures as may be necessary, [in relation to a range of serious [criminal (Jamaica on behalf of Caricom, USA) (delete: Iran)] offences to be determined by domestic law (delete: Mexico)], to empower its competent authorities[, where there are reasonable grounds to suspect that a criminal offence was committed or is being committed (Mexico) (retain original: USA, Australia, India, EU and mS)] to undertake the following actions with respect to [content data] [electronic/digital information, including content data, transmitted by means of information and communications technologies] of specified communications in its territory transmitted by means of a [computer system] [information and communications technology system/device]:

 (a) Collect or record, [within reasonable means, (Philippines) (retain original: Pakistan, Iran, Indonesia, Egypt, Jamaica on behalf of Caricom, India, Dominican Rep., Algeria, USA)] in [real time (delete: Caricom)], through the application of technical means in the territory of that State Party; and

 (b) Compel a service provider, within its existing technical capability:

(i) To collect or record[, in real time, (delete: Jamaica on behalf of Caricom) (retain: Pakistan, Iran, Dominican Rep.)] through the application of technical means in the territory of that State Party; or

(ii) To cooperate and assist the competent authorities in the collection or recording of, in [real time (delete: Caricom)] [through the application of technical means (Pakistan)];

Alt2 (ii): To cooperate and assist the competent authorities in the collection or recording of content data, in real time of, specified communications in its territory transmitted by means of a [computer system alt: ICT device (Pakistan) alt2: by means of ICTs (India, Russian Fed.)] (Jamaica on behalf of Caricom, USA, Pakistan, Egypt)

such [data] [information]].

Alt. to article 48 (Caricom): Each State Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious criminal offences to be determined by its domestic law, to empower its competent authorities, where there is reasonable belief that a criminal offence was committed or is being committed, to:

1. collect, record or store through the application of technical means in the territory of that Party; and
2. compel a service provider, within its existing technical capability:
3. to collect, record or store through the application of technical means in the territory of that Party; or
4. to cooperate and assist the competent authorities in the collection or recording of,

 content data, in real time, of specified communications in its territory which is transmitted by means of a computer system.

2. Where a State Party, [in accordance with its domestic law, (Jamaica on behalf of Caricom, Iran, USA, Pakistan, Egypt)] [owing to the [fundamental alt: established (Australia, USA) (retain original: Iran, Pakistan, Brazil, Indonesia, Algeria, Egypt, India)] principles of its domestic legal system, (delete: Jamaica on behalf of Caricom)] cannot adopt the measures referred to in paragraph 1 (a), it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means in that territory.

3. Each State Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.

[4. The powers and procedures referred to in this article shall be subject to articles 41 and 42.] Delete sub-para 4: Mexico. Retain: Pakistan. Reservation: Iran.

**Delete article**: EU and mS, Norway, Singapore, Switzerland, Liechtenstein. **Retain article**: Nigeria, Pakistan, Namibia, Iran, Brazil, Australia, USA, Russian Fed., Egypt, New Zealand, Trinidad and Tobago on behalf of Caricom, Eritrea, Algeria, Colombia, China, Venezuela, Chile, Argentina, Indonesia, India, Thailand, Peru, Malaysia, Philippines, Dominican Rep., UK

Article 49. Admission of electronic/digital evidence

 [Electronic/Digital] evidence derived or extracted from devices, equipment, [electronic/digital] media, information systems, computer programs or any information and communications technologies shall have the [same (Pakistan)] probative value of material [forensic (delete: Kenya)] evidence in criminal procedure when such evidence meets the [technical (delete: Russian Fed.)] conditions under the laws of the States Parties concerned [and is relevant and authentic (Pakistan)].

