

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

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GROUP 11

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Article 40. [General principles and procedures

*relating to (delete: Iran, Russian Federation, Mauritania, Syria, Cameroon, DPRK,
Retain: Australia, Canada, United States, EU & its mS)] mutual legal assistance*

1. 1. States Parties [shall alt: may (Yemen, Oman, Retain original: Brazil, Argentina, Namibia, Iran, Morocco, CARICOM)] afford one another the [widest alt: appropriate (Cameroon)] measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences established in accordance with [articles 6 to 16 of (delete: Egypt, Bahrain, India, Burkina Faso, Pakistan, Retain: Australia, Canada, United Kingdom, Switzerland, EU & its mS, United States, Morocco)] this Convention [and all the crimes arising from the misuse of information and communications technologies (Oman, Yemen – throughout the text)], and for the purposes of the collection [, obtaining, preservation and sharing (India, Philippines, Indonesia, Algeria, Iran)] of evidence in electronic form of [any crime (Morocco)] {offences established in accordance with [articles 6 to 16 of (delete: Egypt, Bahrain, India, Burkina Faso, Pakistan, Retain: Australia, Canada, United Kingdom, Switzerland, EU & its mS, United States)] this Convention, [, States Parties shall also cooperate for the purposes of the collection of evidence in electronic form of serious crimes, including serious crimes covered by article 17 of this Convention, when applicable (United States, United Kingdom)] {as well as of serious crimes, [including alt: and (Egypt, Retain original: Australia, Israel)] those offences covered by article 17 of this Convention when applicable alt: and serious crimes as defined in article 2 (h) (EU and its mS, Côte d'Ivoire, Lebanon, Liechtenstein, Georgia, Vanuatu, Australia, Philippines, Tonga, Colombia) alt: any criminal offence (Uganda)] [and other criminal offences punishable by a maximum deprivation of liberty of at least three years (Argentina, Brazil)] (Delete: Morocco)}. [delete paragraph: Russian Federation, Syria, Retain: Australia, United States, Canada] (delete: Norway, Pakistan, Switzerland)}

[alt: States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences established under this Convention, including for the purposes of the collection of information and evidence in electronic form of offences established under this Convention. As to serious crimes defined in article 2 (h), States Parties shall afford one another mutual legal assistance for the purposes of the collection of information and evidence in electronic form. (China, Delete: Australia, Norway, United Kingdom, Israel, EU & its mS, United States, Canada, Switzerland)] [retain original: Argentina]

2. Mutual legal assistance [shall ~~alt: may~~ (Viet Nam, Yemen, Retain original: Brazil, Argentina)] be afforded to the [fullest ~~alt: widest~~ (New Zealand, Canada, Tonga) ~~(delete: Yemen)~~ extent possible [in accordance with this Convention, applicable international (Russian Federation, Syria, DPRK, Delete: Australia, United States, Canada, EU & its mS)] under relevant laws, treaties, [agreements and arrangements ~~domestic law~~ (Russian Federation, Syria, Delete: Australia, United States, Canada, EU & its mS)] of the requested State Party with respect to investigations, prosecutions and judicial proceedings [including those (Russian Federation, Syria, Delete: Australia, United States, Canada)] in relation to the offences for which a legal person may be held liable in accordance with article 18 of this Convention in the requesting State Party. [retain original: CARICOM, United States, EU & its mS, Colombia]

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 [, including representatives of legal persons (Russian Federation, Syria, Pakistan, DPRK, Delete: Australia, United States, Canada, EU & its mS)] [, depositions or any other type of evidence (Central African Republic) ~~(delete: EU & its mS)~~];

(b) Effecting service of [judicial ~~(delete: Russian Federation, Syria, Philippines)~~ (Retain original: Australia, United States, Canada, EU & its mS, Colombia)] documents;

[~~(e)~~ Executing searches and seizures, [of stored data, disclosing this data (Senegal)] and freezing [assets (Senegal)]];

(d) Searching or similarly accessing, seizing or similarly securing, and disclosing data stored by means of [a computer system] [an information and communications technology device] pursuant to article 44; [merge sub-paras: Senegal]

