Thank you, Chair, for giving me the floor. My first point will be very short, because our delegation cannot say it any better than the Czech Republic and South African representatives.

In this gathering, we seek to maintain the open, interoperable, secure and reliable internet while protecting it from cybercriminals who abuse it for their own gain. There are member states whose aim is the opposite. The United States condemns in the strongest terms Russia’s premeditated, unprovoked, and unjustified attack on Ukraine and stands resolutely with the government and people of Ukraine. Russia’s actions will not deter our critical work in negotiating a new UN treaty on cybercrime and we will engage with other Member states to achieve a treaty of benefit to the global community. Now, I will address the first seven questions.

**International cooperation:**

➢ **General principles and scope of the international cooperation**

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

   We will rely on our submission for this response, but I also note we have been listening carefully to those interventions that suggest some of these provisions are not necessary. We will be taking those comments into account as we go forward.

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, cooperation between law enforcement, should these provisions apply to the collection of electronic evidence for offences beyond those established in accordance with the convention? If so, should they apply regardless of the penalties of the offences where electronic evidence needs to be collected, or should the scope be limited to “serious offences”?

Regarding the scope of offenses for the international cooperation chapter, the chapter should require cooperation for the “crimes established by this convention,” noting of course that our committee has not finalized that list of crimes. As the United States and many others observed in our last session, this convention should focus on cyber-dependent crimes, as well as a narrow, tailored list of cyber-enabled crimes.

The United States believes that only the provisions related to preservation and mutual legal assistance for electronic evidence collection should apply to offences beyond those established in accordance with this convention. The United States has proposed that the assistance should be provided for the collection of evidence of serious criminal offenses. This approach allows Member States to cooperate with regard to such offenses while avoiding overwhelming central authorities. We note that we have some flexibility regarding the definition of what constitutes a serious criminal offense. We believe that the UNTOC definition is a good place to start the discussion.

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, we believe that the provisions on extradition and mutual legal assistance should follow the models of UNTOC and UNCAC. These provisions have served us well in those contexts, and using agreed language from those conventions can help us reach consensus here. As noted in our submission, we have also proposed additional language to include
international cooperation provisions related to assistance for electronic evidence collection.

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

Regarding civil and administrative cases related to the offenses established under the Convention, the United States believes that cooperation with regard to such proceedings should be voluntary and to the extent permitted by domestic law, as reflected in our submission and Article 43 of UNCAC.

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 imprisonment)?**

Yes, the Convention should include a one-year minimum term of imprisonment for extradition, which seems to be the most common standard internationally. It was not necessary to specify a one-year standard in UNTOC because all extraditable offenses covered by that treaty were already “serious crimes.” Here, however, that may not be the case for all parties for the crimes included in the criminalization chapter.

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

The United States has proposed including in the Convention’s general provisions chapter an article on protecting human rights and fundamental freedoms, which would express an overarching commitment to implement the entirety of the treaty in line with our existing obligations, including under the International Covenant on Civil and Political Rights. In addition, as we have said before, the international cooperation chapter should further allow for refusal to provide assistance, including mutual legal assistance, where a State Party has reason to believe that a request was made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin, or political opinion, or that compliance with the request would cause prejudice to that person’s position for any one of those reasons. We believe that such a general provision,
along with this provision on grounds for refusal to provide assistance, would adequately protect human rights and fundamental freedoms.

I also note that one group of states submitted an anti-discrimination provision that included the above grounds but omitted political opinions. This omission could undermine the credibility of the entire convention, because it would cause civil society and member states to believe the cooperation tools of this convention would be used by some governments to persecute their critics.

If we as a group choose not to incorporate a general provision committing us to uphold our human rights obligations, our delegation will return with additional proposals to ensure that there is adequate protection for human rights and fundamental freedoms in this instrument.

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

We do not believe that it is necessary to specify an additional ground of refusal for data protection reasons. First, our view is that the strict use limitation from both UNTOC and UNCAC—that information provided under the MLA article can only be used for the investigation identified in the request and consent is required for all other uses—is sufficiently strict so as not to necessitate additional data protection safeguards. We note that neither UNCAC nor UNTOC contain additional data protection safeguards, and electronic evidence may already be obtained through mutual legal assistance under those treaties. Despite the very sensitive nature of personal information shared under those treaties, there have not been complaints at the conferences of parties about misuse of data.

