



**Ad Hoc Committee to Elaborate a Comprehensive International Convention on
Countering the Use of Information and Communications Technologies for
Criminal Purposes**

Sixth Session

21 August – 1 September 2023

**Annex to the Submission of the Office of the United Nations High Commissioner
for Human Rights, 22 August 2023: Annotations to the Zero Draft of the
Convention**

Preamble

The States Parties to the present Convention,

(1) *Bearing in mind* the purposes and principles of the Charter of the United Nations,

(2) *Noting* that information and communications technologies, while having enormous potential for the development of societies, create new opportunities for perpetrators, may contribute to the increase in the rate and diversity of criminal activities, and may have an adverse impact on ~~States, enterprises and~~ the well-being of individuals and society as a whole,

(3) *Concerned* that the use of [a computer system] [an information and communications technology device] may have a considerable impact on the scale, speed and scope of other criminal offences, ~~including offences related to terrorism, trafficking in persons, smuggling of migrants, illicit manufacturing of and trafficking in firearms, their parts, components and ammunition, drug trafficking and trafficking in cultural property,~~

Commented [A1]: Suggesting rephrasing to avoid an overly exaggerated perception that the use of one computer automatically has all these impacts

(4) *Convinced* of the need to pursue, as a matter of priority, a common ~~criminal~~ policy aimed at the protection of individuals and society against [cybercrime] [the use of information and communications technologies for criminal purposes] by, inter alia, adopting appropriate legislation, establishing common offences and procedural powers and fostering international cooperation to prevent and combat such activities more effectively at the national, regional and international levels,

(5) *Determined* to deny safe havens to those who engage in [cybercrime] [the use of information and communications technologies for criminal purposes] ~~by prosecuting these crimes wherever they occur,~~

(6) *Stressing* the need to enhance coordination and cooperation among States, including by providing technical assistance and capacity-building to countries, in particular developing countries, upon their request, to improve national legislation and frameworks and enhance the capacity of national authorities to deal with [cybercrime] [the use of information and communications

technologies for criminal purposes] in all its forms, including its prevention, detection, investigation and prosecution, and emphasizing in this context the role that the United Nations plays,

(7) *Recognizing* the ~~increasing~~ number of victims of [cybercrime] [the use of information and communications technologies for criminal purposes], the importance of obtaining justice for those victims and the necessity to address the needs of persons in vulnerable situations in measures taken to prevent and combat the offences covered by this Convention,

(8) *Determined* to prevent, detect and suppress more effectively international transfers of property obtained as a result of [cybercrime] [the use of information and communications technologies for criminal purposes] and to strengthen international cooperation in the recovery and return of proceeds of crime,

(9) *Recognizing* the need for cooperation between States and ~~relevant~~ non-governmental organizations, civil society organizations, academic institutions and the private sector in combating [cybercrime] [the use of information and communications technologies for criminal purposes],

(10) *Affirming* the importance of mainstreaming a gender perspective in all efforts to prevent and combat the offences covered by this Convention,

(11) *Mindful* of the need to achieve law enforcement objectives and to ensure respect for human rights and fundamental freedoms as enshrined in applicable international and regional instruments,

(12) ~~Acknowledging~~ ~~Stressing~~ the right to protection against ~~unlawful and arbitrary~~ interference with ~~the right to~~ privacy, including the protection of personal data,

(13) *Commending* the work of the United Nations Office on Drugs and Crime and other international and regional organizations in preventing and combating [cybercrime] [the use of information and communications technologies for criminal purposes],

(14) *Taking into account* the existing international and regional conventions and treaties on cooperation in criminal matters, as well as similar treaties that exist between States Members of the United Nations,

Have agreed as follows:

Chapter I General provisions

Article 1. Statement of purpose

The purposes of this Convention are to:

(a) Promote and strengthen measures to prevent and combat [cybercrime] [the use of information and communications technologies for criminal purposes] more efficiently and effectively;

(b) Promote, facilitate and strengthen international cooperation in preventing and combating [cybercrime] [the use of

Commented [A2]: Suggest replacing "acknowledging" with "stressing". In addition, it would be preferable to have such references also in the operative parts of the Convention.

Commented [A3]: Using precise language from article 17 ICCPR

information and communications technologies for criminal purposes];
and

(c) Promote, facilitate and support technical assistance to prevent and combat [cybercrime] [the use of information and communications technologies for criminal purposes], in particular for the benefit of developing countries, and strengthen and promote the exchange of information, knowledge, experience and good practices.

Article 2. Use of terms¹

For the purposes of this Convention:

(a) “[Computer system] [Information and communications technology device]”;

(b) “[Computer data] [Digital information]”;

(c) “[Traffic data]” shall mean any [computer data] [digital information] collected by a service provider, excluding content data, related to:

(i) The type of service provided and its duration where it concerns technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of the service, excluding passwords or other authentication means used instead of a password, that are provided by a user or created at the request of a user;

(ii) The commencement and termination of a user access session to a service, such as the date and time of use, or of the login to and logout from the service; and

(iii) Communications metadata processed in an electronic communications network for the purposes of transmitting, distributing or exchanging content data, including data which the network or its operators used to trace and identify the source and destination of a communication, data on the location of the terminal equipment used in the context of providing communications services, and the date, time, duration and type of the communication;

(d) “Content data” shall mean any [computer data] [digital information] relating to a communication by means of a [computer system] [information and communications technology device] concerning the substance or purport of that communication, such as text, voice messages, audio recordings, video recordings and other types of information;

(e) “Service provider” shall mean:

(i) Any public or private entity that provides to users of its service the ability to communicate by means of a [computer system] [information and communications technology device];
and

Commented [A4]: In comparison to instruments like the Budapest Convention this definition appears very broad and detailed. It could thereby further expand procedural powers and should therefore be carefully considered.

Commented [A5]: While this formulation may at first glance appear rather technical it could potentially be read to justify tracing requirements undermining encryption.

The words “used to trace and identify” can raise concern here because one interpretation is (1) information that is already used for this purpose (as part of providing the existing service) or (2) information that could be used for this purpose (e.g. by law enforcement, if law enforcement got a copy of it).

An improved and clearer alternative to this formulation would be: “including data which the network or its operators use to trace and identify the source and destination of a communication.”

Commented [A6]: Noting that precise user location is not a traditional form of “traffic data”. “Data on the location of the terminal equipment” might be interpreted to include anything that an intermediary does, or could, know about where the mobile device (“terminal equipment”) is located even if that information is not routinely collected, or need not be routinely collected, in order to provide the service.

Traditionally “traffic data” is data that the company already possesses and/or uses in order to provide its service, like a source or destination address or other identifier which is actually used as an integral part of service provision. Not all data that a company could conceivably access related to customers (like their whereabouts) if that data is not actually used to provide the service

¹ The terms contained in paragraphs (a) and (b) of this article, as they appear across the draft text of the convention, will continue to be discussed in a co-facilitated informal negotiation group. For this reason, the Chair has chosen not to provide definitions for those terms at the current stage.



(ii) Any other entity that processes or stores [computer data] [digital information] on behalf of such a communications service or users of such a service;

(f) "Subscriber information" shall mean any information contained in the form of [computer data] [digital information] or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:

(i) The type of communications service used, the technical provisions taken thereto and the period of service;

(ii) The subscriber's identity, postal or geographical address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;

(iii) Any other information on the site of the installation of communications equipment, available on the basis of the service agreement or arrangement;

(g) "Personal data" shall mean data relating to an identified or identifiable natural person;

(h) "Serious crime" shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years and causing death or serious bodily harm;

(i) "Child" shall mean any human being under eighteen years of age;

(j) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

(k) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;

(l) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(m) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(n) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 16 of this Convention.

Article 3. Scope of application

1. This Convention shall apply, in accordance with its terms, to the prevention, investigation and prosecution of the offences established in accordance with

Commented [A7]: It seems unclear what this provision means and what its purpose is.

Commented [A8]: Good that this includes a threshold for serious crime. But preferable if an additional limiting factor could be added to avoid arbitrary application.

The reason for this is that in many jurisdictions a maximum deprivation of liberty of at least four years would actually encompass a broad range of crimes. For example, in many jurisdictions a simple theft can be punished by up to five or more years imprisonment, without any aggravating circumstances.

Separately, it is unclear how laws feature here where even minor last offences can trigger life imprisonment or other severe deprivations of liberty based on the fact that a repeat offender has committed a crime.

articles 6 to 16 of this Convention, including the freezing, seizure, confiscation and return of the proceeds of such offences.