[e) Collecting real-time traffic data pursuant to article 45;

(f) Intercepting content data pursuant to article 46; [delete: Singapore, Malaysia, Retain: Philippines, Switzerland]

(g) Examining objects and sites;

(h) Providing [targeted and (Philippines)] [relevant (New Zealand, Canada, Philippines)] information, [evidentiary items ~~alt: objects and evidence~~ (Russian Federation, Syria)] and expert evaluations; [retain original: Australia, United States, Canada, EU & its mS, Colombia]

(i) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(j) Identifying [all persons or the proceeds of crime (Senegal)] [or ~~alt: , (Uganda)~~ tracing [, freezing and confiscating (Uganda)] proceeds of crime, property [and digital assets (Bahrain, Iraq, Delete: Liechtenstein)], instrumentalities or other things for evidentiary purposes; [retain original: Australia, EU & its mS, United States, Canada, Colombia]

(k) Facilitating the voluntary appearance of persons in the requesting State Party;

(l) Recovering [for the purposes of confiscation and transfer of (Russian Federation, Syria) proceeds of crime [in accordance with the provisions of this Convention (Australia, Canada)]; [Retain original: Australia, United States, Canada, EU & its mS, Colombia]

[l bis) Removal of the domain name used for criminal activities;

[l ter) Removal or making the criminal content inaccessible (Iran, Iraq, Delete: Georgia, United States, EU & its mS)]

(m) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

[\[retain original: CARICOM, Yemen\]](#)

4. Without prejudice to 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 of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information 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. The provisions of this article shall not affect [\[the \(India\)\]](#) obligations [\[of the requesting and requested State Party \(India\)\]](#) under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, [\[in respect of \(India\)\]](#) mutual legal assistance [\[between requesting and requested State Parties \(India\)\]](#). [\[retain original: Yemen\]](#)

7. Paragraphs 8 to 30 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty on mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 8 to 30 of this article in lieu thereof. States Parties are strongly encouraged to apply the provisions of those paragraphs if they facilitate cooperation.

[\[move to article 21: Mauritania\]](#) [\[retain original: Yemen, CARICOM\]](#)

8. States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, [\[that does not involve coercive actions, \(Viet Nam\)\]](#) to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party [\[, and in particular when both perpetrators and victims are nationals of the requesting State Parties \(China\) \(delete: United States\)\]](#). 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 provisions of this Convention. [\[delete paragraph: Russian Federation, Syria, Belarus. \(Retain original: Australia, United States, Canada, United Kingdom, Israel, EU & its mS, Colombia, CARICOM\)\]](#) [\[move to paragraph 21 \(e\) \(Senegal, Côte d'Ivoire\)\]](#) [\[retain UNTOC language: Cameroon\]](#)

9. A person who is being detained or is serving a sentence in the territory of one State Party and 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 offences established in accordance with this Convention may be transferred if the following conditions are met:

- (a) The person freely gives informed consent;
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

10. For the purposes of paragraph 9 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 the 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 the person was transferred for time spent in the custody of the State Party to which the person was transferred.

11. Unless the State Party from which a person is to be transferred in accordance with paragraphs 9 and 10 of this article so agrees, that person, regardless of the person's nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to the person's departure from the territory of the State from which the person was transferred.

12. (a) Each State Party shall designate a central authority [or competent authorities (Uganda) (delete: United States)] or authorities that shall have the responsibility and power to [send and (delete: United Kingdom)] 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; [retain original: Indonesia]

(b) Central authorities [and competent authorities (Uganda) (delete: United States)] 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; [retain original: Indonesia]

(c) The [secretariat alt: Secretary-General of the United Nations (Iran, Russian Federation, Syria.) (Retain original: Australia, United States, Canada)] shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention, and shall set up and keep updated a register of central authorities designated by the States Parties. Each State Party shall ensure that the details held in the register are correct at all times; [retain original: Indonesia]

(d) Requests for mutual legal assistance and any communication related thereto 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, if possible.

