

**Brazil's draft proposal for chapters on international cooperation,
implementation mechanisms and final provisions of a United Nations convention on
cybercrimes**

Chapter IV – International co-operation

Section 1 – General principles

Title 1 – General principles relating to international co-operation

Article 28 – General principles relating to international co-operation

- 1 The States Parties shall cooperate to the fullest extent possible in accordance with the provisions of this chapter and pursuant to other international instruments on international cooperation in criminal matters and agreements reached based on the principle of reciprocity, as well as domestic laws, with a view to preventing, detecting, disrupting, investigating, prosecuting and adjudicating offences relating to ICT use.
- 2 States Parties shall consider providing mutual assistance in the investigation and prosecution of civil and administrative cases related to the liability of legal persons for committing unlawful acts relating to ICT use, as appropriate and as permitted by domestic legal systems.
- 3 In making and responding to requests under this Convention, the channels of the International Criminal Police Organization, INTERPOL, may be used in urgent cases and when agreement between the requesting and requested States Parties is being reached.

Commented [B1]: Source: Russia and China's proposal, with modifications by Brazil.

Title 2 – Principles relating to extradition

Article 29 – Extradition

1. a This article applies to extradition between States Parties for the offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the domestic laws of both States Parties concerned by imprisonment or other deprivation of liberty for a maximum period of at least , or by a more severe penalty.

- b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.
- 2 The offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the States Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.
 - 3 If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any offence referred to in paragraph 1 of this article.

- 4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.
- 5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.
- 6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.

Commented [B2]: Source: Budapest Convention.

- 7 Any person regarding whom proceedings are being conducted 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 for by the International Covenant on Civil and Political Rights and the domestic law of the State Party in the territory of which that person is present.
- 8 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 extradition request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, language, religion, nationality or ethnic origin or that compliance with the request would cause prejudice to that person's position for any one of those reasons or that the extradition request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence.

Commented [B3]: Source : Russia and China's proposal.

Title 3 – General principles relating to mutual assistance

Article 30 – General principles relating to mutual assistance

- 1 The States Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning offences related to computer systems and data, or for the collection of evidence in electronic form of any offence, including information conveyed by wire, radio, optical, satellite or other electromagnetic networks, irrespective of the type of data conveyed.
- 2 Each State Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.

- 3 Each State Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the Requested State Party. The Requested State Party shall accept and respond to the request by any such expedite means of communication.
- 4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the Requested State Party or by applicable mutual assistance treaties, including the grounds on which the Requested State Party may refuse co-operation. The Requested State Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.
- 5 Where, in accordance with the provisions of this chapter, the Requested State Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

Article 31 – Spontaneous information

- 1 A State Party may, within the limits of its domestic law and without prior request, forward to another State Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
- 2 Prior to providing such information, the providing State Party may request that it be kept confidential or only used subject to conditions. If the receiving State Party cannot comply with such request, it shall notify the providing State Party, which shall then determine whether the information should nevertheless be provided. If the receiving State Party accepts the information subject to the conditions, it shall be bound by them.

Commented [B4]: Source: Budapest Convention.

Title 4 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements

Article 32 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements

- 1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the Requesting and Requested States Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the States Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.
- 2 a Each State Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.

b The central authorities shall communicate directly with each other;

c Upon previous agreement between central authorities of two States Parties, any documents or other materials transmitted between them, which are related to this Convention, shall be exempt from certification or authentication

- 3 The requested Party shall apply its own law as to the methods and procedures to be followed. However, it will follow a request of the requesting Party that a special method or procedure be followed, unless this is incompatible with the domestic law of the requested Party or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties.

Commented [LM5]: Source: HAGUE CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS (1970), Art. 9, mutatis mutandis.

- 4 The Requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:
 - a the request concerns an offence which the Requested Party considers a political offence or an offence connected with a political offence, or
 - b it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.
- 5 The Requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.

