

United States Proposals for International Cooperation, Technical Assistance, Preventive Measures, Mechanism for Implementation, and Final Provisions Chapters

The United States submits to the Secretariat the following initial proposal of draft provisions for the remaining chapters for consideration by Member States at the third negotiating session of the Ad Hoc Committee to elaborate a UN cybercrime treaty (AHC), taking into full consideration existing international instruments and efforts at the national, regional and international levels to combat cybercrime. The United States is of the view that the preamble to the Convention should be drafted in light of the work of the Ad Hoc Committee and with greater clarity as to the content of the Convention's substantive provisions. As such, the United States does not propose draft text for the Preamble at this time.

In brief, the United States proposes the international cooperation chapter facilitate cooperation relating to the offenses established under the Convention as well as the collection of evidence in electronic form of a "serious criminal offense" (as defined in the UN Convention against Transnational Organized Crime or as otherwise agreed in this Convention), taking into account the necessity of meaningful domestic procedural authorities in the procedural measures chapter to ensure the effectiveness of this chapter. This would include facilitation of expedited preservation of stored computer data, mutual legal assistance, and the use of a 24/7 network to ensure a point of contact in each State Party available on a twenty-four hour, seven-day-a-week basis to provide immediate assistance for the purposes of investigations, prosecutions, or other proceedings concerning criminal offenses established under the Convention or the collection of electronic evidence of a serious criminal offense. In addition, the United States proposes the inclusion of provisions on extradition, joint investigations, law enforcement cooperation, mechanisms for the recovery of property through international cooperation in confiscation, and international cooperation for the purposes of confiscation with regard to the offenses established under the Convention.

The United States proposes that the technical assistance chapter call for training programs for law enforcement and other personnel supporting the administration of justice relating to the prevention, detection, and investigation of offenses covered in this Convention, movement of contraband, tracking of physical and virtual proceeds of crime, collection of electronic evidence, modern law enforcement techniques, tracing of communications and cryptocurrency for the purposes of criminal investigations, and methods to protect victims, experts, and witnesses. State Parties should also promote training and technical assistance that will facilitate extradition and mutual legal assistance. In addition, the United States proposes implementation of the Convention through economic development and technical assistance, including concrete efforts to enhance financial and material assistance to developing countries and encourage the participation of other organizations, including civil society, international organizations, and the private sector, in technical assistance efforts such as training programmes and modern equipment.

The United States proposes that the preventive measures chapter promote best practices and policies aimed at the prevention of cybercrime, including investments in domestic criminal justice capacity and periodic reevaluations of domestic legislation and administrative practices. The United States proposes that State Parties collaborate, as appropriate, with each other and relevant organizations in measures on prevention, including international projects aimed at the prevention of cybercrime. In addition, State Parties would promote the active participation of individuals and groups outside the public sector in the prevention of and fight against cybercrime, including raising awareness of its existence, causes, gravity, and threats. This should include measures enhancing transparency of and promoting the contribution of the public to preventive measures against cybercrime, effective public access to information concerning cybercrime threats and risks and related government policies, and public information activities that contribute to public education programmes on cybercrime threats and risks and related government policies. Finally, the United States proposes State Parties take appropriate measures as necessary to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions and the technology sector, relating to the commission of offenses established under the Convention.

The United States proposes that the mechanism for implementation designate the Commission on Crime Prevention and Criminal Justice of the Economic and Social Council as the implementing body for this treaty, akin to the role played by the Commission on Narcotic Drugs for the UN drug treaties. The Commission would be authorized to consider all matters pertaining to the aims of the Convention, improve the capacity of Member States to combat cybercrime, and promote and review the implementation of the Convention. The United States further proposes that the UN Office on Drugs and Crime serve as the Secretariat for the Convention.

The United States proposes that the final provisions provide for settlement of disputes; signature, ratification, acceptance, approval, and accession; entry into force; amendment; denunciation; and depositary and languages in line with the corresponding provisions of the UN Convention against Transnational Organized Crime.

The United States appreciates this opportunity to provide potential text for the chapters to be discussed at the third session and welcomes feedback and further discussion. The United States looks forward to further developing its positions in response to the ideas and perspectives provided by other Member States and by multistakeholders.

International Cooperation

GENERAL PROVISIONS ON INTERNATIONAL COOPERATION

1. States Parties shall cooperate in criminal matters in accordance with articles [on criminalization] of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and

proceedings in civil and administrative matters relating to the offenses set forth in this Convention. **(UNCAC Article 43)**

2. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties. **(UNCAC Article 43)**

3. Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to provide assistance 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. **(Adapted from UNTOC Article 16.4 and UNCAC Article 44.15)**

EXTRADITION

1. This article shall apply to the offences established under 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.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. 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.

