

DRAFT

**UNITED NATIONS CONVENTION
ON COOPERATION IN COMBATING
INFORMATION CRIMES**

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Preamble

The States Parties to this Convention, hereinafter the States Parties,

Being concerned about the seriousness of problems and threats posed by crimes in the sphere of information and communications technologies (hereinafter the ICT) to the stability and security of society, which undermine democratic institutions and values, ethical values and justice and frustrate sustainable development and the rule of law;

Being also concerned about the fact that the criminal misuse of ICT offers broad opportunities to carry out other forms of criminal activities, including money laundering;

Being concerned further about cases of ICT crimes that involve large amounts of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States;

Being convinced that ICT crimes are a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and combat them essential;

Being convinced also that the technological levels of information and telecommunications systems of the States Parties should be aligned through the provision of technical assistance that plays an important role in enhancing the capacities of States in the field of effectively preventing crimes and raising the level of information security;

Being determined to prevent, detect and suppress in a more effective manner international transfers of assets illicitly acquired as a result of committing ICT crimes and to strengthen international cooperation in asset recovery;

Bearing in mind that the prevention and eradication of ICT crimes is a responsibility of all States and that they must cooperate with one another to

ensure effectiveness of their efforts in this field, with the support and involvement of individuals and groups outside the public sector, such as civil society, as overall security of the entire information environment depends on the efforts of each State;

Being convinced that information environment should be built in strict accordance with the universally acknowledged principles and norms of international law;

Bearing in mind that each State has sovereignty and exercises jurisdiction with regard to information environment over its territory in accordance with its national law;

Bearing also in mind the principles of fairness, responsibility and equality before the law and the need to foster a culture of rejection of ICT crimes;

Have agreed as follows:

CHAPTER I. GENERAL PROVISIONS

Article 1. Purposes

The purposes of this Convention shall be as follows:

- a) to promote and strengthen measures aimed at effectively preventing and combating crimes and other unlawful acts in the field of ICT;
- b) to prevent action directed against the confidentiality, integrity and availability of ICT as well as the misuse of ICT by providing for the punishability of such acts, as described in this Convention, and by providing powers sufficient for effectively combating such crimes and other unlawful acts, by facilitating their detection, investigation and prosecution at both the domestic and international levels and by developing arrangements for international cooperation;
- c) to improve the efficiency and develop international cooperation, including in the context of training and providing technical assistance in preventing and combating ICT crimes.

Article 2. Scope of application

1. This Convention shall apply, in accordance with its provisions, to the prevention, investigation and prosecution of the offences and other unlawful acts established in accordance with Articles 6-17 of this Convention as well as implementation of measures to detect, deter and eliminate the consequences of such acts, including suspension of operations related to assets as a result of committing any offence and other unlawful acts established under this Convention, seizure, confiscation and return of the proceeds from such crimes.

2. For the purposes of implementing this Convention, it shall not be necessary, except as otherwise stated herein, for the offences and other unlawful acts set forth in it to result in damage.

Article 3. Protection of sovereignty

1. The States Parties shall carry out their obligations under this Convention in accordance with the principles of state sovereignty, sovereign equality of States and non-intervention in the domestic affairs of other States.

2. This Convention shall not entitle a State Party to exercise in the territory of another State the jurisdiction and functions that are reserved exclusively for the authorities of that other State in accordance with its domestic law.

Article 4. Terms and definitions

For the purposes of this Convention:

"Seizure of property" shall mean temporary prohibition of transfer, conversion, disposition or movement of property or temporary assumption of custody or control of property on the basis of an order issued by a court or other competent authority;

"Botnet" shall mean two or more ICT devices with malicious software downloaded which is managed centrally and without users' knowledge;

"Malicious software" shall mean software which is objectively characterized by unauthorized modification, destruction, copying, information denial, or neutralization of software used to secure information;

"Child pornography" shall be defined in accordance with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 25 May 2000;

"Proceeds" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence and other unlawful act provided for by this Convention and domestic law;

"Property" shall mean assets of every kind, whether movable or immovable, tangible or intangible, and documents or information evidencing title to such assets or to their part;

"Information" shall mean any data (messages, records) regardless of the form they are presented in;

"Confiscation" shall mean mandatory gratuitous deprivation of property by order of a court or other competent authority;

"Critical infrastructure facilities" shall mean facilities, systems and institutions of the state which conduct their activities in the interests of the state, national defense or security, including individual security;

"Organized criminal group" shall mean a structured group composed of two or more persons existing during a certain time period and acting in coordination with a view to committing one or more offences established under this Convention;

"Service provider" shall mean (a) any public or private entity that provides to users of its services the ability to share information through ICT, and (b) any other entity that processes or stores electronic information on behalf of the entity referred to in paragraph (a) or users of such entity;

"SPAM" shall mean delivery of electronic messages on the address list (data base) to those who do not communicate the sending party their addresses for message delivery and do not give their consent to be sent such messages and are unable to deny the delivery of such messages from the sending party;

"Technical parameters of traffic" shall mean any electronic information (excluding the contents of the transferred data) related to transfer of data through ICT and indicating, in particular, the source, destination, route, time, date, amount, duration, type of appropriate network service;

"ICT device" shall mean a set (complex) of technical means used/designed for automated processing and storage of electronic information.

CHAPTER 2. CRIMINALISATION AND LAW ENFORCEMENT

Section 1. ESTABLISHMENT OF LIABILITY

Article 5. Establishment of liability

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law the acts provided for in Articles 6-12, 15, 18 and 19 of this Convention while applying such criminal and other penalties, including imprisonment, that take into account the degree of public danger of a specific offence and the amount of the damage caused.

2. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law intentional the acts provided in Articles 13, 14, 16 and 17 of this Convention if they were committed illegally and intentionally.

3. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence under its domestic law the acts provided for in Articles 6, 8, 9, 10 and 15 of this Convention if they were committed illegally and intentionally against ICT devices of the critical infrastructure facilities.

4. Each State Party shall ensure that legal persons held liable under Article 20 of this Convention are subject to effective, proportionate and dissuasive sanctions, including monetary sanctions.

5. Without prejudice to the norms of the international common law, this Convention does not exclude the possibility of performing any criminal jurisdiction established in accordance with its domestic law.

Article 6. Unauthorized access to electronic information

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law intentional unauthorized access to electronic information.

Article 7. Unauthorized interception

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law intentional interception of electronic information, carried out without appropriate rights and/or in violation of the established rules, using technical means of interception of technical parameters of the traffic and data processed using ICT which are not intended for public use.

