Madam chair,

First of all, I would like to thank you and the secretariat for the hard work you have done in preparing the guiding questions for this session and summarizing the proposals.

I want to deliver our view on the agenda item 4.

1. In addition to extradition, MLA and law enforcement cooperation, the convention may include 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, since most of them is used as forms of international cooperation in other respected international instruments such as the UNTOC. Beyond that, the speed of the criminal investigation depends on the exchange of information, which can be used as evidence, rather than only for intelligence purposes. For this reason, joint investigation and transfer of criminal proceedings has vital role in this sense. Other mentioned forms have already been mentioned in other specialized treaties.

2. As to our view, extradition provisions may only apply to the offences under this convention. Other forms of international cooperation such as mutual legal assistance, transfer of criminal proceedings and cooperation between law enforcement, should be applied to the collection and sharing of electronic evidence for offences beyond those established in accordance with the convention. Finally, collection of electronic evidence should not be limited to serious offences.

3. As far as the provisions on extradition and mutual legal assistance concerned, we believe that those provisions should follow UNTOC and UNCAC, since the Republic of Azerbaijan have already ratified these treaties. However, the new forms of the transmission of MLA request can be stipulated in the convention.

4. In our view, international cooperation provisions may not be applied 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, since the objective of this convention is to counter the use of ICTs for criminal purposes.

5. We believe that the minimum penalty period for the offences to which extradition may apply should be determined by the domestic law of the requested state or by applicable extradition treaties. This would result also in consistency with UNTOC.

6. Respect of human rights can be stated as a general provision in the previous chapters and in our view, there is no need to mention such safeguards in each chapter, which can make this convention wordy.
7. The chapter on international cooperation should determine the threshold for the transfer of personal data and limits for the disclosure of such information with 3rd party.

8. We believe that this convention may follow the practice of UNTOC and UNCAC. In fact, central authorities can be the main state agency for the transmission of extradition requests.

As an answer to the questions 9 and 10, we are of the opinion that along with the traditional methods, the new forms of transmission of MLA requests may also be stipulated in this convention. The reason is that we faced difficulties during COVID-19 pandemic in the transmission of MLA requests due to restrictions and postponed trips by diplomatic couriers. Additionally, the nature of the offences to be defined by this convention are of the urgent nature and the evidence are mainly volatile. In our view, requested documents or electronic evidence can be transmitted by electronic means by protecting the credibility and admissibility of such evidence.

11. We believe that only the list of general information can be defined by this convention in relation to the request for international cooperation, since this cooperation is not limited to the MLA requests. Furthermore, domestic law of the requested states may differ in this regard, and it would be difficult to harmonize domestic laws of the member states.

12. We strongly suggest that the previous practice of handling mutual legal assistance or extradition should be applied to the urgent circumstances by adjusting this practice to the transmission of such requests in electronic form or even appointment of urgent 24/7 contact point for each state party. However, the use of INTERPOL channels can be discussed with other member states.

Grounds for refusal

As answer to the questions 13 and 15, the ad hoc committee may refer to the Article 16 of the UNTOC, which defines the grounds for refusing an extradition request, such as conformity with the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the nationality issues.

14. We recommend that the Article 18 of the UNTOC, which defines the grounds for refusing an MLA request, such as compliance with the requirements of sovereignty, security, public order or other essential interests of the state party and whether the actions to be carried in relation to the similar offence is being subject to the investigation, prosecution or judicial proceedings in the requested state.
16. We support the inclusion of 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.

17. The convention should include specific provisions on the mutual assistance regarding the expedited preservation of stored computer data and electronic information, and expedited disclosure of preserved traffic data, which is similar to the Article 29 and 30 of the Budapest Convention.

18. The convention should include specific provisions on investigative powers as access to stored computer data and electronic information, real-time collection of traffic data and interception of content data, which is similar to the Article 31 of the Budapest Convention.

19. We are of the view that the provision on transborder access to data can be included, which may follow the established practice of the Article 32 of the Budapest Convention.

20. We recommend that this convention should not heavily focus on the return of assets, since there are many international instruments to refer during the cooperation for purposes of seizure and confiscation, and return and disposal, of confiscated assets.

21. Yes, the convention should include a provision regarding establishment of 24/7 network of points of contact among member states. The purpose of such network can be as same as that defined in the Budapest Convention.

22. Yes, the convention should 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 investigations.

23. Yes, the convention should 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 using the requesting State’s diplomatic missions and consular posts with respect to their own nationals on a voluntary basis, as part of consular functions.

Thanks,

Madam Chair.