OCTOPUS CONFERENCE 2013

COOPERATION AGAINST CYBERCRIME
Workshop 1: Policies, activities and initiatives on cybercrime of international organisations

THE COMMONWEALTH WORKING GROUP OF EXPERTS ON CYBERCRIME AND THE COMMONWEALTH CYBERCRIME INITIATIVE

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The Law Ministers' Mandate and the CHOGM Commitment

1.   At the Commonwealth Law Ministers Meeting held in Sydney in July 2011 Law Ministers resolved to recognise the significant threat cybercrime poses to national security and law enforcement in all countries of the Commonwealth, and mandated the Commonwealth Secretariat to form a multidisciplinary working group of experts to:

(1)   review the practical implications of cybercrime in the Commonwealth;

(2)   identify the most effective means of international co-operation and enforcement, taking into account, amongst others, the Council of Europe Convention on Cybercrime, without duplicating the work of other international bodies; and

(3)   collaborate with other international and regional bodies with a view to identifying best practice, educational material and training programmes for investigators, prosecutors and judicial officers.[1]

2.   In January 2012 the Legal and Constitutional Affairs Division (LCAD) of the Secretariat, in conjunction with the Governance and Institutional Development Division (GIDD), established a Commonwealth Working Group of Experts (the Group) to deliver the mandate, to submit a Report for consideration by Senior Officials of Commonwealth Law Ministries in September 2013, and to present it to Law Ministers at their Meeting in Botswana in 2014.

3.   The Group included individual experts, academics, representatives of some member countries[2] that have developed legislation and have practical experience, Commonwealth organisations[3], civil society[4], and regional[5] and international organisations[6] with remits on cybercrime and related matters. The Group also included members of the Commonwealth Cybercrime Initiative (CCI), a programme recently formed and already working to assist developing countries to develop their institutional capacity in fighting cybercrime.

4.   The Commonwealth Heads of Government had already endorsed the CCI at their Meeting in Perth, Australia in October 2011, when they re-iterated their commitment to

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[1] Commonwealth Law Ministers Meeting Communiqué, 2011 paragraphs 17-19: Cybercrime.
[2] Australia, Canada, Tonga, South Africa, Singapore and the United Kingdom,
[3] Commonwealth Magistrate and Judges Association (CMJA), Commonwealth Lawyers Association (CLA) Commonwealth Telecommunications Organisations (CTO)
[4] Internet Corporation for Assigned Names and Numbers (ICANN), COMNET
[5] Council of Europe
[6] United Nations Office on Drugs and Crime (UNODC), International Telecommunications Union (ITU)

improve legislation and capacity in tackling cybercrime and other cyber inspired security threats, including through the Commonwealth Cybercrime Initiative (CCI). The CCI had recently been formed to assist developing countries to develop their institutional capacity in fighting cybercrime through the sharing of expertise from existing resources, with particular focus on the Commonwealth Model Law on Computer and Computer-Related Crime[7] and also drawing from other treaties, conventions (including the Budapest Convention), legal frameworks, toolkits and guidelines.

5.   Senior Officials of Commonwealth Law Ministries endorsed CCI's methodology in September 2013. Commonwealth Heads of Government noted their endorsement at their Meeting in Sri Lanka in November 2013, and called for the provision of assistance to developing countries on their cybercrime issues.

The Group's Approach, Conclusions and Recommendations

6.   The Law Ministers' mandate requires answers to three questions, which though not entirely separate, call for separate responses. Publication of the responses and the Group's recommendations must await their consideration by Commonwealth Law Ministers at their Meeting in Botswana in May 2014. In the meantime, however, the Commonwealth's policies, activities and initiatives, which are a subject of this workshop, and the work which Commonwealth Secretariat has been performing in pursuance of the mandate, particularly the work and progress of the CCI in responding to part 2 of the mandate, are free for discussion.

The Commonwealth

7.   The Commonwealth consists of 53 countries and former colonies of the British Empire (except Mozambique, Rwanda and Cameroon) sharing the same language, history, legal and institutional frameworks. The Commonwealth Secretariat, which is based in London, responds to requests by member states and fulfils mandates passed down by ministers, such as the mandate on cybercrime passed down by Law Ministers in 2011.

The Commonwealth Secretariat

8.   The Commonwealth Secretariat co-operates closely with international, regional and national organisations to deliver efficient technical assistance to develop the practical skills of investigators, prosecutors and judges. It enjoys close connections with criminal justice officials in member countries, particularly in the small jurisdictions which allow it to engage closely with practitioners to discover the difficulties faced by jurisdictions on the ground, and provide technical assistance accordingly. An important aspect of its work is providing criminal justice officials with the practical skills to tackle all sorts of crime including cybercrime.

