

## TRANSLATION-----

For the purpose of promoting and facilitating an effective discussion during the Third Session of the Expert Group, the Argentine Republic is pleased to share its views on the following aspects of the Convention under negotiation: International Cooperation, Technical Assistance, Preventive Measures, Implementation and Final Provisions.

### **A. International cooperation**

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#### **1) General principles**

1. Except as otherwise provided herein, States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Subject to any exceptions established by reasons of *ordre public* by each State and to Human Rights regulations, as well as any safeguards or special conditions set forth in this Convention, the following [section/title/chapter] shall also apply:

- i. to any crime committed by means of a computer system; and
- ii. to the collection of evidence in electronic form of a criminal offence.

#### **3) Transfer of criminal proceedings<sup>1</sup>**

Subject to their domestic law, States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

#### **4) International cooperation regarding the collection and preservation of evidence in electronic form**

##### **a) Expedited preservation of stored computer data<sup>2</sup>**

A Party may request another Party to order or otherwise impose the expeditious preservation of data stored by means of a computer system located within the territory of that other Party and in

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<sup>1</sup> Based on Article 21 of UNTOC.

<sup>2</sup> Based on Article 29 of the Budapest Convention.

respect of which the requesting Party intends to submit a request for mutual legal assistance for the search of or similar access to, the seizure or similar securing of, or the disclosure of the data.

2. A request for preservation made under paragraph 1 shall specify:

- a. the authority seeking the preservation;
- b. the offence that is the subject of a criminal investigation and a brief summary of the related facts;
- c. the stored computer data to be preserved and how they relate to the offence;
- d. any available information identifying the custodian of the stored computer data or the location of the computer system;
- e. the necessity for preservation; and
- f. that the requesting State intends to submit a request for mutual legal assistance for the search of or similar access to, the seizure or similar securing of, or the disclosure of the data.

3. Upon receiving a request from another Party, the requested State shall take all the necessary measures for the expeditious preservation of the specified data, subject to its domestic legislation. For the purposes of responding to a request for preservation, dual criminality shall not be required as a necessary condition.

4. A State Party that requires dual criminality as a condition for responding to a request for mutual legal assistance for the search of or similar access to, the seizure or similar securing of, or the disclosure of data may, in respect of offences other than those set forth in this Convention, reserve the right to refuse the request for preservation under this Article in cases where it has reasons to believe that, at the time of disclosure, the requirement of dual criminality cannot be met.

5. In addition, a request for preservation may only be refused if:

- a. the request concerns an offence which the requested State considers a political offence or an offence connected with a political offence; or
- b. the requested State considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

6. Where the requested State believes that mere preservation will not ensure the future availability of the computer data or may threaten the confidentiality of or otherwise prejudice the investigation, it shall promptly inform the requesting State, which shall determine whether the request should be executed or not.

7. Any preservation measure taken in response to a request shall be valid for not more than 90 days, which term may be extended for two additional 90-day periods at the demand of the

requesting Party, in order to enable the requesting State to submit a request for assistance for the search the search of or similar access to, the seizure or similar securing of, or the disclosure of the data. Upon receipt of such request, the computer data shall continue to be preserved pending a decision on such request.

8. The authorities in charge of a criminal investigation may ask service providers in the requested State to process any requests for preservation, provided always that it is so permitted under each State's domestic legislation.

#### **b) Expedited disclosure of preserved computer data<sup>3</sup>**

1. Where, in the course of the execution of a request for the preservation of traffic data concerning a specific communication under Article **[Expedited preservation of stored computer data]**, the requested State discovers that a service provider in another State was involved in the transmission of the communication, the requested State shall expeditiously disclose the traffic data to the requesting State for the latter to identify the service provider and the means through which the communication was made.

2. Disclosure of traffic data under paragraph 1 may only be withheld if:

a. the request concerns an offence which the requested State considers a political offence or an offence connected with a political offence; or

b. the requested State considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

#### **5) Mutual legal assistance**

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences falling within **[the scope of this Convention]**.

2. Requests for mutual legal assistance shall be made in writing or by any means capable of producing a written record and sent through the Central Authorities.

States Parties shall provide for practices authorizing the transmission and receipt of requests for mutual legal assistance in electronic form in order to reduce delays in the transmission of documentation.

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<sup>3</sup> Based on Article 30 of the Budapest Convention.

