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Comprehensive Assessment and Recommendations for the Elaboration of an International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes

Introduction

As the CEO and Founder of DB Connect, I humbly and sincerely convey my profound honor as I persist in discharging my responsibilities within the Ad Hoc Committee tasked with elaborating a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes. This committee, an embodiment of the General Assembly's Resolution 74/247, stands as a testament to the dedication and foresight of our esteemed international community.

With unwavering commitment, I now present my meticulously crafted recommendations for the forthcoming sixth session, fully cognizant of the significance of this pivotal endeavor. I commend the Committee for its astute approach to assimilating insights from diverse stakeholders, a hallmark of its distinguished proceedings thus far.

Having assiduously reviewed the draft convention, I offer the following comprehensive evaluation and recommendations aimed at reinforcing the emerging legal framework, employing precise legal terminology. This examination delves into provisions across crucial dimensions and offers constructive propositions to ensure the framework not only steadfastly safeguards fundamental freedoms but also equips authorities to effectively combat cyber criminality.

The scope of this appraisal is tailored to well-constructed amendments that bolster privacy safeguards, foster transnational collaboration, facilitate victim redress, foster deterrence through educational initiatives, and promote agile multilateral engagement.

Preliminary Analysis of the Convention's Preamble

The Preamble of the United Nations Convention on Cybercrime, while outlining the fundamental principles and motivations for the Convention, contains certain language that may exhibit vague expression and could benefit from strengthened rigor and exactness. This section examines potential realms of uncertainty and proposes solutions to reinforce the lucidity, robustness, and invulnerability of the legal framework.

Subsection 1: Introduction and Purpose

The Convention's Preamble emphasizes the potential of information and communications technologies, underscoring their dual nature as tools for both development and criminal activities. However, the terms "enormous potential", "new opportunities," and "adverse impact" lack explicitness and clarity.

Subsection 2: Scope of Criminal Activities

The Preamble identifies various criminal activities related to cybercrime, such as terrorism, trafficking, and drug offenses. However, the terms "considerable impact, "scale, speed, and scope," and "adverse impact" lack clear quantification, making it difficult to assess the extent of the offenses.

Subsection 3: Common Criminal Policy

The Preamble underscores the need for a common criminal policy, but the terms "common criminal policy", "inter alia," and "appropriate legislation" suffer from a lack of sharpness of definition, requiring further elaboration to establish indefinite wording parameters and expectations.

Proposed Solutions

Subsection 1: Introduction and Purpose

To enhance the transparency of the content, replace phrases like "enormous potential" and "new opportunities" with distinct references to technological advancements and the corresponding risks they entail. For instance, employ "rapid technological advancements in information and communications technologies, accompanied by potential benefits and vulnerabilities" instead.

Subsection 2: Scope of Criminal Activities

Replace vague terms such as "considerable impact" and "scale, speed, and scope" with quantifiable measures, like "measurable impact" and "increased frequency and diversity of criminal activities." This change will provide a clearer understanding of the extent of the offenses.

Subsection 3: Common Criminal Policy

In congruence with the stipulations provided above, demonstrate the fundamental characteristics of the "common criminal policy" by providing a comprehensive exposition of the specific legislative, procedural, and collaborative modalities that States Parties undertake to embrace.

Examination of Chapter II Provisions Pertaining to Criminalization

In this segment, a scrupulous examination is undertaken of the stipulations within Chapter II of the United Nations Convention on Cybercrime, relating to criminalization. The aim is to pinpoint any possible shortcomings in exactitude or regions where heightened construing may be warranted and to put forth amendments to augment the lucidity and unassailability of the legal framework.

Subsection 1: Illegal Access

The provisions in Article 6 defining illegal access utilize the terms "access," "computer system," and "information and communications technology device." Given the pivotal nature of these terms, they lack explicit clarification and may lead to varying interpretations.

Subsection 2: Illegal Interception

Article 7 defines illegal interception; however, terms such as "non-public transmissions," "computer data," and "digital information" require clarification to avoid potential confusion.

