

Japan's Response to the Guiding Questions regarding Agenda Item 6

A. First group of questions

Question 1:

It is desirable that a provision on jurisdiction is included in the chapter on procedural measures and law enforcement as in UNTOC and UNCAC.

Question 2:

A provision similar to Article 42, paragraph 2, subparagraph d of UNCAC could be considered.

Question 3:

We believe that it is inappropriate to discuss extradition-related matters at this negotiation session, as it is related to how to stipulate provisions on extradition. If matters such as *aut dedere aut judicare* are stipulated, it would be appropriate to include these matters in the provisions on extradition.

Question 4:

We could consider applying procedural provisions to investigations and criminal proceedings not only for the criminal offenses established in this Convention but also other criminal offenses committed by means of a computer system, and to the collection of evidence in electronic form of a criminal offense. Japan believes that this enables the Convention to promote international cooperation and to avoid a long list of criminalization provisions at the same time.

Question 5:

It is necessary to include a provision confirming that each State Party should ensure that rights arising from obligations under human rights treaties, as well as other human rights and freedoms, are appropriately protected. The provisions should also confirm that domestic legislations which include the principle of proportionality are followed.

In this regard, though we need to continue examining the details of the wording, Japan basically supports the articles proposed in the written submissions by the EU, Brazil,

Switzerland, Colombia, the UK, and Ghana.

Question 6:

We have emphasized the importance of drafting the Convention based on existing human rights treaties from the viewpoint of guaranteeing human rights by establishing unified standards. However, we are against a reference to specific international treaties because such a reference makes it difficult for their non-party states to conclude this Convention. If there are existing international treaties whose provisions should be included in this Convention, they should be included in the form of specific language, not by the names of the treaties. We support the inclusion of universal legal principles such as the principle of proportionality and legality (*Nulla poena sine lege*), and the requirement for law enforcement measures and other safeguards.

B. Second group of questions

Question 1:

In our written submission, Japan raised the expedited preservation, search and seizure of stored computer data, production order, and real-time collection of traffic data as basic powers and procedures the Convention can foresee. On the other hand, careful consideration must be given to whether or not to include provisions on interception of content data. Even if this Convention does include such provisions, it is essential that they be accompanied by an appropriate caveat, such as “in relation to a range of serious offenses to be determined by domestic law.”

Question 2:

It is necessary to consider based on the specific procedural provisions, but it is possible that the safeguards to be applied may vary depending on the nature of the procedure.

Question 3:

It is necessary to examine procedural provisions according to the types of data, ensuring a balance between the protection of privacy and secrecy of communications; for example, consideration should be given to how the real-time collection of traffic data and the interception of content data can be conducted separately.

Question 4:

The appropriate period for preservation depends on the nature and storage conditions of the data, and can also vary according to the legal systems and investigative practices of each State Party. From this point of view, it is appropriate that this Convention does not contain provisions on the specific degree of expeditiousness.

At the same time, the burden on the requested entity should be carefully considered. If this Convention sets a time limit for this purpose, it should allow each Party to extend the upper time limit for a preservation request to at least 60 days to ensure that the competent authorities have sufficient time to take legal measures such as search and seizure, and to make a production order.

Question 5:

Japan believes that this is not about whether to discuss this issue at this time. Rather, the discussion should not be based on which term is used, but on what the term means. It is also possible that the term “electronic information” is appropriate in one provision, but the term “computer data” in another.

Question 6:

Although it is necessary to establish a definition of subscriber information as a prerequisite for defining the scope of application, we should decide in which provision it should be defined after it becomes clear how many relevant articles there are, and Japan cannot give an opinion at the moment.

Question 7:

When coercive measures that restrict important rights or interests of citizens are taken, it is essential that there is a suspicion that a crime has been committed.

Question 8:

We cannot decide at this stage whether the Convention should allow for declarations or reservations with respect to the provisions on procedural measures because this depends on how the criminalization provisions will be determined. Nevertheless, this Committee can consider allowing reservations or declarations to the extent necessary to make this

Convention acceptable to as many countries as possible.

C. Third group of questions

Question 1:

We need to reexamine if the Convention should include a provision on freezing, seizure, confiscation and return of the proceeds of crime, but in general, Japan can support the inclusion of a general provision on these measures similar to the UNTOC and UNCAC.

Questions 2 and 3:

The necessity to stipulate the protection of witnesses and the assistance to and protection of victims in a convention to combat cybercrime is not necessarily clear, and we would like to discuss this issue based on specific stipulations.

D. Fourth group of questions

Question 1:

Japan is against the establishment of a provision on the admissibility of evidence, because the judicial decision on admissibility is not necessarily influenced by the mere fact that the evidence is collected for investigations and criminal proceedings of a cybercrime. The decision should be left to the domestic legal system of each country.

Questions 2 to 4:

Japan does not believe that these provisions are essential at this time, but would like to consider the proposal based on specific proposals.