2. This Convention shall also apply to the collecting, obtaining, preserving and sharing of evidence in electronic form, as provided for in the relevant articles of this [Convention](#).

Article 4. Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5. Respect for human rights

[Nothing in the present convention should be interpreted as impairing any obligations of the States Parties under international human rights law.](#) States Parties shall ensure that the implementation of their obligations under this Convention is consistent with their obligations under international human rights law.

Chapter II Criminalization

Article 6. Illegal access

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of [a computer system] [an information and communications technology device] without right.

2. A State Party may require that the offence be committed by infringing security measures, with the intent of obtaining [computer data] [digital information] or other dishonest intent or in relation to [a computer system] [an information and communications technology device] that is connected to another [computer system] [information and communications technology device].

Article 7. Illegal interception

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the interception, made by technical means, of non-public transmissions of [computer data] [digital information] to, from or within [a computer system] [an information and communications technology device], including electromagnetic emissions from [a computer system] [an information and communications technology device] carrying such [computer data] [digital information].

2. A State Party may require that the offence be committed with dishonest intent, or in relation to [a computer system] [an information

Commented [A9]: We welcome that article 3(3) of the CND has been deleted. That provision read as follows:

3. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences set forth in it to result in damage or harm to persons, including legal persons, property and the State.

Commented [A10]: Alternative language could be: "*Nothing in the present convention should be interpreted in a way that would constitute a violation of or weaken States Parties' obligations under international human rights law.*"

Commented [A11]: This is a bare minimum human rights clause that has deleted many of the aspects raised in the negotiations and CND. It would be beneficial to reintroduce aspects that have been lost either here or at least in the preamble (gender, vulnerable groups).

Commented [A12]: The meaning of "intentionally" here and in other parts of the Convention remains vague. As a consequence, the Convention would risk criminalizing actions that are not even harmful but beneficial for society. For example, independent security researchers could easily be captured by article 6.

One way to address the problem of the possible criminalization of legitimate, and societally even beneficial acts, would be to add a qualification to the intent requirements, such as for example "criminal intent", "dishonest intent" or the like. Criminal intent, or other appropriately defined forms of qualified intent, should be a default requirement for articles 6-12, and not discretionary.

and communications technology device] that is connected to another [computer system] [information and communications technology device].

Article 8. Interference with [computer data] [digital information]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the damaging, deletion, deterioration, alteration or suppression of [computer data] [digital information].
2. A State Party may require that the conduct described in paragraph 1 result in serious harm.

Article 9. Interference with [a computer system] [an information and communications technology device]

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the serious hindering of the functioning of [a computer system] [an information and communications technology device] by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing [computer data] [digital information].

Article 10. Misuse of devices

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:

(a) ~~The obtaining, production, sale, procurement for use,~~ import, distribution or otherwise making available of:

- (i) A device, including a programme, designed or adapted primarily for the purpose of committing any of the offences established in accordance with articles 6 to 9 of this Convention;
- or
- (ii) A password, access credentials, electronic signature or similar data by which the whole or any part of [a computer system] [an information and communications technology device] is capable of being accessed;

with the intent that the device, password, access credentials or similar data be used for the purpose of committing any of the offences established in accordance with articles 6 to 9 of this Convention; and

(b) The possession of an item referred to in paragraph 1 (a) (i) or (ii) of this article, with intent that it be used for the purpose of committing any of the offences established in accordance with articles 6 to 9 of this Convention. A State Party may require by law that a number of such items be possessed before criminal liability attaches.

2. This article shall not be interpreted as imposing criminal liability where the obtaining, production, sale, procurement for use, import, distribution or otherwise making available, or the possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with articles 6 to 9 of this Convention, such as for the authorized testing or protection of [a

Commented [A13]: Corresponding article in the Budapest Convention does not include “obtaining” This language may make it easier to prosecute people for “obtaining” devices or code that can be used to break computer security—not just those who created or distributed them, but also those who possess them. The “procurement for use” language which is here and also in the Budapest Convention might potentially cover the same activities as “obtaining”. It is not clear why this draft adds “obtaining”.

computer system] [an information and communications technology device].

3. Each State Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 (a) (ii) of this article.

Article 11. Computer-related forgery

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion or suppression of [computer data] [digital information] resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of whether or not the data are directly readable and intelligible.

2. A State Party may require an intent to defraud, or a similar dishonest intent, before criminal liability attaches.

Article 12. Computer-related theft or fraud

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by means of:

(a) Any input, alteration, deletion or suppression of [computer data] [digital information];

(b) Any interference with the functioning of [a computer system] [an information and communications technology device];

with the fraudulent or dishonest intent of procuring for oneself or for another person, without right, an economic benefit or [computer data] [digital information] containing personal data, including information related to a person's bank account, without the consent of the person concerned, that would not otherwise be made available to the perpetrator.

*Article 13. Offences related to
online child sexual abuse or child sexual exploitation material*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

(a) Producing, offering, selling, distributing, transmitting, broadcasting, displaying, publishing or otherwise making available child sexual abuse or child sexual exploitation material through [a computer system] [an information and communications technology device];

(b) Soliciting, procuring, accessing or otherwise engaging ~~with~~ child sexual abuse or child sexual exploitation material through [a computer system] [an information and communications technology device];

(c) Possessing or controlling child sexual abuse or child sexual exploitation material stored in [a computer system] [an

Commented [A14]: These three acts (broadcasting, displaying and publishing) are not included in the corresponding article in the Budapest Convention nor in the Second Optional Protocol to the Convention on the Rights of the Child (CRC OP 2).

Commented [A15]: Soliciting and accessing are not included in the Budapest Convention (only "procuring") nor in CRC OP 2.

"Otherwise engaging with" appears very vague and hence potentially overly broad.

Commented [A16]: In combination with the carve-out in 13(4) limited to "self-generated" content, it would still be possible, for example, for one child being criminalized for possessing footage of her/their/his partner (of similar age) that the latter may have self-generated and then shared.

Commented [A17]: Corresponding article in the Budapest Convention uses "Possession" but not "controlling" and CRC OP2 also only includes "possession", not "controlling". "Controlling" may be intended to cover cloud scenarios where it may not be clear that something falls under "possession". However, it appears quite broad and vague and may require further definitions.



information and communications technology device] or another storage medium;

(d) Financing, facilitating or profiting from the offences established under this article.

2. For the purposes of this article:

(a) The term "child sexual abuse or child sexual exploitation material" shall include material that depicts or represents a child or a person appearing to be a child:

- (i) Engaging in real or simulated sexual activity or pose;
- (ii) In the presence of a person engaging in any sexual activity;
- (iii) Whose sexual parts are displayed for primarily sexual purposes; or
- (iv) Who is, or is implied to be, a victim of torture or cruel, inhumane or degrading treatment or punishment and such material is sexual in nature;

(b) The term "material" shall include images, video and live-streaming media, written material and audio recordings.

3. A State Party may require that the material identified in paragraph 2 (b) be limited to material that:

- (a) Depicts, describes or represents a real child; or
- (b) Visually depicts child sexual abuse or child sexual exploitation.

4. States Parties shall take steps to exclude the criminalization of children for self-generated material as described in paragraph 2 of this article.

5. States Parties shall ensure that there are appropriate safeguards under domestic law to protect children who are accused of this offence, consistent with their obligations under the Convention on the Rights of the Child and its Protocols. States Parties should make every effort to create and use alternatives to a criminal justice response.

Article 14. Solicitation of a child for sexual purposes through [a computer system] [an information and communications technology device]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally by an adult through [a computer system] [an information and communications technology device], communicating, soliciting, or making any arrangement with a child for sexual purposes, including for the commission of any of the offences established in accordance with article 13.

2. A State Party may require an act in furtherance of the communication described in paragraph 1.

Article 15. Non-consensual dissemination of intimate images

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the offering, selling, distributing, transmitting, publishing or otherwise making available of an intimate image of a person by means of [a

Commented [A18]: Not in the Budapest Convention. Moreover, "facilitating" generally will fall under "participation and attempt" in article 19.

Commented [A19]: CRC OP 2 uses the following definition of child pornography:

"any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes."

Commented [A20]: Not in the Budapest Convention nor in CRC OP 2

Commented [A21]: The inclusion of written material could easily encompass important works of literature and science and should be reconsidered.

