Guiding questions on the chapters on international cooperation, technical assistance, preventive measures, the mechanism of implementation and the final provisions, and the preamble, of a comprehensive international convention on countering the use of information and communications technologies for criminal purposes

Thank you very much, Madam Chair,

Since this is the first time that my delegation has taken the floor, I would like to express our appreciation to you and to the UNODC Secretariat for the great efforts made in the organization of this third substantive session of the Ad Hoc Committee responsible for drafting a new international instrument against cybercrime and your leadership throughout this entire process.

I reiterate our delegation's commitment to this process, which we trust will conclude with a consensus document that represents us all.

I. International cooperation

General principles and scope of the provisions on international cooperation

1. What forms of international cooperation should be stipulated in the convention? In addition to extradition, mutual legal assistance and law enforcement cooperation, should the convention cover transfer of sentenced persons; transfer of criminal proceedings; joint investigation; and international cooperation for the purposes of confiscation, and return and disposal of confiscated assets?

The Dominican Republic is of the view that joint investigations and joint investigation teams are very important tools of international cooperation for more efficient investigation processes and should be part of the convention. Even though these tools are covered in other instruments with a very wide membership like UNTOC, given the specificities of cybercrime and electronic evidence investigation methods, it makes sense to include them here.

Regarding the transfer of sentenced persons, the transfer of criminal proceedings, confiscation and the return of confiscated assets, given that the type of crime makes no difference in the handling of these procedures we believe we can rely on UNTOC which already covers those issues. We however don’t object that those be included in this convention.

2. What should be the scope of offences to which the international cooperation mechanisms stipulated in the convention apply? The proposals submitted by Member States indicate a common understanding that the extradition provisions would apply only to offences established in accordance with the convention. In relation to other forms of international
cooperation such as mutual legal assistance, transfer of criminal proceedings and cooperation between law enforcement, should these provisions apply to the collection and sharing of electronic evidence for offences beyond those established in accordance with the convention? If so, should they apply regardless of the penalties for the offences where electronic evidence needs to be collected and shared, or should the scope be limited to “serious offences”?

The international cooperation mechanisms should apply to the offences defined in the substantive part of this convention, as well as to the collection and sharing of electronic evidence for any *criminal* offence.

3. **Should the provisions on extradition and mutual legal assistance follow the models established by the United Nations Convention against Transnational Organized Crime or the United Nations Convention against Corruption, and, if so, to what extent?**

Madame Chair, it is our view that for extradition both UNTOC and UNCAC have proven to be effective tools and we should therefore either rely on those instruments for extradition or follow their models.

Regarding mutual legal assistance, due to the high volatility and other characteristics of electronic evidence and cybercrime investigations in general, there should be specific expedited MLA provisions in this convention so that they are effective.

4. **Should the international cooperation provisions apply to the investigation and prosecution of civil and administrative cases related to the liability of legal persons for committing an offence established in accordance with the convention?**

Yes, they should.

5. **Should the convention include a threshold penalty period for the offences to which the extradition article may apply (e.g. offences subject to a maximum penalty of not less than a given number of years of imprisonment)?**

Yes.

In our domestic legislation there is a the maximum penalty should be of at least one year for extradition to be possible.

6. **How can consistency be ensured between international cooperation provisions and the respect of human rights?**

By building sufficient safeguards into the convention, specially in regards to *due process*. 
7. How should the chapter on international cooperation determine the requirements for the protection of personal data for the purposes of the convention?

In the data protection realm, since there are so many different levels among the UN member States, we are of the view that the provision dealing with data protection should establish that when 2 Parties exchange data it should be done by the rules of the Party with the higher standards in this regard.

Transmission of requests and materials

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

The traditional channels can perfectly be used as, contrary to the case of preservation and obtention of electronic evidence, there is no rush in extradition processes, which for example in the case of the Dominican Republic have to be approved by Presidential decree anyhow.

However taking into account that in many national legislations electronic documents digitally signed have the same validity as physical documents, and those are being considered for other forms of cooperation requests within this convention, it might as well also apply for extradition requests using secure communication channels.

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

Given the fact that we are dealing with electronic evidence, and that it is highly volatile, both the transmission channels and the requests themselves should be secure and expedited, therefore favoring secure electronic channels and encrypted digitally-signed documents.

Perhaps we don’t need to reinvent the wheel and bear the costs of setting up and maintaining a new system and could make use of proven existing available channels (also for the 24/7 POC network). One example of such secure electronic channels is INTERPOL’s i24-7.

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

See answer to Q9.
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 information required?

Yes, a minimum information requirement should be established in order for the authorities of the requested State to have sufficient elements to assess the requests.

12. What mechanism should the convention establish for handling mutual legal assistance or extradition in urgent circumstances? Should the International Criminal Police Organization (INTERPOL) channel be used? If so, how would urgent circumstances be defined? What kinds of request would be transmitted through the channel?

We are of the opinion that in all cases, whether urgent or not, we should use electronic means, provided they have adequate levels of security and traceability. It is counterproductive to use analog means to address digital issues.