3. Each State Party shall designate a central authority that shall have the responsibility to receive requests for mutual legal assistance and the power to either execute them or transmit them to the competent authorities for execution.<sup>4</sup>

Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified by each State Party of the name of the central authority designated for such purposes at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels. In urgent circumstances, where the States Parties agree, requests may be made orally, but shall be confirmed in writing forthwith.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. A request for mutual legal assistance shall contain<sup>5</sup>:

- a) The identity of the authority making the request;
- b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial 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) Where possible, the identity, location and nationality of any person concerned; and
- f) The purpose for which the evidence, information or action is sought.

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<sup>4</sup> Based on Article 18.13 of UNDOT.

<sup>5</sup> Based on Article 18.15 of UNDOT.

6. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with **[Article]** of this Convention in the requesting State Party<sup>6</sup>.

7. Mutual legal assistance to be afforded in accordance with this Article may be requested for any of the following purposes<sup>7</sup>:

- a) Taking evidence or statements from persons;
- b) Effecting service of judicial documents;
- c) Executing searches and seizures, and freezing;
- d) Examining objects and sites;
- e) Providing information, evidentiary items and expert evaluations;
- f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- h) Facilitating the voluntary appearance of persons in the requesting State Party;
- i) Taking statements through video conference;
- j) Any other type of measure that is not contrary to the domestic law of the requested State Party.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.<sup>8</sup>

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.<sup>9</sup>

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<sup>6</sup> Based on Article 18.2 of UNDOT.

<sup>7</sup> Based on Article 18.3 of UNTOC.

<sup>8</sup> Based on Article 18.8 of UNTOC.

<sup>9</sup> Based on Article 18.9 of UNTOC.

10. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.<sup>10</sup>

11. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.<sup>11</sup>

12. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.<sup>12</sup>

13. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.<sup>13</sup>

14. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.<sup>14</sup>

15. Mutual legal assistance may be refused<sup>15</sup>:

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<sup>10</sup> Based on Article 18.16 of UNTOC.

<sup>11</sup> Based on Article 18.17 of UNTOC.

<sup>12</sup> Based on Article 18.18 of UNTOC.

<sup>13</sup> Based on Article 18.19 of UNTOC.

<sup>14</sup> Based on Article 18.20 of UNTOC.

<sup>15</sup> Based on Article 18.21 of UNTOC.

a) If the request is not made in conformity with the provisions of this article;

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 subject 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.

16. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

17. Reasons shall be given for any refusal of mutual legal assistance<sup>16</sup>.

18. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required<sup>17</sup>.

19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding<sup>18</sup>.

20. Before refusing a request pursuant to paragraph [15] of this article or postponing its execution pursuant to paragraph 19 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions<sup>19</sup>.

21. A witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State

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<sup>16</sup> Based on Article 18.23 of UNTOC.

<sup>17</sup> Based on Article 18.24 of UNTOC.

<sup>18</sup> Based on Article 18.25 of UNTOC.

<sup>19</sup> Based on Article 18.26 of UNTOC.

Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.<sup>20</sup>

22. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

#### **6) 24/7 network**

1. Each State Party shall designate a point of contact available on a twenty-four-hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance with respect to investigations, prosecutions or other proceedings in relation to **[this convention]**, or to collect electronic evidence **[pursuant to this convention]**.

2. The assistance provided by the point of contact described in paragraph 1 shall include the facilitation or, if permitted by the State Party's domestic law and practice, directly carrying out the following measures: a. keeping of data as provided for in article [preservation]; b. providing information that may contribute to the keeping of data, including, if available, technical assistance and legal information.

3. A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.

4. If the point of contact designated by a Party is not part of that Party's authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to coordinate with such authority or authorities on an expedited basis.

5. Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

#### **7) Joint Investigation Teams<sup>21</sup>**

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may

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<sup>20</sup> Based on Article 18.27 of UNTOC.

<sup>21</sup> Based on Article 19 of UNTOC.



be undertaken by agreement on a case-by-case basis The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

#### 8) Special investigative techniques

11. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.<sup>22</sup>

2. Among other special investigative techniques, the States Parties, to the extent permitted by the basic principles of its domestic legal system, may enter into agreements or arrangements in order to take the necessary measures to allow for the appropriate use of undercover agents and disclosing agents.

#### **9) International cooperation for purposes of confiscation and seizure and the recovery of proceeds and instrumentalities of crime**

##### **a) International cooperation for purposes of confiscation and seizure of proceeds and instrumentalities of crime<sup>23</sup>**

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences **[falling within the scope of]** this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences **[falling within the scope of]** this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

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<sup>22</sup> Based on Article 20 (2) of UNTOC.

