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 future Convention should provide for, in addition to extradition, mutual legal assistance in criminal matters, cooperation between law enforcement agencies, such forms of cooperation as mutual emergency assistance, transfer of criminal proceedings, transfer of convicted persons, joint investigations, mutual assistance in the collection of information in electronic form, mutual assistance in collection of technical parameters of traffic in real time, expedited preservation of electronic information, expedited disclosure of preserved traffic data. Special investigative techniques should also be applied. The convention should cover international cooperation for the purpose of confiscation, which is especially important given the enormous income that cybercriminals receive from the commission of crimes using ICTs, as well as international cooperation for the return and disposal of confiscated stolen property. International cooperation should be carried out in order to investigate, prosecute or adjudicate crimes and other illegal acts committed in the use of ICTs.

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”?

Mechanisms for international cooperation should apply to all crimes and other offenses that will be provided for in the future convention. In particular, the Russian draft convention, submitted to the AHC as a contribution, provides for 23 elements of such unlawful acts.
International cooperation in extradition matters should be pursued if extradition requests relate to offenses with a sentence of at least one year's imprisonment or a more severe penalty.

Other forms of international cooperation should also apply to the offenses provided for in the convention. Cooperation under the future convention should not extend to petty offences, but should be limited to "serious offences". In exceptional cases, assistance may be provided, taking into account the justification for the need to receive it from another state and the possible undesirable consequences if it is not provided. The rationale for the need for assistance must be included in the requested State's request.

We also allow the situation where the collection of electronic evidence will be required in connection with offenses that go beyond the scope of those established in the draft convention. We do not exclude international cooperation in collecting such information in accordance with the procedure established by the convention and national legislation, observing the principles of sovereignty, non-interference in the internal affairs of states, certain conditions and guarantees.

Where appropriate and consistent with their domestic legal systems, participating States may provide each other with assistance as well as in the investigation and production of civil and administrative cases related to illegal acts in the field of the use of ICTs.

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?

Yes, the provisions on extradition and legal assistance in criminal matters contained in these conventions are similar, detailed enough and convenient for their application.

At the same time, such provisions in the future convention could be supplemented with appropriate details, taking into account the specifics of the scope of application, the speed of their transmission and other features.

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. When it is appropriate and consistent with the domestic legal system of the participating States, they shall assist each other in the investigation and proceedings in civil and administrative cases related to illegal acts in the field of the use of ICT.

The convention should provide for provisions on the liability of legal persons, which, depending on the legal principles of the state, can be either criminal, civil or administrative. This provision is contained in the Russian draft convention.
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, it should. The convention should provide for a provision that would apply to extraditable offenses punishable under the law of the requesting and the requested State Party by imprisonment for at least one year or a more severe penalty.

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

The convention should include general provisions obliging State parties to ensure that the establishment, exercise and application of the powers and procedures provided for in the convention are carried out in accordance with the conditions and guarantees provided for by norms of national legislation ensuring adequate protection of human rights and freedoms, including the rights arising from the State party's obligations under the 1966 International Covenant on Civil and Political Rights and other international human rights treaties to which that State is a party.

At the same time, it should be noted that the convention should not be “stuffed” with provisions on the observance of human rights, given that its purpose is not to regulate the human rights aspect. In this regard, the provisions on human rights that must be observed in the framework of the implementation of the future convention should be included in the section of the draft convention "General Provisions".

7. How should the chapter on international cooperation determine the requirements for the protection of personal data for the purposes of the convention?

Currently, at the global level, unfortunately, there is no legally binding document regulating the universal principles for the processing of personal data, the procedure for their protection, as well as the mechanisms for cooperation between national authorities to oversee compliance with personal data protection legislation. In this regard, it seems appropriate to include in the convention a separate article dedicated to the protection of personal data, the cross-border transfer of which is carried out from the territory of one State Party to the territory of another State Party on the basis of a relevant request.