4. 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.

5. States Parties that make extradition conditional on the existence of a treaty shall:

a. At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

- b. If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to achieve the aims of this article.
6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
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. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

15. 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.

16. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. **(UNTOC Article 16)**

TRANSFER OF SENTENCED PERSONS

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established under this Convention, in order that they may complete their sentences there. **(UNTOC Article 17)**

EXPEDITED PRESERVATION OF STORED COMPUTER DATA

1. A State Party may request another State Party to order or otherwise obtain the expedited preservation of data stored by means of a computer system, located within the territory of that other State Party and in respect of which the requesting State Party intends to submit a request for mutual legal 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 State Party intends to submit a request for mutual legal assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.
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 legal assistance for the search or similar access, seizure or similar securing,

or disclosure of the data may, in respect of offenses other than those established under the 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;
 - 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 State Party's investigation, it shall promptly so inform the requesting State 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 ninety 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 receipt of such a request, the data shall continue to be preserved pending a decision on that request.

MUTUAL LEGAL ASSISTANCE

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and other proceedings in relation to the offences established under this Convention, and for the collection of evidence in electronic form of a serious criminal offense.
2. 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 other proceedings in relation to the offences for which a legal person may be held liable in accordance with article [on liability of legal persons] of this Convention in the requesting State Party, without prejudice to article [on the general provisions on international cooperation].
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes with respect to conduct required to be criminalized by this convention in articles [on criminalization]:
 - a. Taking evidence or statements from persons;
 - b. Effecting service of judicial documents;
 - c. Executing searches and seizures, and freezing assets;
 - d. Searching or similarly accessing, seizing or similarly securing, and disclosing, 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 the article [on expedited preservation of stored computer data];
- e. Collecting real-time traffic data associated with specified communications in the territory of the requested State Party, governed by the conditions and procedures provided for under that State Party's domestic law, with respect to criminal offenses for which real-time collection of traffic data would be available in a similar domestic case of the requested State Party;
 - f. Collecting or recording content data of specified communications transmitted by means of a computer system, to the extent permitted under the States Parties' applicable treaties and domestic laws;
 - g. Examining objects and sites;
 - h. Providing information, evidentiary items and expert evaluations;
 - i. Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
 - j. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
 - k. Facilitating the voluntary appearance of persons in the requesting State Party;
 - l. Transferring proceedings for prosecution;
 - m. Any other types of assistance that is not contrary to the domestic law of the requested State Party.

4. Mutual legal assistance shall also be afforded for the collection of evidence in electronic form for the investigation, prosecution or other proceedings in relation to serious criminal offenses.
5. 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 to this Convention.
6. The transmission of information pursuant to paragraph 5 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party, in advance, of the intended disclosure. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

7. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.
8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.
9. Paragraphs 10 to 30 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 10 to 30 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.
10. 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. Assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention.
11. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or other proceedings in relation to offences established under this Convention may be transferred if the following conditions are met:
 - a. The person freely gives his or her informed consent;
 - b. The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.
12. For the purposes of paragraph 11 of this article:
 - a. The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;
 - b. The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;
 - c. The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

- d. The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.
13. Unless the State Party from which a person is to be transferred in accordance with paragraphs 11 and 12 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.
14. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. 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 of the central authority designated for this purpose 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 and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible. Where not prohibited by the laws of the respective States Parties, States Parties are encouraged to direct central authorities to transmit and receive requests for mutual legal assistance, and communications related thereto, in electronic form. Where acceptable to the central authorities of both States Parties involved, central authorities are also encouraged to transmit and receive electronic evidence.
15. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

16. A request for mutual legal assistance shall contain:
 - a. The identity of the authority making the request;
 - b. The subject matter and nature of the investigation, prosecution or other proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or other proceeding;
 - c. A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
 - d. A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
 - e. As appropriate, the identification, location and nationality of any person[, item, or accounts concerned; and
 - f. The purpose for which the evidence, information or other assistance is sought.
17. 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.
18. 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.
19. 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.
20. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or other 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.