Commented [A22]: Good that the provision on decriminalizing children has improved. However, it's still flawed as it falls short of the CRC. "Take steps" is a weak commitment. And the limitation to "self-generated" material does not protect partners that consensually possess material. See CRC General Comment No. 25, paras 117 and 118.

Commented [A23]: This provision can be improved in line with CRC article 40 and CRC GC 25 para 117.

Commented [A24]: It seems that this provision would also cover communication with adolescents who are above the minimum age of consent. It thus requires some adjustments.

Commented [A25]: While addressing an important issue, it requires further consideration to ensure human rights compliance. For example, "sexual activity" would have to be clearly defined to avoid overbroad application. Moreover, exceptions, for example for public interest cases, should be included.



computer system] [an information and communications technology device], without the consent of the person depicted in the image.

2. For the purpose of paragraph 1, “intimate image” shall mean a visual recording or representation of a natural person made by any means, including a photograph, film or video recording in which the person is nude, is exposing their genital organs, anal region or breasts, or is engaged in sexual activity, and in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy.

3. A State Party may require the intent to cause harm before criminal liability attaches.

Article 16. Laundering of proceeds of crime

1. Each State Party shall adopt, **in accordance with fundamental principles** of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of that person’s actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include, as predicate offences, relevant offences established in accordance with articles 6 to 15 of this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in that list a comprehensive range of offences established in accordance with articles 6 to 15 of this Convention;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article, had it been committed there;

Commented [A26]: This qualification does not appear in most other provisions. What is the relation between this term here and 16(1) b’s use of “basic concepts of its legal system”?

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the secretariat of the Conference of the States Parties to this Convention;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

Article 17. Offences relating to other international treaties

States Parties shall adopt such legislative and other measures as may be necessary to ensure that offences established in accordance with applicable international conventions and protocols also apply when committed through the use of [a computer system] [an information and communications technology device].

Article 18. Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with articles 6 to 16 of this Convention.
2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.
4. Each State Party, shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 19. Participation and attempt

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, when committed intentionally, the participation ~~in any capacity, such as that of an~~ accomplice, assistant, instigator, aider or abettor, in an offence established in accordance with articles 6 to 16 of this Convention.
2. Each State Party may adopt the necessary legislative and other measures to establish as a criminal offence, in accordance with its domestic law, when committed intentionally, any attempt to commit an offence established in accordance with articles 6 to 16 of this Convention.
3. Each State Party may adopt the necessary legislative and other measures to establish as a criminal offence, in accordance with its domestic law, when committed intentionally, the preparation for an offence established in accordance with articles 6 to 16 of this Convention.

Article 20. Statute of limitations

Each State Party ~~shall~~ may, where appropriate, considering the gravity of the crime, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence

Commented [A27]: It should be clearly analysed if there are any unintended consequences of art. 17, e.g. expanding the scope of cooperation to a very broad range of offences. Consider in this context that different language versions of a future Convention may lead to slightly different interpretations and hence any ambiguity in such a matter needs to be avoided.

Commented [A28]: Criminalization of acts before the attempt stage should be limited to acts that are so inherently dangerous that such wide-reaching criminalization is necessary to protect interest of high value. This provision appears to be overly permissive in that light.

Commented [A29]: The provision lacks necessary clarity as it does not establish a maximum and could fail the proportionality requirement. Also, what would this imply for the dual criminality requirement for international cooperation/legal assistance?

Article 20 could be deleted altogether.

established in accordance with articles 6 to 16 of this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

Article 21. Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with articles 6 to 16 of this Convention liable to effective, proportionate and dissuasive sanctions that take into account the gravity of the offence.

2. Each State Party may adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to establish aggravating circumstances in relation to the offences established in accordance with articles 6 to 9 of this Convention, including circumstances that affect critical information infrastructures.

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with articles 6 to 16 of this Convention are exercised in order to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

4. Each State Party shall ensure that any person prosecuted for offences established in accordance with articles 6 to 16 of this Convention enjoys all rights and guarantees in conformity with domestic law and consistent with the obligations of the State Party under international human rights law, including the right to a fair trial and the rights of effective defence.

5. In the case of offences established in accordance with articles 6 to 16 of this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, guarantees of due process and fair trial to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

6. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

7. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with articles 6 to 16 of this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Chapter III Jurisdiction

Article 22. Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 6 to 16 of this Convention when:

Commented [A30]: The point of discretionary powers is that they are discretionary, allowing to take into account in the decision-making various, often contradictory aspects, including those that are important for the protection of rights. Imposing on States Parties that the exercise of discretion should exclusively focus on one of those aspects (effectiveness of law enforcement) would unduly restrict the discretion that's needed to reach adequate, balanced outcomes.

Commented [A31]: Revised in line with Article 14 as interpreted by Human Rights Committee in General Comment 32

Commented [A32]: Revising in line with existing formulation of rights under international human rights law

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time when the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a national of that State Party or a stateless person with habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 16, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 16, paragraph (1) (a) (i) or (ii) or (b) (i) of this Convention within its territory; or

(d) The offence is committed against the State Party.

3. For the purposes of the article on extradition of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 6 to 16 of this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that the person is one of its nationals.

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 6 to 16 of this Convention when the alleged offender is present in its territory and it does not extradite the person.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Chapter IV Procedural measures and law enforcement

Article 23. Scope of procedural measures

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this chapter for the purpose of criminal investigations or proceedings where there are reasonable grounds to believe that a criminal offence is committed or about to be committed.

2. ~~Except as provided otherwise in this Convention,~~ Each State Party shall apply the powers and procedures referred to in paragraph 1 of this article to:

Commented [A33]: What would this cover? The State Party' institutions? Infrastructure? Officials? This letter could potentially be very broad.

Commented [A34]: Compare article 3, 23 (2) and 35

Commented [A35]: This edit is intended to address the fact that none of the individual provisions on procedural measures in chapter IV have expressly established safeguards or conditions, including limitations that the measure be directly linked/limited to the investigation of a specific criminal offence. As written now, the Convention could well be read as permitting (or even requiring) various intrusive and rights-restricting procedural measures without any links to a crime, let alone specific qualification as to the gravity of the offences concerned.

As an alternative to the change to article 23(1), specific language could be included in the provisions detailing the respective powers (as had been done in articles 45(1), 46(1) and 47(1) of the CND).

(a) The criminal offences established in accordance with articles 6 to 16 of this Convention;

(b) Other serious criminal offences committed by means of [a computer system] [an information and communications technology device]; and

(c) The collection of evidence in electronic form of any serious criminal offences.

3. (a) Each State Party may reserve the right to apply the measures referred to in article 29 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in article 30. Each State Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in article 29;

(b) Where a State Party, owing to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in articles 29 and 30 to communications being transmitted within a [computer system] [information and communications technology device] of a service provider, which:

(i) Is being operated for the benefit of a closed group of users; and

(ii) Does not employ public communications networks and is not connected with another [computer system] [information and communications technology device], whether public or private;

that State Party may reserve the right not to apply these measures to such communications. Each State Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in articles 29 and 30.

Article 24. Conditions and safeguards

1. Each State Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this chapter are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights be consistent with its obligations under international human rights law, and which shall incorporate the principles of legality, necessity, proportionality.

2. Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, inter alia, include judicial or other independent authorization and review, grounds justifying application, and limitation of the scope and the duration of such power or procedure to what is necessary and proportionate for the investigation of a specific criminal offence, adequate notification and other transparency measures, accountability and access to effective remedies and confidentiality for attorney-client and other privileged communications.

3. To the extent that it is consistent with the public interest, in particular the proper administration of justice, eEach State Party shall consider the impact of the powers and procedures in this article taken in the public interest and in the administration of justice upon the

Commented [A36]: Letters (b) and (c) significantly expand the scope of offences, to which procedural measures would apply, beyond the offences to be criminalized under the Convention. Both letters could permit procedural measures under Chapter IV to be applied with regard to effectively any criminal offence that leave a digital trail, which would amount to most criminal offences today. In other words, it allows for intrusive measures such as for example real-time collection of traffic data, even for minor criminal offences. Such an approach would be overly sweeping and raises compatibility issues with necessity and proportionality requirements under international law. It would considerably go beyond what is necessary for the purpose of this convention to establish a baseline for international cooperation.

To address this issue, we recommend a reconsideration of the language to ensure a proportional application of law enforcement and procedural measures. First, we recommend limiting the scope of procedural measures in article 23(2)(b) to "serious" criminal offences. Second, letter (c) could be dropped or at least limited to "serious crimes" as well.