Article 8. Unauthorized impact on data

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law intentional unauthorized modification, blocking, destruction or copying of electronic information.

Article 9. Disruption of ICT operation

1. Each State Party shall adopt legislative and other measures as are necessary to recognize as an offence or another unlawful act in accordance with its domestic law intentional unlawful act aimed at disrupting ICT operation.

Article 10. Creation, utilization and distribution of malicious software

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law the intentional creation, utilization and distribution of malicious software, except for the research purposes.

2. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law the creation or utilization of a botnet for the purposes of committing any of the acts provided for by the provisions of Articles 6-10 of this Convention.

Article 11. Distribution of spam

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence and another unlawful act under its domestic law the distribution of spam.

Article 12. Unauthorized trafficking in devices

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law an illegal manufacture, sale, purchase for use, import, export of other forms of transfer for use of devices designed or adapted primarily for the purposes of committing any of the offences provided for by the provisions of Articles 6-9 of this Convention.

Article 13. ICT-Related theft

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence and another unlawful act under its domestic law an intentional theft of property by means of copying, modifying, deletion or suppression of electronic information or other interference with the ICT operation.

2. Each State Party may reserve the right to consider ICT-related theft an aggravating circumstance when committing theft in forms defined in the domestic law.

Article 14. Offences related to child pornography

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence under its domestic law the production, possession, procurement and processing of child pornography in electronic form, as well as its distribution.

Article 15. Phishing-related offences

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic law the creation and use of electronic information similar to the point of

confusion to the data already known and trusted by a user for illegitimate purposes.

2. Each State Party may reserve the right to consider such acts criminal if they were committed together with other offences under the domestic law of that State Party or involved the intent to commit these offences.

Article 16. Offences related to the data protected by domestic law

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as offences under its domestic law the publication with the use of ICT of electronic information containing data which are a state secret and have appropriate marks proving that the information published belongs to that protected by domestic law of another State Party.

Article 17. Use of ICT to commit acts established as offences by the international law

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as under its domestic law the use of ICT for the purposes of committing an act established as an offence in the scope of application of one of the international treaties listed in Annex 1 to this Convention.

2. On depositing its instruments of ratification, acceptance, approval or accession, State Parties which are not parties to a treaty listed in Annex 1 to this Convention may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the indicated Annex. The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact.

When a State Party ceases to be a party to a treaty listed in Annex 1 to this Convention, it may make a declaration as provided for in this article, with respect to that treaty.

Article 18. ICT-Related infringement of copyright and related rights

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence or another unlawful act under its domestic

law the infringement of copyright and related rights, as defined by the legislation of that State Party, when such acts are committed intentionally.

2. Each State Party shall adopt such legislative and other measures as are necessary to establish as an offence under its domestic law the infringement of copyright rights, as defined under the legislation of that State Party, when such acts are committed intentionally and with the use of ICT.

Article 19. Aiding, preparation and attempt at committing an offence

1. Each State Party shall adopt such legislative and other measures as are necessary to establish as offences under its domestic law any form of participation, for example as an accomplice, aider or abettor, in the commission of an offence established as such by the provisions of this Convention.

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as offences under its domestic law intentional actions of a person directly aimed at committing an offence, if the offence was not accomplished for reasons beyond this person's control.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as offences under its domestic law manufacturing or adaptation of means or instruments of offence by a person, finding accomplices, conspiring to commit an offence or any other intentional creation of conditions for the commission of an offence, if the offence was not accomplished for reasons beyond this person's control.

Article 20. Corporate liability

1. Each State Party shall adopt such legislative and other legal measures as may be necessary to ensure that legal persons can be held liable for a criminal offence and other unlawful acts established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the respective legal person, who has a leading position within it, based on:

- a) the powers of representation of the legal person;

- b) authority to take decisions on behalf of the legal person;
 - c) authority to exercise control within the legal person.
2. In addition to the cases already provided for in paragraph 1 of this Article, each State Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence or other unlawful acts established in accordance with the provisions of this Convention for the benefit of that legal person by a natural person acting under its authority.
3. Subject to the legal principles applied by the respective State Party, the liability of a legal person may be criminal, civil or administrative.
4. Such liability of legal persons shall be without prejudice to the liability of the natural persons who have committed the offence and another unlawful act.

Section 2. LAW ENFORCEMENT

Article 21. Scope of procedural provisions

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for by the provisions of this Section for the purposes of prevention, suppression, investigation and judicial proceedings.
2. Except as provided otherwise in Article 28 of this Convention, each State Party shall apply the powers and procedures referred to in paragraph 1 of this Article to:
- (a) the criminal offences and other unlawful acts established in accordance with Articles 6 - 19 of this Convention;
 - (b) other criminal offences and other unlawful acts committed through the ICT;
 - (c) the collection of evidence, including in electronic form, of committing crimes and other unlawful acts.

3. (a) Each State Party may make a reservation that it retains the right to apply the measures referred to in Article 27 of this Convention only to criminal offences or categories of criminal offences specified in the reservation, provided that the range of such criminal offences or categories of criminal offences is not more restricted than the range of criminal offences to which it applies the measures referred to in the provision of Article 28 of this Convention. Each State Party shall consider restricting the application of such a reservation to enable the broadest application of the measures provided for by the provision of Article 27 of this Convention;

(b) If a State Party, due to limitations in its domestic legislation in force at the time of the adoption of this Convention, is not able to apply the measures referred to in Articles 27 and 28 of this Convention to the data being transmitted within an information system of a service provider, this system:

- is being operated for the benefit of a closed group of users;
- does not employ information and telecommunications network and

is not connected with other information systems, that State Party may reserve the right not to apply the said measures to such data transmission. Each State Party shall consider restricting the scope of such a reservation to enable the broadest application of the measures provided for in the provisions of Articles 27 and 28 of this Convention.

4. This Convention is not applicable in cases when a crime is committed in one state, the alleged criminal is a citizen of this state and is present in the territory of this state, and no other states has any grounds to exercise their jurisdiction, in accordance with the provisions of this Convention.

Article 22. Conditions and safeguards

1. Each State Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic legislation, which shall ensure the adequate protection of human rights and liberties, including

rights arising from the obligations the State Party has undertaken under the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments.

2. Such conditions and safeguards shall, in view of the nature of the powers and procedures concerned, *inter alia*, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such powers or procedures.