Subsection 3: Interference with Data and Systems

Articles 8 and 9 address interference with data and systems. The phrases "damaging," "deterioration," and "serious hindering" could be more distinctly delimited to ensure consistent interpretation.

Subsection 4: Misuse of Devices

Article 10 conveys with scrupulous detail the misuse of devices, passwords, and access credentials. To enhance freedom from opacity, it is recommended to provide a more comprehensive explication within the ambit of vagueness for the terms "dishonest intent" and "analogous data."

Subsection 5: Computer-Related Forgery

Article 11 delves into computer-related forgery. To enhance comprehensibility, the term "inauthentic data" requires clearer elucidation.

Proposed Amendments

Subsection 1: Illegal Access

Replace "access" with "unauthorized access" and provide a "conclusive" definition of "computer system" and "information and communications technology device." This will establish a clear scope of what constitutes "illegal access."

Subsection 2: Illegal Interception

Elaborate on "non-public transmissions", "computer data," and "digital information" with distinct examples, ensuring that the definition is all-encompassing and unequivocal.

Subsection 3: Interference with Data and Systems

Define terms like "damaging", deterioration," and "serious hindering" with quantifiable thresholds, leaving no room for subjective interpretation.

Subsection 4: Misuse of Devices

Refine the definitions of "dishonest intent" and "similar data" to ensure consistent understanding and application across jurisdictions.

Subsection 5: Computer-Related Forgery

Set forth a carefully phrased demarcation of "inauthentic data" and provide illustrative instances to mitigate potential confusion.

Chapter III: Jurisdiction

Analysis

The jurisdictional authority provisions formulated in Article 22 of the United Nations Cybercrime Convention reflect the attempt to address the territorial, nationality, and protection-based principles of authority in the context of cybercrime. However, the language used in the article could benefit from greater edification and exactitude to ensure consistent and effective application.

Recommendations

To enhance the legal framework's manifestness and efficacy, the following measures are suggested:

- a) **Stipulate Scope of Jurisdiction:** Clearly define the scope of each type of jurisdiction (territorial, nationality, protective) and construe the conditions under which they can be invoked.
- b) **Align Definitions:** Establish uniform definitions for terms such as "vessel," "aircraft," "national," and "stateless person" throughout the Convention to mitigate ambiguity and ensure consistent interpretation.
- c) **Facilitate Multi-Jurisdictional Cases:** Provide explicit guidelines for handling multi-jurisdictional cases to ensure seamless synchronization among States Parties, particularly when simultaneous investigations or prosecutions are underway for the same conduct.
- d) **Conformity with General International Law:** Express the alignment of the Convention's provisions with recognized standards of customary international law to preempt possible clashes and territorial controversies.

Chapter IV: Procedural Measures and Law Enforcement

Analysis

Articles 23 to 34 explicate procedural measures and law enforcement mechanisms concerning cybercrime. While these articles entail a comprehensive framework, certain segments could benefit from heightened linguistic accuracy and supplementary safeguards to guarantee the observance of human rights and due process.

Recommendations

With the intent to fortify the legal framework's resilience and ensure the safeguarding of individuals' rights, the subsequent measures are advocated:

- a) **Precise Parameters for Procedural Measures:** Establish clear and objective criteria for the application of procedural measures, particularly those related to search, seizure, and interception of data.
- b) **Incorporate Human Rights Safeguards:** Explicitly incorporate human rights safeguards, such as proportionality and judicial review, in the application of procedural measures, ensuring they are consistent with international human rights law.
- c) **Confidentiality of Measures:** Reinforce the confidentiality of measures by elaborating on the limits of disclosure, especially when involving private entities providing technological support.
- d) **Amplify the provisions pertinent to witness protection and victim assistance** by elaborating the details and scope of protective measures, given due consideration to the gender, age, and distinct vulnerabilities of the victims.
- e) **Compensation and Restitution:** Enunciate the procedures for "victims" access to compensation and restitution, ensuring their equitable treatment and reintegration into society, and thereby enhancing the coherence of the regulatory framework.

f) Uniformity of Definitions and Constructions: Ensure consistent terminology and definitions across articles to minimize potential confusion and discrepancies.