Commented [A37]: Unclear which systems or services are referred to in 3(b) but 3(b)(ii) seems very narrow because the overwhelming majority of systems will be somehow connected to the Internet to some extent or for some purposes. It seems like this (ii) is going to include almost everything that could otherwise have been excluded under 3(b).

Commented [A38]: The CND, aligned with the Budapest Convention used "which shall provide for the adequate protection of human rights and liberties (plus specific references)". It is regrettable that references to core human rights treaties are not included here, it is important to at least include in art. 24 legality, necessity and data protection, as well as transparency, accountability and remedies.

Moreover, we noticed that the draft would not enable States Parties to take into account the need to protect attorney-client and other privileged communications and suggest adding this key element in line with States' human rights obligations.

See Basic Principles on the Role of Lawyers, adopted on 7 September by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, principle 22, according to which "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential." For further discussion of protection of confidentiality in the attorney-client see A/71/348, paras 45-49.

Commented [A39]: Alternative to clarify that the degree of how those powers restrict human rights is a determinative factor: "nature of the procedure or power concerned, in particular the degree of the associated restrictions of human rights".

Commented [A40]: An alternative way of writing this provision that would spell out with more clarity what is needed:

"Each State Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this chapter are subject to conditions and safeguards that ensure full respect of human rights in view of the nature of the procedure or power concerned, including judicial or other independent supervision, prior judicial or other independent approval, grounds justifying application and limitation of the scope and the duration of such power or procedure, adequate notification and other transparency measures, access to effective remedies, and confidentiality for attorney-client and other privileged communications."

rights, responsibilities and legitimate interests of [individuals](#) ~~third parties~~.

Article 25. Expedited preservation of stored [computer data] [digital information]

1. Each State Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified [computer data] [digital information], including traffic data, that has been stored by means of [a computer system] [an information and communications technology device], in particular where there are grounds to believe that the [computer data are] [digital information is] particularly vulnerable to loss or modification.

2. Where a State Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored [computer data] [digital information] in the person's possession or control, the State Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that [computer data] [digital information] for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A State Party may provide for such an order to be subsequently renewed [if necessary for the purpose for which it was initially requested](#).

3. Each State Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the [computer data] [digital information] to keep confidential the undertaking of such procedures for the period of time provided for in its domestic legislation.

Article 26. Expedited preservation and partial disclosure of traffic data

Each State Party shall adopt, in respect of traffic data that are to be preserved under the provisions of the article on the expedited preservation of stored [computer data] [digital information], such legislative and other measures as may be necessary to:

(a) Ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and

(b) Ensure the expeditious disclosure to the State Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the State Party to identify the service providers and the path through which the communication or indicated information [was transmitted, subject to articles 23 and 24](#).

Article 27. Production order

Each State Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities [upon judicial authorization](#) to order:

(a) A person in its territory to submit specified [computer data] [digital information] in that person's possession or control that [are] [is] stored in [a computer system] [an information and

Commented [A41]: Article 24(3) on public interest appears to establish a problematic relationship between public interest and individual rights. The underlying rationale for public interest is not that rights should only be upheld to the extent that they are consistent with the public interest. Rather, the impact on people's rights must be fully taken into account, and restrictions are only acceptable in the public interest if they are necessary and proportionate. We recommend amending the provision so it reads: "Each State Party shall consider the impact of the powers and procedures in this article that are taken in the public interest upon the rights of individuals."

Commented [A42]: Confidentiality must have limits, transparency needs to be guaranteed and access to remedy ensured. Without transparency, and in particular notifications of the individuals affected by procedural measures access to remedy is severely impeded. We recommend therefore to include concrete limits to the confidentiality requirements, ending such requirements at least once disclosure cannot put the investigation at issue in peril This applies to this article 25(3) as well as articles 29(3) and 30(3).

Commented [A43]: The Budapest Convention corresponding article is similar but states in an additional paragraph that this is subject to arts. 14 and 15 (scope / safeguards)

communications technology device] or a [computer data] [digital information] storage medium; and

(b) A service provider offering its services in the territory of the State Party to submit subscriber information relating to such services in that service provider's possession or control, [subject to articles 23 and 24.](#)

Article 28. Search and seizure of stored [computer data] [digital information]

1. Each State Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access in the territory of that State Party:

(a) [A computer system] [An information and communications technology device], part of it, and [computer data] [digital information] stored therein; and

(b) A [computer data] [digital information] storage medium in which the [computer data] [digital information] sought may be stored.

2. Each State Party shall adopt such legislative and other measures as may be necessary to ensure that, where its authorities search or similarly access a specific [computer system] [information and communications technology device] or part of it, pursuant to paragraph 1 (a) of this article, and have grounds to believe that the [computer data] [digital information] sought is stored in another [computer system] [information and communications technology device] or part of it in its territory, and such data are lawfully accessible from or available to the initial system, such authorities shall be able to expeditiously conduct the search to obtain access to that other [computer system] [information and communications technology device].

3. Each State Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure [computer data] [digital information] in its territory accessed in accordance with paragraphs 1 or 2. These measures shall include the power to:

(a) Seize or similarly secure [a computer system] [an information and communications technology device] or part of it, or a [computer data] [digital information] storage medium;

(b) Make and retain copies of [those computer data] [that digital information] in electronic form;

(c) Maintain the integrity of the relevant stored [computer data] [digital information];

(d) Render inaccessible or remove [those computer data] [that digital information] in the accessed [computer system] [information and communications technology device].

4. [Each State Party shall adopt such legislative and other measures](#) as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the [computer system] [information and communications technology device] in question, the information and telecommunications network, or their component parts, or measures applied to protect the [computer data] [digital information] therein, to provide, as is reasonable, the necessary information to enable the undertaking of the measures referred to in paragraphs 1 to 3 of this article.

Commented [A44]: The Budapest Convention corresponding article is similar but adds reference to scope/safeguards provisions

Commented [A45]: Personal electronic devices frequently contain highly sensitive personal information not only about their user/owner but also many third parties. Search and seizure measures for such devices therefore can threaten human rights, including the right to privacy, just as severely as covert access to data on a particular individual. It is essential that the convention recognizes the need for additional robust safeguards for search and seizure of personal devices and ensures that these measures are subject to sufficient independent oversight and control.

Commented [A46]: Article 28(4) contains broad language, which goes beyond the corresponding article in the Budapest Convention, and which can be interpreted as compelling decryption or force disclosure of encryption keys, enable decryption orders and provide active assistance in decryption, and enable surveillance of various kinds. We recommend the deletion of article 28(4).

Article 29. Real-time collection of traffic data

1. Each State Party shall adopt such legislative and other measures as may be necessary and upon judicial authorization to empower its competent authorities to:

(a) Collect or record, through the application of technical means in the territory of that State Party; and

(b) Compel a service provider, within its existing technical capability:

(i) To collect or record, through the application of technical means in the territory of that State Party; or

(ii) To cooperate and assist the competent authorities in the collection or recording of;

traffic data, in real time, associated with specified communications in its territory transmitted by means of [a computer system] [an information and communications technology device].

2. Where a State Party, owing to the principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1 (a), it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means in that territory.

3. Each State Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it and only to the extent that such confidentiality needed in order not to put the investigation at peril.

4. The powers and procedures referred to in this article shall be subject to Articles 23 and 24.

Article 30. Interception of content data

1. Each State Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious criminal offences to be determined by domestic law, and upon judicial authorization to empower its competent authorities to:

(a) Collect or record, through the application of technical means in the territory of that State Party; and

(b) Compel a service provider, within its existing technical capability:

(i) To collect or record, through the application of technical means in the territory of that State Party; or

(ii) To cooperate and assist the competent authorities in the collection or recording of;

content data, in real time, of specified communications in its territory transmitted by means of [a computer system] [an information and communications technology device].

2. Where a State Party, owing to the principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1 (a), it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on

Commented [A47]: A major problem that the draft convention does not address is that real-time traffic data collection as a highly intrusive act should only be acceptable for very serious offences, as otherwise the measure is likely disproportionate.

The approach in the zero draft to only allow reservations but otherwise leave the door wide open for real-time collection of traffic data sends a problematic message and opens the door for justifying far-reaching surveillance globally. Moreover, in the case of this convention, there is no international court with binding powers to interpret police powers from a human rights perspective, this gap is highly problematic.

Commented [A48]: See comment on art. 25(3)

Commented [A49]: Inspired by the equivalent in the Budapest Convention.

