

Statement of Rashtriya Raksha University

Third Session on Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes

Introduction

Rashtriya Raksha University ('RRU') welcomes the initiative of the Ad Hoc Committee ('AC') to elaborate a comprehensive International Convention on countering the use of information and communications technologies for criminal purposes ('Convention'). Since the Third Session calls for contribution on facets like International Cooperation, Technical Assistance, Preventive Measures, Mechanism of Implementation and Final provisions; RRU reiterates its complements and welcomes the systematic and well channelized negotiation process that gives multi-stakeholders like ours (an education Institution of National Importance) a chance to contribute towards to cause.

In this regard, RRU submits contribution on the relevant chapters as follows:

1. Preamble

- 1.1. RRU believes that the preamble should envisage the postulates to ensure compatibility among the facet of law enforcement, fundamental rights, and domestic laws of the state parties. It should also demarcate the escalation in the use of Information and Communications Technologies (ICTs) for criminal purposes and hence this Convention.
- 1.2. The Convention should be understood to be in consistent with-

- ❖ Universal Declaration of Human Rights (UDHR), 1948
- ❖ International Covenant on Civil and Political Rights (ICCPR), 1966
- ❖ International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
- ❖ The Convention on the Elimination of All forms of Discrimination against Women (CEDAW), 1979
- ❖ Convention on the Rights of the Child (CRC), 1989
- ❖ Convention on the Elimination of all forms of Racial Discrimination (CERD), 1965
- ❖ United Nation Convention against Corruption (UNCAC), 2003

- ❖ Any international instrument, cooperation framework and other incidental and connected realms and standards.

2. International Cooperation

2.1. Conditions and Safeguards

2.1.1. It will be beneficial to ponder upon the inclusion of provision wherein each state party is to ensure that the application of procedures depicted under the subfield of 'International Cooperation' are subject to the conditions and safeguards entailed under their domestic laws.

2.2. General Principles

2.2.1. RRU is a firm believer of the postulate that we should initiate towards an inclusive, transparent, stable, accessible free and secure cyberspace that is fair in all terms.¹ There has to be enhancement in the capacity and capability of concerned entities and each state party.

2.2.2. It is vital to consider that international cooperation can exist and flourish if state parties are able to locate areas and domains within which their national interest falls compatible with. Nonetheless, the issue of countering the use of ICT's for criminal purposes are one such compatible domain of national importance that genuinely calls for the need of international cooperation.

2.2.3. It will be beneficial to ponder upon the inclusion of provision addressing the fundamental question of jurisdiction of contemporary cyber affairs.² Moreover, every state party has sovereignty to exercise jurisdiction over its territory in accordance with its domestic laws.

2.2.4. The domain of International Cooperation and its subfields should not overlap with the existing international and national instruments, domestic laws, reciprocal legislations and mutual recognitions and frameworks.

2.3. Extradition

2.3.1. It will be beneficial to ponder upon the inclusion of provision on extradition on crimes envisaged within the Convention will facilitate investigation and prosecution of

¹ Statement by Joint Secretary (Cyber Diplomacy), March 02, 2022, available at https://www.mea.gov.in/Speeches-Statements.htm?dtl/34917/Statement_by_Joint_Secretary_Cyber_Diplomacy_at_the_1st_Session_of_UN_Ad_Hoc_Committee_to_Elaborate_a_Comprehensive_International_Convention_on_Counte.

² *ibid.*

cybercrimes committed within the jurisdiction of state parties. Each state party can establish competent authorities in this regard. However, this clause of the Convention should not overlap with provisions of other domestic or bilateral frameworks.

2.4. *Mutual Legal Assistance*

2.4.1. It will be beneficial to ponder upon the inclusion of provision on mutual legal assistance (MLA) envisaged within the Convention depicting that the state parties are to provide MLA to the widest possible extent. The several medium of MLA can be following but not limited to-

- ❖ Collecting evidence/statements/information from persons/concerned authorities
- ❖ Serving of judicial documents in effective manner
- ❖ Executing Search, Seizure and Freezing in appropriate manner
- ❖ Examining of sites and relevant objects
- ❖ Providing evidentiary items, expert evaluations
- ❖ Identification and recovery of proceeds of crime
- ❖ Facilitating various investigation, prosecution, judicial proceedings and other connected proceedings concerning the criminal offences/cyber offences
- ❖ Other assistance not in prejudice to the domestic laws of the requested state party

2.4.2. The usage of ICTs offers anonymity, scale, speed and scope to the terrorists/offenders leading to deterioration of the possibility of law enforcement agencies (LEAs) in tracing them and thus causing a major hurdle. To rein in cybercrimes globally, member states ought to develop an international cooperation through this convention and include a framework with provisions for 'freezing' and 'return' of proceeds that are obtained from cybercrimes.³

2.4.3. It will be beneficial to ponder upon the inclusion of provision of Confidentiality Clause not in prejudice to the domestic laws of the state parties.

2.5. *Sub-field of Human Right*

³ Aashish Aryan, *Economics Times*, July 16, 2022, available at <https://economictimes.indiatimes.com/tech/technology/counter-use-of-technology-for-cybercrime-india-tells-un-ad-hoc-group/articleshow/92237908.cms>.