[Retain original: CARICOM]

13. Requests 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 secretariat 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 (delete: Ecuador)] and where agreed by

the States Parties, requests may be made orally [or in electronic form (Viet Nam, Iraq, Australia, El Salvador, Canada, Ecuador, Indonesia, Peru, Tonga, Colombia)], but shall be confirmed in writing forthwith. [Retain original: United States, CARICOM, Indonesia]

14. Where not prohibited by [their alt: the (Russian Federation, Syria, DPRK)] respective laws, [of State Parties, their (Russian Federation, Syria, DPRK)] central authorities [of States Parties (delete: Russian Federation, Syria, DPRK)] [are encouraged to alt: may (Russian Federation, Syria, DPRK)] transmit and receive requests for mutual legal assistance, and communications related thereto, as well as evidence, in electronic form under conditions allowing the requested State Party to establish authenticity and ensuring the security of communications. [Retain original: Australia, United States, Canada, Peru, EU & its mS, Colombia, CARICOM, Indonesia]

15. 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 functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts [for circumstances of the offence in respect of which the examination, investigation, prosecution, or judicial proceeding is being conducted (Russian Federation, Syria.) (Retain original: Australia, United States, Canada, EU & its mS)], except in relation to requests for the purpose of service of [judicial (delete: Philippines)] documents; [retain original: Peru]
- (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 and appropriate, the identity, location and country of origin of any person, item or accounts concerned; and

[e alt) Where possible and appropriate, the identity, location and nationality of any person concerned or the location and description of any property concerned (Singapore, Lebanon, Ghana, Thailand, Philippines)] [and any other information that may help identify or locate the property concerned (Philippines) [delete: United States]]

[e alt 1] Data identifying the person who are the subject of a crime report, in vestigation, prosecution or proceeding where possible their location and nationality or account as well as items concerned (Russian Federation, Syria.) (delete: Australia, United States, Canada)]

(f) The [time period and (delete: CARICOM, Vanuatu, United Kingdom, EU & its mS, United States, Tonga.),] purpose for which the evidence, information or other assistance is sought.

[(f bis) The preferred deadline for execution of the request desired by the requesting State Party. (Russian Federation, Syria.) (Delete: Australia, United States, Canada, EU & its mS)]

[(f ter) If appropriate, the specific time period which relates to the criminal activity under investigation (United Kingdom, EU & its mS, United States, Tonga, Georgia, CARICOM)] [Retain original: Russian Federation]

16. 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 can facilitate such execution.

17. 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.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness [or alt: , Russian Federation, Syria.] expert [suspect, accused or victim (Russian Federation, Syria, Philippines, Pakistan)] by the [judicial authorities of alt: the relevant authority as deemed appropriate (Philippines)] another State Party, the [first (delete: Russian Federation, Syria.)] State Party [in whose territory that individual is located (Russian Federation, Syria.)] may, at the request of the other [State Party (Russian Federation, Syria.)], permit the hearing to take place by videoconference [if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party (delete: United Kingdom, Georgia)]. 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. If the requested State Party does not have access to the technical means necessary for holding a videoconference, such means may be provided by the requesting State Party, upon mutual agreement. [Retain original: Australia, United States, Canada, Peru, EU & its mS, CARICOM, Indonesia]

19. 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.

20. 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.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this [article alt: Convention (Saudi Arabia)];

(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 subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

[(c bis) When, as determined by the requested State, the offence for which the person is sought to be a political offence, or an offence related thereto, (or an ordinary offence prosecuted for political reasons (delete: Georgia, Algeria)). (Costa Rica, EU and its mS, Côte d'Ivoire, Lebanon, Dominican Rep., Ghana, Liechtenstein, Georgia, Guatemala, Paraguay, Brazil, Vanuatu, Australia, United States, Norway, Canada, Ecuador, Kenya, United Kingdom, Philippines, Albania, Switzerland, Algeria, EU & its mS, Tonga, Israel. Delete: Tanzania, Morocco, Russian Federation)

[(c ter) Nothing in this Convention shall be interpreted as imposing an obligation to cooperate 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, language, 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. (Argentina, New Zealand, Georgia, Brazil, Colombia, Australia, El Salvador, United States, Canada, Chile, Armenia, Israel, EU & its mS. Delete: Tanzania, Russian Federation)]

[if there is a substantial ground to believe that the request was made for the ... r (Philippines)]

(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.