3. To the extent that it is consistent with the public interests, in particular the administration of justice, the State Party shall consider the impact of the powers and procedures provided for by this Section upon the rights, responsibility and legitimate interests of third parties.

Article 23. Expedited preservation of stored computer data

1. Each State Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to give adequate orders or instructions or in a similar manner ensure the expeditious preservation of specified computer data, including technical parameters of the traffic, in particular if there are grounds to believe that this data is especially vulnerable to deletion, copying or modification.

2. If a State Party gives effect to the provisions of above paragraph 1 of this Article by means of an order to a person to preserve specified stored data in the person's possession or control, the State Party shall adopt such legislative and other legal measures as may be necessary to oblige that person to preserve that data and maintain the integrity of that data for a period of time, up to a maximum of 180 days, to enable the competent authorities to seek its disclosure. A State Party may provide for such an order to be subsequently renewed.

3. Each State Party shall adopt such legislative and other measures as may be necessary to oblige the person who is tasked to preserve the data to keep

confidential the undertaking of such procedures for the period of time provided for by its domestic legislation.

4. The powers and procedures referred to in this Article shall be subject to the provisions of Articles 21 and 22 of this Convention.

Article 24. Expedited preservation and partial disclosure of traffic technical parameters

1. Each State Party shall adopt, in respect of traffic technical parameters which are to be preserved under the provisions of Article 23 of this Convention, such legislative and other measures as may be necessary to:

(a) ensure that such expeditious preservation of traffic technical parameters is possible regardless of how many service providers were involved in the transmission of such information; and

(b) ensure the expeditious disclosure to the competent authorities of that State Party, or a person designated by those authorities, of a sufficient amount of traffic technical parameters which will enable the respective State Party to identify the service providers and the path through which the indicated information was transmitted.

2. The powers and procedures referred to in this Article shall be established in accordance with the provisions of Articles 21 and 22 of this Convention.

Article 25. Production order

1. For the purposes set out in paragraph 1 of Article 21 of this Convention, each State Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:

(a) a person in its territory to submit specified computer data in that person's possession or control;

(b) a service provider offering its services in its territory to submit subscriber information in that service provider's possession or control.

2. The powers and procedures referred to in this Article shall be established in accordance with the provisions of Articles 21 and 22 of this Convention.

3. For the purpose of this Article, the term "subscriber information" shall mean any information that is held by a service provider, relating to subscribers of its services other than traffic technical parameters or content data by which can be established:

(a) the type of information and communication service used, the technical provisions taken thereto and the period of service;

(b) the subscriber's identity, postal or other addresses, telephone and other access number, including IP addresses, billing and payment information, available in the service agreement or arrangement;

(c) any other information on the site of the installation of information and telecommunication equipment, available in the service agreement or arrangement.

Article 26. Search and seizure of stored or processed computer data

1. Each State Party shall adopt such legislative and other measures as may be needed to empower its competent authorities to search to get access to:

(a) ICT devices and computer data stored therein; and

(b) computer-data storage media in which the sought computer data may be stored;

in the territory of that State Party.

2. Each State Party shall adopt such legislative and other measures as may be necessary to ensure that where its competent authorities search, pursuant to the provisions of paragraph 1(a) of this Article, have grounds to believe that the data sought is stored on another ICT device in the territory of that State Party, such authorities shall be able to expeditiously perform the search to get access to that another ICT device.

3. Each State Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize the computer data in the territory of the State Party or under its jurisdiction, or similarly secure them. These measures shall include the provision of the following powers:

- (a) to seize an ICT device used to store information or secure it in another way;
- (b) to make and retain copies of those computer data;
- (c) to maintain the integrity of the relevant stored computer data; and
- (d) to remove data in the ICT device stored or processed in the electronic form.

4. Each State Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order, under the procedure established by its domestic legislation, any person who has special knowledge about the functioning of the corresponding information system, information and telecommunication network or their parts or measures applied to protect the information therein, to provide the necessary information and/or providing assistance in undertaking measures, referred to in paragraphs 1 - 3 of this Article.

5. The powers and procedures referred to in this Article shall be established in accordance with the provisions of Articles 21 and 22 of this Convention.

Article 27. Real-time collection of traffic technical parameters

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

- (a) collect or record, through the application of technical means, in the territory of that State Party, technical parameters of the traffic transmitted with the use of ICT; and

- (b) oblige service providers, within their existing technical capability:
 - to collect or record through the application of technical means on the territory of that State Party technical parameters of the traffic; or
 - to cooperate with and assist the competent authorities of that State Party in collecting or recording in real time technical parameters of the traffic associated with specified information in the territory of that State Party.

2. Where a State Party due to the long-established principles of its domestic legal system cannot adopt the measures provided for in paragraph 1 (a) of this Article, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of the technical parameters of the traffic 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.

4. The powers and procedures referred to in this Article shall be subject to the provisions of Articles 21 and 22 of this Convention.

Article 28. Collection of information transmitted through ICT

1. Each State Party shall adopt such legislative and other measures as may be necessary, in relation to offences provided for by this Convention and established under its domestic legislation, to empower its competent authorities to:

(a) collect or record, through the application of technical means, in the territory of that State Party, information transmitted through ICT; and

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

- to collect or record through the application of technical means in the territory of that State Party computer information transmitted with the use of ICT; or

- to cooperate with and assist the competent authorities of that State Party in collecting or recording in real time computer information transmitted through ICT in the territory of that State Party.

2. Where a State Party, due to the long-established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1 (a) of this Article, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of computer information

transmitted with the use of ICT 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.

4. The powers and procedures referred to in this Article shall be subject to the provisions of Articles 21 and 22 of this Convention.

Section 3. ASSET RECOVERY MEASURES

Article 29. General provision

1. The States Parties shall cooperate with each other in the widest possible way and render mutual assistance for asset recovery in accordance with the provisions of this Convention, domestic legislation and taking account for appropriate initiatives of regional, interregional and multilateral organizations to combat money laundering.

Article 30. Prevention and detection of transfers of proceeds of crime

1. A State Party shall take such measures as may be necessary to require in accordance with domestic legislation financial institutions within its jurisdiction to determine the identity of customers and beneficial owners, in relation of which there is information on their possible involvement in the commission of offences provided for by this Convention, or their family members and closely associated partners or on behalf of the aforementioned individuals, as well as of their accounts.

2. A State Party shall take all necessary measures that allow in accordance with the domestic legislation to require financial institutions to adopt reasonable measures of control in relation to accounts which are attempted to be opened or maintained by persons specified in paragraph 1 of this Article.