Considering that the fundamental purpose of the transfer of personal data is their processing by the authorized national authorities of the Member State to which these data are transferred, in order to exercise their powers for the purposes of criminal, administrative or civil proceedings, other judicial or administrative procedures directly related to these proceedings, as well as to prevent an immediate and serious threat to public safety and the persons whose personal data are transferred, it seems that the article of the convention on the protection of personal data should enshrine such principles as:

- processing of personal data exclusively on legal basis;
- the content and volume of the requested personal data should comply with the declared purpose of processing;
- processing of personal data received solely for achieving a specific, legitimate purpose determined in advance;
- prohibition of transfer of received personal data to third parties persons;
- storage of personal data in a form that allows to identify the subject of personal data, no longer than required by the purpose of processing personal data.

We proceed from the fact that the intention to process the received personal data for purposes other than those specified in the original request should be the subject of an additional request. The relevant article of the convention should also provide for the right of a State Party to prohibit or restrict the transfer of personal data across borders in order to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of citizens, ensure national defense and state security, protect economic and financial interests, sovereignty, territorial integrity and other interests in the international arena.

**Transmission of requests and materials**

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

Extradition requests must be submitted directly to the central authorities of the State Party to which the extradition request is addressed, subject to the respective competence of those authorities, or through diplomatic channels. The convention should contain the provision that the State, when transmitting its instrument of ratification, must designate the central authority which will be responsible for the direction and execution of requests for extradition.

Copies of requests can also be sent via the Interpol channel, as well as by e-mail to the relevant central authority of the requested state, followed by the obligatory forwarding of the original request.

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?**

For requests for legal assistance, there should be provided channels of transmission through the central or competent authorities of the states parties to the convention, as well as through diplomatic channels. At the same time, sending requests by e-mail with subsequent sending of the original request is not excluded.

In the event of an emergency, requests can be transmitted through the channels of the 24/7 contact point network.
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?

In urgent cases, taking into account the nature of the offenses, requests and documents can be transmitted using electronic means of communication, but with further sending of the originals.

At the same time, it is obvious that the traditional forms of sending requests and other documentation necessary for its execution, taking into account the specifics of offenses, will not contribute to the effectiveness of cooperation in this area.

In this regard, the convention should contain provisions that electronic evidence can be transmitted using special, secure electronic communication channels in order to avoid leaks of the transmitted information.

In addition, we believe that the future convention should encourage the States Parties to consider creating secure platforms and communication channels between them that provide authentication and certification of requests and evidence transmitted exclusively in digital form, and mutual recognition of digital signatures, seals and stamps affixed to such requests and evidence, if necessary, implementing these channels in contact points 24/7.

This also applies to the answers to questions 9 and 21 of this questionnaire. We keep in mind that such a mechanism should be applied not only to emergency cases of transmission of requests and digital evidence.

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?

The content of the request and the requirement for information depends on the assistance requested by the state. For example, there are certain requirements for a request for extradition, while for a request for the expedite preservation of stored information in electronic form or for mutual assistance in collecting the technical parameters of traffic other requirements apply. Requirements for the content of requests for extradition and legal assistance in criminal cases are contained, as a rule, in the relevant international treaties, both multilateral and bilateral. However, we believe that the establishment of minimum requirements for a request, taking into account, as far as possible, the specifics of the sphere of cooperation, should affect the efficiency of interaction between states.

We believe that the request should contain the basic information that must be provided to the requested state. The request must contain the following information: the name of the requesting authority; a summary of the main facts, the nature of the investigation, prosecution or legal proceedings to which the request relates; information in electronic form regarding which assistance is required and its connection with a crime or other unlawful act; any available information that
identifies the owner/user of the information or the location of the ICTs device; rationale and period for collecting information.

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?

If a State Party considers that there is an emergency, it may apply to another State Party for mutual legal assistance as soon as possible. In such a case, the request must include, among other necessary details, a description of the facts that indicate that there is an emergency (urgent circumstance) and the relationship of the requested assistance to it.

The convention should also provide that the requested State Party accepts such a request in electronic form. This may require that an appropriate level of security and authentication be provided before accepting the request.

