SINGAPORE’S STATEMENT
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
NEW YORK, 29 AUGUST TO 9 SEPTEMBER 2022

Agenda Item 4: Provisions on international cooperation (First Group of Questions)

On Q1, Singapore strongly supports the inclusion of international cooperation for the purposes of confiscation, and return and disposal of confiscated assets. When criminal proceeds and assets have already been transferred out of a country, recovery is often very difficult. This Convention therefore provides the opportunity to implement concerted global measures to recover assets. Cooperation from overseas law enforcement agencies plays a key role in enhancing any country’s ability to recover criminal proceeds that have already been moved out of their jurisdiction. It is important that countries work together on asset recovery so that criminals do not benefit from the criminal proceeds, and use those proceeds to grow in capability, capacity and sophistication.

Given the transnational nature of cybercrime, we also support the inclusion of a provision on joint investigations. The language used in UNTOC and UNCAC allows sufficient flexibility and can be used as a reference for this Convention, adapted as necessary for the cybercrime context.

However, this Convention should not cover transfer of criminal proceedings.

If an offence has occurred within a state’s jurisdiction, domestic investigations should always take precedence. This should apply even in investigations that involve a foreign nexus, which will likely be the case in cybercrime offences. Under international law, there are already mechanisms in place to grant foreign law enforcement agencies priority of jurisdiction in certain scenarios, such as offences committed by visiting forces or diplomats. Otherwise, if an offence has occurred within a state’s jurisdiction, the state’s law enforcement agencies should retain the discretion to investigate and prosecute the matter based on their domestic laws.

In the same vein, this Convention should not cover transfer of sentenced persons.

Every person convicted of an offence should be treated equally, regardless of whether they are a citizen or a foreigner. Foreigners who are sentenced to imprisonment terms should be subject to the same prison regime as citizens, and should complete their sentences in the country they are convicted in.

On Q2, the scope of offences to which the international cooperation mechanisms apply should be limited to those established in accordance with this Convention. With the increasing use of technology in all aspects of life, especially in communications, criminal investigations inevitably involve electronic evidence. We urge Member States to carefully consider the implication on resources given the potentially high number of matters if the
international cooperation provisions are expanded to offences beyond those established in accordance with the Convention without any practical limitations. We would also flag that smaller States will likely face resource issues in rendering assistance for such a wide scope of cooperation. Further, this approach will also inevitably result in overlap with other international crime instruments, and there will be a need for States to direct their minds to how such conflict can be resolved.

On Q3, we are of the view that the provisions on extradition and MLA should follow the models established by UNTOC and UNCAC as far as possible, but adapted to suit the needs to the offences established in accordance with this Convention. This would increase the likelihood of compliance between existing extradition and MLA regimes with the obligations under this Convention, and consequently reduce the need for extra resources to be devoted to developing alternative frameworks with similar functions.

With respect to Q4, we would first like to seek clarification if “prosecution” was the intended word here, or if it should refer to “investigations and proceedings”. In addition, we would be interested to hear from other Member States on the type of civil and administrative cases related to the liability of legal persons that are likely to arise in the context of this Convention. We would therefore appreciate the Chair’s indulgence to defer our response to a later juncture.

On Q5, we hold the view that this Convention should include a threshold penalty period of two years, if not more.

On Q6, we are of the view that an overarching reference to human rights acknowledged in the preamble or statement of purpose of this Convention would be sufficient, as opposed to being referenced in specific chapters.

As for Q7, it is unclear to us how the chapter on international cooperation should determine the requirements for personal data protection for this entire convention. We note for instance that UNTOC and UNCAC do not contain such provisions. We would therefore like to seek more clarity on this question.

However, as a general comment, we would like to flag that personal data protection should be balanced against the need to ensure public safety, including combatting cybercrimes to ensure online safety, and allowing enforcement agencies to take necessary action, such as through international cooperation, to combat cybercrime quickly and effectively. If, however, such provisions are to be included in the chapter on international cooperation, our preliminary view is that this should be subject to the domestic legislation of the requested State party.