21. 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.
22. Mutual legal assistance may be refused:
 - 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 other proceedings under their own jurisdiction;
 - d. If the request is disproportionate to the offense under investigation or prosecution; or
 - e. 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.
23. 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.
24. Reasons shall be given for any refusal of mutual legal assistance.
25. 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.
26. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or other proceeding.
27. Before refusing a request pursuant to paragraph 22 of this article or postponing its execution pursuant to paragraph 26 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.

28. Without prejudice to the application of paragraph 13 of this article, 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 or prosecution 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 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 competent 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.
29. 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 whether, under the circumstances, the request can be executed and, if so, the manner in which the costs shall be borne.
30. The requested State Party:
- a. Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;
 - b. May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.
31. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article. **(Adapted from UNTOC Article 18).**
32. This article applies solely to the provision of mutual legal assistance among States Parties. Its provisions shall not create any right on the part of any private person to obtain or exclude evidence or to impede execution of any request for assistance.

JOINT INVESTIGATIONS

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

agreements or arrangements, joint investigations may 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.
(UNTOC Article 19)

LAW ENFORCEMENT COOPERATION

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established under this Convention. Each State Party shall, in particular, adopt effective measures:
 - a. To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences established under this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;
 - b. To cooperate with other States Parties in conducting inquiries with respect to offences established under this Convention concerning:
 - i. The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;
 - ii. The movement of proceeds of crime or property derived from the commission of such offences;
 - iii. The location of property, equipment or other instrumentalities used or intended for use in the commission of such offences;
 - c. To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;
 - d. To exchange information with other States Parties on specific means and methods used by persons committing crimes established under this convention, including, where applicable, means of concealing their activities;
 - e. To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences established under this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences established under this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or

regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to crimes established under this Convention through the use of modern technology.
(UNTOC Article 27)

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 for the purpose of investigations, prosecutions or other proceedings concerning criminal offences established under this convention, or for the collection of evidence in electronic form of a serious criminal offence.
2. The assistance to be rendered by the point-of-contact identified in paragraph 1 shall include facilitating, or, if permitted by the domestic law and practice of the State Party, directly carrying out the following measures:
 - a. the preservation of data pursuant to Article [preservation];
 - b. providing information which may assist in the preservation of data including, if available technical advice and legal information.
3. A State Party's point of contact shall have the capacity to carry out communications with the point of contact of another State Party on an expedited basis.
4. If the point of contact designated by a State 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.
5. Each State Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.
6. This article is without prejudice to State Parties' participation in other 24/7 networks with other participants in those networks.

MECHANISMS FOR RECOVERY OF PROPERTY THROUGH INTERNATIONAL COOPERATION IN CONFISCATION

1. Each State Party, in order to provide mutual legal assistance pursuant to article [on international cooperation for purposes of confiscation] of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention in articles [on criminalization], shall, in accordance with its domestic law:

- a. Take such measures as may be necessary to permit 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 to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and
 - c. Take such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.
2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to [paragraph 2 of the article on international cooperation for purposes of confiscation, below] of this Convention, shall, in accordance with its domestic law:
 - a. Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1(a) of this article;
 - b. Take such measures as may be necessary to permit its competent authorities to freeze or seizure property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1(a) of this article; and
 - c. Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property. **(UNCAC Article 54)**

INTERNATIONAL COOPERATION FOR THE PURPOSES OF CONFISCATION

1. A State Party that has received a request from another State Party having jurisdiction over an offence established under this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article [on confiscation and seizure, paragraph 1], 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 article [on confiscation and seizure, paragraph 1], of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article [on confiscation and seizure, paragraph 1], situated in the territory of the requested State Party.
2. Following a request made by another State Party having jurisdiction over an offence established under 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 article [on confiscation and seizure, paragraph 1], 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 [on mutual legal assistance] of this Convention are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article [on mutual legal assistance, paragraph 15], 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, including, to the extent possible, the location, and where relevant, the estimated value of the property 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, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;
 - 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 and, where available, a legally admissible copy of an order on which the request is based.
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 established under this Convention. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party did not receive sufficient and timely evidence or if the property is of a de minimis value.
8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.
9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.
10. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article. **(UNTOC Article 13)**

Technical Assistance

TRAINING AND TECHNICAL ASSISTANCE

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for: its law enforcement personnel, including prosecutors, investigating magistrates and forensic analysts; other personnel charged with the prevention, detection and investigation of the offences covered by this Convention; and, consistent with its domestic legal framework, its personnel supporting the administration of justice relating to these offenses, such as judicial authorities and victim advocates and other service providers. Such programmes may include secondments and exchanges of staff. 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 covered by this Convention;