3. Measures referred to paragraphs 1 and 2 of this Article shall be reasonably designed to detect suspicious transactions for the purpose of

reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

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

5. Each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this Article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

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

7. Each State Party shall consider establishing, in accordance with its domestic legislation, effective financial disclosure systems for appropriate persons who may reportedly be involved in the commission of offences provided for by the provisions of this Convention, and shall provide for

appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate and recover proceeds of crimes established in accordance with this Convention.

[Article 31. Measures for direct recovery of property

1. Each State Party shall, in accordance with its domestic legislation adopt such legislative or other measures as may be necessary

(a) to permit another State Party, its citizens and stateless persons permanently residing in its territory, legal persons established or having permanent representation in its territory to initiate civil action in the courts of that State Party to establish the right of property acquired through the commission of an offence or other unlawful acts established in accordance with this Convention;

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

(c) to permit its courts or competent authorities, when having to decide on confiscation, to recognize claims of another State Party, its citizens and stateless persons permanently residing in its territory, legal persons established or having permanent representation in its territory as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.]

Article 32. Mechanisms for recovery of property through international cooperation in the sphere of confiscation

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

(a) take such measures as may be necessary to permit its competent authorities to give effect to orders of confiscation issued by courts 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 offences of money-laundering received as a result of crimes established in accordance with the provisions of this Convention;

(c) consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases where the offender cannot be prosecuted by reason of death, flight or absence, or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon another State Party's request, shall, in accordance with its domestic legislation:

(a) take such measures as may be necessary to permit its competent authorities to seize property upon a seizure order issued by a court or competent authority of the requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such 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 seize property upon a request that provides 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;

(c) consider taking additional measures to permit its competent authorities to preserve property for purposes of confiscation, for instance, on the basis of foreign arrest order or criminal charge related to the acquisition of such property.

Article 33. 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 this Convention for confiscation of property obtained as a result of commission of offences provided for by this Convention, or instrumentalities referred to in Article 35, paragraph 1, of this Convention, situated in its territory shall, to the extent possible within its domestic legislation:

(a) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) submit to its competent authorities orders of confiscation issued by a court in the territory of the requesting State Party, with a view to giving effect to it to the extent requested and to the extent to which it is related to the property situated in the territory of the requested State Party, obtained as a result of commission of offences established in accordance with this Convention or instrumentalities used for such offences.

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

3. The decisions or actions provided for in paragraphs 1 and 2 of this Article shall be taken by the requested State Party in accordance with the provisions of its domestic legislation and any bilateral or multilateral agreements or arrangements by which it may be bound in relations with the requesting State Party.

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

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

6. Before lifting any provisional measure taken pursuant to this Article, the requested State Party shall, wherever possible, provide the requesting State Party with an opportunity to validate (set out its reasons for) further implementation of this measure.

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

Article 34. Special cooperation

1. Without prejudice to its domestic law, each State Party shall aim to take measures to forward, on its own initiative and without prejudice to its own investigations or judicial proceedings carried out by its competent authorities, information on property which proceeds of an offence established in accordance with this Convention to another State Party, when it considers that the disclosure of such information might give grounds for the competent authorities of the receiving State Party to initiate investigation or judicial proceedings or might result in a request by that State Party under this chapter of the Convention.

Article 35. Return and disposal of property

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

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

3. In accordance with Article 35 of this Convention and paragraphs 1 and 2 of this Article, the requested State Party shall:

(a) in case of embezzlement of public assets when they were confiscated in accordance with Article 35 of this Convention and on the basis of a final judgment made in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated assets to the requesting State Party;

(b) in all other cases, consider, as a matter of priority, returning confiscated property to their prior legitimate owners or paying compensation or damages to the victims of the offence;

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations or judicial proceedings resulted in a return or disposition of the confiscated property pursuant to this Article.

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

CHAPTER 3. MEASURES TO PREVENT AND COMBAT OFFENCES AND OTHER UNLAWFUL ACTS IN THE INFORMATION SPACE

Article 36. Policy and practices to prevent and combat offences and other unlawful acts in the area of ICT use

1. Each State Party shall, in accordance with basic principles of its legal framework, develop and implement or pursue an effective and coordinated policy to combat offences and other unlawful acts in the area of ICT use.

2. Each State Party shall aim to establish and promote effective practices to prevent offences and other unlawful acts in the area of ICT use.

3. The States Parties shall, as appropriate and in accordance with basic principles of their legal frameworks, collaborate with each other and relevant international and regional organizations in developing and promoting the measures referred to in this Article.

Article 37. Bodies responsible for prevention of and combating offences and other unlawful acts in the area of ICT use

1. Each State Party shall take all necessary legislative and other legal measures to designate authorities responsible for activity to prevent and combat offences and other unlawful acts in the area of ICT use, and establish procedures for their interaction.

2. Each State Party shall inform the Secretary General of the United Nations of the name and address of the authority/authorities that may assist other States Parties in developing and implementing specific measures to prevent offences and other unlawful acts in the area of ICT use.

Article 38. Private sector

1. Each State Party shall take measures, in accordance with basic principles of its domestic law, to prevent offences and other unlawful acts in the area of ICT use in the private sector; enhance information security standards in the private sector, and, where appropriate, impose and apply effective, proportionate and dissuasive civil and administrative/criminal sanctions for the failure to comply with such measures.

2. Measures aimed at attaining these goals may include *inter alia*:

(a) promotion of cooperation between law enforcement agencies and relevant private entities;

(b) support for the development of standards and procedures to provide information security;

(c) promotion of training programs for law enforcement, investigative, judicial and prosecution authorities.

Article 39. Principles and codes of conduct of private bodies offering information and telecommunication services

1. Each private body (or a group of bodies) offering information and telecommunication services and located in the territory of a State Party shall take appropriate measures, within its power and in accordance with the law of the State where the above body is located, to support the establishment and implementation of principles and codes for the international information space, based on respect for human rights guaranteed by fundamental instruments of the United Nations.

2. Measures aimed at attaining these goals may include *inter alia*:

(a) cooperation among private bodies offering information and telecommunication services and groups of them;

(b) cooperation in developing principles and standards to create an enabling environment to build civilized society as an integral part of the international information space.

