

1. New Zealand is pleased to respond to the invitation from the Chair of the Ad Hoc Committee requesting proposals for the third negotiating session, to be held from 29 August – 9 September, relating to:
 - International cooperation;
 - Technical assistance;
 - Prevention measures;
 - The mechanism of implementation;
 - The final provisions; and
 - The preamble.
2. In this submission, New Zealand makes proposals on the chapters relating to international cooperation, prevention measures, and technical assistance. Alongside those suggestions, we provide (in brackets) examples from other relevant international instruments, which could serve as a good basis for our negotiations. We look forward to further constructive discussions on all issues at the third negotiating session.

Effective provisions on international cooperation, prevention, and technical assistance go hand-in-hand

3. In New Zealand's view, this convention should seek to address and improve international responses to cybercrime, including through enhanced international cooperation, effective prevention measures, and robust technical assistance to ensure universal implementation. Capacity building is a key element. We cannot have a truly effective convention without ensuring that all States Parties have the ability to meet its standards.

We should look to build off existing instruments and ensure consistency with human rights obligations

4. The new convention should not conflict with or erode existing instruments, nor existing mutual legal assistance and information sharing obligations or practices, but rather take them into account and build on them where appropriate. Further, all aspects of this convention should be consistent with states' existing international human rights obligations, which apply online just as they do offline, including the right to freedom of expression and the right not to be subjected to arbitrary and unlawful interference with privacy.

International cooperation

5. Given its frequently transnational and cross-border nature, the investigation and prosecution of cybercrime requires effective international cooperation including timely access to relevant data and electronic evidence.

Mutual Legal Assistance

6. Existing provisions relating to mutual legal assistance ("MLA") (UNTOC Article 18 and Budapest Convention Article 25) provide a good basis for our negotiations. As a general principle, States Parties should afford one another the widest measure of MLA in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention, subject to the full protection of human rights and fundamental freedoms.
7. We also recognise that current MLA regimes and practices are not always well suited to respond to cybercrime activity where swift and agile responses are necessary to ensure information is preserved and shared in a timely fashion. Where possible we should seek to improve the consistency and timeliness of MLA responses, including developing and sharing best practices aimed at standardising MLA processes.
8. Recognising the complexities of cybercrime investigations, and the need for expedited access to data, this convention should include – subject to robust human rights and procedural safeguards – provisions for MLA requests relating to the matters set out at Art 18(3)(a)-(i) of UNTOC, and specifically in relation to the collection of evidence in electronic form, MLA requests relating to:
 - Preservation of computer data in respect of which a state intends to submit a request for mutual legal assistance (Budapest Convention Article 29);
 - The search, access, seizure, securing, and disclosure of data stored by means of a computer system (Budapest Convention Article 31);
 - The real time collection of traffic data associated with specified communications transmitted by means of a computer system, as permitted under states' domestic law (Budapest Convention Article 33);
 - The real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under applicable treaties and domestic laws (Budapest Convention Article 34);
 - Subject to appropriate safeguards, New Zealand could support a provision allowing requests for rapidly expedited mutual legal assistance for disclosure of computer data in emergency cases, for example in situations where there is a significant and imminent risk to the life or safety of an individual.
 - This convention should encourage the creation of well-resourced and well-trained central authorities to respond to MLA requests, and promote high-standards, for example, ensuring information provided can meet evidentiary requirements when requested for that purpose.

9. Subject to the inclusion of strong safeguards and human rights protections within this Convention, New Zealand could support extending aspects of the provisions relating to the collection, preservation, and sharing of electronic evidence to apply also to sufficiently serious criminal offending other than those offences established in this Convention.
10. The Convention should provide States Parties the ability to refuse to provide assistance because it would prejudice its sovereignty, security, *ordre public* or other essential interests. Additionally, States Parties should be able to refuse to provide assistance in accordance with its domestic law, which may include the grounds of absence of dual criminality, political offences/political motivation; but may not include grounds that the offence is also considered to involve fiscal matters (UNTOC Art 18(21)-(22)).

Extradition

11. The Convention should contain extradition provisions applying to offences established by the Convention. Article 16 of UNTOC provides a good basis for negotiations, and as with mutual legal assistance, States Parties should be able to refuse extradition requests on the grounds established by its domestic law and applicable treaties. New Zealand supports the introduction of a provision allowing states to establish jurisdiction to prosecute offences established by this Convention where an alleged offender is found in its territory and it does not extradite. We are also open to discussing whether this convention should include a mandatory obligation to consider prosecution under certain circumstances (*aut dedere aut judicare*) for example in cases where there is sufficiently serious offending to trigger a mandatory obligation.

24/7 point of contact

12. We recommend including a provision that creates a 24/7 single point of contact system (Budapest Convention Article 35) to ensure expeditious assistance in cybercrime investigations and for the collection of electronic evidence. We further suggest that we consider existing instruments and frameworks relating to communication between 24/7 contact points. We also note that between states there are varying degrees of capacity to resource and maintain a 24/7 single point of contact system. Therefore, we suggest that this convention's provisions on capacity building ensure states will have both the resources and training to adhere to this standard.

Law enforcement co-operation

13. In the interests of cultivating a proactive approach to international cooperation, the convention should encourage cooperation between competent authorities. Including for spontaneous sharing of information or data, relating to investigations or proceedings, within the limits imposed by domestic law and in the common interest of responding to criminal acts (Budapest Convention article 26, UNTOC article 18(4) and UNCAC article 46(4)).

Joint Investigations

14. The convention should include provisions encouraging States Parties to conclude bilateral or multilateral agreements or arrangements that would establish joint investigative bodies in relation to offences covered by this convention. In the absence of any such formal arrangements, States Parties should allow for joint investigations on a case-by-case basis (UNTOC Article 19).

Technical assistance

15. Effective capacity building measures will increase the likelihood of widespread implementation of the convention and reduce the opportunity for cybercriminals to find safe havens. The convention should include provisions on training and technical assistance (UNTOC Article 29) and on effective implementation of the convention through economic development and technical assistance (UNTOC Article 30).
16. Capacity-building measures in the convention should emphasise the value of training and sharing best practises, including around responding to MLA requests efficiently, electronic-evidence preservation, and evidence sharing techniques. In this regard, we note that the UNODC has significant experience in developing such tools, including guides relating to model MLA requests, voluntary disclosure requests, preservation requests and emergency disclosure requests. We therefore could envision a role for UNODC, as well as other organisations that have experience in facilitating international law enforcement cooperation, such as Interpol, in delivering the capacity building programmes required to ensure this treaty is effective.

Prevention

17. This convention should recognise the importance of multi-sectoral cooperation in combatting cybercrime, including the importance of ensuring we develop a framework of cooperation built on trust and transparency between governments and private sector actors. Moreover, New Zealand acknowledges that a whole-of-society approach is required in effectively preventing cybercrime. This convention should seek to foster broad participation in that regard (UNCAC article 13).
18. New Zealand would encourage in this convention measures that emphasise the importance of building societal awareness of cybercrime risks through educational campaigns and training.
19. In addition, the Convention should seek to foster an evidence-based approach to cybercrime prevention, including analysing cybercrime trends and their impacts on societies, including women, children and other vulnerable groups. This work should be done in consultation with relevant private sector actors, academia, indigenous groups, and interested NGOs (UNTOC article 28). Likewise, the Convention could also include provisions that encourage States Parties, in accordance with domestic law, to foster cooperation between law enforcement and relevant private sector actors in combatting the criminal activity established within this Convention (UNCAC article 39(1)).