- b. Detection and monitoring of the movements of proceeds of cybercrime, including methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities;
 - c. Collection of evidence, including electronic evidence;
 - d. Modern law enforcement equipment and techniques, including electronic surveillance;
 - e. Tracing of communications and virtual assets for the purposes of criminal investigations;
 - f. Methods used in the protection of victims, experts, and witnesses
2. 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.
3. 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.
4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements. (UNTOC Article 29)

TECHNICAL ASSISTANCE TO IMPLEMENT THE CONVENTION

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 cybercrime 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, and civil society.
 - 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 cybercrime;
 - b. To enhance financial and material assistance to support the efforts of developing countries to fight cybercrime effectively and to help them implement this Convention successfully;
 - c. To encourage and persuade other States; civil society, including academia, the media and non-governmental organizations; international organizations; financial institutions; and the private sector including all relevant private entities, as appropriate, to join them or otherwise contribute to in efforts, including 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.

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 cybercrime. (UNTOC Article 30)

Preventive Measures

GENERAL PROVISIONS ON 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 cybercrime.
2. States Parties shall also endeavour to build and invest in increasing domestic criminal justice capacity, including training and developing expertise among criminal justice practitioners, as part of national cybercrime prevention strategies.
3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established under this Convention.
4. States Parties shall endeavour to evaluate periodically existing relevant domestic legislation and administrative practices with a view to identifying gaps in coverage of offenses established by this instrument.
5. 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. This includes participation in international projects aimed at the prevention of cybercrime, for example by alleviating the circumstances that render socially marginalized groups, women, and children vulnerable to the action of cybercrime. (UNTOC Article 31 and the Agreed Paragraphs of the Open-ended Intergovernmental Expert Group to Conduct a Comprehensive Study on Cybercrime)

PARTICIPATION OF SOCIETY

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, including academia, the media, non-governmental organizations and community-based organizations; financial

institutions; and the private sector including all relevant private entities in the prevention of and the fight against cybercrime and to raise public awareness regarding the existence, causes and gravity of and the threat posed by cybercrime. This participation should be strengthened by such measures as:

- a. Enhancing the transparency of and promoting the contribution of the public to preventive measures against cybercrime;
 - b. Ensuring that the public has effective access to information concerning cybercrime threats and risks. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime;;
 - c. Undertaking public information activities that contribute to public education programmes on cybercrime threats and risks, including school and university curricula;
 - d. Paying special attention to the issues of preventing and eradicating gender-based violence, in particular, violence against women and girls through cybercrime;
 - e. Cooperating with civil society to inform and protect victims of cybercrime, especially victims who are members of vulnerable populations, of their rights, protections, and available assistance.
2. Each State Party shall take appropriate measures to ensure that the relevant law enforcement bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention. (UNCAC Article 13, UNTOC Article 31, and the Agreed Paragraphs of the Open-ended Intergovernmental Expert Group to Conduct a Comprehensive Study on Cybercrime)

COOPERATION BETWEEN NATIONAL AUTHORITIES AND THE PRIVATE SECTOR

Each State Party shall take such appropriate measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions and the technology sector, relating to matters involving the commission of offences established in accordance with this Convention. Such measures may include:

- a. information sharing among industry sectors on cybercrime trends and risks, including referrals to competent national authorities and
- b. incident alert and countermeasures on cybercrime trends distributed to the private sector. (UNCAC Article 13 and the Agreed Paragraphs of the Open-ended Intergovernmental Expert Group to Conduct a Comprehensive Study on Cybercrime)

PROTECTION AND ASSISTANCE MEASURES FOR VULNERABLE VICTIMS

1. In implementing this Convention, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of natural persons who have been the object of conduct set forth under articles [on criminalization] of this Convention as accorded under applicable international law.
2. Each State Party shall afford appropriate assistance to victims whose lives or safety are endangered by reason of being the object of conduct set forth under articles [on criminalization] of this Convention.
3. In applying the provisions of this Article, States Parties shall take into account the special needs of vulnerable populations, in particular women, children and the elderly.

Mechanism of Implementation

IMPLEMENTATION OF THE CONVENTION

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. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating cybercrime. (**UNTOC Article 34**)

IMPLEMENTATION BODY

1. The States Parties, recognizing the competence of the United Nations with respect to assisting member states in implementing their international obligations under international treaties with the purpose of preventing and combating various forms of crime, agree to entrust to the Commission on Crime Prevention and Criminal Justice of the Economic and Social Council the functions assigned to it under this Convention. (**Single Convention on Narcotic Drugs (SCND) Article 5**)
2. For purposes of this Chapter:
 - a. “Commission” means the Commission on Crime Prevention and Criminal Justice of the Council.
 - b. “Council” means the Economic and Social Council of the United Nations.
 - c. “General Assembly” means the General Assembly of the United Nations.