Article 40. Raising public awareness of cybercrime prevention

1. Each State Party shall take appropriate measures, within its power and in accordance with basic principles of its domestic law, to promote active involvement of individuals and groups, including non-governmental and public organizations, in prevention of offences and other unlawful acts in the area of ICT use, and to raise public awareness of those offences, their causes and seriousness as well as threats they pose. This involvement should be backed by the following measures:

(a) to provide an effective public access to information;

(b) to carry out public awareness activities to promote zero tolerance for offences and other unlawful acts in the area of ICT use;

(c) to provide public education training programs on ICT security;

2. Each State Party shall take appropriate measures to ensure that the public is aware of relevant bodies responsible for combating offences and other unlawful acts in the area of ICT use referred to in this Convention, and provide access to address such bodies to report any incidents that may be considered to constitute offences and other unlawful acts in accordance with this Convention.

Chapter IV. INTERNATIONAL COOPERATION

Section 1. GENERAL PRINCIPLES OF INTERNATIONAL COOPERATION AND MUTUAL ASSISTANCE

Article 41. General principles of international cooperation

1. The State Parties shall cooperate as much as possible in accordance with the provisions of this chapter and pursuant to relevant international instruments on international cooperation in criminal cases and agreements reached on the basis of uniform or mutual legislations, as well as domestic laws with a view to preventing, suppressing, detecting and investigating offences in the field of ICT use.

2. When the principle of mutual recognition is required to qualify an action as an offence in dealing with international cooperation issues, the above principle shall be considered as applicable irrespective of whether the law of the requested State Party qualifies the action as the same offence category or describe it with the same terms as the requesting State Party, in case the action constituting an offence where assistance is requested is criminalized in accordance with the legislations of both States Parties.

3. Where appropriate and applicable under the domestic legal framework, the States Parties shall consider providing assistance to each other in investigation and prosecution of civil and administrative cases related to unlawful acts in the area of ICT use.

4. For the purpose of mutual legal assistance and extradition between the States Parties, neither offence referred to in articles 6 -18 of this Convention shall be considered as a political offence, an offence associated with a political

offence or an offence on political grounds. Therefore, a request for legal assistance or extradition related to such offence shall not be rejected merely on the ground of being relevant to a political offence or an offence associated with a political offence or an offence on political grounds.

Article 42. General principles on mutual legal assistance

1. The States Parties shall provide mutual legal assistance for the purpose of investigation or judicial proceedings of offences and other unlawful acts in the area of ICT use.
2. Each State Party shall also take all necessary legislative and other measures to comply with the obligations provided for in Articles 47-48, 50-54 and 57 of this Convention. Each State Party shall also consider extending (or suspending) a period of limitation in order to ensure inescapable responsibility.
3. Each State Party may, in case of emergency, send requests for mutual legal assistance or communications related thereto by expedited means of communication, including by fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested State Party. The requested State Party shall accept and respond to the request by any expedited means of communication. The requested State Party may reserve the right to forward a response after the receipt of the original request.
4. Unless otherwise specifically provided for in the articles in this chapter, mutual legal assistance shall be subject to the provisions of the requested State Party's law or those of applicable mutual legal assistance agreements, including the list of grounds the requested State Party may refer to for non-cooperation.

Article 43. Jurisdiction

1. Each State Party shall take all necessary measures to establish jurisdiction over offences and other unlawful acts established in accordance with this Convention, when they are committed:

(a) in the territory of that State Party; or

(b) onboard vessel that was flying the flag of that State Party when the offence was committed; or onboard aircraft registered under the law of that State Party at that time.

2. Subject to Article 3 of this Convention, a State Party may also establish its jurisdiction over any such offence and other unlawful act when:

(a) offence is committed against a national of that State Party, stateless person permanently residing in its territory, legal person established or having a permanent representation in its territory, as well diplomatic mission and consular office of that State Party; or

(b) offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) offence is committed against that State Party.

3. For the purposes of Article 48 of this Convention, each State Party shall take all necessary measures to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is in its territory and it does not extradite such person on the mere ground that he/she is one of its nationals or a person granted a refugee status by that State Party.

4. Each State Party, in the territory of which the alleged offender is present, and which does not extradite such person, shall, in cases provided for in paragraphs 1 and 2 of this Article, without any exception and regardless of whether the offence was committed in the territory of that State Party, without further delay submit the case to its competent authorities for the purpose of prosecution through proceedings in accordance with the law of that State.

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 investigating, prosecuting or carrying out judicial proceeding on the same action, the competent authorities of those States Parties shall, as appropriate, consult each other with a view to coordinating their actions.

6. Without prejudice to 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.

Article 44. Information *suo motu*

1. A State Party may, within the scope of its domestic law and without prior request of another State Party, forward information gathered during its own investigation, if it believes that disclosure could help the State Party initiate or conduct an investigation or judicial proceedings on offenses or other unlawful acts established in accordance with this Convention or might result in a cooperation request by that State Party in accordance with the provisions of this chapter.

2. Before providing such information, the providing State Party may require maintaining confidentiality of such information or make certain conditions of its use. If the receiving State Party cannot grant such request, it shall then notify the providing State Party which will decide whether such information should still be provided. If the receiving State Party accepts the information under mentioned conditions, they shall be binding for that State Party.

Article 45. Transfer of criminal proceedings

1. The States Parties shall consider transferring to one another proceedings for purposes of criminal prosecution on an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved to ensure combining of criminal cases.

Article 46. Procedures of sending requests for mutual assistance in the absence of applicable international agreements

1. In case of absence of an existing mutual legal assistance treaty or agreement between the requesting and requested State Party, the provisions of paragraphs 2 to 8 of this Article shall be applied. If such treaty or agreement does exist, the provisions of this Article shall not be applied unless the States Parties concerned agree to apply in lieu thereof any or all of the following provisions of this Article.

2. (a) Each State Party shall designate a central authority or authorities that shall send requests for mutual legal assistance and respond to them, grant such requests or transfer them to the competent authorities;

(b) Central or other authorities referred to in subparagraph (a) shall communicate directly with each other;

(c) Each State Party at the time of signature of this Convention or depositing its instrument of ratification or its instrument of acceptance, approval or accession shall inform the Secretary General of the United Nations of the names and addresses of the authorities designated in accordance with this paragraph;

(d) The Secretary General of the United Nations shall compile and keep permanently updated the register of central authorities designated by the States Parties. Each State Party shall ensure that this register always contains reliable data.

3. When granting a request for mutual legal assistance, the requested authority shall apply the law of its State. If asked by the requesting authority, the legal procedures of the requesting State may be applied if they do not contradict the legislation of the requested State Party.