Commented [A50]: This language raises concerns about the direct endorsement of direct access scenarios. See [A/HRC/39/29](#), para 18 ("Such systems of direct access are of serious concern, as they are particularly prone to abuse and tend to circumvent key procedural safeguards") and European Court of Human Rights, *Roman Zakharov v. Russia*, application No. 47143/06, judgment of 4 December 2015, para. 270.

We would recommend that 30(2) be the default - and maybe in some circumstances, (1)(a) could be permissible.



specified communications in its territory through the application of technical means in that territory.

3. Each State Party shall adopt such legislative and other measures as may be necessary to **oblige a service provider to keep confidential** the fact of the execution of any power provided for in this article and any information relating to it **if and only to the extent it is necessary that such confidentiality is needed not to put the investigation at peril.**

Commented [A51]: See comment on art. 25(3).

4. **The powers and procedures referred to in this article shall be subject to Articles 23 and 24.**

Commented [A52]: Inspired by the equivalent in the Budapest Convention.

Article 31. Freezing, seizure and confiscation of the proceeds of crime

1. Each State Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable the confiscation of:

(a) Proceeds of crime derived from offences established in accordance with articles 6 to 16 of this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with articles 6 to 16 of this Convention.

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

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

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

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

Commented [A53]: This may raise concerns if it amounts to an ex parte mechanism which would not have traditional due process or burden of proof guarantees.

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

7. For the purposes of this article and article 50 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

8. Each State Party **may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a**

requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

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

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

Article 32. Establishment of criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as, and for the purpose that, it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with articles 6 to 16 of this Convention.

Article 33. Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses who give testimony or, in good faith and on reasonable grounds, provide information concerning offences established in accordance with articles 6 to 16 of this Convention or otherwise cooperate with investigative or judicial authorities and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 34. Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation, and restitution, for victims of offences covered by this Convention.

Commented [A54]: This turns the burden of proof on its head as it suggests that the burden of proof is not placed on the police/prosecutor. Suggest deletion. If not, this provision should as a minimum include references to due process principles under international human rights law.



3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against [alleged](#) offenders in a manner not prejudicial to the rights of the defence.

4. With respect to the offences established under articles 13 to 15, each State Party shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery, in cooperation with relevant international organizations, non-governmental organizations, and other elements of civil society.

5. In applying the provisions of paragraphs 2 to 4, each State Party shall take into account the age, gender and the particular circumstances and needs of victims, including the particular circumstances and needs of children.

6. Each State Party shall, to the extent consistent with its domestic legal framework, take steps to ensure compliance with requests to remove or render inaccessible the content described in articles 13 and 15.

Chapter V International cooperation

Article 35. General principles of international cooperation

1. States Parties shall cooperate with each other in accordance with the provisions of this Convention, [including articles 23 and 24](#), as well as other applicable international instruments on international cooperation in criminal matters, and domestic laws, for the purpose of investigations, prosecutions and judicial proceedings concerning offences established in accordance with articles 6 to 16 of this Convention, or for the collection, obtaining, preservation and sharing of evidence in electronic form of offences established in accordance with articles 6 to 16 of this Convention, as well as of serious crime, [including those offences covered by article 17 of this Convention when applicable](#).

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. [When obligations or powers under this Chapter refer to a serious crime, however, it must be deemed a serious crime in both the requesting and requested State Party.](#)

Article 36. Protection of personal data

1. A State Party transferring personal data pursuant to this Convention shall do so subject to the conditions of that State Party's domestic law and applicable international law. States Parties shall not be required to transfer personal data in accordance with this Convention if it cannot be provided in compliance with their applicable laws concerning the protection of personal data. They may

Commented [A55]: A problem is that the current structure may be interpreted as if article 24 (human rights safeguards) applies only to chapter IV and not to other chapters, such as chapter V. Although "provisions of this Convention" in article 35 should be interpreted to include articles 23 and 24 on safeguards, it could be better to include them explicitly in the absence of any specific safeguards included in the chapter on international cooperation. Otherwise, it is not immediately clear that there is binding language about a responsibility to ensure compliance with human rights laws and obligations when performing activities under Chapter V. While art. 5 applies throughout the entire convention, it is far less specific than art. 23 and 24.

Commented [A56]: We read this phrase in a way that offences covered by article 17 would have to be "serious crimes" in order to trigger cooperation obligations under Chapter V (which would make the reference to article 17 unnecessary). However, we are concerned that this could be interpreted differently, in particular in future other language versions that would be deemed equally valid – thereby opening the scope of binding cooperation to all kinds of crimes.

also seek to impose conditions, in accordance with such applicable laws, to achieve compliance in order to respond to a request for personal data. States Parties are encouraged to establish bilateral or multilateral arrangements to facilitate the transfer of personal data.

2. For personal data transferred in accordance with this Convention, States Parties shall ensure that the personal data received are subject to effective and appropriate safeguards in the respective legal frameworks of the States Parties.

3. States Parties may transfer personal data obtained in accordance with this Convention to another third country or international organization only with the prior written authorization of the original transferring State Party.

Article 37. Extradition

1. This article shall apply to the criminal offences established in accordance with articles 6 to 16 of this Convention where the person who is the subject of the request for extradition is present 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 by a maximum deprivation of liberty of at least one year. When the extradition is sought for the purpose of serving a final sentence of imprisonment or another form of detention imposed in respect of an extraditable offence, the requested State Party may grant the extradition provided that, at the moment of submission of the request, a period of at least six months of the sentence remains to be served.

2. Notwithstanding paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the criminal offences established in accordance with articles 6 to 16 of this Convention that are not punishable under its own domestic law.

3. If the request for extradition includes several separate criminal offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with articles 6 to 16 of this Convention, the requested State Party may apply this article also in respect of those offences.

4. 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.

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

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

(a) At the time of deposit of their instruments of ratification, acceptance or 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 in extradition with other States Parties to this Convention; and

Commented [A57]: What situations would this cover? Articles 6-16 require criminalization in domestic law. Would this provision mean that extradition can take place prior to taking steps to implement the convention in domestic law? Or does it mean something else?



(b) If they do not take this Convention as the legal basis for cooperation in extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. 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.

8. 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.

9. 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.

10. 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 the person's presence at extradition proceedings.

11. 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 the person 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 decisions and conduct their proceedings in the same manner as in the case of any other offence of a comparable 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.

12. 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 11 of this article.

13. 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 State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. 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 and international legal obligations of the State Party in the territory of which that person is present, in line with article 21(4).

Commented [A58]: Amending in order to make consistent with article 21(4)

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, language, religion, nationality, ethnic origin or political opinion on any prohibited ground of discrimination under international human rights law, ~~or~~ that compliance with the request would cause prejudice to that person's position for any one of these reasons, that the extradition would lead to prosecution for a political offence, or that the extradition would likely lead to a violation of human rights, including procedural rights.

Commented [A59]: Note that currently the grounds listed here would represent a reduction of the protected grounds under international human rights law and offer a lower protection in violation of obligations under international human rights law as these have evolved.

It would be important to align this with the non-discrimination grounds established under international human rights law. We could make a general reference here "on account of that person's sex, ..., or any other prohibited ground of discrimination under international human rights law".

Otherwise, extradition could not be rejected, for example, if a prosecution for sexual orientation, gender identity, etc. is at issue, which would risk enabling serious human rights violations.

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

17. 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.

18. The requested State Party shall inform the requesting State Party of its decision with regard to the extradition, including any reason for refusal of extradition.

19. Each State Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the secretariat the name and address of an authority responsible for making or receiving requests for extradition or provisional arrest. The secretariat shall set up and keep updated a register of authorities so designated by the States Parties. Each State Party shall ensure that the details held in the register are correct.

20. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 38. 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 in accordance with articles 6 to 16 of this Convention, in order that they may complete their sentences there.

Article 39. Transfer of criminal proceedings

1. States Parties shall consider the possibility of transferring to one another proceedings for the criminal prosecution of an offence established in accordance with articles 6 to 16 of this Convention where such a transfer is deemed to be in the interests of the proper administration of justice, particularly in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

2. If a State Party that makes the transfer of criminal proceedings conditional on the existence of a treaty receives a request for transfer from another State Party with which it has no treaty in this matter, it may consider this Convention as the legal basis for the transfer of



criminal proceedings in respect of any offence to which this article applies.