EXPENSES OF THE COMMISSION

1. The expenses of the Commission shall be borne by the United Nations in such manner as shall be decided by the General Assembly. (SCND Article 6)

REVIEW OF DECISIONS AND RECOMMENDATIONS OF THE COMMISSION

1. Each decision or recommendation adopted by the Commission pursuant to the provisions of this convention shall be subject to approval or modification by the Council or the General Assembly in the same way as other decisions or recommendations of the Commission. (SCND Article 7)

2. The Commission is charged with the periodic review of the implementation of this Convention, to include:

- a. Mid-Term Review of Implementation every five years.
- b. High-Level Ministerial Review of Implementation to occur every ten years.
- c. Annual discussion on treaty implementation as a standing agenda item during the UN Commission on Crime Prevention and Criminal Justice.

FUNCTIONS OF THE COMMISSION

1. The Commission is authorized to consider all matters pertaining to the aims of this Convention, to improve the capacity of Member States to combat cybercrime and to promote and review the implementation of this Convention, and in particular:

- a. To make recommendations for the implementation of the aims and provisions of this Convention, including programmes of scientific research and the exchange of information of a scientific or technical nature; and
- b. To agree on means of implementation for achieving the objectives mentioned in paragraph 1 of this article, including:
 - i. Facilitating activities by States Parties under articles [on criminalization] of this Convention, including by encouraging the mobilization of voluntary contributions;
 - ii. Facilitating the exchange of information among States Parties on patterns and trends in cybercrime and on successful practices for combating it;
 - iii. Cooperating with relevant international and regional organizations and non-governmental organizations;
 - iv. Reviewing periodically the implementation of this Convention; and
 - v. Making recommendations to improve this Convention and its implementation.

2. For the purpose of paragraphs 1 (b) (iv) and (v) of this article, the Commission 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 Commission.

3. Each State Party shall provide and each Member State not a State Party to this Convention is encouraged to provide the Commission with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Commission. (Adapted from **SCND** Article 8/ **UNTOC** Article 32)

SECRETARIAT

1. The Secretary-General of the United Nations shall designate the UN Office on Drugs and Crime to serve as the Secretariat for this Convention.

2. The Secretariat shall:

- a. Assist the Commission in carrying out the activities set forth in article [on functions of the Commission] of this Convention and make arrangements and provide the necessary services for the Commission as pertain to this Convention;
- b. Upon request, assist States Parties in providing information to the Commission as envisaged in articles [on functions of the commission, paragraph 3, and information to be furnished by parties to the Commission.] of this Convention; and
- c. Ensure the necessary coordination with the secretariats of relevant international and regional organizations. (**UNTOC** Article 33)

INFORMATION TO BE FURNISHED BY PARTIES TO THE COMMISSION

1. The States Parties shall furnish to the Commission such information as it may request as being necessary and appropriate for the performance of its functions, and in particular:

- a. A report every five years on the working of the Convention within each of their territories;
- b. The text of all laws and regulations from time to time promulgated in order to give effect to this Convention;
- c. Information concerning cases or offenses arising under this convention, including particulars of appropriate cases which may be of importance because of the type of activity engaged in to commit the offense or the methods employed by the offenders, without prejudice to the need for States Parties to protect sensitive law enforcement information, and the rights of victims and witnesses; and

- d. The, names and addresses of the governmental authorities empowered to make or receive requests for international cooperation pursuant to this Convention.
2. States Parties shall furnish the information referred to in the preceding paragraph in such manner and by such dates and use such forms as the Commission may request. (SCND Article 18)

Final Provisions

SETTLEMENT OF DISPUTES

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. (UNTOC Article 35)

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

1. This Convention shall be open to all States for signature [at the agreed date and time, and thereafter at United Nations Headquarters in New York until a further agreed 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.
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. (UNTOC Article 36)

ENTRY INTO FORCE

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. (UNTOC Article 38)

AMENDMENT

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. 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 other amendments that they have ratified, accepted or approved. (UNTOC Article 39)

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 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.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto. (UNTOC Article 40)

DEPOSITORY AND LANGUAGES

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. (UNTOC Article 41)