Indeed, this use limitation has proven to be sufficient for UNTOC and UNCAC for purposes of protecting information. I have attended all of the conferences of parties and all 13 of the working group meetings on data protection, and chaired 11 of them. In none of the 13 meetings of the UNTOC International Cooperation Working Group has a party complained about misuse of data provided under the convention.

In addition, we are seeking to have universal participation in this convention but identifying this ground for refusal could lead to the overlapping and potentially conflicting application of dozens of domestic data protection regimes being applied, resulting in very uneven usefulness of the convention.
as a tool for cooperation. This is not an outcome that would lead to more efficient cooperation between State Parties, and indeed would lead to precisely the opposite scenario.

Negotiating this instrument on cybercrime is difficult enough without taking on the task of attempting to reach consensus on a set of data protection requirements of which there is no universal set of practices or agreement.

Finally, this proposal sends the wrong message to states that do not meet the proponent data protection standards. It sends the message that the default position on their requests will be denial—and the authorities will not even try to invoke the derogations that are available under the proponent’s legal framework.

➢ Transmission of requests and materials

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

From our perspective, diplomatic channels should be used for extradition requests; provisional arrest requests should be authorized to be made directly between Ministries of Justice. We note that UNTOC and UNCAC do not provide for the channels of transmission, and we are not certain this is necessary here.

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

The United States believes that direct transmission of requests for mutual legal assistance between central authorities is the best practice and should be the rule, whenever consistent with both parties’ laws. Direct transmission between central authorities is much faster than transmission through diplomatic channels and is one way in which to lessen delays in the mutual legal assistance process.

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 future convention? Could requested documents or electronic evidence be transmitted by electronic means?

Where acceptable to both parties involved, central authorities should transmit and receive electronic evidence directly by electronic means. This is another way to lessen delays in the mutual legal assistance process.

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?

Information to be included in a mutual legal assistance request under the Convention should include information similar to that specified in UNTOC Art. 18 paragraph 15: (a) the identity of the authority making the request; (b) the subject matter and nature of the investigation, prosecution or other proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or other proceeding; (c) a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; (d) a description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed; (e) as appropriate, the identification, location and nationality of any person, item, or accounts concerned; and (f) the purpose for which the evidence, information or other assistance is sought.

As provided in UNTOC, the convention should also specify that the requested party may request additional information when necessary for the execution of the request.

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 kind of requests would be transmitted through the channel?

As to whether there should be a separate provision to address mutual legal assistance in emergency situations, our delegation would like to hear the ideas of other delegations on this topic. We do think there are some urgent life and death circumstances that may justify expedited cooperation, such as
where there is an emergency involving danger of death or serious physical injury to a person. We do not, however, support setting deadlines for executing mutual legal assistance requests. The circumstances of every case are different and there is no one standard that can be established.

We do believe that a clause stating that a requesting State may transmit a request through INTERPOL, where the parties agree, for emergencies is helpful, but we do not believe that INTERPOL should be specified as the exclusive channel for such requests. For example, requesting States may also make requests directly between ministries of justice, as many countries authorize for provisional arrest requests. Many countries have established channels to foreign partners which work well, and these channels should not be disturbed.

Regarding urgent extradition matters, such as when there is a significant risk of flight by a fugitive or danger to the public, the convention could set forth the possibility of making a provisional arrest request, seeking the arrest and detention of an individual with an assurance that the requesting party will make a full extradition request within the required timeframe.

Additional Question: Should the Convention’s articles on the transmission channels and 24/7 contact points contain a provision encouraging the Parties to consider establishing among them secure platforms and channels of communications that provide for authentication and certification of requests and evidence transmitted solely in digital form, and mutual recognition of digital signatures, seals or stamps affixed to such requests and evidence, where appropriate embedding those platforms and channels within 24/7 contact points?

While the United States could likely accept language that would encourage, but not require, parties to consider entering into secure communications arrangements with partners, we do not see a need for the convention itself to create any sort of secure platform or “channel of communication” for mutual legal assistance requests or transmission of evidence. In addition, matters such as authentication of electronic evidence should be left for parties to work out bilaterally as needed and in accordance with each party’s respective domestic law.

➢ 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?**

As reflected in our submission, we believe we should follow the model of UNTOC and UNCAC with regard to the grounds for refusing an extradition request, including that extradition be subject to the conditions provided for by domestic law of the requested state or by applicable extradition treaties. In terms of other grounds for refusing an extradition request that should be specifically referenced in the Convention, the Convention should include lack of a bilateral treaty where such is required by the requested state, and situations in which there are substantial grounds to believe 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.

