



CCG-NLU Delhi contribution to the Fifth Session of UN Ad-Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communication Technologies for Criminal Purposes

The Centre for Communication Governance at the National Law University, Delhi, India welcomes the opportunity to submit its comments for the fifth session of the UN Ad-Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communication Technologies for Criminal Purposes. CCG-NLUD appreciates the Chair, the Secretariat, and staffers for their critical work and efforts in enabling broader stakeholder participation that allows a greater exchange of information and ideas between disparate actors operating in the global ICT ecosystem. In this document, we aim to offer our recommendations on provisions for ***International Cooperation***.

Agenda Item IV: International Cooperation.

1. Cluster 1 (Article 56-57):

We are appreciative of the inclusion of overarching principles on international cooperation under Article 56 of the Negotiating Document that broadly outlines the scope and objective of international cooperation and recognises that power and procedure outlined under the Chapter are subject to conditions and safeguards provided under Article 42. We are also in support of the inclusion of Article 57 of the Negotiating Document that lays down explicit obligations on the State Party in relation to the protection of personal data.

However, in our understanding, in context of Article 56 para 1, the principle of reciprocity should be replaced with the requirement of dual criminality as it ensures that conduct

underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties. In extension to this, we also propose to strike off the term “wherever” before dual criminality presently mentioned under Article 56 para 3.

Furthermore, we would like to submit that given that the powers and procedure laid down under the Chapter on international cooperation are highly interfering and intrusive, the scope of the given chapter should be strictly restricted to offences criminalised under the convention.

2. Cluster 2 (Article 58: Extradition):

In relation to Article 58 of the Negotiating Document, we are of the opinion that the provision on extradition should apply only in case of “serious crimes” that include offences punishable by maximum deprivation of liberty of at least four years or a more serious penalty as defined under United Nations Convention Against Transnational Organized Crime (UNTOC). We, therefore, propose in favour of modification of Article 58 (a) to reflect the requested changes. In respect to Article 58 (14) of the Convention that obligates the State parties to ensure fair treatment at all stages of the proceedings to the person subjected to extradition-related proceedings, we strongly believe that the said obligation can be strengthened by explicit reference to the United Nations International Covenant on Civil and Political Rights (UN ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3. Cluster 5 (Article 75-78):

Article 76 para 2 of the text lays down an obligation on the State Parties to develop guidelines in relation to the format and duration of preservation of digital evidence and information for service providers in assisting law enforcement agencies in the investigation of cybercrime. In our understanding, said provision should not result in data retention for indefinite periods and should not unnecessarily interfere with the data minimisation efforts of service providers. We are also of the view that such guidelines should ensure full respect for human rights and other fundamental freedoms and incorporate ex ante procedures that require independent judicial authorisation, provision for adequate and timely notice to users, measures that are strictly necessary and proportionate to stated aims and an efficient mechanism for redressal, appeal, and review. In relation to provisions elaborating on Joint Investigations (Article 77) and Special

Investigative Techniques (Article 78), we propose for explicit reference to international human rights obligations” or “applicable human rights instruments”. In our understanding, reference to international human rights and other legal instruments would act as necessary safeguards for protection of human rights and other fundamental freedoms.