<sup>23</sup> Based on Article 12 of UNTOC.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and **[the article on international cooperation for recovery of proceeds and instrumentalities of crime]** of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

#### **b) International cooperation for recovery of proceeds and instrumentalities of crime<sup>24</sup>**

1. A State Party that has received a request from another State Party for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in paragraph 1 of the article **[on international cooperation for recovery of proceeds and instrumentalities of crime]** of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with paragraph 1 of the article **[on international cooperation for recovery of proceeds and instrumentalities of crime]** of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in paragraph 1 of the article **[on**

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<sup>24</sup> Based on Article 13 of UNTOC except for paragraph 10.

**international cooperation for recovery of proceeds and instrumentalities of crime]**, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in paragraph 1 of the article **[on international cooperation for recovery of proceeds and instrumentalities of crime]** of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of [article] of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in paragraph 2 of the article on **[mutual legal assistance]**, requests made pursuant to this article shall contain:

a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence **[falling within the scope of]** this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or

arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

10. States Party shall appoint a “Negotiation and Distribution Authority”, which shall be each State Party’s agency responsible for negotiating the disposal of confiscated property. Such Negotiation and Distribution Authority shall be appointed upon deposit of the instrument of ratification of this Convention and may be changed at any time or under any circumstance, in which case notice shall be given to the Depositary who shall, in turn, give notice to the other Parties<sup>25</sup>.

#### **10) Disposal of confiscated property<sup>26</sup>**

1. States Parties’ cooperation is a priority to achieve recovery of property and instrumentalities of offences **[falling within the scope of this Convention]**.

2. States Parties shall negotiate the disposal of confiscated property when participating in the process of recovering the assets of two or more States.

3. For the purposes of disposing of property, States Parties shall consider its nature and importance, as well as the complexity and effectiveness of cooperation in the recovery of such property.

4. Confiscated goods or the proceeds of their sale shall be distributed in accordance with the negotiation of the Parties, which shall be conducted pursuant to the criteria established in paragraph 6 of this article and considering their participation in the processes of investigation, prosecution and recovery of such goods.

5. States Parties shall give consideration to the fact that a portion of the goods or proceeds received be allocated, pursuant to the implementation of this Agreement, to their agencies related to the fight against these forms of crime within the framework of this Convention.

6. The appointed Negotiation and Distribution Authorities shall agree, in each case, on the percentage of the confiscated goods that shall be distributed taking into account the cooperation provided and pursuant to the following criteria:

- a) The nature and importance of the goods;
- b) The complexity and importance of the cooperation;
- c) The effect of the cooperation provided on the outcome of the case;
- d) The reparation of the social damage;
- e) The reparation for the victims;

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<sup>25</sup> Based on the definitions in the Framework Agreement for Disposal of Confiscated Property of Transnational Organized Crime in MERCOSUR.

<sup>26</sup> This provision is based on the Framework Agreement for Disposal of Confiscated Property of Transnational Organized Crime in MERCOSUR, whose negotiation accommodated the existing practice in these procedures, and which provides further parameters for negotiations concerning the disposal of confiscated property.

f) The state mechanisms used to combat and prevent crime.

7. Particular emphasis shall be placed on the protection of the rights of bona fide third parties and the compensation for the damage suffered by the victims in all negotiations.

8 In cases where the goods are disposed of, the maintenance, management and conservation costs of the confiscated goods shall be previously deducted and shall be reimbursed to the Party that covered them.

9. The Negotiation and Distribution Authorities may agree not to dispose of the confiscated goods where they are of small or minimal value.

10. When deciding on the amount to be transferred, the Party that is in possession of the confiscated goods may include any subsequent interest or increase in value of such goods.

11. In cases where the confiscated good has been auctioned off, the subject of the distribution shall be the amount obtained.

12. The Parties may agree that the party that is in custody of the good has the right of usufruct with respect to such good.

#### **11) Extradition<sup>27</sup>**

1. This article [**shall apply to the offences falling within the scope of application of this Convention**] and the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party, [**with a maximum penalty of imprisonment of at least one (1) year**].

2. The formal extradition requirements shall be sent in writing, along with the appropriate documents, through diplomatic channels, or through any other electronic means that provides evidence in writing that the States Parties were notified.

3. If the request for extradition is based on several separate offences, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

4. The Requested State may refuse extradition for special reasons of national sovereignty, public safety or order, or other essential national interests that render execution of the request unsuitable.

5. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

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<sup>27</sup> Based on Article 16 of UNTOC.

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

6. Extradition shall be subject to the conditions provided for by 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 grounds upon which the requested State Party may refuse extradition.

7. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

The request for extradition may be sent through diplomatic channels and through the International Criminal Police Organization (INTERPOL), and may be transmitted by email, fax, or any other electronic means that provides evidence in writing.

9. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

10. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

11. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so

permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

12. After being decided that extradition is appropriate, and if the requested person is serving a sentence or undergoing criminal proceedings in the Requested Party, the Requesting Party may request his or her temporary surrender. The requested person may be temporarily surrendered for prosecution, upon the condition that such person be returned in the conditions and on the term agreed between both Parties.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has 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.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

## **12) Delivery of Goods**

1. To the extent possible under the laws of the requested State, and subject to the rights of third parties, which shall be duly respected, if extradition is granted and at the request of the requesting State, all goods found in the requested State that have been acquired as a result of the commission of the offence or that could be required as evidence shall be delivered.

2. Such goods may be delivered to the requesting State, if so required by it, even if the extradition that had already been agreed could not be conducted.

3. Where such goods may be the subject of seizure or confiscation in the requested State, such State may retain or temporarily deliver them.

4. After proceedings have been completed, and where required by the laws of the requested State or the protection of the rights of third parties, the goods that have been delivered under those circumstances shall be returned at no charge to the requested State, at its request.

## **B. Technical Assistance**

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### **1) Training and Technical Assistance<sup>28</sup>**

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for the personnel charged with the prevention, detection, control, prosecution and adjudication of the offences **[falling within the scope of this Convention]**. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

a) Methods used in the prevention, detection and control of the offences **[falling within the scope of this Convention]**;

b) Routes and techniques used by persons suspected of involvement in the offences **[falling within the scope of this Convention]**, and appropriate countermeasures;

c) Detection and monitoring of the movements of proceeds of crime, or of the property, equipment or other instrumentalities used to perpetrate such crimes and the methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes.

d) Collection and preservation of evidence, especially digital evidence;

f) Modern equipment, techniques and technologies used **[for the prevention, detection, control, prosecution and adjudication of the offences falling within the scope of this Convention]**;

g) Methods used in the protection of victims and witnesses and the preservation of evidence.

2. Each State Party shall, to the extent possible, take relevant measures so that the authorities in charge of **the prevention, detection, control, prosecution and adjudication of the offences falling within the scope of application of this Convention** will establish dedicated departments with professional expertise on such offences.

3. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

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<sup>28</sup> Based on Article 29 of UNTOC.



4. States Parties shall consider the disclosure of statistics and analyses in connection with the offences listed with a view to developing, to the extent possible, definitions, standards and methodologies, including best practices to prevent and combat these offences, and sharing them with each other and through international and regional organizations.

5. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

6. In the case of existing bilateral and multilateral agreements or arrangements in force, States Parties shall strengthen, to the extent necessary, their efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

## **2) Other measures: implementation of the Convention through economic development and technical assistance<sup>29</sup>**

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of **[the offences falling within the scope of this Convention]** on society in general.

2. States Parties shall make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat **[the offences falling within the scope of this Convention]**, especially in technology transfer;

b) To enhance financial and material assistance to support the efforts of developing countries to fight **[the offences falling within the scope of this Convention]** effectively and to help them implement this Convention successfully;

c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism;

d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

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<sup>29</sup> Based on Article 30 of UNTOC

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of **[the offences falling within the scope of this Convention]**.

#### **D. Prevention**<sup>30</sup>

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##### **1) Prevention**

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of **[the offences falling within the scope of this Convention]**.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities **[to perpetrate the offences falling within the scope of this Convention]** through appropriate legislative, administrative or other measures. These measures should focus on:

- a) Strengthening cooperation between government agencies and relevant private entities;
- b) Promoting the development of standards and procedures designed to safeguard the integrity of public and relevant private entities;
- c) Issuing regulations to ensure that the authorities in charge of the prevention and detection of the offences falling within the scope of this Convention may carry out open-source crime prevention activities.
- d) Issuing regulations to ensure that the authorities in charge of the prevention and detection of the offences falling within the scope of this Convention may resort to digital forensics/interception of devices containing digital evidence”

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences **[falling within the scope of this Convention]**.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by organized criminal groups.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by **[the offences falling within the scope of this Convention]**.

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<sup>30</sup> Based on Article 31 of UNTOC.

Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent **[the offences falling within the scope of this Convention]**.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article.

## **2) Cooperation between National Authorities and the Private Sector**<sup>31</sup>

States Parties shall take such measures as may be necessary to encourage, in accordance with their domestic law, cooperation [in relation to the offences falling within the scope of this Convention] between the authorities charged with the prevention, investigation, control, and prosecution of such offences and the private sector, in particular, internet service providers.

States Parties, through their competent authorities, shall implement cooperation mechanisms with the private sector in areas of mutual interest, information exchange and training in relation to the offences provided for in this Convention.

States Parties, through their authorities charged with the prevention and detection of the offences falling within the scope of this Convention, shall regulate the vulnerability detection activities authorized by the owner or person in charge of the computer system.

## **E. Implementation Mechanisms**

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### **1) Conference of the Parties to the Convention**<sup>32</sup>

1. A Conference of the Parties to the Convention is to be established in order to improve the capacity of States Parties to promote and review the implementation of this Convention with a view to enhancing its effectiveness.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article (including rules concerning payment of expenses incurred in carrying out those activities).

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

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<sup>31</sup> Based on the proposal submitted by Jamaica in representation of CARICOM  
[https://www.unodc.org/documents/Cybercrime/AdHocCommittee/Third\\_session/Jamaica-CARICOM\\_AHC3.pdf](https://www.unodc.org/documents/Cybercrime/AdHocCommittee/Third_session/Jamaica-CARICOM_AHC3.pdf)

<sup>32</sup> Based on Article 32 of UNTOC.

- a) Facilitating activities by States Parties under articles **[referring to the measures of implementation of the Convention through economic development and technical assistance and Training and Technical Assistance]** of this Convention, including by encouraging the mobilization of voluntary contributions;
- b) Facilitating the exchange of information among Member States on **[the assessment of patterns and trends in crimes falling under the scope of this Convention and on successful practices for combating them]**;
- c) Cooperating with relevant international and regional non-governmental organizations;
- d) Reviewing periodically the implementation of this Convention **[through swift procedures free from any significant administrative burden]**;
- e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

## **2) Secretariat<sup>33</sup>**

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention. The Secretariat shall:

- a) Assist the Conference of the Parties in carrying out the activities set forth in the article **[referring to the Conference of the Parties]** of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;
- b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in paragraph 5 of the article **[referring to the Conference of the Parties]** of this Convention; and
- c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

## **3) Implementation of the Convention<sup>34</sup>**

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<sup>33</sup> Based on Article 33 of UNODC.

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. The offences established in accordance with the articles [...] of this Convention shall be established in the domestic law of each State Party.
3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating **[the offences falling within its scope]**.

## **F. Final Provisions**

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### **1) Final Provisions<sup>35</sup>**

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### **2) Signature, ratification, acceptance, approval and accession<sup>36</sup>**

1. This Convention shall be open to all States for signature from [days/month/place] and thereafter at United Nations Headquarters in New York until [date].
2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

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<sup>34</sup> Based on Article 34 of UNODC.

<sup>35</sup> Based on Article 35 of UNODC.

<sup>36</sup> Based on Article 36 of UNODC.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

### **3) Reservations<sup>37</sup>**

States Parties may file reservations in writing with the Secretary-General of the United Nations upon depositing the instruments of ratification, acceptance or approval, in relation to any article of this convention, except for **[essential provisions not subject to reservation should be determined]**.

### **4) Entry into force<sup>38</sup>**

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the **[fortieth]** instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the **[fortieth]** instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

### **5) Amendment<sup>39</sup>**

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal.

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<sup>37</sup> Not based on any existing provision. The aim is to discuss how reservations will work under this Convention.

<sup>38</sup> Based on Article 38 of UNODC.

<sup>39</sup> Based on Article 39 of UNODC.

The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

#### **6) Relation with protocols <sup>40</sup>**

1. This Convention may be supplemented by one or more protocols.

2. In order to become a Party to a protocol, a State or a regional economic integration organization must also be a Party to this Convention.

3. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

4. Any protocol to this Convention shall be interpreted together with this Convention, taking into account the purpose of that protocol.

#### **7) Denunciation <sup>41</sup>**

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

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<sup>40</sup> Based on Article 37 of UNODC.

<sup>41</sup> Based on Article 40 of UNODC.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

**8) Depositary and languages**<sup>42</sup>

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

Translated from Spanish. City of Buenos Aires, 30 August 2022.

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<sup>42</sup> Based on Article 41 of UNODC.