Commonwealth programmes and initiatives

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[7] Text available at:
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7BDA109CD2-5204-4FAB-AA77-86970A639B05%7D_Computer%20Crime.pdf

The Commonwealth Connects Programme

9.   The Commonwealth Connects programme is a vehicle for technology and knowledge transfer in areas such as eGovernment Services, Telecommunication Regulation and related activities. Its work includes promoting the development of national ICT strategies; sharing ICT resources for capacity building; and supporting pan-Commonwealth ICT-based initiatives.

10.   In October 2011 Commonwealth Heads of Government re-iterated their support for the programme in encouraging greater effort from member countries to harness the benefits provided by technology, through promoting strategic partnerships, building ICT capacity and sharing ICT expertise; encouraged member countries to contribute to the Commonwealth Connects Special Fund[8]; and requested the Secretariat's continued support for the programme. The programme provides a unique opportunity for keeping up to date the growing body of expertise in cybercrime and providing a virtual community within the Commonwealth to share information, exchange views, and act as a repository of best practice.

The Commonwealth Internet Governance Forum (CIGF)

11.   The Secretariat established the Commonwealth Internet Governance Forum (CIGF) in 2010 to encourage greater participation from Commonwealth member states on policy issues and discussions related to Internet Governance, including those under the aegis of the UN Internet Governance Forum. It has compiled lists of resources on child protection and cyber security.

The Commonwealth Cybercrime Initiative

12.   In 2011, the CIGF promoted the idea of a Commonwealth Cybercrime Initiative (CCI). Its aim was to assist Commonwealth member states to implement a programme of measures including an appropriate legal framework for responding to cybercrime and acquiring cyber evidence. While the Commonwealth benefited from a common institutional backdrop, traditions, language and values, as an institution it had little by way of specialist capacity or funds for such a venture. It could, however, act as a catalyst and broker working with the broad alliance of partners, each partner having a unique contribution to make. The CCI is thus an innovative umbrella type construct, comprising a consortium of partners including states, organisations, networks, NGOs and individuals who are able to offer their expertise and capacity to develop projects to assist jurisdictions within the Commonwealth. The list of current partners indicates its potential[9].

13.   CCI's methodology is to:

(i)   conduct independent, holistic needs assessments for developing Commonwealth states in terms of their capacity to address the threat from cybercrime (covering all

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[8] A fund established by CHOGM in 2005 to implement activities within the Commonwealth Connects programme.
[9] TheAnti-Phishing Working Group (APWG), Caribbean Telecommunications Union (CTU), Centre for Internet Safety at the University of Canberra (CIS), Children's Charities' Coalition on Internet Safety (CHIS), Commonwealth Business Council (CBC), Commonwealth Secretariat, CTO, COMNET, Council of Europe, CyberEthics Cyprus, DiploFoundation, European NGO Alliance for Child Safety Online (eNACSO), Global Prosecutors' e-Crime Network (GPEN), Institute for Security Studies, South Africa (ISS), International Center for Missing and Exploited Children (ICMEC), ICSPA, ITU, ICANN, Internet Watch Foundation (IWF), Interpol, Kenya Communications Commission, Secretariat of the Pacific Community, Serious Organised Crime Agency (SOCA) and UNODC.

components from national strategy and legal framework to CIRT and public awareness);

(ii) further a needs assessment, and where the necessary level of state commitment is identified, to co-ordinate comprehensive, long-term programmes of assistance, harnessing the motivations of governments, international organisations and the private sector; and

(iii) to serve as a forum for states and international organisations and others to co-ordinate their capacity building work across Commonwealth states; and to discuss, debate and refine capacity-building methodology.

14. Although the role of the Budapest Convention was a dominant feature of early discussions amongst those initiating the CCI, who amongst others, included the Council of Europe and the ITU, it was relatively easily agreed that CCI would promote legislation, consistent, compatible and convergent with the convention, thereby assisting those states wishing to join the convention to do so, but not in any way making assistance conditional on an intention to accede to the Convention.

15. Initially, the Commonwealth Secretariat and the Governments of Malta and the United Kingdom provided the Initiative's resources, by engaging with potential partners, securing their collaboration, and by establishing its structures and working methods. Until 30 June 2013, its secretariat was provided by COMNET, an independent Foundation established as a joint initiative of the Commonwealth Secretariat and the Government of Malta. However, as it became clear that the CCI's governance structure was preventing the participation of some prospective partners and that funding for administration as opposed to project work would not be forthcoming once the initial phase was over, the decision was taken in May 2013 that CCI's management should pass from COMNET to the Commonwealth Secretariat itself. The Commonwealth Secretariat, which already deals with cybercrime issues as part of its criminal justice, money-laundering and terrorism programmes, is a natural home for the CCI, which can benefit from the Secretariat's established financial management and procurement procedures. The United Kingdom Government is committed to the Initiative and has agreed to assist the Commonwealth Secretariat with administrative support for the work of the CCI, initially through SOCA and its successor the National Crime Agency (NCA).

