India Statement - 31.8.2022

Transmission of requests and materials

Madam Chair,

I will be answering questions 8 to 23:

8. Through the Central Authority of member states.

The provisional arrest request can be made through Interpol as is being done presently. More popularly known as Red Notice, this provides for temporary detention of a person for whom a formal extradition is pending and under process.

There is a need to create a secure communication channel in order to exchange real time information of extradition under this convention. This secure channel can be used for communication of extradition and data preservation requests, real time sharing of crime intelligence and EMLAT requests. The final extradition request however should be sent formally between the two member states through their nodal authorities.

9. Through the Central Authority of the country. However, there is need for faster MLATs with provisions of eCommunication.

The member states are required to identify nodal authority(s) to handle the MLAT requests for the offences established through this convention. This convention may adopt the usage of secured electronic mode of transmission for processing MLAT and sharing electronic evidence. Further, relevant provisions from UNCAC may be referred in this regard.

10. Yes, this convention shall allow for electronic sharing of request and evidence on real time basis using a secure channel, so that its integrity, identification is ensured. A template may be created under this convention for the member states. Under Indian laws, whenever a document is transferred electronically, it is made admissible in the court of law by way of furnishing a certificate by the sending authority. The load of such executions would increase drastically once the convention becomes a reality and hence transmission of evidence by physical means would become untenable.

11. Yes, templates may be arrived at for the minimum required information exclusively for non-content data / meta data and content data; while the process in evolving based on the technology progress and domestic laws and policies of member states, the same may be appended in the schedule to the convention.
12. INTERPOL channels can be used for emergency requests for Mutual Legal Assistance in a situation wherein there is a significant and imminent risk to the life or safety of any natural person, terrorist attack and attack on critical infrastructure. Red Notice for provisional arrest via Interpol pending extradition may be used. However, extradition requests cannot be sent under emergency situations through Interpol channels.

**Grounds for refusal**

13. An extradition request may be refused if punishment prescribed is less than 1 year, if the prosecution has been requested based on account of that person’s sex, race, religion, nationality, ethnic origin; if the request prejudices the state’s sovereignty, security, or public order.

14. Mutual legal assistance may be refused if the request is not made in conformity with the provisions of this convention; if the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, public order or other essential interests; if it would be contrary to the legal system of the requested State Party.

15. Complete deferment may lead to loss of international cooperation when required as it would give more leeway to the concerned State Party to evade the requests when not convenient to fulfil. The reason we have gathered here is to find ways to overcome such obstacles and pave the path for effective international cooperation and mutual legal assistance. Therefore, it is important that the concerned member state party clearly spell out the valid grounds for refusal of such requests.

**Other questions**

18. Expedited preservation of stored computer data is the first step before request for data can be made. Hence this must be included in the convention. Existing models like G8-24/7 network can be used for this preservation. India is willing to support the provision of enabling the LEAs to directly request service providers with a copy to nodal authority of the requested state to preserve data before it is requested under formal channels.

As far as expedited disclosure of preserved ‘traffic data’ is concerned, it requires more deliberation as some States link ‘traffic data’ to interception also. It is essential that there is agreed definition under this Convention what is meant by Data, meta-data, traffic data, non-content data, subscriber data and content data. However, in principle, India is supportive of expedited disclosure of non-content data which is essential for the LEAs to make progress in the initial investigation.
19. It is a very complex question involving the issue of jurisdiction over the data and rights of the victim of cybercrime as well as sovereignty of the State. There is no easy answer to say yes or no given the trans-national nature of cybercrimes. It requires more deliberation by this Committee.

The Convention should clearly recognise the rights of the State vis a vis its citizen so as to enable them to investigate crimes against its citizen. It is once again reiterated that right to privacy is a fundamental right and the transborder access to the content data should be allowed only through lawful authorization of the State party to disclose the information (data).

20. Both UNTOC and UNTAC have provisions of return of the assets. Cybercrime is more of a transnational organised crime, wherein the money belongs to thousands of victims. Therefore the approach of UNTOC may be more relevant than that of UNCAC. The provisions of both the conventions can act as a guide to us.

21. **Yes we need** 24/7 network of point of contacts, which can be used for data preservation, emergency requests, intelligence sharing, disclosure of non-content data without MLAT, capacity building and sharing of best practices, coordination in cases of joint investigations, transfer of MLAT request electronically, sharing of collected evidence electronically.

22. **No.** This Convention is not being designed for electronic surveillance or for covert special investigations. However, the Central Authority or 24/7 points of contact can facilitate, on case by case basis, where there is need and with mutual understanding among the member States for coordinated investigation involving multiple member States with special investigative techniques.

23. Yes. The convention should include a provision for hearing via Video conference. We don’t think telephonic conference without video should be permitted. Such Video conference should happen under judicial authorisation for the purpose of ongoing investigation and for giving evidence before the court of law. Request for such hearing should be made by the requesting State via nodal authorities responsible for handling MLAT requests under this convention. Such depositions must be voluntary without any coercions and should be as per the domestic laws of the country where the witness is present.

Madam Chair

I would like to propose and request for inclusion of a question by the Secretariat under International Cooperation so that we can all benefit from the views of member States. The suggested question emanates from the Indian Statements and submissions made earlier during the 1st and 2nd Sessions and the current Session. The proposed question is:
Can non-content data / meta data be shared under this convention in a faster manner without MLATs so as to help LEAs start investigation and identify the accused. What kind of safeguards could we envisage for this kind of cooperation?

Madam Chair,

The above question is significantly linked to international cooperation under this Convention and we request that it be included in the Guiding Questions.

Thank you Madam Chair,

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