4. The requested State Party may, in addition to the grounds for refusal provided for in Article 43, paragraph 4, refuse legal assistance if:

(a) the request concerns an offense which the requested State Party considers as an offence or as an offense related to an offense against the state;

(b) it deems that the execution of the request will undermine its sovereignty, security, public order or other vital interests.

5. The requested State Party may postpone taking measures on the request, if such measures interfere with criminal investigations or judicial proceedings conducted by its authorities.

6. Before refusing or postponing the legal assistance, the requested State Party shall consider granting the request in part or subject under such conditions as it deems appropriate, after consultations with the requesting State Party, if necessary.

7. The requested State Party shall as promptly as possible inform the requesting State Party of the results of the request for legal assistance. In case of refusal to grant the request or its postponement, the reasons for such refusal or postponement shall be notified. The requested State Party shall also inform the requesting State Party of any reasons due to which the request shall not be granted or, most probably, shall be granted with a considerable delay.

8. The requesting State Party may request the requested State Party to keep confidential the fact and the subject matter of the request submitted in accordance with the provisions of this chapter, but only to the extent consistent with its execution. If the requested State Party cannot comply with the request for confidentiality, it shall promptly notify thereof the requesting State Party which shall then decide whether the request should still be made.

Article 47. Confidentiality and limitations on the use of information

1. In case of absence of an existing mutual legal assistance treaty or agreement between the requesting and requested State Party based on the uniformed or reciprocal legislation, the provisions of this Article shall be applied. If such treaty, agreement or laws do exist, the provisions of this Article

shall not be applied unless the States Parties concerned agree to apply in lieu thereof any or the following provisions of this Article.

2. In response to the request, the requested State Party may set conditions for information/data provision:

(a) keep them confidential, if without such condition the request for mutual legal assistance could not be granted;

(b) not disclose them for other investigations or legal proceedings that are not referred to in the request.

3. If the requesting State Party cannot comply with any condition referred to in paragraph 2 of this Article, it shall promptly notify thereof another State Party which then decides whether such information can be provided. If the requesting State Party agrees to comply with those conditions, they shall become binding for that State Party.

4. Any State Party, providing information or data on conditions referred to in paragraph 2 of this Article, may request clarifications from the other State Party on any the set conditions regarding the use of such information or data.

Article 48. Extradition

1. This Article shall apply to the offences established in accordance with 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, providing they are punishable under the domestic law of both States Parties concerned by imprisonment for at least a one-year period, or by a heavier penalty.

2. The criminal offences provided for in Articles 6 to 20 of this Convention shall be deemed to be included as extraditable offences in any existing extradition treaty between the State Parties. States Parties undertake to include such offences as extraditable offences in any future extradition treaty between them. A State Party whose domestic law so permits, in case it uses this

Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

3. If the request for extradition concerns several separate offences, at least one of which is extraditable under this Article while other are not extraditable due to their terms of punishment but are considered as offences established in accordance with this Convention, the requested State Party may apply this Article also in respect of those offences.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party which has no extradition treaty with the former, this Convention may be considered as a legal basis for extradition in respect of any offence to which this Article applies.

5. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) at the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary General of the United Nations whether it will apply this Convention as a legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) if it does not apply this Convention as a legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to apply this Article.

6. The States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this Article is applicable as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by relevant extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirements for extradition and the grounds upon which the requested State Party may refuse extradition.

8. The States Parties shall, subject to their domestic law, endeavor to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this Article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his/her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such a person in connection with an offence to which this Article applies shall, without any exception, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary issues, to ensure the efficiency of such a prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this procedure and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this Article.

12. Any person regarding whom the 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 for by the domestic law of the State Party in the territory of which that person is present.

13. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the extradition request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality or ethnic origin or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

14. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunities to present its opinions and to provide information relevant to the facts set forth in its request.

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

Article 49. Transfer of sentenced persons

1. The 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 this Convention in order that they may complete their sentences there.

Article 50. Expedited preservation of electronic information.

1. A State Party may request another State Party to order or otherwise obtain the expeditious preservation of information stored or processed with the use of ICT in the territory of that State Party and in respect of which the requesting Party intends to send a request for the search, seizure or other preservation of that information within the framework of mutual legal assistance.

2. A request for the preservation of information made under paragraph 1 of this Article shall specify:

- (a) the name of requesting authority;
- (b) the summary of basic facts, nature of investigation, prosecution or judicial proceedings to which the request relates;
- (c) the electronic information to be preserved and its relationship to the said offence;
- (d) any available data identifying the custodian of the information or the location of the ICT device;
- (e) the rationale for the preservation of information;
- (f) a message that the State Party intends to submit a request for search, seizure or similar preservation of this information within the framework of mutual legal assistance.

3. Upon receiving the request from another State Party, the requested State Party shall take appropriate measures to preserve expeditiously the information specified in paragraph 1 of this Article in accordance with its domestic law. The requested State party may execute in whole or in part the request to ensure the preservation of information even if the act giving ground for a request is not criminalized in the requested State Party.

4. A request for the preservation of information may be refused if the requested State Party considers that execution of the request can prejudice its sovereignty, security or other essential interests.

5. Where the requested State Party believes that execution of the request referred to in paragraph 1 of this Article will not ensure the future preservation of information or will threaten the confidentiality of or otherwise prejudice the investigation, prosecution or judicial proceedings, it shall promptly so inform the requesting State Party. Based on that notification the requesting State Party shall determine whether the request should be executed or not.

6. Any preservation effected in response to the request referred to in paragraph 1 of this Article shall be for a period not less than 180 days, in order to enable the requesting State Party to submit a request for the search, seizure or another preservation of information. Following the receipt of such a request, the requested State Party shall preserve that information pending a decision on that request.

Article 51. Expedited disclosure of preserved technical parameters of the traffic

1. Where, in the course of the execution of a request for the preservation of information made pursuant to Article 50 of this Convention, the requested State Party discovers that a service provider in another State was involved in the transmission of information, the requested State Party shall expeditiously disclose to the requesting State Party a sufficient amount of traffic data to identify that service provider and the path through which the information whose preservation is sought was transmitted.

2. The request to preserve information may be refused if the requested Party considers that execution of the request may prejudice its sovereignty, security, or other essential interests.