- 6 Before refusing or postponing assistance, the Requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.
- 7 The requested Party shall promptly inform the Requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The Requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.
- 8 The Requesting Party may request that the Requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.
- 9
 - a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.
 - b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).
 - c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.
 - d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

Article 33 – Confidentiality and limitation on use

- 1 When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the Requesting and the Requested States Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.
- 2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:

- a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or
 - b not used for investigations or proceedings other than those stated in the request.
- 3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.

- 4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.

Commented [B6]: Source: Budapest Convention.

Section 2 – Specific provisions

Title 1 – Mutual assistance regarding provisional measures

Article 34 – Expedited preservation of stored computer data

- 1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or 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 or proceedings and a brief summary of the related facts;
 - c the stored computer data to be preserved and its relationship 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 of the preservation; and
 - f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.
 - g The need to keep the request for preservation confidential and to not notify the user.
- 3 Upon receiving the request from another State Party, the Requested State Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.

- 4 A State Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of 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 condition of dual criminality cannot be fulfilled.
- 5 In addition, a request for preservation may only be refused if:
 - a the request concerns an offence which the Requested State Party considers a political offence or an offence connected with a political offence, or
 - b the Requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.
- 6 Where the Requested State Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the Requesting Party's investigation, it shall promptly so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

- 7 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the Requesting State Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

Article 35 – Expedited disclosure of preserved traffic data

- 1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the Requested State Party discovers that a service provider in another State was involved in the transmission of the communication, the Requested State Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted.
- 2 Disclosure of traffic data under paragraph 1 may only be withheld if:
- a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or
 - b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

Commented [B7]: Source: Budapest Convention.

Title 2 – Mutual assistance regarding investigative powers

Article 36 – Mutual assistance regarding accessing of stored computer data

- 1 A State Party may request another State Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the Requested State Party, including data that has been preserved pursuant to Article 29.
- 2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter.
- 3 The request shall be responded to on an expedited basis where:
- a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or

b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.

Commented [B8]: Source: Budapest Convention.

Article 37 – Trans-border access to stored computer data with consent or where publicly available

Subject to reservation, a State Party may, without the authorisation of another State Party:

- a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or
- b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.

Article 38 – Mutual assistance regarding the real-time collection of traffic data

- 1 The States Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.
- 2 Each State Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.

Article 39 – Mutual assistance regarding the interception of content data

The States Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.

Commented [B9]: Source: Budapest Convention, with modifications by Brazil.

Article 40 Mutual emergency assistance

- 1 For the purposes of this article, an emergency means a situation involving a substantial and imminent risk to the life or safety of any individual.
- 2 Each State Party may request mutual assistance from another State Party within the shortest possible time if it believes that an emergency exists. A request under this article should include, among other necessary contents, a description of the facts showing that an emergency exists and its relation to the assistance requested.
- 3 The Requested State Party shall accept such a request in electronic form. However, it may request that an appropriate level of security and authentication be ensured before accepting the request.
- 4 The Requested State Party may, within the shortest possible time, request additional information to assess the request. The Requesting State Party shall provide such additional information within the shortest possible time.
- 5 The Requested State Party, upon being satisfied that an emergency exists and other requirements for mutual assistance are met, shall respond to the request within the shortest possible time.

Commented [B10]: Russia and China's proposal, with modifications by Brazil.

Article 41 Protection of personal data

1. Personal data transmitted from one State Party to another State Party at the request made in accordance with this Convention may be used by the State Party to which the data is transmitted only for the purposes of criminal, administrative or civil proceedings and other judicial or administrative procedures directly related to those proceedings, as well as to prevent an imminent and serious threat to the public safety of persons whose personal data is transmitted.