*Article 40. General principles and procedures
relating to mutual legal assistance*

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences established in accordance with articles 6 to 16 of this Convention, and for the purposes of the collection of evidence in electronic form of offences established in accordance with articles 6 to 16 of this Convention, as well as of serious crimes, including those offences covered by article 17 of this Convention when applicable.
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 judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 18 of this Convention in the requesting State Party.
3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:
 - (a) Taking evidence or statements from persons;
 - (b) Effecting service of judicial documents;
 - (c) Executing searches and seizures, and freezing;
 - (d) Searching or similarly accessing, seizing or similarly securing, and disclosing data stored by means of [a computer system] [an information and communications technology device] pursuant to article 44;
 - (e) Collecting real-time traffic data pursuant to article 45;
 - (f) Intercepting content data pursuant to article 46;
 - (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) Recovering proceeds of crime;
 - (m) Any other type of assistance that is not contrary to the domestic law of the requested State Party.
4. ~~Without prejudice to domestic law,~~ Subject to the provisions and procedures of 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~~ investigations and criminal



proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 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 prior to the disclosure and, if so requested, consult with the transmitting State Party. 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.

6. The provisions of this article shall not affect obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 8 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 on 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 8 to 30 of this article in lieu thereof. States Parties are strongly encouraged to apply the provisions of those paragraphs if they facilitate cooperation.

8. States Parties ~~may shall~~ decline to render 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.

Commented [A60]: Which ones would that be?

9. A person who is being detained or is serving a sentence in the territory of one State Party and whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences established under this Convention may be transferred if the following conditions are met:

- (a) The person freely gives informed consent;
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

10. For the purposes of paragraph 9 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 the person was transferred for time spent in the custody of the State Party to which the person was transferred.

11. Unless the State Party from which a person is to be transferred in accordance with paragraphs 9 and 10 of this article so agrees, that person, regardless of the person's nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to the person's departure from the territory of the State from which the person was transferred.

12. (a) Each State Party shall designate a central authority or authorities that shall have the responsibility and power to send and 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;

(b) 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;

(c) The secretariat 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, and shall set up and keep updated a register of central authorities designated by the States Parties. Each State Party shall ensure that the details held in the register are correct at all times;

(d) 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.

13. 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 secretariat 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.



14. Where not prohibited by their respective laws, central authorities of States Parties are encouraged to transmit and receive requests for mutual legal assistance, and communications related thereto, as well as evidence, in electronic form under conditions allowing the requested State Party to establish authenticity and ensuring the security of communications.

15. 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 judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;
- (e) Where possible and appropriate, the identity, location and nationality of any person, item or accounts concerned; and
- (f) The time period and purpose for which the evidence, information or other assistance is sought.

16. 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.

17. 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.

18. 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 videoconference 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. If the requested State Party does not have access to the technical means necessary for holding a videoconference, such means may be provided by the requesting State Party, upon mutual agreement.

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

Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may in situations where disclosure would put an investigation or proceeding in peril 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.

21. 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; if there are reasonable grounds to believe that (i) the criminal offence will be treated as a political offence by the requesting State or (ii) lead to a violation of international human rights;

(c) If the authorities of the requested State Party would be prohibited not be authorized by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

22. 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.

23. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

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 the status, and progress in 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 judicial proceeding.

27. Before refusing a request pursuant to paragraph 21 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 11 of this article, a witness, expert or other person who, at the request of the

Commented [A61]: This is a key provision, ensuring that States do not have to comply with demands that would go against international human rights law. At the same time, it would be preferable if this article made clear references to human rights harms, and political offences, etc.

We suggest the following language:

"International cooperation and mutual legal assistance shall be refused if (a) there are reasonable grounds to believe that the criminal offence will be treated as a political offence by the requesting State; (b) there are reasonable grounds to believe that the cooperation or assistance will result in a violation of human rights; (c) 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; the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, or ordre public."

Commented [A62]: It appears preferable to replace "prohibited" with "would not be authorized" to capture situations where there might not be an express prohibition but it is clear from the legal system that express authorization is needed (for example under the law for real-time communications surveillance).

requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of the person's liberty in that territory in respect of acts, omissions or convictions prior to the person's 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 the person has been officially informed that the presence of the person is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of the person's 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 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, subject to the right to privacy and data protection principles.

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.

Article 41. 24/7 network

1. Each State Party shall designate a point of contact available 24 hours a day, 7 days a week, in order to ensure the provision of immediate assistance for the purpose of investigations, prosecutions or judicial proceedings concerning offences established in accordance with articles 6 to 16 of this Convention, or for the collection, obtaining, preservation and sharing of evidence in electronic form of offences established in accordance with articles 6 to 16 of this Convention, as well as of serious crime, including those offences covered by article 17 of this Convention when applicable.

2. The secretariat shall be notified of such point of contact and keep an updated register of points of contact designated for the purposes of this article.

3. Such assistance shall include facilitating or, if permitted by the domestic law and practice of the requested State Party, directly carrying out the following measures:

(a) The provision of technical advice;

Commented [A63]: Should consider privacy and data protection issues here, not just "at its discretion"

Commented [A64]: It would be appropriate to add a requirement about security and authentication (even if only clarifying that the communications should be secured and authenticated by technical means).

(b) The preservation of stored [computer data] [digital information] pursuant to articles 42 and 43;

(c) The collection of evidence, the provision of legal information and the locating of suspects; or

(d) The provision of [computer data] [digital information] to avert an emergency.

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

5. Each State Party shall ensure that trained and equipped personnel are available to ensure the operation of the 24/7 network.

6. States Parties may also use and strengthen existing authorized networks of points of contact, where applicable, and within the limits of their domestic laws, including the 24/7 networks for computer-related crime of the International Criminal Police Organization for prompt police-to-police cooperation and other methods of information exchange cooperation.

*Article 42. Expedited preservation of stored
[computer data] [digital information]*

1. A State Party may request another State Party to order or otherwise obtain the expeditious preservation of data stored by means of [a computer system] [an information and communications technology device], 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 in 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 an investigation or judicial proceedings and a brief summary of the related facts;

(c) The stored [computer data] [digital information] to be preserved and their relationship to the offence;

(d) Any available information identifying the custodian of the stored [computer data] [digital information] or the location of the [computer system] [information and communications technology device];

(e) The necessity of the preservation, [and the underlying facts and evidence justifying preservation](#);

(f) That the requesting State Party intends to submit a request for mutual legal assistance in the search or similar access, seizure or similar securing, or disclosure of the stored [computer data] [digital information];

(g) As appropriate, the need to keep the request for preservation confidential and not to 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 for providing such preservation.

4. A State Party that requires dual criminality as a condition for responding to a request for mutual legal assistance in the search or similar access, seizure or similar securing, or disclosure of stored [computer data] [digital information] may, in respect of offences other than those established in accordance with 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 could not be fulfilled.

5. A request for preservation may be refused on the basis of the grounds contained in article 40, paragraph 21.

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 a request made pursuant to paragraph 1 shall be for a period of not more 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 the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

8. Before the expiry of the preservation limit in paragraph 7, the requesting State Party may request an extension of the period of preservation, for not more than ninety additional days.

Article 43. Expedited disclosure of preserved traffic data

1. Where, in the course of the execution of a request made pursuant to article 42 to preserve traffic data concerning a specific communication, the requested State Party discovers that a service provider in another State Party was involved in the transmission of the communication, the requested State Party shall, upon judicial or other independent authorization, expeditiously disclose to the requesting State 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 be refused on the basis of the grounds contained in article 40, paragraph 21.

Article 44. Mutual legal assistance in accessing stored [computer data] [digital information]

1. A State Party may request another State Party, upon judicial authorization, to search or similarly access, seize or similarly secure, and disclose data stored by means of [a computer system] [an information and communications technology device] located within the territory of the requested State Party and that is necessary to obtain

Commented [A65]: States made the argument in the negotiations that dual criminality should not be a condition because preservation is not the same as prosecution. The language here is similar to the Budapest Convention 29(3) but would be better deleted since preservation is already an act that interferes with the rights of the person concerned.

Commented [A66]: The equivalent in the Budapest Convention also allows refusal for a political offence. This would be covered if the suggested amendments in article 40(21) are included

Commented [A67]: The Budapest Convention art 30 also includes: may be refused for a political offence. This would be included if the suggested amendments in article 40(21) are included.

Commented [A68]: There is a considerable gap here in terms of safeguards, unlike previous articles. Why are there no grounds required? No formalities? Article 44 does not require any grounds and does not provide for any formalities. It would be necessary to add those.

for the purpose of investigation of a specific criminal offence, including data that have been preserved pursuant to article 42.

