 Transmission of requests and material

8. What channels for transmission of requests for extradition should be provided for in the convention

9. What channels of transmission of mutual legal assistance requests should be provided for in the convention, particularly considering the nature of offences covered by the future convention?

10. What means of transmitting requests are needed to facilitate international cooperation, particularly considering the nature of offences covered by the future convention? Could requested documents or electronic evidence be transmitted by electronic means?

Brazil fully supports electronic and secure means to transmit international extradition and mutual legal assistance due to the nature of offences covered by the future convention, but also the efficiency of any investigation and prosecution in the present digital era. So, procedural communication between parties should be carried out preferably by digital means, avoiding the physical transfer of sensitive media and documents.

Regarding of the channels for transmission extradition requests, in case of urgency, a preventive arrest request could be transmitted through Interpol prior to the processing of a formal request. Urgences cases can be understood in situations where there is a serious risk that the person being extradited will evade.

The transmission of mutual legal assistance requests should be provided in the convention through the central authorities’ channels. However, the convention should not exclude others forms of cooperation between law enforcement authorities consistent with domestic law and international agreements, that are outlined in articles 27 and 48 of UNTOC and UNCAC, in order to facilitate the international cooperation mechanisms.
In addition, the future convention could be prescribed expedited and direct communications between law enforcement authorities in case of preservation electronic evidence’ requests, through channels of direct cooperation such as Interpol 24/7 network, as well as other channels.

11. What key information would have to be submitted in a request for international cooperation under the convention? For example, should provisions set out the minimum required information to be provided as part of a request?

The cooperation between the parties, must be as broad as possible for the purposes of investigating and the procedures of the crimes and the collected electronic evidence under the future convention. Nevertheless, Brazil considers that the requests should include the facts under investigation, the legal provisions, the requested and requesting authorities and the specific object of the request.

12. What mechanism should the convention establish for handling mutual legal assistance or extradition in urgent circumstances? Should the International Criminal Police Organization (hereinafter referred to as INTERPOL) channel be used? If it is the case, how would urgent circumstances be defined? What kind of requests would be transmitted through this channel?

- **Grounds for refusal**

13. Should the convention specify grounds for refusing an extradition request? What are the views of Member States on the grounds that should be included for refusing the extradition?

Brazil has been practicing traditional extradition refuses in its agreements, such as follow: a request may be denied if it relates to a
military offense, or political opinion; in cases of death penalty, torture or others cruel punishments and treatment, among others.

However, under the perspective of the future convention, Brazil understands that the reasons for refusing extradition must be subject to internal law and the extradition treaties as a main rule with a minimum penalty requirement for extradition, one or two years, and the grounds upon which the requested State Party may refuse extradition.

If the Parties deem it necessary, based on the prior manifestations of the countries, Brazil supports include specify grounds for refusing extradition request as provided by UNTOC in article 16, item 14, as follow: when the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person’s position for any one of these reasons.

14. Should the convention specify grounds for refusing a mutual legal assistance request? What are the views of Member States on the grounds that should be included for refusing mutual legal assistance?

Brazil understands that the reasons for refusing mutual legal assistance must be subject to internal law and the MLA agreements as a main rule.

We do believe, also that it would be positive to include a provision that stipulates that requests by the requesting party that are not incompatible with the requested party’s domestic law should be followed. This is inspired by a similar provision in the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.

15. Should the convention simply defer grounds for refusing an extradition or mutual legal assistance requests to the domestic laws of the State Party and applicable treaties?
16. Should the convention include a clause stating that the offences established in accordance with this convention shall not be considered as a political offence, and that international cooperation shall not be rejected solely on this ground?
Yes, answer below

➢ Other provisions
17. Should the convention include specific provisions on mutual legal assistance regarding provisional measures? If so, what specific provisions should be included? ( Expedited preservation of stored computer data-electronic information/ Expedited disclosure of preserved traffic data)

18. Should the convention include specific provisions on investigative powers? If so, what specific provisions should be included? (accessing of stored computer data-electronic information/ real-time collection of traffic data/ interception of content data)

19. Should the convention include a provision on trans-border access to [data] [information]? It would allow for a State to access stored computer data without the authorization of the State party where such data/information is geographically located, if the data is (a) publicly available, or (b) access to the data is through a computer system located in its territory and that State obtains the consent of the person who has lawful authority to disclose the data through that computer system.

20. Should the convention include provisions to facilitate the return of the assets? How should the convention address international cooperation for purposes of seizure and confiscation and return and disposal of confiscated assets, particularly as regards the difference between the approaches of the United Nations Convention against Transnational Organized Crime and the UN Convention against Corruption?
21. What are the views of Member States on a provision for Parties to establish a 24/7 network of points of contact? What would be the purposes of such a network, and the relationship with networks established under existing international instruments and frameworks?

22. What are the views of Member States on the possibility of a specific provision on international cooperation in carrying out electronic surveillance and other types of covert special investigative techniques, as part of cross-border cybercrime/ criminal uses of information and communications technologies investigations?

23. Should the convention include a provision permitting the organization of hearings held by video or telephone conference for purposes of taking evidence, and also enabling such hearings to be conducted through the use of the requesting State’s diplomatic missions and consular posts with respect to their own nationals on a voluntary basis, as part of their consular functions?

*Regarding provisional measures, Brazil considers that their inclusion in the MLA is essential for the effectiveness of the convention, given the nature and pace of cybercrimes and electronic evidence.*

*As included in our national submission, it would be relevant to have provisions on the expedited preservation of stored computer data and the expedited disclosure of preserved traffic data.*

*Cooperation on during the investigation phase is crucial for effectively countering cybercrimes and therefore, the convention should include provisions on cooperation relating to investigative powers.*
We consider that it would be important to include provisions on accessing stored computer data; real time collection of traffic data; interception; as well as trans-border access to stored computer data with consent or when publicly available.

In respect of a 24X7 network of points of contact, Brazil considers that the creation of a 24/7 is also important, in view of the fast pace of cybercrimes and of the need to adopt urgent measures in that regard.

A 24/7 should be an interface between authorities of states parties that can receive and take immediate action to communicate with companies, internet providers and governmental organs to request the preservation of data, content and other request arising from the convention.

We consider that the inclusion of special investigative techniques is useful to effective application of the convention and can be encouraged.

The use of such techniques should both respect the domestic laws of the countries involved and be the object of agreements or arrangements between the states parties involved. Or other protocols to this Convention if there is agreement on it.

Regarding of return of assets, the Convention should include general provisions to facilitate the return of assets, as well as international cooperation for the purposes of seizure, confiscation, return and disposal of confiscated property.
However, the Convention should not set out provisions different from those established by the Conventions of Palermo and Mérida for the purposes of repatriation.
In fact, the provisions of the new Convention should reflect the basic structure of both UNCAC and UNTOC. The approach should be general and broad and more detailed provisions to regulate assets recovery should be established within the scope of bilateral treaties.

We also believe that some reference a digital financial assets and digital currencies, it would be useful for the convention.

In respect of the organization of hearings held by video or telephone conference for purposes of taking evidence, Brazil considers that the hearings should be dealt by the competent authorities in any case.