Chapter V: International Cooperation

Article 35: General principles of international cooperation

Recommendation: The language of Article 35 is largely lucid and well-defined. However, for the purpose of enhanced concreteness, it is recommended to incorporate a clause clarifying the mechanisms through which States Parties should engage in cooperation, including but not limited to direct communication channels, information exchange, and collaborative platforms.

Article 36: Protection of personal data

Recommendation: Inasmuch as Article 36 provides a solid foundation for the protection of personal data, it would be beneficial to explicitly pronounce the obligations of States Parties regarding data privacy and security. Embedding concrete references to globally acknowledged data protection benchmarks and tenets would augment the perspicuity and inclusiveness of the legal framework.

Article 37: Extradition

Recommendation: The terminology of Article 37 copiously addresses sundry aspects of extradition. However, to foster enhanced perspicuity, interpolating a subheading to formulate procedures for extradition petitions involving plural contraventions would ensure the succession remains hyaline and doctrinally incontrovertible.

Article 38: Transfer of sentenced persons

Recommendation: To augment Article 38, it would be advantageous to present methodical particularizations for the distinct criteria that States Parties should take into consideration when entering into bilateral or multilateral agreements for the transfer of sentenced persons. This could assimilate factors

such as the nature of the offense, the remaining duration of the sentence, and the potential risks associated with the transfer.

Article 39: Transfer of criminal proceedings

Recommendation: To strengthen Article 39, a subsection should be included that elaborates on the criteria guiding the determination of whether transferring criminal proceedings is in the "interests of the proper administration of justice." This would ensure a more uniform approach and enhance the consistency of decision-making among States Parties.

Article 40: General principles and procedures relating to Mutual Legal Assistance

Recommendation: To enhance the effectiveness of mutual legal assistance, it is proposed to introduce a separate subsection mandating the types of information and evidentiary items that can be provided under the purview of this article. This would provide a clear framework for cooperation and mitigate the potential absence of particularity.

Article 40: General principles and procedures relating to Mutual Legal Assistance

Recommendation: To further address concerns of dual criminality, it is advisable to elucidate distinct criteria or guidelines that determine whether a matter is "of a de minimis nature." This would help to standardize the interpretation and application of this concept across different legal systems.

Article 40: General principles and procedures relating to Mutual Legal Assistance

Recommendation: To ensure consistency in mutual legal assistance procedures, it is proposed to incorporate a provision that encourages States Parties to establish a standardized format for transmitting and receiving requests for assistance, while duly considering the various stages of the legal process.

Article 40: General principles and procedures relating to Mutual Legal Assistance

Recommendation: Considering the article adequately addresses the use of electronic means for mutual legal assistance, a subsection detailing the necessary safeguards to protect electronic communications and data privacy would contribute to a more comprehensive legal framework.

Article 40: General Principles and Procedures Relating to Mutual Legal Assistance

Recommendation: Strengthen the pellucidity of the legal framework by explicitly defining the purpose and scope of mutual legal assistance, thereby fostering effective cooperation between State Parties.

Article 41: 24/7 Network

Recommendation: Refine the provisions concerning the 24/7 network, identifying the criteria for designating a point of contact and detailing the responsibilities and capabilities required for immediate assistance.

Article 42: Expedited Preservation of Stored [Computer Data] [Digital Information]

Recommendation: Articulate in full the prerequisites for invoking the expedited preservation of data, expositing in finely honed detail the contingencies under which this provision may be utilized, and enumerating the requisite actions necessary to satisfy the preservation request.

Article 43: Expedited Disclosure of Preserved Traffic Data

The language pertaining to the expedited disclosure of preserved traffic data necessitates precision to mitigate potential instances of opacity. The use of the term "involved in the transmission" in connection with a service provider's engagement in communication transmission may raise the conspicuousness.

Recommendation: Revise the phrasing to explicitly indicate the involvement of a service provider in transmitting the communication. This clarification will facilitate a clearer understanding of the requirement.