2. The States Parties while seeking or providing assistance under paragraph 1 shall take following reasonable safeguards as per their domestic laws:

a) data including personal data must be obtained and processed fairly and lawfully and must be appropriate, relevant and not excessive with regard to the purposes for which it is sought and transferred;

b) the Requesting State Party shall inform the Requested State Party the period for which the data is required. Such period shall be consented by the Requested State Party. The transferred data shall be kept for no longer than the period required for the purpose for which it has been received and shall be returned to the Requested State Party or deleted at the end of period specified. The Requesting State Party shall inform the Requested State Party in advance in case the data has to be kept for a longer period in Requesting State Party;

c) the competent Authorities of the States Parties shall take all reasonable measures to prevent the transfer of inaccurate, incomplete or out-of-date data. If it is established that inaccurate or nontransferable data has been transferred, the Requesting States Party shall immediately inform the Requested State Party and provide correct or accurate data. The Requesting State Party shall delete or return any such inaccurate data received;

d) no data transferred to the Requesting State Party under this Agreement may be transferred to a third country, a private individual or an international body without the consent of the Requested State Party which provided the data;

e) the States Parties shall take appropriate measures to ensure that the data transferred to them is protected from accidental or unauthorized destruction, accidental loss, and unauthorized access, modification or dissemination;

f) parties shall keep a record of the data transferred and its destruction;

2. A State Party transmitting personal data at the request made in accordance with this Convention may request that the State Party to which the data has been transmitted provide information about its use.

Commented [B11]: Source: Russia and China's proposal.

Article 42

Transfer of criminal proceedings

The States Parties shall consider transferring to another State Party proceedings relating to criminal prosecution of an offence established in accordance with this Convention where such transfer is deemed to be in the interests of the proper administration of justice, particularly in cases involving several jurisdictions with a view to ensuring the consolidation of criminal proceedings.

Commented [B12]: Source: Russia and China's proposal.

Article 43

Joint investigations

The competent authorities of two or more States Parties may, by mutual agreement, set up joint investigative teams for a specific purpose and for a limited time period, which may be extended by mutual consent, to conduct criminal investigations in one or more of the States Parties that have set up the team. To this end, States Parties shall consider entering into bilateral or multilateral agreements or arrangements. The composition of the team shall be specified in the agreement.

A request for setting up a joint investigation team may emanate from any interested State Party. The team shall be formed in one of the States Parties where the investigation is to take place.

The States Parties shall ensure that the sovereignty of the State Party in whose territory such an investigation is to take place is fully respected.

Commented [B13]: Source: Russia and China's proposal.

Article 44

Special investigative techniques

1. With a view to effectively combating offences relating to ICT use, each State Party, to the extent permitted by the fundamental principles of its domestic law and subject to the conditions prescribed by its legislation, shall, to the best of its ability, take such measures as may be necessary to allow for the appropriate use by its competent authorities of controlled deliveries and other special investigative techniques, such as electronic or other forms of surveillance, as well as for conduct of undercover operations by its competent authorities in its territory, and to ensure that the evidence gathered through such methods is acceptable before the courts.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to enter, as necessary, into appropriate bilateral or multilateral agreements or arrangements for the use of 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 the sovereign equality of States and carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as envisaged in paragraph 2 of this article, decisions on the use of such special investigative techniques at the international level shall be made on a case-by-case basis and may, as necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

Commented [B14]: Source: Russia and China's proposal.

Title 3 – Measures for Recovery of Property

Article 45

General Provision

States Parties shall afford each other the widest measure of cooperation and mutual legal assistance in the recovery of property obtained by criminal means, in compliance with the provisions of this Convention and their domestic law, taking into account the relevant initiatives of international regional and interregional organizations on combating money-laundering.

Article 46

Prevention and Detection of Transfers of Proceeds of Crime

1. A State Party shall take all necessary measures enabling it, in accordance with its domestic law, to obtain, from financial institutions, as well as organizations engaged in the activities related to the circulation of digital financial assets and digital currency within its jurisdiction, information on the identity of customers and beneficial owners in relation to whom there is information about their alleged involvement, or the alleged involvement of members of their families or close associates or persons acting on their behalf, in the commission of the offences provided for in the provisions of this Convention, including information on the accounts of all the above-mentioned persons.

