



Statement by

Mrs. Andrea Martin-Swaby

**Deputy Director of Public Prosecutions and Head of Jamaica's
Cybercrimes and Digital Forensics Unit**

on behalf of

The Caribbean Community

(CARICOM)

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

Purposes on

**Agenda Item 6: Preliminary exchange of views on the key
elements of the Convention**

Conference Room 4, UNHQ

March 4, 2022

Madame Chair,

I have the privilege of delivering this statement regarding the key elements of the Convention, on behalf of the fourteen (14) member states of CARICOM.

CARICOM believes that, if we are to achieve the proposed objectives of the Convention, there are several key areas which must be addressed. However, this is by no means an exhaustive list.

GENERAL PROVISIONS

CARICOM is of the view that the aspect of the new instrument which deals with the issue of general provisions should include the definitions of terms and, as has been stated before, the objectives and scope of the instrument should reflect respect for the principle of sovereignty, as well as indicate that the full and equal enjoyment of human rights will form the underlying basis of the Convention.

CRIMINALIZATION

In terms of criminalization, Madame Chair, CARICOM would suggest the following as key elements for the consideration of the Ad Hoc Committee:

1. **The Outline of Computer Dependent Crimes** – This will form the foundation of the instrument and should include a technologically neutral outline of the offences which affect the integrity, confidentiality and availability of computer

systems and data – to include Illegal/ Unauthorised Access, Illegal/ Unauthorized Interception/, Illegal/ Unauthorized Interception of Data, Data Interference & System Interference, Misuse of Devices;

2. **Computer Enabled Crimes** – There should be a list of computer enabled crimes to include Computer Related Fraud & Computer Related Forgery; Infringement of Copyrights;

3. **Content Related Offences** – These would include offences related to Child Pornography; Violation of Privacy – Revenge Pornography/ Non-Consensual Distribution of Sexual Images. The latter, Madame Chair, is perhaps the most effective method of “naming and shaming” an individual and not only leaves the victim almost defenceless, but also unable to control the reach of the transmission of that data on the internet. It is a violation of the human right to privacy and the use of ICTs to commit this act changes the nature of the act and almost an entirely new offence which may not be otherwise adequately covered by legislative instruments.

INVESTIGATIVE POWERS

Madame Chair, a further critical area of the instrument will be the necessary investigative powers which would facilitate the effective investigation and ultimately successful prosecution and conviction of individuals who use ICTs for criminal purposes. Regarding these

investigative powers, key elements will be the treatment of the following tools:

1. **Expedited Preservation of Data** - The 24/7 network is critical in respect of securing the expedited preservation of computer material/ data which is needed for a criminal investigation. State parties should be encouraged to implement laws which secure such expedited preservation of data. Due to the transient nature of data, this element of the convention arguably has pride of place as an investigative tool.
2. **Production of Data** – State parties should be encouraged to implement laws which also facilitate the production of data which is needed for a criminal investigation within a timely manner.
3. **Search & Seizure of computer material** – The instrument should also include a facility for enabling law enforcement to search and seize computer material which is needed for a criminal investigation.
4. **Lawful Interception of Communication** – The new instrument should encourage member states to implement laws which facilitate the interception of live communication in circumstances which justify this invasive method of surveillance.

5. **Technical Assistance and Capacity Building** – For small developing states like CARICOM that continue to grapple with resource constraints, it is paramount that for capacity building be included as a key element in the development of the Convention.

JURISDICTION AND JOINT INVESTIGATIONS

CARICOM believes that another key element of the convention will be the treatment of the issue of **Jurisdiction and joint investigations.**

– The treatment of the issue of Jurisdiction in Article 15 of UNTOC and joint investigations which was dealt with in Article 19 of the UNTOC.

INTERNATIONAL COOPERATION

The treatment of the issue of International co-operation will be very important in this convention. There should be the following;

1. General principles relating to international cooperation in its broadest sense, including both informal cooperation as well as cooperation on the basis of relevant international instruments;
2. Extradition;
3. Mutual Legal Assistance – Keen attention must be placed on international cooperation where such data is needed for a criminal investigation which is being conducted in the territory

of a member state. Careful attention must be paid to the existing mutual legal assistance regime and the pace at which international cooperation is achieved using this tool. CARICOM believes it takes too long and is ill-suited for electronic evidence which may be needed urgently to further a criminal investigation or to prevent a serious crime being committed. This instrument should pay careful attention to whether a special road map could be inserted in respect of how to seek to expedite not only the preservation of data, but also the production and transfer of data. The 24/7 network, which is often utilized for the preservation of data, could be extended beyond law enforcement to law enforcement to include the officers within the states who are points of contact in relation to securing the production of data where a viable, credible and sound criminal investigation is being conducted. CARICOM is not saying that we must do away with Mutual Legal Assistance. However, CARICOM believes that the time has come where we look carefully at Mutual Legal Assistance and its relationship with the gathering of digital evidence and seek to re-define or enhance the capabilities of member states to act quickly in producing the data, and seek to overcome the bureaucratic nature of the existing Mutual Legal Assistance process as it applies to traditional offences. This will be a key element of this new instrument.

4. Asset Recovery – Confiscation of the benefit of cybercrimes, as well as international cooperation in the respect of asset

recovery. In this regard, we adopt the aspect of our statement in respect of the scope and objectives of the new instrument.

5. Technical Assistance and Capacity Building – Again, Madame Chair, CARICOM has a preference for the inclusion of strong provisions in this regard.

Madame Chair, as CARICOM has indicated, this is not an exhaustive list and we welcome further engagement in this regard.