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?**

The Convention should provide for the same grounds of refusal as UNTOC and UNCAC for mutual legal assistance, as well as a grounds for refusal where the request is disproportionate to the offense under investigation or prosecution. In addition, as we stated before, we believe the Convention should also provide a ground for refusal where there is an absence of dual criminality, or where there is reason to believe that the request was made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin, or political opinion, or where compliance with the request would cause prejudice to that person’s position for any of those reasons.

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

As demonstrated by our submission, we believe we should follow the model of UNTOC and UNCAC with regard to extradition and mutual legal assistance. Accordingly, the convention should set out the grounds for refusal that we just mentioned and also allow for grounds for refusal of
extradition based on applicable treaties and domestic law as appropriate, as reflected in UNTOC Art. 16 paragraph 7.

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

We do not believe that the convention should include a clause stating that offenses established in accordance with this convention must not be considered a political offense. On the contrary, as we have stated, the convention should include a provision that clarifies that nothing in the convention imposes an obligation to provide assistance if the requested party has substantial grounds to believe 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. Including a ground for refusal where the request concerns an offense which the requested state party considers a political offense, or an offence connected with a political offense, would also be helpful. We also note that it would be premature to include a clause that offenses established in accordance with the convention must not be considered a political offense, as we have not yet come to a decision on the specific crimes to be included in the criminalization chapter.

➢ **Other provisions**

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-electronic information, and expedited disclosure of preserved traffic data?**

On this question, we believe that the Convention should include expedited preservation of stored computer data as a provisional measure. We would also consider supporting a provision on provisional arrest with a view toward extradition, if both parties agree and in appropriate cases.
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 Convention should provide that mutual legal assistance should be provided with respect to the accessing of stored computer data and real-time collection of traffic data. The Convention should also provide for interception of content data to the extent that such interception is permitted under a party’s applicable treaties and domestic law.

19. Should the convention include a provision on trans-border 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.

Our delegation has listened carefully to the comments of other delegations on this topic. We realize there are diverse views on this topic. We took note of CARICOM’s comments in support of a provision as set for in Budapest. The United States supported that in Budapest and I note that the African Union convention incorporates the same provision that is in Budapest. Our delegation would consider supporting such a provision in this convention, although we realize it will be a challenge for the AHC to reach consensus on such a provision.

20. Should the convention include provisions to facilitate the return of the 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 UN Convention against Corruption?
The Convention should primarily follow UNTOC’s confiscation provisions, with a focus on compensating victims of crime for their losses. However, as noted in our submission, it would be helpful for the Convention to adopt some of the helpful procedural elements from UNCAC, such as UNCAC Article 54 on mechanisms for recovery of property through international cooperation in confiscation. Making as much use as possible of previously agreed text from UNTOC (and UNCAC, where appropriate) will increase the likelihood of reaching consensus and will better complement existing mechanisms for confiscation, seizure, and return of crime proceeds to victims.

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?

Participation in a 24/7 network of points of contact for quick assistance to preserve electronic evidence is an essential step to strengthen international cooperation among police agencies, and the convention should require the designation of a 24/7 point of contact and encourage broad participation in a 24/7 network. However, the Convention should not require that parties abandon existing networks, which already work well for many member states, or exclusively use the 24/7 network created by the Convention. For parties not already members of existing 24/7 networks, Interpol may be an option for assisting with such a network.

The point is the availability of someone who can respond to an urgent request. It is important to note that a 24/7 point of contact does not literally mean that a single person will have to sit in an office all night long waiting for emails or phone calls. This function can be performed remotely, and within existing domestic law enforcement structures and practices. For example, during business hours in the United States, a request for assistance can be made by email or telephone. After hours, a call to the U.S. Department of Justice with a request for assistance will be routed to a prosecutor who is assigned after-hours duty for that night.

22. **Should the convention include a specific provision on international cooperation in 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 United States does not believe that an article on special investigative techniques is necessary. Parties can always enter agreements with willing partners to engage in such enhanced cooperation so a provision about this is not necessary.

23. **Should the convention include a provision permitting the organization of hearings held by video or telephone conference for purposes of taking 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 their consular functions?**

The United States is open to hearing from others who are interested in including provisions permitting hearings held by video conference. At this point, we do not believe such an article is necessary, because it could be accomplished under the residual/catch all provision concerning the types of assistance available. We also caution against directing particular uses of diplomatic premises that go beyond and may implicate relevant international law, including the Vienna Conventions on Diplomatic Relations and Consular Relations.