2. A State Party shall take all necessary measures to require, in accordance with its domestic law, that financial institutions, as well as organizations engaged in the activities related to the circulation of digital financial assets and digital currency, apply reasonable scrutiny to the accounts that persons, referred to in paragraph 1 of this Article, try to open or maintain.

3. Measures, referred to in paragraphs 1 and 2 of this Article, shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

4. In order to facilitate implementation of the measures provided for in paragraphs 1 and 2 of this Article, each State Party shall, as appropriate, notify financial institutions, as well as organizations engaged in the activities related to the circulation of digital financial assets and digital currency within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions or organizations will be expected to apply enhanced scrutiny, in addition to those persons whom financial institutions, as well as organizations engaged in the activities related to the circulation of digital financial assets and digital currency, may otherwise identify.

5. Each State Party shall implement measures to ensure that its financial institutions, as well as organizations engaged in the activities related to the circulation of digital financial assets and digital currency maintain, over an appropriate period of time, adequate records of accounts and transactions involving the persons referred to in paragraph 1 of this Article, which shall, at a minimum, include information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

6. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions, as well as organizations engaged in the activities related to the circulation of digital financial assets and digital currency to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

7. Each State Party shall consider establishing, in accordance with its domestic law, effective systems for the disclosure of financial information on the persons in relation to whom there is information about their alleged involvement in the offences covered by the provisions of this Convention, and shall provide for appropriate sanctions for non-compliance with the requirements referred to in this Article. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate and take action to recover proceeds of offences established in accordance with this Convention.

Article 47

Measures for Direct Recovery of Property

Each State Party shall, in accordance with its domestic law, take such legislative or other measures as may be necessary:

a) to permit another State Party, its citizens and stateless persons permanently residing in its territory, and legal persons established or having a resident office in its territory, to initiate civil action in the courts of that State Party to establish the right of ownership of property violated as a result of the commission of an offence or other unlawful acts established in accordance with this Convention;

b) to permit its courts to order to pay compensation or damages resulting from the commission of such offences or other unlawful acts established in accordance with this Convention; and

c) to permit its courts or competent authorities, when having to decide on confiscation, to recognize, fully or partially, claim of another State Party, its citizens or stateless persons permanently residing in its territory, and legal persons established or having residential office in its territory, as a legitimate owner of property acquired through the commission of an offence or other unlawful acts established in accordance with this Convention.

Article 48

Mechanisms for Forfeiture of Property through International Cooperation in Confiscation

1. Each State Party, in order to provide mutual legal assistance in relation to property acquired through the commission of an offence established in accordance with this Convention, or the means of committing such an offence, shall, in accordance with its domestic law:

a) take such measures as may be necessary to enable its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

b) take such measures as may be necessary, within its jurisdiction, to enable its competent authorities to confiscate property of foreign origin by judicial order in connection with the legalization of proceeds derived from an offence established in accordance with the provisions of this Convention;

c) consider taking such measures as may be necessary to enable non-conviction-based confiscation of such property in criminal proceedings where the offender cannot be prosecuted by reason of death, flight or absence, or in other appropriate cases.

2. Each State Party, for the purpose of providing mutual legal assistance, at the request of another State Party, shall, in accordance with its domestic law:

a) take such measures as may be necessary to permit its competent authorities to seize property pursuant to an order of seizure issued by a court or other competent authority of the requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such measures and that the property would eventually be subject to a confiscation order for the purposes of paragraph 1 (a) of this Article;

b) take such measures as may be necessary to permit its competent authorities to seize property upon request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such measures and that the property would eventually be subject to a confiscation order for the purposes of paragraph 1 (a) of this Article;

c) consider taking additional measures to permit its competent

authorities to retain the property for confiscation purposes, for example, based on a foreign seizure order or criminal charges in connection with the acquisition of such property.

3. In accordance with paragraph 2 of this article legal assistance is provided upon the relevant request submitted in writing.