Article 52. Law enforcement cooperation

1. The States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. The States Parties shall, in particular, adopt effective measures aimed at:

(1) enhancing and, where necessary, establishing channels of communication between their competent authorities, agencies and services in order to facilitate the secure and prompt 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;

(2) cooperating with other States Parties in conducting inquiries with respect to offences covered by this Convention to discover:

(a) the identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(b) the movement of proceeds of offences or property derived from the commission of such offences;

(c) the movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(3) providing items that were used to commit offences, including criminal instruments; items that were obtained as a result of offences and as a reward for them, or items obtained by the criminal in return for items obtained in that way; items that can have the value of evidence in the criminal case;

(4) exchanging, as appropriate, information with other States Parties on specific means and methods used to commit offences covered by this Convention, including the use of false identities, false, altered or forged documents or other means of concealing their unlawful activities;

(5) facilitating effective coordination between their competent authorities, agencies and services and promoting the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the secondment of liaison officers;

(6) exchanging information that is of interest and taking coordinated measures for the purpose of early identification of the offences covered by this Convention.

2. With a view to implementing this Convention, the 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 as 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 mechanisms of international or regional organizations, to enhance the cooperation between their law enforcement agencies.

Article 53. Mutual assistance regarding the real-time collection of the technical parameters of the traffic

1. A State Party on request from another State Party shall carry out the real-time collection of the technical parameters of the traffic in its territory or territory under its jurisdiction and then, in accordance with procedures provided for by domestic law, on relevant grounds, if any, transmit the collected information.

2. Each State Party shall consider providing mutual legal assistance in relation to offences and other unlawful acts for which real-time collection of the technical parameters of the traffic is provided for by its domestic law.

3. The request sent in accordance with paragraph 1 of this Article shall contain:

- (a) the name of requesting authority;
- (b) the summary of basic facts, nature of the investigation, prosecution or judicial proceedings to which the request relates;
- (c) electronic information in relation to which the collection of the technical parameters of the traffic is required and its connection with the said offence or other unlawful act;
- (d) any available data that identify owner/user of information and location of the ICT device;
- (e) period of collection of the technical parameters of the traffic;
- (f) reasons for collecting technical parameters of the traffic;
- (g) reasons for choosing the specified period for collecting technical parameters of the traffic.

Article 54. Mutual assistance regarding the collection of electronic information.

1. A State Party in its territory or territory under its jurisdiction shall carry out the real-time collection of electronic information transmitted with the use of ICT, in accordance with procedures provided for by domestic law. Such information is provided to another State Party in accordance with domestic law, as well as existing mutual legal assistance agreement.

Article 55. Joint investigations

The States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to cases 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 relevant States Parties involved shall ensure that the sovereignty of the State Party in whose territory such an investigation is to take place is fully respected.

Article 56. Special investigative techniques

1. With a view to effectively combating offences in the area of ICT use each State Party, to the extent permitted by the basic principles of its domestic law and under the conditions prescribed by its domestic law, take, within its possibilities, such measures which can be necessary to allow for the appropriate use of special investigative techniques, such as electronic or other forms of surveillance, as well as undercover operations, by its competent authorities in its territory so that evidence gathered through such methods were accepted in court.

2. For the purpose of investigating the offences covered by this Convention, States Parties shall be encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level.

Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

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

Article 57. 24/7 Network

1 Each State Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations, prosecutions or judicial proceedings concerning criminal offences related to computer systems and data, or for electronic evidence-gathering of criminal offences. Such assistance shall include facilitating, or, if permitted by its domestic law or practice, directly carrying out the following measures:

(a) the provision of technical advice;

(b) the preservation of data to gather evidence and subsequently provide legal information in accordance with its domestic law, as well as existing mutual legal assistance agreements;

2. Each State Party shall take measures so that trained personnel and equipment are available, in order to facilitate the operation of the network.

Section 2. TECHNICAL ASSISTANCE AND TRAINING

Article 58. General principles of technical assistance

1. The States Parties shall, according to their capacity, consider affording one another the widest measure of technical assistance, especially for the benefit of developing countries, in their respective plans and programmes to combat ICT crimes, including material support and training in the areas referred to in

Article 60 of this Convention, as well as training and assistance and the mutual exchange of relevant experience and expertise, which will facilitate international cooperation between States Parties on extradition and mutual legal assistance.

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

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

4. The States Parties shall consider establishing voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries with economies in transition through technical assistance programmes and projects.

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

Article 59. Training

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

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

(b) capacity-building in the development and planning of strategic policy to counteract ICT crimes;

(c) training of the staff of competent authorities in the preparation of requests for mutual legal assistance that meet the requirements of this Convention;

(d) prevention of the transfer of proceeds of offences established in accordance with this Convention and recovering such proceeds;

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

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

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

(h) methods used in protecting victims and witnesses who cooperate with judicial authorities; and

(i) training of staff in national and international regulations and in languages.

2. The States Parties shall entrust the United Nations Office on Drugs and Crime with the task of providing specialized training assistance to States Parties with a view to promoting the implementation of national programmes and projects to combat ICT crimes.

Article 60. Information exchange

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

2. The States Parties shall consider expanding statistics, analytical expertise concerning ICT crimes with a view to developing, insofar as possible, common

definitions, standards and methodologies, including on best practices to prevent and combat such offences, and share them between themselves and through international and regional organizations.

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

Chapter V. MECHANISMS FOR IMPLEMENTATION

Article 61. Conference of the States Parties to the Convention

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

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

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the functioning of the activities set forth in this Article, including rules concerning the admission and participation of observers, and the payment of expenses incurred in carrying out those activities.

4. The Conference of the States Parties shall agree upon activities, procedures and methods of work to achieve the objectives set forth in paragraph 1 of this Article, including:

(a) facilitating activities by States Parties under Articles 59 and 60 and chapters 2 to 5 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) facilitating the exchange of information among States Parties on patterns and trends in ICT crimes and on successful practices for preventing and

combating them and for the return of proceeds of crime, through, inter alia, the publication of relevant information as mentioned in this Article;

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

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

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

(f) making recommendations to improve this Convention and its implementation;

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

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

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

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

Article 62. International Technical Commission

1. By the means of this Convention, the Conference of the States Parties shall create and establish the International Technical Commission on Combating ICT Crime (ITC) to assist the States in the review of the implementation of the Convention.

2. The ITC shall be a permanent body, consist of 23 members, and be created under the principles of mixed representation – two thirds of the members shall be presented by the Conference of the States Parties while one third shall be presented by the governing bodies of the International Telecommunication Union (ITU).

3. The members of the Commission shall be experts with significant direct experience in diplomacy, international law, communication technologies or relevant research developments.

4. The members of the Commission shall work for the period of five years and may be reappointed.

5. The sessions of the ITC shall be called not less than once a year and held at the ITC Head-Quarters or the United Nations Office on Drugs and Crime or at time and place indicated or approved by the Conference of the States Parties.