[(d bis) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party 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 provisions of this Convention. (Senegal)]

[22. 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.

23. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank [and tax (South Africa) (delete: United States, Canada)] secrecy.

24. Reasons [shall alt: may (Uganda)] be given for any refusal of mutual legal assistance. (delete paras: Yemen)]

25. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the 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.

26. 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.

27. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 26 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.

28. Without prejudice to the application of paragraph 11 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 [investigated, (Uganda) (delete: United States, Canada)] prosecuted, detained, punished or subjected to any other restriction of the person's liberty in that territory in respect of acts, omissions or convictions prior to the person's 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 the person has been officially informed that the presence of the person 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 the person's own free will.

29. 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.

30. The requested State Party:

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

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

[\[delete paragraph: Russian Federation, Syria. Retain original: Australia, United States, Canada, Peru, EU & its mS\]](#)

31. 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 the provisions of this article.

[\[retain original: Nigeria, Ghana, Tonga, DRC\]](#)

*Article 42. Expedited preservation of stored
[computer data] [digital [\[electronic \(Pakistan\)\]](#) information]*

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] [an information and communications technology device], located within the territory of that other State Party [\[, or where the data is in the possession or control of a service provider located or established in, or, through data processing activities, otherwise operating from that other State Party, \(Russian Federation\)\]](#) and in respect of which the requesting State Party intends to submit a request for mutual legal assistance in the search [\[or similar access, seizure or similar securing, or disclosure of the data \[alt: for actions such as searching, accessing, seizing, securing or disclosing electronic information \\(Pakistan\\)\]\(#\)\].](#) [\[Retain original: EU & its mS, United States, Canada\]](#)

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

(a) The authority seeking the preservation; [\[agreed ad referendum\]](#)

(b) The offence that is the subject of an [\[criminal \(United States, Canada, United Kingdom, Rep. of Korea, EU & its mS, Tonga, South Africa\)\]](#) investigation [\[, prosecution \(Thailand, Algeria, EU & its mS, Tonga, South Africa\)\]](#) or judicial proceedings and a brief summary of the related facts;

(c) The stored [computer data] [digital information] to be preserved and their relationship to the offence; [\[agreed ad referendum\]](#)

(d) Any available information identifying the custodian of the stored [computer data] [digital information] or the location of the [computer system] [information and communications technology device]; [\[agreed ad referendum\]](#)

(e) The necessity of the preservation; [\[agreed ad referendum\]](#)

(f) That the requesting State Party intends to submit a request for mutual legal assistance in the search or similar access, seizure or similar securing, or disclosure of the stored [computer data] [digital information]; [\[agreed ad referendum\]](#)

(g) As appropriate, the need to keep the request for preservation confidential and not to notify the user. [\[agreed ad referendum\]](#)

3. Upon receiving the request from another State Party, the requested State Party [\[shall take \[alt: shall consider taking \\(Singapore\\)\]\(#\)\]](#) all appropriate measures [\[including the use of technical means \(Pakistan\)\]](#) to preserve expeditiously the [\[specified data \[alt: specified electronic information for the duration specified \\(Pakistan\\)\]\(#\)\]](#) in accordance with its domestic law. [\[For the purposes of responding to a request, dual criminality shall not be required as a condition for providing such preservation \(delete: Viet Nam, Australia\)\].](#)

4. A State Party that requires dual criminality as a condition for responding to a request for mutual legal assistance in the search or similar access, seizure or similar securing, or disclosure of stored [computer data] [digital information] may, in respect of offences other than those established in accordance with [\[articles 6 to 16 of \(Japan, United States, Canada, United Kingdom, EU & its mS\)\]](#) 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 could not be fulfilled. ~~[(delete paragraph: India)]~~ [\[retain original: Australia, Switzerland, EU & its mS\]](#)

[\[5. A request for preservation may be refused on the basis of the grounds contained in article 40, paragraph 21. \(delete para: Brazil, Lebanon, Retain: CARICOM, Liechtenstein, Australia, United Kingdom, Switzerland, EU & its mS, United States, Canada\)\]](#)