4. If there is any doubt as to the authenticity or the content of the request, additional confirmation may be requested.

5. The request shall contain the following information:

- a) name of the requesting and the requested competent authority;
- b) the factual basis of the case;
- c) purpose and justification for the request;
- d) description of the content of the requested assistance;
- e) copy of the seizure order, if available;
- f) any other information that could be helpful for the proper execution of the request.

6. The request submitted or confirmed in writing shall be signed and stamped by an authorized official of the requested competent authority.

Article 49

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of property, referred to in paragraph 1 of article 73 of the Convention, obtained as a result of the commission of offences provided for by this Convention, or instrumentalities used in the commission of the offence that are situated in its territory shall, to the extent possible within its domestic legislation:

- 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 an order of confiscation issued by a court in the territory of the requesting State Party, with a view to giving effect to it to the extent requested and to the extent to which it is related to the property situated in the territory of the requested State Party obtained as a result of the commission of

offences established in accordance with this Convention or to instrumentalities used for such offences.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify or seize property obtained as a result of the commission of offences established in accordance with this Convention, or instrumentalities used for such offences referred to in paragraph 1 (b) of this article, for the purpose of eventual confiscation to be ordered either by the requesting State Party or pursuant to a request by that State party under paragraph 1 of this article.

3. 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 the provisions of its domestic legislation and any bilateral or multilateral agreements or arrangements by which it may be bound in relations with the requesting State Party.

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

5. A request submitted under this article may be refused or provisional measures lifted if the requested State Party does not receive in a timely manner the order of the competent authorities of the requesting State Party or documents required for the competent authorities of the requested State Party to adopt that decision.

6. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, provide the requesting State Party with an opportunity to present its reasons in favour of continuing the measure.

7. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Article 50

Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to forward, on its own initiative and provided that it does not prejudice investigations or judicial proceedings carried out by its own competent authorities,

information on property derived from the commission of an offence established in accordance with this Convention to another State Party, when it considers that the disclosure of such information might provide grounds for the competent authorities of the receiving State Party to initiate an investigation or judicial proceeding or might lead to a request by that State Party under this chapter.

Article 51

Return and disposal of property

1. A State Party which has confiscated property in accordance with the provisions of this chapter shall dispose of such property, including by returning it to its prior legitimate owners, in accordance with paragraph 3 of this article and its domestic law.

2. Each State Party shall adopt all necessary legislative and other measures to enable its competent authorities to return confiscated property, when acting on a request made by another State Party in accordance with this Convention, taking into account the rights of bona fide third parties and in accordance with its domestic law.

3. In accordance with article 71 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

a) In the case of the embezzlement of public property confiscated in accordance with article 68 of this Convention and on the basis of a final judgment made in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

b) In all other cases, give priority consideration to returning the confiscated property to its prior legitimate owners or paying compensation or damages to the victims of the offence.

4. Where appropriate, unless States parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations or judicial proceedings leading to the return or disposal of confiscated property pursuant to this article.

5. With a view to reaching mutually acceptable arrangements on the final disposal of confiscated property, States parties may hold consultations and conclude separate agreements.

Article 52

Expenses

Request-related ordinary costs shall be covered by the requested State party, unless the States parties concerned otherwise agree. If expenses of a substantial or extraordinary nature are 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.

Commented [B15]: Source: Russia and China's proposal.

Title 4 – 24/7 Network

Article 53 – 24/7 Network

- 1 Each 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 for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:
 - a the provision of technical advice;
 - b the preservation of data pursuant to Articles 29 and 30;
 - c the collection of evidence, the provision of legal information, and locating of suspects.
- 2
 - a 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.
 - b 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 co-ordinate with such authority or authorities on an expedited basis.

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

Commented [B16]: Source: Budapest Convention.

