THE THIRD SESSION OF THE AD HOC COMMITTEE TO ELABORATE A
COMPREHENSIVE INTERNATIONAL CONVENTION ON COUNTERING
THE USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES
FOR CRIMINAL PURPOSES

STATEMENT BY
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ON BEHALF OF
THE CARIBBEAN COMMUNITY
(CARICOM)

AGENDA ITEM 4: INTERNATIONAL COOPERATION

TRUSTEESHIP COUNCIL CHAMBER

AUGUST 30, 2022
Madame Chair, further to CARICOM’s previous intervention on International Cooperation, we take this opportunity to address the questions on the matter of the grounds for refusal of transmission requests, as well as other questions put forward for the consideration of the Ad Hoc Committee.

**Grounds for refusal**

- CARICOM in its submission has recommended that the convention specify grounds for refusing a request for extradition. Such specified grounds are in circumstances where there are 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.

- CARICOM also believes that the convention should also specify grounds for refusing a mutual legal assistance request. Such grounds may include the absence of dual criminality as well as the following:
  - (a) If the request is not made in conformity with the convention;
  - (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;
(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subjected to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

**Other Questions**

As it relates to the other questions to be addressed:

**Questions 17 & 18**

CARICOM believes that the Convention should include specific provisions on Mutual Legal Assistance regarding provisional measures and also specific provisions on investigative powers. As such, we have included the following articles within our written submissions;

1. Mutual Assistance regarding the preservation of computer data/ information (Expeditied Preservation of Stored Computer Data);

2. Expeditied Production of Stored Computer Data in an Emergency, as well as Mutual Legal Assistance regarding the Interception of data;
3. Mutual Assistance regarding Accessing of Stored Computer Data;
4. Mutual Assistance regarding the interception of Content Data;
5. Mutual Assistance regarding the real-time collection of data.

Question 19

CARICOM believes that the Convention should address situations where a member state may unilaterally access computer material which may be stored in another member state without the need for a Mutual Legal Assistance request. There are two instances which may be addressed in the new instrument and for which consensus may be achieved. This includes provisions which facilitate the trans-border access to stored computer data with the consent of the person who has the lawful authority to share the data or where the data is publicly available.

As it concerns electronic information which is publicly available, such data should be transmissible regardless of the geographical location. In respect of the consent based sharing access to data, where the ISP elects to share or the individual who has the lawful authority so elects to share.

Question 20

CARICOM believes that the convention should include provisions to facilitate the return of the proceeds of criminal activities involving
the use of ICT's for criminal purposes and should be similar to the approach taken in Articles 13 & 14 of the UNTOC.

**Question 21**

CARICOM believes that the new instrument should include a provision for parties to establish a 24/7 network of points of contacts. This network will primarily facilitate a rapid response mechanism for the preservation of data, and also assist in emergency situations where the disclosure/ production of data is critical. Data is transient in nature and as such an emergency point of contact will be critical to the success of the new instrument in seeking to offer member states the means to preserve evidentiary material which may be needed to further a criminal investigation and which is capable of ultimately proving the commission of an offence. This 24/7 network, once established, could further strengthen other existing networks and complement their efforts in the global fight against the use if ICT's for criminal purposes.

Thank you Madame Chair.