6. Where the requested State Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting State Party's investigation, [\[prosecution or other proceedings, the requesting State Party may postpone the execution of said request \(Philippines\)\]](#) it shall promptly so inform the requesting State Party, which shall then determine whether the request should nevertheless be executed. [\[Retain original: EU & its mS\]](#)

7. Any preservation effected in response to a request made pursuant to paragraph 1 [\[shall alt: may \(Singapore, Armenia\)\]](#) be for a period of [\[not \(more than alt: less than \(Pakistan, Tonga\)\) ninety days alt: at least sixty days \(EU and its mS, Lebanon, Liechtenstein, Paraguay, Australia, United States, Norway, Canada, United Kingdom, Thailand, Rep. of Korea, Albania, Israel, Peru, Morocco, CARICOM\)\]](#), 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 data. Following the receipt of such a request, the data [\[shall alt: may \(Singapore\)\]](#) continue to be preserved pending a decision on that request. [\[retain original: Iraq\]](#)

8. Before the expiry of the preservation limit in paragraph 7, the requesting State Party may request an extension of the period of preservation, [\[for not more than ninety additional days \(delete: United State, Thailand, Rep. of Korea, Philippines, EU & its mS, Morocco, Tonga\)\]](#) [\[for the same period as originally requested \(Philippines\)\]](#). ~~[(delete paragraph: Japan, United Kingdom, Uganda)]~~

[\[retain original: Nigeria, Malaysia, Vanuatu, Australia, Palestine, Tanzania, Ghana, South Africa, Tonga\]](#)

Article 43. Expedited disclosure of preserved traffic data

1. Where, in the course of the execution of a request made pursuant to article 42 to preserve traffic data concerning a specific communication, the requested State Party discovers that a service provider in another State Party was involved in the transmission of the communication, the requested State Party shall expeditiously disclose to the requesting State Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted. [\[agreed ad referendum\]](#)

2. Disclosure of traffic data under paragraph 1 may be refused on the basis of the grounds contained in article 40, paragraph 21.

[\[2 bis A State Party that requires dual criminality as a condition for responding to a request for mutual legal assistance for disclosure of preserved traffic data may, in respect of offences other than those established in accordance with this Convention, reserve the right to refuse the request for disclosure of traffic data under paragraph 1 in cases where it has reasons to believe that the condition of dual criminality could not be fulfilled. \(India\)\]](#)

[retain original: CARICOM, Namibia, Malaysia, Vanuatu, United States, Nigeria, United Kingdom, Tanzania, Thailand, Albania, Ghana, EU & its mS, Tonga, Morocco, Australia]

Article 44. Mutual legal assistance in accessing stored [computer data] [digital information]

1. A State Party may request another State Party to search or similarly access, seize or similarly secure [. render inaccessible (India)], and disclose data stored by means of [a computer system] [an information and communications technology device] located within the territory of the requested State Party [or retained by any service provider that is located or established in, or, through data processing activities, otherwise operating from the requested State (Pakistan)] [for the purpose of criminal investigations, prosecutions and other proceedings concerning the offences defined under this Convention and other criminal offences provided that those are punishable under the laws of both Parties (Philippines)] [, or where the data is in the possession or control of a service provider located or established in, or, through data processing activities, otherwise operating from that other State Party (Russian Federation)], including data that have been preserved pursuant to article 42. [Retain original: United States, Canada, Morocco]

2. The requested State Party shall respond to the request through the application of relevant international instruments and laws referred to in article 35, and in accordance with other relevant provisions of this chapter. [agreed ad referendum]

3. The request shall be responded to on an expedited basis where:

(a) There are grounds to believe that the relevant data are particularly vulnerable to loss or modification; or

[(a bis) There are grounds to believe that the relevant [computer data] [digital information] are used to commit further offences established in accordance with this Convention (India, South Africa)

(f) (b) The instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited cooperation.