16. In 2012, its first year of operation, the CCI responded to a major request from Ghana and had formal requests for assistance from The Gambia, Kenya, Maldives, Trinidad & Tobago, and Uganda, together with expressions of interest from a number of other Commonwealth countries. It also established its working methods, described below. By July 2013 it had conducted five comprehensive Needs Assessment Reports.

17. The CCI's working method, has not changed under the new administrative arrangements. Requests for assistance are made to the Commonwealth Secretariat and considered by the CCI's Cybercrime Executive Management Committee (CEMC), composed principally of representatives of governments, the two relevant Divisions of the Commonwealth Secretariat (GIDD and LCAD), and a representative of the NCA. The Committee is responsible for the overall policy of the CCI and prioritises requests for assistance. If following a preliminary study it decides to act on a request, it sends a team of individual experts to the state concerned to conduct a Gap Analysis and Needs Assessment using a checklist developed by the Initiative, and to make a Needs Assessment Report. The expenses of the experts are covered by a Projects Fund established within the CCI.

18.   When it has been agreed by the requesting state the Needs Assessment Report is shared with the CCI's Operations Consortium of agencies, organisations and individual experts willing to contribute to its work. The Consortium meets physically about twice a year but information is also exchanged through its virtual network. It may identify a range of different types of assistance needed by the state visited. There is close consultation with that state's government. Many aspects of the assistance identified, and agreed with the government, will fall within the mandate and expertise of a CCI partner, and will be undertaken by the partners concerned under their usual procedures in terms of funding and responsibility. Otherwise the CCI and its partners may be able to assist in identifying funding and/or expertise from elsewhere. The CCI will also assist the requesting state in co-ordinating the various pieces of work to ensure an effective outcome.

19.   CCI's methodology is illustrated by its first project undertaken in Ghana. In January 2012 the Ghana Ministry of Communications requested CCI's assistance in developing a cyber security strategy and the establishment of a national CIRT. In the following month the CCI sent out a team from SOCA, ITU and ICSPA to conduct a Needs Assessment. In April 2012, the CCI submitted a Needs Assessment Report to the Minister and in August 2012 the Minister submitted a further and more developed request for assistance in line with the Report's recommendations. This was shared with the partners with the result that offers of assistance and/or funding were identified against all elements of the request. In January 2013 the CCI sent the proposal to the Minister and in April 2013 a meeting took place in which the proposals were discussed and agreed. These included a University Partnership to promote joint research and training programmes; assistance in establishing a CIRT with ITU; assistance from SOCA and the CPS in conducting a resource and training needs analysis for the criminal justice system; and a scheme in which the IWF will provide a reporting line for child abuse images. More recently Needs Assessment teams have been established to examine requests from Kenya, Trinidad and Tobago, The Gambia and Uganda.

20.   The methodology adopted by the CCI is an innovative means of securing co-ordinated and comprehensive assistance to Commonwealth member states. It can avoid duplication and help to ensure the establishment and implementation of national strategies that address all issues in a sustainable fashion. Although dependent on the continued goodwill of the partner agencies as well as clear and focused management, the global need for cooperation should ensure that they will continue to be found.

Commonwealth Telecommunications Organisation (CTO)

21.   Within the Commonwealth, the Commonwealth Telecommunications Organisation (CTO) is an international organisation, established in its present form in 1967, co-operating with but independent of the Commonwealth Secretariat. Its membership includes all member states of the Commonwealth and ICT sector members including government departments or regulators, private sector companies, civil society organisations, and other entities that share the CTO's objectives. According to its Constitution, the CTO has four main purposes: (a) to support the development and use of ICTs within the Commonwealth and beyond; (b) to promote the provision and use of ICTs to meet the needs of members, to support development in member countries, and to ensure the inclusion of marginalised people; (c) to promote effective co-operation and partnership amongst its members and other organisations; and (d) to develop and implement activities to promote the above three objectives. The CTO delivers training and capacity building, carries out research and consultancies and organises international events and conferences.

The future role of the Commonwealth

22.   By continuing its role in managing CCI together with its more general work relating to criminal justice and development, the Commonwealth Secretariat is responding to a unique opportunity to assist member states to develop the capacity to combat cybercrime and collaborate with other international and regional organisations for that purpose.

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