Title 5 – Technical assistance and training

Article 54

General principles of technical assistance

1. The States parties shall, to the extent that they are able, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries for their respective plans and programmes to combat ICT crimes, including training in the areas referred to in article 76 of this Convention, as well as training and assistance and the mutual exchange of relevant experience and expertise, which will facilitate international cooperation between States parties on extradition and mutual legal assistance.

2. The States Parties shall strengthen, to the extent necessary, efforts to maximize the effectiveness of operational and training activities in international and regional organizations and in the framework of relevant bilateral and multilateral agreements or arrangements.

3. The States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes and effects of ICT crimes committed in their respective countries, with a view to developing, with the participation of the competent authorities, society and the private sector, strategies and action plans to combat these types of offences.

4. The States Parties shall entrust the United Nations Office on Drugs and Crime with the task of providing specialized technical assistance to States parties with a view to promoting the implementation of programmes and projects to combat ICT crimes and other offences.

Article 55

Training

1. Each State Party shall, as necessary, develop, implement or improve specific training programmes for its personnel responsible for preventing and combating ICT crimes. Such training programmes could cover, inter alia, the following areas:

a) Effective measures to prevent, detect and investigate ICT crimes, as well as to punish and combat them, including the use of electronic evidence-gathering and investigative techniques;

b) Capacity building for the development and planning of a strategic policy to combat ICT crimes;

c) Training of staff of competent authorities in the preparation of requests for extradition, law-enforcement support and mutual legal assistance that meet the requirements of this Convention;

d) Prevention of the transfer of proceeds of offences established in accordance with this Convention and recovery of such proceeds;

e) Detection and blocking of transactions related to the transfer of proceeds of offences established in accordance with this Convention;

f) Surveillance of the movement of proceeds of offences established in accordance with this Convention and of the methods used to transfer, conceal or disguise such proceeds;

g) Appropriate and efficient legal and administrative mechanisms and methods facilitating the seizure and confiscation of proceeds of offences established in accordance with this Convention;

h) Methods used in protecting victims and witnesses who cooperate with judicial and law-enforcement authorities; and

i) Training of staff in national and international regulations and language training.

2. With the support of the United Nations Office on Drugs and Crime, the States Parties may provide specialized training assistance to States parties with a view

to promoting the implementation of national programmes and projects to combat ICT crimes.

Article 56

Exchange of information

1. Each State Party shall consider analysing, in consultation with relevant experts, trends with respect to ICT crimes in its territory, as well as the circumstances in which such offences are committed.

2. The States Parties shall consider disseminating statistics and analysis concerning ICT crimes with a view to developing, to the extent possible, common definitions, standards and methodologies, including best practices to prevent and combat such offences, and share them with one another and through international and regional organizations.

3. Each State Party shall consider monitoring its policies and practical measures to combat ICT crimes, as well as assessing their effectiveness.

Commented [B17]: Source: Russia and China's proposal.

Chapter V

Convention implementation mechanisms

Article 57

Conference of the States Parties to the Convention

1. A Conference of the States Parties to the Convention is hereby established to improve the capacity of and cooperation between States parties to achieve the objectives set forth in this Convention and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular sessions of the Conference shall be held in accordance with the rules of procedure adopted by the Conference of the States Parties.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this article, including rules

concerning the admission and participation of observers and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph

1 of this article, including:

a) Facilitating activities by States parties under articles 76-77 and chapters II-VI of this Convention, including by encouraging voluntary contributions;

b) Facilitating the exchange of information among States parties on patterns and trends with respect to ICT crimes and on successful practices for preventing and combating them, except for the information containing data constituting a State secret in accordance with the legislation of the State Party, and for the return of proceeds of crime;

c) Cooperating with relevant international and regional organizations and mechanisms and international non-governmental organizations;

d) Making appropriate use of relevant information produced by other international and regional mechanisms for combating and preventing ICT crimes, in order to avoid unnecessary duplication of work;

e) Reviewing periodically the implementation of this Convention by the States parties thereto;

f) Making recommendations to improve this Convention and its implementation;

g) Identifying the technical assistance requirements of States parties with regard to the implementation of this Convention and recommending any action it may deem necessary in that respect.