[3 bis. A State Party that requires dual criminality as a condition for responding to a request for mutual legal assistance for access to stored [computer data] [digital information] may, in respect of offences other than those established in accordance with this Convention, reserve the right to refuse the request for access to stored [computer data] [digital information] under paragraph 1 in cases where it has reasons to believe that the condition of dual criminality could not be fulfilled. (India)]

[retain original: CARICOM, Namibia, Malaysia, Vanuatu, United States, Nigeria, Palestine, United Kingdom, Tanzania, Thailand, Albania, Ghana, EU & its mS, Tonga, Morocco, Australia]

Article 45. Mutual legal assistance in the real-time collection of traffic data

1. States Parties shall alt: may (EU and its member States, Lebanon, New Zealand, Liechtenstein, Georgia, Paraguay, Vanuatu, Australia, Norway, Canada, United Kingdom, Albania, Indonesia, Israel, United States, Tonga, Armenia. Retain original: Brazil, Algeria, South Africa, Ghana, Namibia, Tonga) (retain original: Morocco)] provide mutual legal assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of [a computer system] [an information and communications technology device]. [or where the data is in the possession or control of a service provider located or established in, or, through data processing activities, otherwise operating from that other State Party (Russian Federation) (delete: EU & its mS, United States, Canada,

Morocco]. Subject to the provisions of paragraph 2, such assistance shall be governed by the conditions and procedures provided for under domestic law.

2. Each State Party [shall alt: may (EU and its member States, Lebanon, New Zealand, Liechtenstein, Georgia, Paraguay, Norway, Canada, Albania, Indonesia, United States, Armenia. Retain original: South Africa)] provide such assistance at least with respect to criminal offences for which the real-time collection of traffic data would be available in a similar domestic case.

3. A request made in accordance with paragraph 1 of this article [may be submitted in electronic format and (Pakistan) (delete: EU & its mS)] shall specify:

- (a) The name of the requesting authority;
- (b) A summary of the main facts and the nature of the investigation, prosecution or judicial proceeding to which the request relates;
- (c) The [computer data] [digital information] in relation to which the collection of the traffic data is required and their relationship to the offence or other illegal act;
- (d) Any available data that identify the owner or user of the data or the location of the [computer system] [information and communications technology device];
- (e) Justification for the need to collect the traffic data;
- (f) The period for which traffic data are to be collected and a corresponding justification of its duration. [delete sub-para: United States, Canada, EU & its mS]

[delete article: Singapore, Malaysia, Norway, Switzerland, Viet Nam]

[retain original: CARICOM, Namibia, Nigeria, Palestine, United Kingdom, Tanzania, Thailand, Argentina, Philippines, Albania, Australia, Belarus]

Article 46. Mutual legal assistance in the interception of content data

States Parties [shall alt: may (EU and its member States, Lebanon, New Zealand, Liechtenstein, Georgia, Paraguay, Vanuatu, Australia, Norway, Canada, United Kingdom, Albania, Indonesia, Israel, Tonga, Armenia.) provide mutual legal assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of [a computer system] [an information and communications technology device], to the extent permitted under treaties applicable to them and under their domestic laws.

[retain original: CARICOM, Namibia, Australia, United States, Canada, Nigeria, Palestine, United Kingdom, Tanzania, Thailand, Argentina, Philippines, Albania, Morocco, Brazil, Algeria, South Africa, Ghana, Namibia, Iran, Tonga.]

[Alt: 1. States Parties shall provide mutual legal assistance to each other in the real-time collection or recording of content data of specified communications in their territory transmitted by means of [a computer system] [an information and communications technology device], or where the data is in the possession or control of a service provider located or established in, or, through data processing activities, otherwise operating from another State Party. Subject to the provisions of paragraph 2, such 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 the real-time collection or recording of content data would be available in a similar domestic case.

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

- (a) The name of the requesting authority;

(b) A summary of the main facts and the nature of the investigation, prosecution or judicial proceeding to which the request relates;

€ The [computer data] [digital information] in relation to which the collection or recording of content data is required and their relationship to the offence;

(d) Any available data that identify the owner or user of the data or the location of the [computer system] [information and communications technology device];

€ Justification for the need to collect or record the content data;

(f) The period for which content data are to be collected or recorded and a corresponding justification of its duration. (Russian Federation, Belarus, Delete: Canada, United States)]

[delete article: Singapore, Malaysia, Norway, Switzerland, Viet Nam]