Article 44: Mutual Legal Assistance in Accessing Stored [Computer Data] [Digital Information]

Given that the framework under Article 44 states the procedure for mutual legal assistance in accessing stored data, there is room for improvement in terms of procedural alignment and cogency. The reference to "relevant international instruments and laws referred to in article 35" could benefit from further designation.

Recommendation: Enumerate the distinct international instruments and laws that are deemed relevant for the execution of mutual legal assistance requests. This approach will enhance transparency and streamline the cooperation process.

Article 45: Mutual Legal Assistance in the Real-Time Collection of Traffic Data

The language used in Article 45 has the potential to generate verbiage yielding dubiety regarding the conditions and procedures for the real-time collection of traffic data. The reference to "domestic law" raises questions about uniformity and consistency in implementing this provision.

Recommendation: Offer supplementary guidance on the scope and parameters of domestic law, fostering a cohesive approach to the real-time collection of traffic data across State Parties.

Article 46: Mutual Legal Assistance in the Interception of Content Data

In light of Article 46 addressing mutual legal assistance in the interception of content data, the references to treaties and domestic laws warrant enhancement of the perspicuity to prevent uncertainty about permissible actions.

Recommendation: Present a thorough and intricate analysis of the particular treaties and domestic statutes that depict the permissible scope of assistance in the contemporaneous acquisition or documentation of content data.

Article 47: Law Enforcement Cooperation

The language within Article 47 touches on a multitude of cooperation aspects. However, the utilization of terms like "[cybercrime] tactics, techniques, and procedures" lacks thoroughness and may lead to misconceptions.

Recommendation: Define the term "[cybercrime] tactics, techniques, and procedures" more comprehensively or offer explicit examples to ensure accurate interpretation among State Parties.

Article 48: Joint Investigations

The provisions in Article 48 regarding joint investigations necessitate more detailed instructions for establishing joint investigative bodies, particularly to avoid potential conflicts related to jurisdiction and sovereignty.

Recommendation: Designate the procedural guidelines for forming joint investigative bodies, addressing issues of legal authority and jurisdictional dominion to facilitate efficient and effective cooperation.

Article 49: Mechanisms for the Recovery of Property through International Cooperation in Confiscation

The language in Article 49 relating to property recovery through international cooperation may benefit from additional decipherability, particularly concerning the coordination of confiscation orders.

Recommendation: Elaborate on the mechanisms for coordinating and executing confiscation orders, detailing procedures for collaboration between competent authorities of the requesting and requested State Parties.

Article 50: International Cooperation for the Purposes of Confiscation

Article 50 comprises intricate procedures for property confiscation; however, the references to "greatest extent possible" and "domestic legal system" necessitate further clarification.

Recommendation: Enact the criteria for inferring the "maximum extent possible " and the confines of the "domestic legal system," engendering the reliable and evident invocation of the article's clauses.

Article 51: Special Cooperation

The language of Article 51 regarding the exchange of information on the proceeds of offenses has the potential to result in an absence of cognizability regarding the circumstances and procedures for sharing such information.

Recommendation: Provide pellucid criteria for when a State Party may transmit information to another State Party without antecedent request, including formulating distinct circumstances that authorize such disclosure.

Article 52: Return and Disposal of Confiscated Proceeds

Article 52 addresses the disposal of confiscated proceeds, yet the usage of terms such as "domestic law and administrative procedures" may create uncertainties in the disposition process.

Recommendation: Identify the imperative stipulations and procedural nuances with regard to the disposal of seized earnings, ensuring their exactness with international premier practices.

Chapter VI: Preventive Measures

The language in Chapter VI breaks down the mechanics of preventive measures but lacks limpidity in terms of actionable steps and the coordination of efforts among various stakeholders.

Establishing Clear Preventive Measures

Recommendation: Develop an inclusive inventory of particular precautionary defenses, elaborating concrete undertakings that States Parties should accomplish to minimize cybercrime opportunities. This will ensure a more consistent policy to prevention across sovereignties.