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

6. Each State Party shall provide the Conference of the States Parties with information on legislative and administrative and other measures, as well as on its programmes, plans and practices to implement this Convention, as required by the Conference of the States Parties. The Conference of the States Parties shall examine the most effective ways of receiving and acting upon information, including, inter alia, information received from States parties and from competent international organizations. Inputs received from relevant international non-governmental organizations duly accredited in accordance with procedures to be decided upon by the Conference of the States Parties may also be considered.

7. Pursuant to paragraphs 4 to 6 of this article, the Conference of the States Parties shall establish, if it deems necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

Article 58

Secretariat

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

2. The Secretariat shall:

a) Make arrangements and provide the necessary services for the sessions of the Conference of the States Parties and the Commission;

b) Upon request, assist States parties in providing information to the Conference of the States Parties and the Commission; and

c) Ensure the necessary coordination with the secretariats of other relevant international and regional organizations and mechanisms.

Commented [B18]: Source: Russia and China's proposal.

Chapter VI

Final provisions

Article 59

Relation with protocols

Commented [UC19]: UNTOC Article 37

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.

Article 60

Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.
2. Each State Party may adopt stricter or more severe measures than those provided for by this Convention for the prevention and combating of ICT crimes.

Article 61

Settlement of disputes

In the event of a dispute between States parties concerning the interpretation or application of this Convention, they shall seek a solution by negotiation, conciliation or arbitration, or by other peaceful means agreed upon by the parties to the dispute.

Article 62

Signature, ratification, acceptance and approval

1. This Convention shall be open for signature by all UN Member

States.

2. This Convention shall also be open for signature by regional economic integration organizations, provided that at least one of its members has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance, approval or formal approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance, approval or formal approval if at least one of its Member States has done likewise. In that instrument of ratification, acceptance, approval or formal 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.

Article 63

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or formal approval. For the purposes of this paragraph, any such 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 Party or regional economic integration organizations ratifying, accepting or approving this Convention after the deposit of the thirtieth 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 or on the date this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 64

Amendments

1. Three years after 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 States Parties to the Convention for the purposes of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts to achieve 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.

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 States parties. 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 shall be subject to ratification, acceptance or approval by States parties and relevant regional economic integration organizations.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party or a regional economic integration organization 90 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 an amendment by a two-thirds majority vote.

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

Article 65 Reservations

Each State Party may declare that it will exercise the right to make a reservation regarding the application of this Convention, when signing or depositing its instrument of ratification or accession, by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. States Parties are not allowed to make reservations to:

a Chapter I (General provisions);

b in Chapter III (Procedural measures and law enforcement): Articles 18 (Scope of procedural provisions), Article 19 (Conditions and safeguards), 20 (Expedited preservation of stored computer data), 21 (Expedited preservation of accumulated electronic information), 22 (Expedited preservation and partial disclosure of traffic data), 23 (Production order), 24 (Search and seizure of information stored or processed electronically), 25 (Real-time collection of traffic data), 27 (Jurisdiction),

c in Chapter IV (International co-operation): Section 1 (General principles), Articles 34 (Expedited preservation of stored computer data), 35 (Expedited disclosure of preserved traffic data), 36 (Mutual assistance regarding accessing of stored computer data), 38 (Mutual assistance regarding the real-time collection of traffic data), 40 (Mutual emergency assistance), 41 (Protection of personal data), 47 (Measures for Direct Recovery of Property), 54 (24/7 Network), Article 54 (General principles of technical assistance);

d Chapter V (Convention implementation mechanisms); and

e Chapter VI (Final provisions).

Commented [B20]: Brazil's original proposal.

Article 66

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective six months 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 States participating in such organization have denounced this Convention.

Article 67

Depositary and languages

1. The Secretary-General of the United Nations is hereby designated as the 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.