- 2.5.1. It will be beneficial to ponder upon the inclusion of provision advocating the harmonisation of approach to criminalisation with adequate safeguard to protection of human right. Several applications pose significant human rights risks and restrict freedom of expression, target dissenting voices, interfere with privacy and anonymity of communications, and limit the rights to freedom of association, assembly and data protection.
- 2.5.2. However, the convention should consider the aspects of necessity, legality and proportionality and such human right considerations ought to be balanced and equated with facets of national security and law and order of the member states.

2.6. *Ground of Refusal*

- 2.6.1. It will be beneficial to ponder upon the inclusion of provision depicting the right to refusal in accordance with the domestic laws of the member states and other existing international instruments (for instance, UNCAC).

2.7. *Information that is spontaneous in nature*

- 2.7.1. It will be beneficial to ponder upon the inclusion of provision desiring for spontaneous response and exchange of information between the requested and requesting state party. However, the same has to be in consonance with the domestic laws of the member states. Upon receiving a request, the state parties should perform a prompt procedure and respond accordingly considering the urgency of the same.
- 2.7.2. However, the same should not be contrary to the postulates of sovereignty, privacy and human right and rule of law of the member states and other incidental entities.

2.8. *Network that is 24*7*

- 2.8.1. It will be beneficial to ponder upon the inclusion of provision that demarcates state party to designate a Point of Contact (PoC) that is 24*7 available and accessible so that assistance and cooperation with immediate effects is ensured. Availability and accessibility with channelize the entire superstructure in a smoother manner. Such provision will boost exchange of technical advice. These PoCs can communicate with their counterparts from different state parties and expedite the process. In addition to this, the designated PoCs ought to be trained in specific manner.

2.9. Towards raising awareness of the public

2.9.1. It will be beneficial to ponder upon the inclusion of provision for member states to cooperate in the promotion and spreading of awareness among the concerned and relevant entities regarding the modalities, characteristics and gravity of the Convention.

2.10. Joint Investigations

2.10.1. It will be beneficial to ponder upon the inclusion of provision wherein each state party can enter into bilateral or multilateral agreements or like arrangements and execute joint investigations through designated bodies. Nevertheless, such joint investigation should not be in prejudice to the domestic laws of the concerned state parties.

3. Technical Assistance

3.1. It will be beneficial to ponder upon the inclusion of provision/clause of technical assistance as it will enhance the effectiveness of the convention. The domain of Technical assistance can cover following subfields-

- ❖ Development and Implementation of domestic regulations, laws revolving around investigation and prosecution
- ❖ Assistance in the implementation of the Convention
- ❖ Development of contact points for flexible and appropriate management

3.2. The AC can also entail provisions demarcating the role of various entities like the INTERPOL, United Nations Office on Drug and Crime (UNODC) and other domestic agencies towards technical assistance.

4. Preventive Measures

4.1. Each state party to initiate appropriate measures towards public information and awareness activities in accordance with its domestic laws.

4.2. Each state party to promote best practices and incidental policies to emphasize on the benefit of preventive measures towards cybercrimes and criminal offences committed using ICTs.

4.3. Each state party ought to endeavour to prevent and preserve their own territory from ICT driven criminal offences and endeavour to counter them with full potential.

- 4.4. Each state party to prevent instances of reoffending.
- 4.5. Each state party, as appropriate and in accordance with the fundamental laws of their own legal system, envisages collaborating with other member states and organizations to promote the development and expansion of preventive measures in this regard.
- 4.6. Convention to stipulate that state parties can also initiate measures towards cooperation among investigating agencies (national) and other private entities (for instance the internet service providers) in furtherance of matters that circumscribe offences mentioned in the Convention.

5. Envisaging Capacity Building

- 5.1. It will be beneficial to ponder upon the inclusion of provision for state parties to endeavour into the arena of capacity building. The domain can include aspects not limited to-
 - ❖ Consult with academic, scientific and professional communities and analyse recent trends in the domain of cybercrime, and several operations and technologies that are involved.
 - ❖ Integrate with relevant international and regional organizations; develop, share and analyse expertise among these organizations that revolve around several cybercriminal activities that target vulnerable groups.
 - ❖ Assistance in planning and implementing Research and Training programs.
 - ❖ Training of experts, law enforcement officials and capacity development towards policy making.
- 5.2. Member states to envisage cooperation in facilitating education, training, public awareness and other incidental activities for preventing and combating cybercrime and use of ICTs for criminal purposes.
- 5.3. India in the spirit of 'Vasudhaiva Kutumbakam' *i.e.* 'the world is one family' is inclined to share expertise and enhance the capacity building. In light of the same, RRU as an educational institute of national importance is determined and inclined to engage constructively in these deliberations.

6. Mechanism of Implementation

- 6.1. Implementation is vital in order to combat cybercrime. Its mechanism has to be versatile. It will be beneficial to ponder upon the inclusion of provision for establishment of framework for collection and exchange of relevant information regarding good practices and potential challenges.

7. Final provisions

- 7.1. It will be beneficial to ponder upon the inclusion of provision of adequate reservations or declarations as and when required in accordance with the Convention. In addition to this, provision of protocols ought to be inserted considering the future developments that may arise as per the need.