In the event of an emergency (urgent circumstances), requests can be transmitted through Interpol channels or 24/7 networks.

**Grounds for refusal**

13. Should the convention specify grounds for refusing an extradition request? If so, which grounds should be included for refusing the extradition?

Yes, it should. The grounds for refusing extradition should be the same as those provided for in the existing international treaties governing extradition, in particular, the UNTOC, the UNCAC, the European Convention on Extradition. The grounds on which extradition may be refused should be as follows:

- if the offense for which extradition is requested is not an offense under the domestic law of the requested State;
- if the person whose extradition is requested is being prosecuted, subject to criminal a proceeding or sentenced by the requested State for the same offense;
- if the requested State has substantial grounds for believing that the extradition request is intended to prosecute or punish a person on grounds of race, sex, religion, nationality, ethnic origin or political motives;
- if the requested State considers that the extradition of the requested person would prejudice its sovereignty, security, public policy or other essential interests;
- if the offense for which extradition is requested is punishable by the death penalty under the law of the requesting State, unless that State furnishes assurances which the requested State considers sufficient that the requested person will not be subjected to the death penalty;
- if the offense for which extradition is requested is considered under the law of the requested state to have been committed in whole or in part in its territory;
- if the person whose extradition is requested is a national of the requested State.
14. Should the convention specify grounds for refusing a mutual legal assistance request? If so, which grounds should be included for refusing mutual legal assistance?

In our opinion, the future convention should provide for the most significant grounds for refusing to execute a request for legal assistance in criminal matters, for example, legal assistance may be denied:

if the requested State considers that the execution of the request may harm its sovereignty, security, public order and other essential interests.

At the same time, we believe that the list of such grounds should be reduced to a minimum. International cooperation in matters of legal assistance should be given as many opportunities as possible, avoiding unnecessary and unreasonable restrictions on such cooperation.

15. Should the convention simply defer grounds for refusing an extradition or mutual legal assistance request to the domestic legislation of the State party and applicable treaties?

Grounds for refusal of extradition with reference to national law are possible, but in this case it will be necessary to request information about the law of the requested state in this part before submitting a request for extradition. We believe that such an approach will not be convenient for cooperation on extradition issues, unlike the situation when the list for refusal will already be included in the convention.

It is also possible to speak of a reference to extradition treaties to which the requesting and requested states are parties.

The grounds for refusing legal assistance are discussed above in the answer to question 14.

16. Should the convention include a clause stating that the offences established in accordance with the convention shall not be considered a political offence, and that international cooperation shall not be rejected solely on those grounds?

Yes, such provision should be included.

Other questions

17. Should the convention include specific provisions on mutual legal assistance regarding provisional measures? If so, what specific provisions should be included? For example, should they include the expedited preservation of stored computer data and electronic information, and expedited disclosure of preserved traffic data?
Yes, it should. The Convention should include the following provisions regarding provisional measures:
operational security of information in electronic form;
prompt provision of saved technical parameters of traffic;
m昨al assistance in collecting technical parameters of traffic in real time;
m午al assistance in collecting information in electronic form.

18. Should the convention include specific provisions on investigative powers? If so, what specific provisions should be included? For example, should they include access to stored computer data and electronic information, real-time collection of traffic data and interception of content data?

The powers of the investigating authorities are determined in each state in accordance with national legislation. Nevertheless, it is advisable to define principal powers in the convention.

19. Should the convention include a provision on transborder access to [data] [information]? It would allow for a State to access stored [computer data] [electronic information] without the authorization of the State party where such [data are] [information is] geographically located, if the [data are] [information is] publicly available, or if access to the [data] [information] 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] [information] through that computer system.

No. The convention should not include provisions on cross-border access to the data of another state. Cross-border access without the consent of the state to data on its territory will be an interference with the sovereignty of this state.

The Convention should include a provision not on cross-border access to data/information, but on cross-border provision/exchange of data/information. We presume that such an exchange should be carried out exclusively through the contact points/authorized national public authorities designated by the participating States for this purpose, taking into account the requirements of the national legislation of the participating States regarding the protection of information.