Fostering Collaborative Participation

Recommendation: Further elaborate on the ways in which non-governmental organizations, civil society organizations, academic institutions, and the private sector can actively participate in preventive efforts. Identify the roles and responsibilities of these entities for a coordinated approach.

Article 53: Preventive Measures

The phrasing of Article 53 compels expanded diligent explication of the categories of legislative, bureaucratic, or supplementary undertakings that States Parties should promulgate to negate cybercrime with proficiency.

Recommendation: Itemize definitive legislative, administrative, and other measures that States Parties should adopt to create a robust preventive framework. Demonstrate the concordance between the stated provisions and the fundamental principles forming the basis of each State Party's statutory edicts.

Addressing Gender-Based Violence

Recommendation: Institute a distinct subsection within Article 53 to unequivocally stipulate strategies for precluding and eliminating gender-based violence facilitated by the utilization of information and communications technologies. Proffer tangible mechanisms that States Parties should implement to efficaciously combat this issue.

Article 54: Accessible Reporting Authorities

The language of Article 54 regarding accessible reporting authorities and mechanisms for incident reporting needs to be further indicated to ensure practical implementation.

Recommendation: Stipulate explicitly the requisite criteria for appointing pertinent competent authorities for incident reporting, delineate mechanisms for anonymous reporting, and furnish protocols for instituting accessible reporting channels.

Article 55: Periodic Evaluation

The language in Article 55 discussing periodic evaluation lacks acuity on the scope and methodologies for assessing national legal frameworks and administrative practice.

Recommendation: Codify an explicit methodology for regular appraisal, stipulating punctiliously defined procedures and quantifiable benchmarks that States Parties should utilize to evaluate the efficacy of their extant frameworks and practices.

Chapter VII: Technical Assistance and Information Exchange

Article 54: Technical Assistance and Capacity-Building

The language in Article 54 delivers a profound examination of technical assistance and capacity-building measures, but certain terms have the potential to create inconsistencies in interpretation during implementation.

Protocol for the Reciprocal Exchange of Specialized Knowledge and Expertise Between States Parties

Recommendation: Clarify the standards for the reciprocal transfer of expert knowledge and pertinent expertise among States Parties, underscoring the imperative of transparency and impartial distribution.

Addressing Technology Transfer

Recommendation: Set forth thoroughly indexed protocols and stipulations for the conveyance of technology between States Parties, ensuring equitable provisions and mechanisms to safeguard sensitive technology.

Article 55: Exchange of Information

Article 55 is contingent on the exchange of information, yet it lacks exactitude regarding the methodologies for States Parties to systematize and efficaciously harness the disseminated information.

Recommendation: Formulate a comprehensive framework constructing the modus operandi for States Parties in scrutinizing, disseminating, and operationalizing information, embracing explicit directives concerning the engagement of pertinent experts and stakeholders in this procedural endeavor.

Article 56: Implementation of the Convention through Economic Development and Technical Assistance

The language within Article 56 particularizes upon measures for implementation through economic advancement and technical support yet falls short in providing minutely crafted guidance on the methodologies for States Parties to efficaciously engage in collaborative endeavors concerning these facets.

Recommendation: Provide concrete examples of measures that States Parties can take to enhance cooperation, such as setting up joint initiatives, technical working groups, or shared projects that address common challenges.

Financial Contribution Mechanism and Equitable Distribution

Recommendation: Pinpoint the mechanism for financial contributions from States Parties to support technical assistance programs and capacity-building projects, ensuring transparency and equitable distribution.

Chapter VIII: Mechanism of Implementation

Article 57: Conference of the States Parties to the Convention

The article establishes the Conference of the States Parties, but certain aspects could be further clarified for efficient functioning.

Recommendation: Elaborate on the rules of procedure, ensuring that they incorporate explicit provisions for participation, decision-making, and dispute-resolution mechanisms.

Monitoring and Review Mechanisms

Recommendation: The modalities for oversight of the effectuation of this Convention shall be promulgated by the Conference of the States Parties, detailing the periodicity and investigative scope of the compliance evaluations and appraisals to be administered.

