



**THE SECOND SESSION OF THE AD HOC COMMITTEE TO ELABORATE A
COMPREHENSIVE INTERNATIONAL CONVENTION ON COUNTERING
THE USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES
FOR CRIMINAL PURPOSES**

**STATEMENT BY
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**ON BEHALF OF
THE CARIBBEAN COMMUNITY
(CARICOM)**

**AGENDA ITEM 6: PROVISIONS ON PROCEDURAL MEASURES AND
LAW ENFORCEMENT**

PLENARY (ROOM M-3)

JUNE 8, 2022

Madame Chair,

CARICOM will now answer the first group of questions posed by you on agenda item 6: provisions on procedural methods and law enforcement.

Question 1.

Under which chapter should “jurisdiction” be addressed (in this regard, Member States have made proposals under all three chapters: criminalization, general provisions and procedural measures and law enforcement)?

The term “jurisdiction” would be more appropriately addressed under a separate chapter and not to be included in any one of the chapters referenced. If one takes consideration of other international instruments which address the issue of computer crimes, they provide for jurisdiction in a separate chapter. This allows for an all-inclusive classification which can be used throughout all other chapters.

CARICOM also notes that the UNCAC addressed jurisdiction in the Chapter on Criminalization.

Question 2.

Should the basis to establish jurisdiction include a State party being the object/target of a crime (which was included in UNCAC but not UNTOC)?

CARICOM finds it appropriate to have this included. There will be need for a State to robustly exercise its jurisdiction if attacked. The attack will be focused on a state's ICT infrastructure being compromised by external parties for criminal purposes. Therefore, a State should be allowed to apply its authority to protect its structures, resources and property.

Question 3.

Should the article on jurisdiction also cover extradition-related matters, i.e. jurisdiction when extradition is not possible (aut dedere aut judicare)?

CARICOM is of the opinion that extradition-related matters should be covered within the instrument in an article under International cooperation.

However, CARICOM has observed that in the UNTOC, there is a provision included within the article on Jurisdiction which addresses jurisdiction where extradition is not possible. A similar approach was taken in UNCAC. We have also examined other instruments which addressed this issue within the article on jurisdiction.

If the Ad Hoc Committee adopts the approach outlined in the aforementioned instruments then, we will ensure the required consistency with relevant international Conventions, thereby avoiding contradictions. This will also allow for fulsome guidance to Member States where extradition is not possible and the issue of jurisdiction arises.

CARICOM will also consider the approach and recommendations by Member States on this issue.

Question 4:

What is the scope of the chapter on procedural measures and law enforcement? Should it apply only to the list of offences established by the convention (in its chapter on criminalization)? Could it also apply to other offences? Why would such enlargement to other offences be necessary?

CARICOM believes that the chapter on procedural measures and law enforcement should be applicable beyond the list of offences established by the convention. These measures and law enforcement powers should be applicable to the offences under the convention, as well as other offences committed by means of a computer system. These measures should also apply to the collection of evidence in electronic form of a criminal offence.

It is necessary that these provisions are applicable to the widest possible list of offences as the technological era has changed the landscape in respect of criminal law and procedure. Firstly, electronic evidence has become a common feature in most

criminal investigations and trials. Electronic evidence is different from other types of evidence, due to the fact that it is volatile and transient in nature. It can be easily altered, deleted or rendered inaccessible to law enforcement.

For this reason, it is important that there are special procedural mechanisms in place which assist law enforcement efforts in seeking to secure evidentiary material which is in an electronic form in as many offences as possible.

These procedural measures and law enforcement tools will operate to ensure that criminal procedural law and investigative techniques are capable of treating with the unique characteristic of electronic evidence.

It therefore follows that the new procedural measures of expedited preservation of data, compelling the production of data will be critical and should be applicable to the widest range of criminal offences.

Question 5:

Which conditions and safeguards should procedural measures be subject to?

In light of the fact that the procedural measures and new investigative tools will involve the collection of traffic data, content and subscriber data; and that in some instances this data may exist in a stored form or in the process of communications (interception),

it is important that adequate and expressed safeguards and conditions are included in this chapter:

1. The power to intercept content data should be limited to a range of serious offences to be determined by domestic law. This is important as the interception of content is the most invasive form of surveillance. Such limitation recognizes the importance of privacy of communications;
2. A member state should be given the flexibility to also apply the procedural measures in respect of the real time collection of traffic data to a restricted category of offences according to their domestic context;
3. In elaborating this new instrument, the Ad Hoc Committee should be mindful to allow member states some amount of autonomy to address the establishment, implementation and application of the powers and procedures which are provided for in the convention in accordance with the conditions and safeguards which are provided under their domestic law. The member state will implement in accordance with their own peculiar domestic context in respect of constitutional, legislative and judicial context;
4. It is important that the powers and procedures should incorporate the principles of proportionality. This shall be implemented also in accordance with the domestic context of each member state. Due consideration must be given to

the impact of these powers and procedures on the rights and legitimate interests of third parties.

Question 6:

Should specific international or regional human rights treaties be referenced under this chapter, in particular under a provision on conditions and safeguards? If so, what are the specific human rights treaties that should be referenced (regional vs. global treaties)? Should there be also a reference to universal legal principles (e.g. Necessity, proportionality).

CARICOM believes that there should be specific reference to international instruments on human rights within the article on “Conditions and Safeguards”. We have recommended specific reference to the 1966 United Nations International Covenant on Civil and Political Rights and other applicable instruments.

Thank you.