2. The requested State Party shall respond to the request through the application of relevant international instruments, arrangements and laws referred to in article 35, 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 the relevant data are particularly vulnerable to loss or modification; or

(b) The instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited cooperation.

Article 45. Mutual legal assistance in the real-time collection of traffic data

1. States Parties shall provide mutual legal 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] [an information and communications technology device]. Subject to the provisions of paragraph 2, such 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 serious criminal offences for which the real-time collection of traffic data would be available in a similar domestic case.

3. A request made in accordance with paragraph 1 of this article shall specify:

(a) The name of the requesting authority;

(b) A summary of the main facts and the nature of the investigation, prosecution or judicial proceeding to which the request relates;

(c) The [computer data] [digital information] in relation to which the collection of the traffic data is required and their relationship to the offence or other illegal act;

(d) Any available data that identify the owner or user of the data or the location of the [computer system] [information and communications technology device];

(e) Justification for the need to collect the traffic data;

(f) The period for which traffic data are to be collected and a corresponding justification of its duration.

Article 46. Mutual legal assistance in the interception of content data

States Parties shall provide mutual legal assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of [a computer system] [an information and communications technology device], to the extent permitted under treaties applicable to them and under their domestic laws.

Article 47. Law enforcement cooperation

Commented [A69]: We welcome this cautious approach, meaning that under the convention itself there will not be an obligation for mandatory assistance in this form of surveillance, but that separate bilateral agreements would have to be concluded. This enables States Parties to establish rights protective collaboration frameworks or refrain from such collaborations if deemed problematic.

Commented [A70]: This provision needs to include human rights safeguards, otherwise this provision reads like an open-ended law enforcement cooperation that is less based on specific requests or investigations, and may not involve written requests with formal justifications. This article seems to potentially include much more informal cooperation and much more informal exchange of personal data about people.

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 ~~specific criminal the~~ offences covered by this Convention. States Parties shall, in particular, take 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 covered by 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 covered by 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 movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or data for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit the offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities, as well as [cybercrime] tactics, techniques and procedures [associated with the use of information and communications technologies for criminal purposes];

(e) 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;

(f) To exchange information and coordinate administrative and other measures taken, as appropriate, for the purpose of early identification of the offences covered by 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 States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by 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.

Commented [A71]: The wording "rapid" exchange of information can be used to justify very informal exchanges and not based on explicit justifications or standards, and which may not generate any paper trail and hence not subject to any oversight. Can raise serious transparency/oversight/accountability/remedy concerns.

Article 48. 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 judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may 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 investigations are to take place is fully respected.

Article 49. Mechanisms for the recovery of property through international cooperation in confiscation

1. Each State Party, in order to provide mutual legal assistance pursuant to article 50 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with articles 6 to 16 of this Convention, 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) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the [alleged](#) 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 article 50, paragraph 2, 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 the purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize 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.



Article 50. 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 in accordance with articles 6 to 16 of this Convention for the confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, 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 31, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with articles 6 to 16 of 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 31, 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 40 are applicable, *mutatis mutandis*, to this article. In addition to the information specified in article 40, 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 secretariat.

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 also be refused or provisional measures may be lifted if the requested State Party does 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 as prejudicing 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.

Article 51. Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with articles 6 to 16 of this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under article 50 of the Convention.

Article 52. Return and disposal of confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to article 31 or 50 of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on a request made by another State Party in accordance with article 50 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their prior legitimate owners.

3. When acting on a request made by another State Party in accordance with articles 31 and 50 of this Convention, a State Party may, after due consideration has been given to compensation of victims, give special consideration to concluding agreements or arrangements on:

(a) Contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds of crime or property or a part thereof to the account designated in accordance with article 56, paragraph 2 (c), of this Convention, and to intergovernmental bodies specializing in the fight against [cybercrime] [the use of information and communications technologies for criminal purposes];

(b) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic law or administrative procedures.

Chapter VI Preventive measures

Article 53. Preventive measures

1. Each State Party shall endeavour, in accordance with fundamental principles of its legal system, to develop and implement or maintain effective and coordinated policies and best practices to reduce existing or future opportunities for [cybercrime] [the use of information and communications technologies for criminal purposes] through appropriate legislative, administrative or other measures.

2. 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, groups and stakeholders outside the public sector, such as non-governmental organizations, civil society organizations, academic institutions and the private sector, as well as the public in general, in the prevention of the offences covered by this Convention.

3. Preventive measures may include:

(a) Strengthening cooperation between law enforcement agencies or prosecutors and relevant stakeholders for the purpose of preventing and combating the offences covered by this Convention;

(b) Promoting public awareness regarding the existence, causes and gravity of the threat posed by the offences covered by this Convention through public information activities, public education, media and information literacy programmes and curricula that promote public participation in preventing and combating such offences and contribute to its non-tolerance;

(c) Building and making efforts to increase the capacity of domestic criminal justice systems, including training and developing expertise among criminal justice practitioners, as part of national prevention strategies against the offences covered by this Convention;

(d) Developing, facilitating and promoting programmes and activities in order to discourage those at risk of engaging in [cybercrime] [offences committed with the use of information and communications technologies] from becoming offenders and to develop their skills in a lawful manner;

(e) Endeavouring to promote the reintegration into society of persons convicted of offences covered by this Convention;

(f) Developing strategies and policies to prevent and eradicate gender-based violence that occurs through or is amplified by the use of information and communications technologies, taking into consideration the special circumstances and needs of persons in vulnerable situations;

(g) Undertaking specific and tailored efforts to ~~keep-protect the rights of children -safe~~ online, including through education and training on and raising public awareness of child sexual abuse or child sexual exploitation online ~~and through revising domestic legal frameworks and international agreements aimed at its prevention~~, as well as making efforts to guarantee the immediate removal of child sexual abuse and exploitation material;

(h) Enhancing the transparency of and promoting the contribution of the public to decision-making processes and ensuring that the public has adequate access to information;

(i) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning [cybercrime] [the use of information and communications technologies for criminal purposes];

(j) Developing or strengthening support programmes for victims of the offences covered by this Convention;

(k) Preventing and detecting transfers of proceeds of crime and property related to the offences established in accordance with articles 6 to 16 of this Convention.

4. Each State Party shall take appropriate measures to ensure that the relevant competent authority or authorities responsible for preventing and combating [cybercrime] [the use of information and communications technologies for criminal purposes] are known and accessible to the public, where appropriate, for the reporting, including anonymously, of any incident that may be considered a criminal offence covered by this Convention.

5. States Parties shall endeavour to periodically evaluate existing relevant national legal frameworks and administrative practices with a view to identifying gaps and vulnerabilities and ensuring their relevance in the face of changing threats posed by the offences covered by this Convention.

6. States Parties may collaborate with each other and with 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] [offences committed with the use of information and communications technologies].

7. Each State Party shall inform the secretariat of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures to prevent [cybercrime] [the use of information and communications technologies for criminal purposes].

Commented [A72]: We are concerned that such an obligation to revise domestic and international law could lead to new overbroad regulations of expression online and potential restrictions on encryption or scanning of private communications ... Although "revising [...] legal frameworks" might grant some flexibility concerning the means, the word "guarantee" could be read as a very strict obligation to achieve certain outcomes that could not be reached without blocking and removing large swaths of legitimate expression.

Chapter VII

Technical assistance and information exchange



Article 54. Technical assistance and capacity-building

1. States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance and capacity-building, including training and other forms of assistance, the mutual exchange of relevant experience and specialized knowledge and, where possible, the transfer of technology on mutually agreed terms, with a view to facilitating the prevention, detection, investigation and prosecution of the offences covered by this Convention.
2. States Parties shall, to the extent necessary, initiate, develop, implement or improve specific training programmes for their personnel responsible for the prevention, detection, investigation and prosecution of the offences covered by this Convention.
3. Activities referred to in paragraphs 1 and 2 of this article may include, to the extent permitted by domestic law, the following:
 - (a) Methods and techniques used in the prevention, detection, investigation and prosecution of the offences covered by this Convention;
 - (b) Building capacity in the development and planning of strategic policies and legislation to prevent and combat [cybercrime] [offences committed with the use of information and communications technologies];
 - (c) Building capacity in the collection, preservation and sharing of evidence, in particular in electronic form, including the maintenance of the chain of custody and forensic analysis;
 - (d) Modern law enforcement equipment and the use thereof;
 - (e) Training of competent authorities in the preparation of requests for mutual legal assistance and other means of cooperation that meet the requirements of this Convention, especially for the collection, preservation and sharing of evidence in electronic form;
 - (f) Prevention, detection and monitoring of the movements of proceeds deriving from the commission of the offences covered by this Convention, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities;
 - (g) Appropriate and efficient legal and administrative mechanisms and methods for facilitating the seizure and return of proceeds of offences covered by this Convention;
 - (h) Methods used in the protection of victims and witnesses who cooperate with judicial authorities;
 - (i) Training in relevant substantive and procedural law, and law enforcement investigation powers, as well as in national and international regulations and in languages.
4. States Parties shall endeavour to leverage the expertise of and cooperate closely with other States Parties, relevant non-governmental organizations, civil society organizations, academic institutions and the private sector, with a view to enhancing the effective implementation of this Convention.
5. 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 3 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.