[2. Each State Party shall ensure that the collection, preservation and admission in the criminal procedure of digital evidence are subject to due procedure provided for under its domestic law. (China, Iran, Tanzania, Venezuela, Pakistan) (delete: Trinidad and Tobago on behalf of Caricom, USA, Australia, New Zealand, UK, Rep. of Korea, Japan, Australia, Liechtenstein, Dominican Rep., Colombia, Singapore)] [in addition: Each State Party may adopt, if necessary, the relative legislation in this regard. (Iran, Venezuela)]

**Retain article**: China, Russian Fed., Iran, Venezuela, Pakistan

**Delete article**:Trinidad and Tobago on behalf of Caricom, USA, Tanzania, EU and mS, Canada, Norway, New Zealand, Australia, Switzerland, Chile, Rep. of Korea, UK, Japan, Australia, Liechtenstein, Dominican Rep., Colombia, Singapore, Peru, Kenya

*Article 73. Mutual [legal* (delete: Russian Fed.)] *assistance in the real-time collection of traffic
[data] [information] Alt.: Procedure for request of real time collection of traffic data and real time collection of content data (CARICOM)*

[1. States Parties shall provide mutual [legal (delete: Russian Fed.)] assistance to each other in the real-time collection of traffic [data] [information] associated with specified communications in their territory transmitted by means of a [computer system] [information and communications technology system/device]. Subject to the provisions of paragraph 2 [of this article (Russian Fed.)], such assistance shall be governed by the conditions and procedures provided for under domestic law [of the requested State Party (Russian Fed.)].

2. Each State Party shall provide such assistance at least with respect to criminal offences for which the real-time collection of traffic [data] [information] would be available in a similar domestic case. (Delete: CARICOM)]

[3. A request made in accordance with paragraph 1 of this article shall specify:

 (a) The name of the requesting authority [identity of the authority making the request (CARICOM)];

 (b) A summary of the main facts and the nature of the investigation, prosecution or judicial proceeding to which the request relates; [Alt.: A summary of the main facts, subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution and judicial proceedings. (CARICOM)] [Alt.2: A summary of the circumstances of the offence committed in connection with which an examination, investigation, criminal prosecution or judicial proceeding is being carried out. (Russian Fed.)]

 (c) The [computer data] [electronic/digital information] in relation to which the collection of the traffic [data] [information] is required and [their] [its] relationship to the offence or [other illegal act (delete: CARICOM, Russian Fed.)];

 (d) Any available [data that identify] [information that identifies] the owner or user of the [data] [information] [and/ (Russian Fed.)]or the location of the [computer system] [information and communications technology system/device] [which are subject to an investigation (Mexico)];

 (e) Justification for the need to collect the traffic [data] [information];

 (f) The period of collection of the traffic [data] [information] and its corresponding justification. (Delete sub-para 3: USA. Retain: Russian Fed.)]

 [(g) Administrators of the [data] [information] (Mexico)]

Alt. para. 3: A request made in accordance with paragraph 1 of this article shall specify, as appropriate, information identified under paragraph 14 of article 61 (Australia)

**Delete**: EU and mS, Norway, Singapore, Liechtenstein, Georgia, Malaysia

**Retain**: Brazil, USA, Iran, Russian Fed., Egypt, Eritrea, Colombia, Peru, Honduras, China, Pakistan, Indonesia, India

*Article 74. Mutual [legal* (delete: Russian Fed.)] *assistance in the [real-time collection (Russian Fed.)] interception of [content data] [information in electronic/digital form]*

*Alt.: Procedure for request of real time collection of traffic data and real time collection of content data (CARICOM)*

 States Parties shall provide mutual [legal (delete: Russian Fed.)] assistance to each other in the real-time collection or recording of [content data] [information in electronic/digital form] of specified communications transmitted by means of a [computer system] [information and communications technology system/device], to the extent permitted under treaties applicable to them, as well as their domestic laws.

**Delete**: EU and mS, Norway, Singapore, Liechtenstein, Georgia, Malaysia

**Retain**: Brazil, Iran, Russian Fed., Egypt, Eritrea, Colombia, Peru, Honduras, China, Pakistan, Indonesia, India

Alt.: 1. States Parties shall provide mutual legal assistance in the real time collection of content data.

2. Such assistance shall be subject to the conditions and procedures provided for by the domestic law of the requested State Party and shall be provided upon a request specifying:

 (a) The name of the requesting authority;

 (b) A brief statement of the circumstances of the offence committed in connection with which an examination, investigation, criminal prosecution or judicial proceeding is being carried out;

 (c) Information about the persons with respect to whom the assistance is required;

 (d) Particular network access, equipment or service-level identifiers subject to the requested measure;

 (e) Information to be provided;

 (f) Justification for the need to collect it;

 (g) The period during which it is necessary to collect such information and the corresponding justification.

(Russian Fed.)