20. Should the convention include provisions to facilitate the return of assets? How should the convention address international cooperation for purposes of seizure and confiscation, and return and disposal, of confiscated assets, in particular as regards the difference between the approaches of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption?

Yes. The provisions for the return and disposal of stolen assets should include that a State party to a convention that has confiscated assets in accordance with the convention has the right to dispose of those assets, including their return to the
previous rightful owners. A State Party should take appropriate measures, including at
the legislative level, that empower the competent authorities to return confiscated
assets when those competent authorities act at the request of another State Party to
the convention. It is necessary to provide for the procedure for the return of assets in
the event that such assets were of a public nature. It should also provide for the
payment of compensation or damages to the victims of the crime, deductions for
reasonable costs in the recovery of assets. In the Russian draft convention, a separate
section with detailed regulation of this issue is devoted to asset recovery measures.

21. Should the convention include a provision for States parties to establish a 24/7
network of points of contact? What would be the purpose of such a network and its
relationship with networks established under existing international instruments and
frameworks?

The convention should provide for the establishment and operation of a 24/7
contact point to provide prompt assistance in investigations, prosecutions or judicial
proceedings of offenses covered by the convention or in the collection of evidence in
electronic form in relation to these crimes. Such assistance should include the
following measures:
- providing technical advisory assistance;
- preservation of data for the purpose of collecting evidence and subsequently
  providing information (in accordance with the provisions of this convention, legal
  assistance treaties and the domestic legislation of the state).

It is also possible to designate a 24/7 contact point on the basis of already
existing national points of contact.

Such a point of contact should operate within the competent authorities
responsible for combating these types of crimes.

22. Should the convention include a specific provision on international cooperation
for 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?

The Convention should include a stand-alone article on int’l cooperation in
carrying out, pursuant to requests for legal or law enforcement assistance, electronic
surveillance, online undercover investigations, extended searches and, generally,
other types of online covert SITs. This article should set forth a specific self-
contained regime for requesting and rendering this kind of inter-State assistance
rather than only contain general non-self-executing provisions by way of reference to
other int’l arrangements like it is done in the UNCAC or UNTOC, which are not
adequate for countering the highly surreptitious and anonymized criminal activities in
cyberspace. The relevant text could be modeled on the draft convention’s articles
related to the real-time interception of traffic or content data as well as mutatis
mutandis secs. 27(7), 34 of the UNODC 2007 Model Law on Mutual Assistance in
Criminal Matters as amended in 2022.
23. Should the convention include a provision permitting the organization of hearings held by video or telephone conference for the taking of evidence, and 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 consular functions?

Yes, it should. The convention should include an article on the use of video or telephone conference systems for interrogation and other legal proceedings.

This article should provide that the competent authorities of the states parties to the convention may, by mutual agreement, provide legal assistance through the use of videoconferencing or telephone conference systems, which will be carried out in accordance with the law of the requested state. However, it should also be provided that, if the requested state does not have access to technical means for conducting videoconferencing, such facilities may be provided by the requesting state by mutual agreement.

The article on the powers of diplomatic missions and consular offices should contain provisions that give the states parties to the convention the right to serve documents to their own citizens through their diplomatic missions and consular offices. They also have the right, on behalf of their competent authorities, to interrogate their own citizens through their diplomatic missions and consular offices, including using video conferencing systems or a telephone conference.

2. Can non-content data/meta data be shared under the convention in a faster manner without mutual legal assistance treaties so as to help law enforcement agencies start the investigation and identify the accused? What kind of safeguards could we envisage for this kind of cooperation?

It depends on what type of non-content data is at stake. Basic subscriber information may be shared both within and without int’l MLA, by employing law enforcement (police-to-police) assistance, since BSI is generally not subject to mandatory judicial authorization. On the other hand, traffic data that touch upon privacy-related issues ordinarily require a court warrant as a human right safeguard, and therefore the int’l legal (judicial) assistance procedures are to be strictly adhered to for traffic data to get collected and transferred abroad.