Article 58: Secretariat

As the secretariat's role continues developing, focused enhancements through detailed descriptions and clear exposition per existing protocols may help optimize key aspects.

Issuing Explicit Guidelines for Alignment between the Secretariat and Applicable Entities

Recommendation: Offer unequivocal directives for alignment between the secretariat and relevant international and regional organizations, emphasizing the interchange of information and collaboration on joint endeavors.

Chapter IX: Final Provisions

Article 59: Implementation of the Convention

The language of Article 59 discusses the implementation of the Convention, but certain aspects require further disambiguity to ensure effective implementation.

Recommendation: Thoroughly present an in-depth exploration of the requisite legislative and administrative measures that States Parties are obligated to adopt for the purpose of implementation. Furthermore, institute a rational timeframe for the adoption of these measures to ensure punctual compliance.

Article 60: Effects of the Convention

Pursuant to Article 60 addressing the effects of the Convention, it could benefit from enhanced coherence regarding the scope and relationship with existing agreements.

Recommendation: Explicitly demarcate the permissible scope of agreements or treaties making provisions for subjects encompassed by this Convention. Highlight that such agreements shall conform to the objectives and principles of this Convention to avert any incongruities.

Article 61: Relation with Protocols

The language of Article 61 relates to protocols; however, certain clauses could be refined for enhanced coherence.

Recommendation: Provide explicit instructions for the formulation and endorsement of protocols that complement this Convention, thereby establishing clear directives relating to the procedure for Parties to ratify and implement such protocols.

Article 62: Settlement of Disputes

Notwithstanding Article 62 addressing dispute settlement, it could benefit from more stringent detail in certain areas.

Detailed Arbitration Procedure

Recommendation: Expound upon the procedural stages and criteria for submitting a dispute to arbitration, guaranteeing lucidity regarding the organizational framework, procedural intricacies, and temporal parameters.

Article 63: Signature, Ratification, Acceptance, Approval, and Accession

Article 63 demarcates the process of accession to the Convention; nonetheless, certain provisions within its clauses may warrant enhanced purity of expression.

Recommendation: Elaborate upon the prerequisites and substance of notifications laying down formalities respecting signature, ratification, acceptance, approval, and accession to the Convention, incorporating the explicit particulars to be included within declarations.

Article 64: Entry into Force

Concurrently, as Article 64 stipulates the entry into force of the Convention, it could benefit from additional exposition concerning the role of regional economic integration organizations.

Role of Regional Organizations

Recommendation: Interpret the procedural intricacies through which regional economic integration organizations engage in the commencement of the Convention's effectiveness, describing the interconnection between said organizations and their constituent Member States.

Article 65: Amendment

The verbiage within Article 65 addresses procedures for amendments; however, could be further refined to achieve heightened concision and efficacy.

Recommendation: Enumerate the prerequisites that a State Party must satisfy to propose an amendment, detailing the requirement to furnish a justification for the pertinence of the proposed amendment to the objectives of the Convention.

Conclusion

The United Nations' draft convention presents a robust and substantive foundation for the establishment of a comprehensive legal framework, encompassing thorough provisions concerning international cooperation, assistance, and preventive measures. My diligent analysis, in turn, has been resolutely focused on enhancing transparency, accountability, and the meaningful engagement of civil society, effectively preserving, and safeguarding fundamental freedoms.

The preceding report extensively reviews the draft Convention through various pertinent dimensions, offering detailed undertakings that intricately coalesce into the regulatory fabric. These recommendations, thoughtfully crafted and strategically placed, serve as keystones that elevate the report's efficacy in promoting security, privacy, and the broader public interest. By infusing these recommendations, the report stands fortified and poised to ensure the utmost protection and advancement of vital principles.

It has been my privilege to contribute my expertise to this significant endeavor. Through collaborative dedication, we have not only identified avenues for refinement but have also woven a tapestry of enhancement that magnifies the report's impact.

Respectfully submitted,

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