

India Statement on Group 2

Madam Chair

The Indian delegation's views on group 2 questions are as follows:

1. In order to seek/receive any legal assistance, a State must assume jurisdiction. A state assumes jurisdiction when a criminal activity is committed within the territorial limits of a State or by its national or legal person or against the state or its national or legal person. Such power to assume jurisdiction may be widely acknowledged and adequately addressed in the convention.

2. India values the human rights of every citizen and in fact the right to privacy is a fundamental right in the Constitution of India. However, such fundamental rights must be balanced with the wider welfare of the society and the collective rights of the members of society so that the society enjoys economic and social development. This requires international cooperation among competent authorities for prevention, deterrence, mitigation, investigation and prosecution of criminal offences so as to maintain public security. Therefore, there is a requirement for the principle of natural justice and rule of law to be incorporated. A standardised format for e-evidence or data request needs to be formulated for effective and efficient international cooperation.

3. The data may be bifurcated into two categories viz. content data and non-content/meta data. The procedural measures governing both may differ due to different thresholds of safeguards for both kinds of data. Non-content data may, for instance, be shared without the need of an MLAT. Such data travelling through traditional channels becomes obsolete vis-à-vis the pace at which a cyber-crime progresses.

4. Data may be preserved for 180 days at a time with provision for renewal request. A system on the lines of existing G8-24/7 may be created for this.

6. India submits that such a definition is required and must be kept under the convention's general provisions on the use of the terms. However, the 'production order' issued by a designated authority by member State domestically should be sufficient to seek the subscriber information.

7. Yes. The suspicion of ICT-related crimes or the commission of criminal offences may be stated as grounds for search and seizure under the convention as this is crucial for LEAs to start their investigation

8. The procedural measures are largely exercised in line with the domestic laws as well. India submits that allowing reservations/ declarations to procedural measures will bring more clarity to international cooperation.