6. States Parties shall consider assisting one another, upon request, in conducting evaluations, studies and research relating to the types, causes and effects of offences covered by this Convention committed in their respective territories, with a view to developing, with the participation of the competent authorities and relevant stakeholders, including civil society and the private sector, strategies and action plans to prevent and combat [cybercrime] [the use of information and communications technologies for criminal purposes].

7. States Parties shall promote training and technical assistance that facilitates timely extradition and mutual legal assistance. Such training and technical assistance may include language training, assistance with the drafting and handling of mutual legal assistance requests, and secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

8. States Parties are encouraged to 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.

9. States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries to implement this Convention through technical assistance programmes and capacity-building projects.

10. Each State Party shall consider making voluntary contributions to the United Nations Office on Drugs and Crime for the purpose of fostering, through the Office, programmes and projects with a view to implementing this Convention through technical assistance and capacity-building.

Article 55. Exchange of information

1. Each State Party shall consider analysing, in consultation with relevant experts, including relevant non-governmental organizations, civil society organizations, academic institutions and the private sector, trends in its territory with respect to offences covered by this Convention, as well as the circumstances in which such offences are committed.

2. States Parties shall consider developing and sharing with each other and through international and regional organizations statistics, analytical expertise and information concerning [cybercrime] [offences committed with the use of information and communications technologies], with a view to developing, insofar as possible, common definitions, standards and methodologies, including best practices to prevent and combat such offences.

3. Each State Party shall consider monitoring its policies and practical measures to prevent and combat offences covered by this Convention and making assessments of their effectiveness and efficiency.

4. States Parties shall consider exchanging information on legal, policy and technological developments related to [cybercrime]

[offences committed with the use of information and communications technologies] and the collection of evidence in electronic form.

Article 56. Implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of the offences covered by this Convention on society in general and, in particular, on sustainable development.
2. States Parties are strongly encouraged to make concrete efforts, to the extent possible and in coordination with each other, as well as with international and regional organizations:
 - (a) To enhance their cooperation at various levels with other States Parties, in particular developing countries, with a view to strengthening their capacity to prevent and combat the offences covered by this Convention;
 - (b) To enhance financial and material assistance to support the efforts of other States Parties, in particular developing countries, in effectively preventing and combating the offences covered by this Convention and to help them to implement this Convention;
 - (c) To provide technical assistance to other States Parties, in particular developing countries, in support of meeting their needs regarding the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism;
 - (d) To encourage civil society, including academia, the media, non-governmental organizations, international organizations, financial institutions and the private sector, as appropriate, to contribute to the efforts of States Parties, 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;
 - (e) To exchange best practices and information with regard to activities undertaken, with a view to improving transparency, avoiding duplication of effort and making best use of any lessons learned.
3. States Parties shall also consider using existing subregional, regional and international programmes, including conferences and seminars, to promote cooperation and technical assistance and to stimulate discussion on problems of mutual concern, including the special problems and needs of developing countries.
4. To the extent possible, States Parties shall ensure that resources and efforts are distributed and directed to support the harmonization of standards, skills, capacity, expertise and technical capabilities with the aim of establishing common minimum standards among States Parties to eradicate safe havens for the offences covered by this Convention and strengthen the fight against [cybercrime] [the use of information and communications technologies for criminal purposes].
5. To the extent possible, the measures taken under this article shall be without prejudice to existing foreign assistance commitments or to

other financial cooperation arrangements at the bilateral, regional or international levels.

6. States Parties may conclude bilateral, regional 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, investigation and prosecution of the offences covered by this Convention.

Chapter VIII Mechanism of implementation

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 its implementation.

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

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the activities set forth in this article, including rules concerning the admission and participation of ~~observers~~ multi-stakeholders and civil society organizations, and the payment of expenses incurred in carrying out those activities. Such rules and related activities shall take into account principles such as effectiveness, inclusivity, transparency, efficiency and national ownership.

4. In establishing its regular meetings, the Conference of the States Parties shall take into account the time and location of the meetings of other relevant international and regional organizations and mechanisms in similar matters, including their subsidiary treaty bodies, consistent with the principles identified in paragraph 3 of this article.

5. 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 the effective use and implementation of this Convention, the identification of any problems thereof, as well as the activities carried out by States Parties under this Convention, including encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information on legal, policy and technological developments pertaining to the offences covered by this Convention and the collection of evidence in electronic form among States Parties and relevant stakeholders, as well as on patterns and trends in [cybercrime] [the use of information and communications technologies for criminal purposes] and on successful practices for preventing and combating such offences;

(c) Cooperating and facilitating regular exchange with ~~relevant~~ international and regional organizations, as well as non-

Commented [A73]: Currently the Convention contains only a weak commitment to participation/multistakeholder principles. It would be important to strengthen the minimum here as it will be the main entry point for meaningful human rights accountability in the implementation of the convention.



governmental organizations, civil society organizations, academic institutions and the private sector;

(d) Making appropriate use of relevant information [and recommendations](#) produced by other international and regional organizations and mechanisms for preventing and combating the offences covered by this Convention, in order to avoid unnecessary duplication of work;

(e) Reviewing periodically the implementation of this Convention by its States Parties;

(f) Making recommendations to improve this Convention and its implementation as well as considering possible supplementation or amendment of the Convention;

(g) Elaborating and adopting supplementary protocols to this Convention on the basis of article 61;

(h) Taking note of the technical assistance and capacity-building requirements of States Parties regarding the implementation of this Convention and recommending any action it may deem necessary in that respect.

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

7. For the purpose of paragraph 5 of this article, the Conference of the States Parties may establish and administer such review mechanisms as it considers necessary to supplement the information provided by States Parties and relevant stakeholders in accordance with paragraph 6 of this article.

8. Pursuant to paragraphs 5 to 7 of this article, the Conference of the States Parties shall establish, if it deems necessary, any appropriate mechanisms or subsidiary bodies to assist in the effective implementation of the Convention.

Article 58. Secretariat

1. The United Nations Office on Drugs and Crime shall provide the necessary secretariat services to the Conference of the States Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in this Convention and make arrangements and provide the necessary services for the sessions of the Conference as they pertain to this Convention;

(b) Upon request, assist States Parties in providing information to the Conference of the States Parties, as envisaged in this Convention; and



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

Chapter IX Final provisions

Article 59. 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 the offences covered by this Convention.~~ Subjects to its obligations under international human rights law.

Commented [A74]: Amendment would bring into line with article 5 and 60(2)

Article 60. Effects of the Convention

1. If two or more States Parties have already concluded an agreement or treaty on the matters dealt with in this Convention or have otherwise established their relations on such matters, or should they in future do so, they shall also be entitled to apply that agreement or treaty or to regulate those relations accordingly. However, where States Parties establish their relations in respect of the matters dealt with in the present Convention other than as regulated therein, they shall do so in a manner that is not inconsistent with the objectives and principles of this Convention.

2. Nothing in this Convention shall affect other rights, restrictions, obligations and responsibilities of a State Party under international law.

Article 61. Relation with protocols

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 62. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation or any other peaceful means of their own choice.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation or other peaceful means 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.

Article 63. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [date] to [date] in [city], [country], and thereafter at United Nations Headquarters in New York until [date].

2. This Convention shall also be open for signature by regional economic integration organizations, provided that at least one member State of such an 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.

Article 64. 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 that 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 or on the date on which this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.

Article 65. Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and transmit it to the secretariat, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference 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.
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 that have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

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 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.

Article 67. Depositary 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.

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