6. The Commission shall adopt its rules of procedure that are to be approved by the Conference of the States Parties to the Convention.

7. The Commission shall assess the technological progress in the ICT field.

8. The ITC via the Conference of the States Parties shall report on the results of its work to the States Parties and interested international organizations.

9. If necessary, the Commission shall give recommendations to the Conference of the States Parties on amendments to the Technical Annex to this Convention. Decisions on such recommendations shall be taken by consensus.

10. Under the recommendation of the ITC, the Conference of the States Parties may suggest to the States Parties amendments to the Technical Annex to this Convention.

Article 63. Secretariat

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

2. The Secretariat shall:

(a) make arrangements and provide the necessary services for the sessions of the Conference of the States Parties and the International Technical Commission;

(b) upon request, assist States Parties in providing information to the Conference of the States Parties; and

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

CHAPTER 6. FINAL PROVISIONS

Article 64. 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 ICT crimes.

Article 65. Settlement of disputes

1. The States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiations.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by a 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 the provisions of paragraph 2 of this Article with respect to any State Party that has made such a reservation.

4. A 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 66. Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by all States Parties.

3. This Convention shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 67. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. For the purposes of this paragraph, any such instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States participating in such an organization.

2. For each State Party or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit

of the thirtieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State Party or organization of the relevant instrument or on the date this Convention enters into force pursuant to paragraph 1 of this Article, whichever is later.

Article 68. Amendments

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and send it to the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the States Parties to the Convention for the purposes of considering and deciding on the proposal. The Conference of the States Parties shall make every effort to achieve consensus on each amendment. If all efforts to achieve consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this Article with a number of votes equal to the number of their States Parties. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this Article shall be subject to ratification, acceptance or approval by States Parties.

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 an amendment.

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

Article 69. Reservations

1. Each State Party may declare that it will use the right to make a reservation regarding the application of this Convention, when signing or depositing its instrument of ratification or accession, by means of a notification in writing addressed to the Secretary-General of the United Nations. Reservations to articles 14, 16, 17 and article 48 paragraph 10 will not be accepted.

Article 70. Revision of Annex 1

1. Any State Party may propose amendments for the purposes of revising the list of international legal instruments contained in Annex 1 to this Convention.

2. The Secretariat shall be obliged to monitor newly adopted international legal instruments which may influence the scope of application of this Convention and to submit proposed amendments to Annex 1 to the next session of the Conference of the States Parties.

3. Proposed amendments should pertain only to universal and regional international legal instruments which have entered into force and are directly related to international crime.

4. The Secretary-General shall send draft amendments proposed in accordance with paragraph 1 of this Article to the States Parties. If one third of the total number of the States Parties which have ratified this Convention notify the Secretary-General of their objections to the entry into force of the amendment within six months from the day the draft amendment is sent, such amendment shall not enter into force.

5. If less than one third of the total number of the States Parties which have ratified this Convention file their objections to the entry into force of the amendment with the Secretary-General within six months from the day the draft amendment was sent, such an amendment shall enter into force for the States Parties not objecting to it thirty days after the six-month deadline for filing objections.

6. The Conference of the States Parties shall adopt an amendment by a two-thirds majority vote of all States Parties which have ratified this Convention. Such an amendment shall enter into force for the States Parties which have expressed their consent to apply the amendment thirty days after the day of the adoption of the amendment.

7. After an amendment has entered into force in accordance with the provisions of this Article, and any State Party has sent the Secretary-General a notification of its objection to the amendment, such an amendment shall enter into force for the respective State Party thirty days after the day it notifies the Secretary-General of the adoption of the amendment.

Article 71. 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 States participating in such organization have denounced this Convention.

Article 72. Depositary and languages

1. The Secretary-General of the United Nations shall be 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.

Annex 1

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)
2. Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague, 16 December 1970)
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971)
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 17 December 1973)
5. International Convention against the Taking of Hostages (New-York, 17 December 1979)
6. Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980)
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation. (Rome, 10 March 1988).
8. International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997)
9. International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999)
10. International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 13 April 2005)
11. Convention on Extradition and Mutual Legal Assistance in Counter-terrorism (New York, 16 May 2008))
12. United Nations Convention against Transnational Organized Crime (New York, 15 November 2000)
13. United Nations Convention against Corruption (New-York, 31 October 2003)

14. Single Convention on Narcotic Drugs (New York, 30 March 1961)
15. United Nations Convention on Psychotropic Substances (Vienna, 21 February 1971)
15. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 19 December 1988)

Technical Annex

Type	Name	Description
1. Software	Worms	A malicious program that spreads itself through local and global computer networks
	Viruses	A malicious self-replicating program
	Trojans	A malicious program that performs unauthorized functions in the system
	Rootkit	A program or program kit designed to hide the presence of intruder or malicious program in the system
	Bootkit	A program modifying the MBR boot sector
	Exploit	A program or a sequence of commands taking advantage of software vulnerabilities to attack the computer system. The attack may be aimed at gaining control of the system (privilege escalation) or its failure (DoS attack)
	Constructor	Programs for developing malicious programs
	Cryptor	A program for hiding malicious software
	Backdoor	A malicious software for hidden control of the computer
	Bruteforcer	A program for cracking passwords
	Keylogger	A malicious program capturing keystrokes
	Sniffer	A network traffic analyzer
	Keygen	Key generator
	Traffic Generator	A malicious program generating spurious traffic
Clicker	A malicious program that simulates banners and clicks on them	
2. Hardware	Skimmer	An attachable device that captures information from magnetic stripe of the card for subsequent copying
	Encoder (reader)	A device that reads/records information on magnetic stripe
	Embosser	A device for embossing plastic cards
3. Special Intelligence Technical Tools	SITT 1	Devices for the hidden obtaining and recording of acoustic information
	SITT 2	Devices for the hidden visual observation and recording
	SITT 3	Devices for the hidden eavesdropping on telephone conversations
	SITT 4	Devices for the hidden capturing and recording of information from technical communication channels
	SITT 5	Devices for the hidden control of mail messages and sendings

	SITT 6	Devices for the hidden examining of items and documents
	SITT 7	Devices for the hidden access to and examination of premises, vehicles and other facilities
	SITT 8	Devices for the hidden control of movements of vehicles and other items
	SITT 9	Devices for the hidden obtaining (modifying, erasing) of information from technical media designed for its storage, processing and transfer
	SITT 10	Devices for hidden identity check